

In the Privy Council

ON APPEAL from the Supreme Court of New South Wales in its Equitable Jurisdiction in Suit instituted by Statement of Claim No. 1231 of 1956

BETWEEN

THE COMMISSIONER FOR RAILWAYS - - - - - *Plaintiff*

AND

AVROM INVESTMENTS PTY. LIMITED
and JOHN BONAVENTURE LIMERICK - - - - - *Defendants*

AND BY AMENDMENT made the Eleventh day of April 1957
pursuant to leave granted on the Ninth day of April 1957

BETWEEN

THE COMMISSIONER FOR RAILWAYS - - - - - (*Plaintiff*) *Appellant*

AND

AVROM INVESTMENTS PTY. LIMITED,
JOHN BONAVENTURE LIMERICK
and JOHN BIRKETT WAKEFIELD - - - - - (*Defendants*) *Respondents*

TRANSCRIPT RECORD OF PROCEEDINGS

INDEX OF REFERENCE

PART 1

No.	Description of Document	Date	Page
	IN THE SUPREME COURT OF NEW SOUTH WALES IN ITS EQUITABLE JURISDICTION		
1	Statement of Claim—Not printed (Reproduced except as to formal parts in Judgment.)	4th October 1956 ...	560
2	Statement of Defence of Avrom Investments Pty. Limited—Not printed (Reproduced except as to formal parts in Judgment.)	12th December 1956 ...	568
3	Replication—Not printed (Reproduced except as to formal parts in Judgment.)	21st December 1956 ...	579
4	Rejoinder—Not printed (referred to in Judgment) ...	13th May 1957	581

Part 1—*continued.*

No.	Description of Document	Date	Page
	Transcript of Evidence of Witnesses :—		
	<i>Defendant's Evidence</i>		
5	Eric Milton Nicholls	6th March 1957	1
6	Henry Arthur Llewellyn	12th March 1957	118
7	Walter Ralston Bunning	14th March 1957	179
8	Henry Arthur Llewellyn recalled	14th March 1957	196
9	Eric Milton Nicholls recalled	19th March 1957	204
10	Henry Arthur Llewellyn recalled	19th March, 1957	206
11	Walter Ralston Bunning recalled	19th March 1957	230
12	William Ray Laurie	19th March 1957	238
13	John Roland Harrowell	20th March 1957	253
14	Henry Arthur Llewellyn recalled	21st March 1957	267
15	John Roland Harrowell recalled	21st March 1957	279
16	Elizabeth Dorothea Randall	21st March 1957	282
17	Henry Arthur Llewellyn recalled	25th March 1957	289
18	Royle Stone Connolly	25th March 1957	291
	<i>Plaintiff's Evidence</i>		
19	Thomas Maxwell Scott	25th March 1957	294
20	Alexander Theodore Britten	26th March 1957	327
21	David Wallo Davies	3rd April 1957	434
	<i>Defendant's Evidence in Reply</i>		
22	Henry Arthur Llewellyn recalled	4th April 1957	437
23	Eric Milton Nicholls recalled	8th April 1957	440
24	Notice of Motion under Section 89 of the Conveyancing Act, 1919-1954.	4th April 1957	455

Part 1—*continued.*

No.	Description of Document	Date	Page
25	Notes of McLelland J.	.....	457
26	Reasons for Judgment (McLelland J.)	11th February 1958 ...	467
27	Decree	11th February 1958 ...	597
28	Order allowing final leave to appeal to Her Majesty in Council.	1st May 1958	
29	Certificate of Deputy Registrar in Equity Supreme Court of New South Wales verifying Transcript Record.		
30	Certificate of Chief Justice.		

APPELLANT'S EXHIBITS

Exhibit Mark	Description of Document	Date	Page
A	Lease (not reproduced but printed copies accompany Record).	26th June 1941	489
B	Permit to Build (reproduced in judgment)	26th June 1941	488
C	File of Correspondence (not reproduced)	28th August 1942 to 12th March 1951.	
D	File of Correspondence (not reproduced)	14th February 1945 to 13th April 1953.	
E	File of Correspondence. 1. Letter from Avrom Investments Pty. Ltd. to Commr. for Railways.	24th August 1953 ...	601
	2. Letter from Solr. for Railways to Sly & Russell ...	25th August 1953 ...	602
	3. Letter from Sec. for Railways to Avrom Investments.	25th August 1953 ...	602
	4. Letter from Solr. for Railways to Sly & Russell ...	25th August 1953 ...	602
	5. Letter from Sly & Russell to Solr. for Railways ...	25th August 1953 ...	603

Part 1—Appellant's Exhibits—*continued.*

Exhibit Mark	Description of Document	Date	Page
<i>E contd.</i>	6. Letter from Solr. for Railways to Sly & Russell ...	26th August 1953 ...	603
	7. Letter from Solr. for Railways to Sly & Russell ...	19th October 1953 ...	603
	8. Letter from Sly & Russell to Solr. for Railways ...	23rd October 1953 ...	604
	9. Letter from Sly & Russell to Solr. for Railways ...	3rd November 1953 ...	604
	10. Letter from Sly & Russell to Sec. for Railways ...	21st April 1954 ...	604
	11. Letter from D. F. Cowell Ham to Registrar Licensing Court.	13th April 1954 ...	605
	12. Letter from Sly & Russell to Sec. for Railways ...	7th May 1954 ...	606
	13. Letter from Sec. for Railways to Avrom Invest- ments Pty. Ltd.	13th May 1954 ...	607
	14. Letter from Solr. for Railways to Sly & Russell ...	21st May 1954 ...	607
	15. Letter from Avrom Investments Pty. Limited to Sec. for Railways.	15th June 1954 ...	609
	16. Letter from Sly & Russell to Solr. for Railways ...	6th August 1954 ...	610
	17. Letter from Sly & Russell to Commr. for Railways	19th August 1954 ...	611
	18. Letter from Sec. for Railways to Sly & Russell ...	5th October 1954 ...	613
	19. Letter from Sec. for Railways to Messrs. Stanley & Llewellyn.	25th October 1954 ...	614
	20. Plan (not reproduced).		
F	Minutes of Order and Order to carry out work (reproduced in Judgment).	9th November 1953 ...	523
G	Minute of Order (reproduced in Judgment) ...	26th May 1954 ...	527
H	Series of Plans marked 'approved' (not reproduced : copies a mpany Record) referred to in Judgment.	.....	525
	Plan (not reproduced : referred to in Judgment) ...	.....	525
J	1. Application for Extension of Time ...	28th September 1955 ...	614
	2. Submissions by Applicant for Extension of Time ...	Undated ...	617
K	Application for Variation (reproduced in Judgment) ...	5th September 1956 ...	558

Part I—Appellant's Exhibits—*continued.*

Exhibit Mark	Description of Document	Date	Page
L	1956 Plans referred to Exhibit K (not reproduced : copies accompany Record). Referred to in Judgment.	25th June 1956	541
M	Application for Authority to carry out work (reproduced in Judgment).	19th September 1956 ...	559
N	File of Correspondence (reproduced in Judgment with the exception of the following letter) — Letter from Sly & Russell to Secretary for Railways	3rd April 1956 to 27th August 1956. 27th March 1956 ...	534 to 552 623
O	Transcript of evidence before Rooney J. (not reproduced : referred to in Judgment).	28th August, 1956 ...	557
P	Diagrammatic Sketches (not reproduced).		
Q	Contract between Respondent and Civil and Civic Construction Pty. Ltd. and annexure (not reproduced : referred to in Judgment).	24th August 1956 ...	551
R	Specifications (not reproduced).		
S	List of Utensils (not reproduced).		
T	Sketch (not reproduced).		
U	Isometric Drawings prepared by T. M. Scott (not reproduced).		
V	3 Files of Correspondence (not reproduced)	3rd December 1928 to 27th August 1930.	
W1	Blue prints of superstructure (not reproduced).		
W2	Elevation of proposed Hotel (not reproduced).		
W3	Bundle of Plans (not reproduced).		
W4	Bundle of Plans (not reproduced).		
W5	Bundle of Plans (not reproduced).		
W6	Specifications (not reproduced).		
X	File of Correspondence (not reproduced)	17th October 1932 to 8th September, 1937.	
X1	Plans (not reproduced).		

Part 1—Appellant's Exhibits—*continued.*

Exhibit Mark	Description of Document	Date	Page
Y	File of Correspondence (not reproduced)	20th June 1934 to 4th September 1935.	
Y1	Bundle of Blue prints (not reproduced).		
Y2	Structural Drawings (not reproduced).		
Y3	Structural Drawings (not reproduced).		
Z	File of Correspondence (not reproduced)	23rd February 1934 to 28th March 1934.	
Z1	Plans (not reproduced).		
AA	File of Correspondence (not reproduced)	13th August 1934 to 25th February 1935.	
AA1	Sub-structure plans (not reproduced).		
BB	File of Correspondence (not reproduced)	21st May 1929 to 23rd May 1932.	
BB1	Computations by Mr. Stanley (not reproduced).		
CC	Calculations (not reproduced).		
DD	Letter from D. F. C. Ham to Secretary for Railways (not reproduced; referred to in Judgment).	29th September 1947 ...	518
EE	Valuation by Valuer General (not reproduced)... ..	21st March 1957 ...	
FF	File of Correspondence (not reproduced)	21st July 1938 to 9th October 1941.	
FF1	Plans (not reproduced).		
GG	File of Correspondence (not reproduced)	25th March 1938 to 22nd September 1938.	
HH	Statement of Claim, Statement of Defence and Replica- tion in Suit 1102 of 1939 (not reproduced; referred to in Judgment).	16th September 1939 ...	484
JJ	File of Correspondence (not reproduced)	23rd June 1932 to 25th May 1937.	
KK	Draft Agreement to execute Lease (not reproduced)	Undated.	
LL	File of Correspondence (not reproduced)	7th March 1946 to 2nd May 1946.	

Part 1—Appellant's Exhibits—*continued.*

Exhibit Mark	Description of Document	Date	Page
MM	3 Letters (not reproduced)	22nd May 1947 28th May 1947 10th July 1947	
NN	File of Correspondence (not reproduced)	12th September 1947 to 3rd November 1947.	
OO	Letter (not reproduced)	17th October 1947 ...	
PP	Minute of Conference (not reproduced)	24th November 1954 ...	
QQ	Plan re Mr Britten's evidence (not reproduced).		
RR	3 Plans (not reproduced).		
SS	City of Sydney By-law No. 52 (not reproduced).		
TT	3 Plans drawn by Mr Davies (not reproduced).		
UU	Letters marked "A" and "B" (not reproduced).		
VV	File of Correspondence (not reproduced)	22nd February 1941 to 17th March 1942.	
WW	File of Correspondence and Plans referred to therein (not reproduced).	6th November 1941 to 9th March 1942.	
XX	Plan and Specification by Warden (not reproduced : referred to in Judgment).	.....	512
YY	Blue prints of facade (not reproduced).		
ZZ	Bundle of Blue prints, 1941 (not reproduced).		
AAA	File of Correspondence :—		
	1. Letter from Secretary for Railways to Respondent	9th June 1955	625
	2. Letter from Secretary for Railways to Ham and Morris.	20th January 1956	625
	3. Letter from Ham and Morris to Secretary for Railways.	6th February 1956	626
	4. Letter from Secretary for Railways to Ham and Morris.	10th February 1956	626
BBB	Letter (not reproduced : referred to in Judgment) ...	25th November 1941 ...	513

Part 1—Appellant's Exhibits—*continued.*

Exhibit Mark	Description of Document	Date	Page
CCC	6 Sheets of Survey Plan (not reproduced).		
DDD	Minute of 16th May 1929 and Document of 4th April 1929 (not reproduced).		
EEE	Document setting out effect of Documents in Licensing Court (not reproduced : referred to in Judgment).	.....	488

RESPONDENT'S EXHIBITS

Exhibit Mark	Description of Document	Date	Page
1	Bundle of Rent accounts and receipts (not reproduced : referred to in Judgment).	.....	538
2	Isometric diagram (not reproduced).		
3	Sheet No. 10 (not reproduced).		
4	Sheet No. 9 (not reproduced).		
5	Document comparing schemes	Undated	627
6	Plan of proposed lift alteration (not reproduced).		
7	Letter of instructions from Respondent to E. M. Nicholls (reproduced in Judgment).	8th June 1956	538
8	Plan of scheme to remove encroachment (not reproduced).		
9	Book of Photos (not reproduced).		
10	3 Sheets of structural drawings (not reproduced).		

Part 1—Respondent's Exhibits—*continued.*

Exhibit Mark	Description of Document	Date	Page
11	Sketch of loads on beams (not reproduced).		
12	Set of plans sent to Railways by Sly & Russell (not reproduced; see Exhibit "L").		
13	Sketch of proposed truss (not reproduced).		
14	Set of slides and typescript (not reproduced).		
15	Sketch of columns (not reproduced).		
16	Sketch of proposed truss (not reproduced).		
17	Financial Estimates (not reproduced).		
18	Calculations re Columns 53 and 55 (not reproduced).		
19	Summary of net profits of Respondents 1943 to 1956...	.....	630
20	Copy Leasehold accounts (not reproduced: referred to in judgment).	.....	585
21	Original Tender (reproduced in Judgment: Copies of attached Plan accompany Record).	6th April, 1927	468
22	Plan accompanying letter of 5th October, 1954 (not reproduced).		
23	Agreement (not reproduced: referred to in Judgment)	10th July, 1942	513
24FF	The balance of file which contains the correspondence tendered by the Appellant as Exhibit FF (not reproduced).	21st July 1935 to 9th October 1941.	
25GG	The balance of file which contains the correspondence tendered by the Appellant as Exhibit GG (not reproduced).	25th March 1938 to 22nd September 1939.	
26	Diagram (not reproduced).		
27	3 Sketches (not reproduced).		
28	Statement of E. M. Nicholls (not reproduced).		
29	Tenancy Agreements (not reproduced; referred to in Judgment).	.....	479
30	Draft list of Admissions by Respondent (not reproduced: referred to in Judgment).	Undated	

PART II.

List of Formal Documents Omitted from the Transcript Record of Proceedings.

No.	Description of Documents	Date
1	Appearance of Defendants Avrom Investments Pty. Limited and John Bonaventure Limerick.	10th October 1956.
2	Statement of Defence of Defendant John Bonaventure Limerick	14th December 1956.
3	Notice of Motion for leave to appeal to Her Majesty in Council	24th February 1958.
4	Affidavit of Alan Grant Crawford in support of Motion	24th February 1958.
5	Order of McLelland J. granting conditional leave to appeal ...	14th March 1958.
6	Certificate of Deputy Registrar in Equity Supreme Court of New South Wales of Settlement of Index and fulfilment of conditions.	30th April 1958.
7	Letter to Deputy Registrar in Equity from Solicitor for Respondent (confirmed by Solicitor for Appellant) undertaking that Counsel for the respective parties will not object to any exhibits which are not reproduced in the Transcript being read or referred to on the Appeal.	23rd April 1958.

Defendant's Evidence

No. 5

Evidence of E. M. Nicholls

Mr WALLACE : Q. Are you a Registered Architect in New South Wales and Victoria ? A. Yes.

Q. Are you an Associate of the Royal British Institute of Architects ? A. Yes.

Q. And an Associate of the Royal Australian Institute ? A. Yes.

Q. A member of the Town Planning Committee—the Town Planning Institute ? A. Yes.

10 Q. Have you been in practise for over 30 years ? A. Yes.

Q. Did you commence your professional life as a partner to the late Walter Burley Griffin ? A. Yes.

Q. Have you had extensive practice in Civic, Industrial and Commercial buildings ? A. Yes.

Q. Are you at present the Architect for a very large building known as Caltex House, at the entrance to the southern end of the Bridge ? A. Kent Street.

Q. Are you currently designing a 300-bed hotel in the Kosciusko Park Trust area ? A. Yes.

20 Q. Have you designed a 400-bed hotel in Melbourne ? A. Yes.

Q. Are you a member of the Planning Committee set up by the Willoughby Council to prepare a plan for the Willoughby Municipality ? A. Yes.

Q. Are you preparing a plan for the Mittagong Shire as a consultant town planner ? A. Yes.

Q. Did you visit America about a year ago at the request of Caltex in connection with their new building and there further study your profession ? A. Yes.

Q. According to modern trends of thought in America ? A. Yes.

30 Q. Do you claim to be conversant with modern trends and modern architectural designs for hotel buildings ? A. Yes.

Q. You are the architect, aren't you, who designed or prepared the plans which form part of Exhibit " L " (shown) ? A. Yes.

Q. Do you have a set of your own plans ? A. The solicitor has a set. I have not a set here.

Q. Have you also examined the plans which form part of Exhibit " H " (shown) ? A. Yes, I am conversant with these.

40 Mr PERRIGNON : I wish to make an application, as follows. I am instructed that the Licensing Court, in order to embark upon the hearing of the matter before it, requires the recent plans in respect of which

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 5.
E. M.
Nicholls.
—
Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 5.
E. M.
Nicholls.
—
Examination.

approval is now being sought, also the plans dated May, 1954, and the two orders, one of November, 1953, and the other of May, 1954. They are the four Exhibits that the Licensing Court does require.

HIS HONOR: Those four Exhibits are also necessary and essential in this Court, but I am prepared, if I am satisfied that the Licensing Court requires them for their proper purposes, to allow the custody of those documents into the Clerk of the Court, on his giving his personal undertaking to me to return them to me on demand, and provided I have before me documents which will enable me to go on while the original exhibits are absent from this Court; in other words, documents 10 which I am satisfied are copies.

Regarding Exhibit "F", subject to what counsel may say, I see no reason why this document should not go down to the Licensing Court on the Clerk undertaking to return it if this Court requires it and when this Court requires it to be returned. I have no copy, and as part of the undertaking he should undertake to lodge a copy with me before taking this one.

Mr PERRIGNON: I am prepared to give that undertaking on behalf of the Clerk of the Court.

HIS HONOR: In regard to Exhibit "G", on a similar undertaking and 20 with a similar copy being lodged, I am prepared to allow that one to go out of this Court.

Mr PERRIGNON: The next one is Exhibit "H", which is the 1954 plans.

HIS HONOR: At the moment I cannot release that exhibit, but if and when I am satisfied I have a copy that will enable this Court to proceed with its work, I will be prepared to let that one out on an undertaking to return it when this Court so requires it. That again will be a personal undertaking on the part of the Clerk of the Court.

Mr PERRIGNON: The next exhibit is Exhibit "L", the plans in 30 respect of which approval is now being sought.

HIS HONOR: I am willing to follow a similar procedure so far as that exhibit is concerned, but at the moment I cannot allow these documents to go out because I have to deal with them in the ordinary course of this case.

SIR GARFIELD: Your Honor takes it that we do not consent to this.

HIS HONOR: Yes.

Mr PERRIGNON: If and when the substituted plans are available, might I mention the matter again? 40

HIS HONOR: Yes. Meanwhile I shall allow you to have in Court those two files so that you will know what copies are necessary to be made. It would be a good idea to get somebody to certify that they are copies.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Mr WALLACE: Q. Have you also examined what I shall call the Ham plans (Exhibit "H"). Do you know what I mean by that? A. Yes, I have examined them.

Defendant's
Evidence.

Mr WALLACE: Mr Ham designed the 1954 plans.

No. 5.
E. M.
Nicholls.

Q. Could you give His Honor an outline of what you have designed and what accommodation will be included therein? In your own words, describe to His Honor with any sketches or any other illustrations that you may have the nature of the plans that are included in Exhibit "L"?

Examination.

A. As a basis for doing this design, I was asked by my clients to produce for them the beginnings of a modern hotel that could be added to. I am not a hotel specialist, therefore I adopted the customary procedure that I do, put a research inquiry through the Public Library, and there they collect for you all of the current data they have on modern hotels, and I made a folder of that, which I have here. With that data in hand, I commenced the design, and then, to describe it in the manner that the builder will build it, the first part of the building that is effected is at the Wynyard Lane level.

Q. I think I should first of all get a description of the subject land and its contours or topography. I show you Sheet No. 9. A. This is Sheet No. 9, being a diagrammatic presentation of the Ham scheme and my own scheme.

Q. We will call it Sheet No. 9. What is this one that I now show you? A. It is Sheet No. 10, an isometric representation of the Ham scheme and my own.

Q. Dealing first with Sheet No. 10, does this diagrammatically represent the respective continuations and ultimate completions of the Ham and the Nicholls' plans? A. Yes.

Q. As you look at it, on the left, is that the Nicholls' plan? A. I am pleased to say that that is the Ham plan.

Q. As you look at it on the left is the representation of the completion of the Ham plans? A. Yes.

Q. When I say "completion", I mean by that how the present Ham and Nicholls' plans could ultimately be extended to the building height limit? A. Yes, within the framework of the present Acts.

Q. Within the framework of the present Acts and Ordinances? A. Yes.

Q. As you look at this No. 10 Sheet, on the right there is a similar view of what could be built on your plan? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

Examination.

Q. Looking at those two representations, which of the two in your opinion produces a better and more efficient result from modern views? (Objected to by Sir Garfield).

(Sheet No. 10—m.f.i. (7)).

Q. Looking at m.f.i. (7), we see, first of all, that the land on which these projected buildings appear fronts George Street and goes over a lane called Wynyard Lane, and then fronts Carrington Street? A. Yes.

Q. The level at George Street, I think, is considerably lower than the level of Carrington Street? A. Approximately two storeys.

Q. George Street, as we all know, is a very busy commercial street? A. Yes, particularly at the Plaza. 10

Q. That is particularly at the Wynyard Railway Station entrance; whilst Carrington Street is quite a quiet sort of street, comparatively speaking. A. Relatively quiet.

Q. Is it a one-way traffic street? A. One-way traffic, the quiet side being the Plaza side.

Q. You have told His Honor that these diagrammatic portrayals of how the Ham and Nicholls' plans respectively would appear completed to the maximum height under existing ordinances and Acts, and, having regard to the basic framework of their respective designs, would appear when completed? A. Yes. 20

Q. On the assumption that one of the tests of your respective designs would be how the design lends itself to efficient development at a later date, which of those two do you say lends itself best to such later development? (Objected to by Sir Garfield).

Q. In connection with the erection of a building of this sort in this type of area, is the question of light of paramount importance? A. Particularly essential.

Q. In the Ham design on this m.f.i. (7), do we notice in the centre of the building two sides or slabs going up to a lower height than the major outside slabs? A. Yes. 30

Q. In between those two inner or lower slabs is a light-well shaded dark? A. Yes.

Q. We will call the Ham plan the 1954 plan and yours the 1956 plan. Is that right? A. Yes.

Q. In relation to the 1954 plan, why is it in the first instance that you have shown the inner slabs as of a lower height than the two major slabs facing George and Carrington Streets? A. The inner court is determined by the City of Sydney Building Regulations, which say that the court cannot be in height greater than three times its width. Therefore, it ceases at some mathematical point. 40

Q. Does that work out, on the 1954 plans, at about a height of seven storeys? A. Yes.

Q. That is why the centre portion of that building is considerably lower than the two major outside slabs ? A. Yes.

Q. Going to that centre portion again, what distance apart are those two internal slabs—the seven storey maximum slabs—approximately ? A. About 22 feet.

Q. Would that mean that the bedrooms on the inner side of those slabs would be facing each other and only 22 feet or 23 feet apart ? A. Yes.

Q. In your opinion, is that a good feature, an indifferent feature 10 or a bad feature ? A. It is a very bad feature.

Q. Turning to another aspect of the respective designs, what do you say of the lighting results produced by way of comparison on the 1956 plan ? A. The lighting is particularly good. The two blocks are far apart.

Q. Does your profession describe or rate lighting according to classes—first, second, third and so on ? A. Yes.

Q. Reverting to the 1954 plan, have you worked out what proportion of accommodation there would be, first, second and third class ? A. Yes.

20 Q. Have you worked out what proportion of the 1956 plan would be first, second and third ? A. Yes.

Q. I think His Honor will allow you to look at any notes you have prepared for the purpose of qualifying yourself to give evidence. A. Yes.

Q. Going to the 1956 design, what proportion of its accommodation would be first class ? A. The whole of it.

Q. In regard to the 1954 plan, how would it be apportioned into the classes ? A. Taking a gross area at one floor level, there are 200,000 square feet approximately, and the first class space would be 30 134,000 square feet, second class space 39,000 square feet, and third class space 32,000 square feet.

HIS HONOR : They are in round figures.

WITNESS : Yes.

Mr WALLACE : Q. Can you indicate roughly where the third class space would be ? A. Surrounding the inner court.

Q. And the second class would be A. On the outer side, as it were surrounding the two outer courts.

Q. Is there any other feature appearing on m.f.i. (7), apart from lighting which in your opinion shows that one is a better design than 40 the other ? A. Yes. You can take air movement,

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Examination.

Q. Just what is that? A. In a hotel it is most important, if the hotel is not air conditioned, to be able to open the windows and to get a movement of air. If you have totally enclosed courts or partly enclosed courts then the movement of air is greatly restricted, whereas in the 1956 design it is quite open, and the air is not impeded.

Q. Before I leave m.f.i. (7), are there any other features to which you would wish to refer on the subject of which in your opinion is the better design? A. Only to reiterate the point that where people are in their bedrooms, in any design with courts of such small dimensions, then you automatically look into the bedroom windows 10 of the people across the court. Perhaps I could also say this, that in the 1956 design the bulk of the bedrooms are towards the Carrington Street frontage and away from the George Street frontage where all the noise is.

Q. Do you regard that as an important feature? A. Well, it is obviously pleasanter to overlook a park and be quiet than it is to overlook George Street and be disturbed by noise.

Q. Both designs, of course, only cater for a small portion of what is shown on m.f.i. (7)

HIS HONOR: The phrase I used at the beginning covers it. This is 20 the conception of two plans, carried out to the fullest extent.

Mr WALLACE: Q. By the way, is this 1956 design in your profession known as the thin slab design? A. That class of building has become known in architectural parlance as a slab building.

Q. That is the 1956 plan? A. Yes.

Q. Has that a modern trend, and is it well regarded by both buildings' owners and the architectural profession? A. Yes.

Q. What have you in mind to elaborate that? A. I have here from the Public Library reproductions of modern hotels dating back as far as 1929. They all adhere to the simple form of slab building, not 30 covering the whole of the site, with a corridor in the centre and rooms on either side.

Q. By "a corridor in the centre" you mean, of course, that in the 1956 building you have tall rectangular section slabs, comparatively narrow, with a corridor running transversely across it, so that rooms open on either side of the corridor, to open air? A. Yes. That shows more clearly on Sheet No. 9, where the plan shows it.

Q. We will come to Sheet No. 9 shortly, but I want to obtain from you at this stage this: when we go to the 1954 plans, we will find, will we not, that they are so designed, although they only go up a 40 short distance, the same as the 1956 plans—they are so designed that what you have drawn on m.f.i. (7) must of necessity represent the future development? A. I think that is inevitable.

(m.f.i. (7) now tendered and marked Exhibit 2).
 (Sheet No. 9—m.f.i. (8)).
 (Schedule of areas—m.f.i. (9)).

Q. Taking m.f.i. (9), that is called on its face a schedule of areas ?

A. Yes.

Q. Does m.f.i. (9), schedule of areas, show the actual areas of the floor plans of the 1954 and 1956 designs ? A. Yes, at a typical bedroom floor level.

Q. It is, of course, diagrammatic, and are you speaking of a typical floor level under the actual design or under the projected development that we have been speaking about in m.f.i. (7) ? A. As regards the 1954 plan, that is from the actual plans. As regards the 1956 one, that portion facing Carrington Street refers to my plans—the immediate work. That section facing George Street refers to logical development in the future.

Q. The section facing George Street is not part of the 1956 plan as at presently existing ? A. No.

SIR GARFIELD : Nor is the whole of this Carrington thing, I should imagine.

20 Mr WALLACE : I thought he said the whole of Carrington Street is.

WITNESS : It is.

SIR GARFIELD : I was thinking of the height. When you come to these total areas, then the height makes all the difference.

Mr WALLACE : Q. I have already made it clear that on the right-hand side of what is called the present scheme, at the foot, that is not part of what we know as the 1956 plan, but only capable of being developed. However, the top one is part of the 1954 plan as it presently exists without development ? A. That is so.

Q. Taking what you have done on m.f.i. (9), do the figures show a comparison of the areas ? A. The site coverage.

Q. What do you mean by “site coverage” ? A. At a typical bedroom floor level, presuming each of the schemes to be developed to their full, then the area of the site coverage is as shown on those two schedules.

Q. That is to say, the proportion of the total area built on ? A. It is not expressed in proportions. It is expressed in square feet.

Q. I know that, but may I say it this way—by indicating that in each case they are drawn to the same scale ? A. Yes.

Q. And the area of land which you understand to be included in the lease is shown in the way I point (demonstrating) ? A. That is so.

Q. Of that area, the total under the 1954 plan would be 21,682 square feet, the total area being 29,200 square feet. Is that right ? A. Yes.

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*

Defendant's
 Evidence.

No. 5.
 E. M.
 Nicholls.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.

E. M.
Nicholls.

Examination.

Q. 21,682 square feet A. Square feet coverage.

Q. And on the 1956 design, 18,189 ? A. That is right.

Q. Of that coverage, all the 18,189 would be first class space, according to your standards ? A. Yes.

Q. While only 9,650 would be first class in the 1954 one ? A. Yes.

Q. Whilst the remainder of the 21,682 would be made up by 6,670 as to second class, and as to 5,354 of third class space ? A. Yes.

(Luncheon adjournment).

Mr WALLACE : I have not had the opportunity of drafting any amendment, but I would like to say that at present I propose to attack the 10 26th May, 1954, proceedings of the Licensing Court rather than the order of the 9th November.

HIS HONOR : While the suit is before me, all that time you have every chance of making an amendment you think appropriate, and it is better for you to do it when you have finally decided what you are going to do.

Mr WALLACE : Q. Just before lunch you had given the details of the schedule of areas from the point of view of site coverage ? A. Yes.

Q. Going back to Exhibit 2 for the moment, can you tell His Honor of the two buildings, if they were completed, which of the two—the 1954 and 1956 buildings—would provide the greater floor coverage. 20 A. 1956.

Q. Have you got the figures there ? A. On another plan. (m.f.i. (9) now tendered and marked Exhibit 3).

Q. I now go to another document. What do you call this (showing) ? A. Sheet No. 9.

Q. It is m.f.i. (8). Does that show sections respectively of the 1954 and 1956 plans ? A. Yes, diagrammatic sections.

Q. That is on the top line ? A. Yes. There are sections. The low ones are the plans.

Q. Going to the sections on the top first of all, would it be correct 30 to say that on the left-hand one, which is the 1954 one, if you were to draw, for the purposes of distinction a red line just above or on the second floor A. Yes.

Q. And you continued on the left-hand side—that is, the side near Carrington Street—and continued that right across to George Street, would you get the roof level of the the 1954 actual plans ? Is that clear ? A. Yes. That is substantially right.

HIS HONOR : Where it has “second floor”, that is the roof.

Mr WALLACE : Q. The roof of the first floor of the 1954 plan then provides for a first floor facing Carrington Street. Is that right ? 40 A. Yes, ground floor and first floor.

Q. The ceiling of the first floor ? A. That is right.

Q. Then you carry it across, and there is some construction envisaged where the words " Wynyard Lane " are ? A. That is so.

Q. Then you carry it across to George Street, and there the line on the same level gets where the words " second floor " are ? A. Yes.

Q. That is to say, the roof of the first floor of George Street. Is that clear ? A. Yes.

Q. Constrasting that with the 1956 plan, would it be correct to say that in the 1956 plan the building goes to where the words " fourth floor " are ? A. Yes.

10 Q. That is to say, the roof of the third floor is the ceiling of the actual building ? A. Yes, that is substantially so.

Q. Then it comes down, and the existing building facing George Street is left untouched ; that is to say, where the roof of the second floor is, it is left untouched in its present form ? A. Yes.

Q. So that under the 1956 plan the work consists of going up as high as and including a third floor facing Carrington Street ? A. Yes.

Q. Then, going underneath to the plan, do we find diagrammatically again a plan of the actual buildings envisaged by the two designs. On the left do we find the plan of the 1954 design ? A. Yes.

20 Q. Showing, from a bird's eye view, the so-called first floor fronting Carrington Street, then a light court of a width of 22 feet 6 inches in the centre, going back towards the back and across Wynyard Lane ? A. Yes.

Q. Then, on each side of that, is some building work. Is that so ? A. Yes.

Q. Then, in George Street, the position is the same ? A. Under the two schemes ?

Q. Yes. A. No.

30 Q. Under the 1954 plan, they have got a storey put on top of the existing building facing George Street ? A. That is not quite correct.

Q. Would you just detail it ? A. At present in George Street existing there is a floor of bedrooms and other things above the ground floor.

Q. Above the George Street level ? A. Yes. Then this scheme presupposes you come in and change that somewhat by virtue of this other building impinging into it and altering it.

Q. The 1954 design impinges into and alters the existing first floor, fronting George Street ? A. Yes.

40 HIS HONOR : Q. But its height will be the same as the height of the first floor in George Street, will it ? A. Substantially.

Mr WALLACE : Q. Going back to the left-hand bottom plan, the 1954 plan, you see a light court on the northern top side, broken shape ? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Examination.

Q. It has the letter "C" with a flag pennant facing towards the left? A. Yes.

Q. And down below there is another light court of somewhat irregular shape? A. Yes.

Q. In between those and the centre light court, you have a line of second-class accommodation and then a line of third-class on both sides, and in each case the third-class fronts the inner light court? A. Yes.

Q. Does that mean what you said this morning, that there would be a corridor running along the centre with a second-class bedroom facing the public light court to the north? A. Yes. 10

Q. And to the south? A. That is correct.

Q. And the third-class facing the small inner light court? A. Yes.

Q. You have an extract, in the footing, "from the City Corporation Act, By-Law 52, made under the City Corporation Act"? A. That is so.

Q. I will come to corridors and so on later. I now want to go to the bedroom accommodation in the respective plans? A. Yes.

(m.f.i. (8) now tendered and marked Exhibit 4).

Q. What is the difference between these two documents (showing)?
A. This section, the centre section, was added, and the rest remains. 20

Q. Why was the centre section added? A. To make clearer the City Ordinance in regard to light courts.

Q. The centre section just shows the height three times the width?
A. Yes.

Q. And just shows the angular result of the light, having regard to the width of the light well? A. Yes.

Q. The next things I go to are the bedrooms and corridors. (Exhibit "L" shown.) Would you tell His Honor in some logical method what the various sheets consist of? A. This (Sheet 4) is a plan of bedrooms at the second and third floor levels above Carrington Street. 30

Q. That is Sheet 4 of 1956? A. Yes. This (Sheet 5) is a plan showing the roof at the top of the bedrooms; that is to say, at the fourth floor level of Carrington Street.

Q. The ceiling of the third floor? A. Yes.

SIR GARFIELD: That is what is green?

WITNESS: Yes, that section (indicating). These are miscellaneous pieces that relate to the lift that is being put in at varying lower levels, where the whole plan is not justified. For instance, that is at the George Street-Wynyard Ramp level.

HIS HONOR: Q. It has the phrase "Wynyard Ramp" on it? 40
A. Yes; and there at the Hunter Street level, which is one below, and this again is at the basement (indicating). That is right down the bowels of

the building. Varying things are affected that the builder needs to know of, and the City Council, and we drew those part plans just where it was affected.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Mr WALLACE : Q. What, giving access to and the environs of the lift ?
A. Yes.

Q. Which alter, according to the floor ? A. Exactly.

Defendant's
Evidence.

Q. What is Sheet 3 ? A. This is a floor of bedrooms at the first floor above Carrington Street.

No. 5.
E. M.
Nicholls.

10 Q. And the lightly shaded area, facing Wynyard Lane, what is that ? A. That is the roof of the ground floor of the Carrington Street structure; Wynyard Lane below—George Street there (indicating).

Examination.

Q. I want to ask you about the concourse and the shopping centres later. What is Sheet 1 ? A. Sheet 1 is a plan at Wynyard Lane level, that being Carrington Street, this being George Street, and that being the existing ramp that you come up from George Street to Wynyard Lane, showing one-half of the shopping court here, the other half of the shopping court there, the access stairs which go up to Carrington Street.

20 Q. Look at Sheet 1. Is this the general scheme—correct me if I am wrong. The public, having come in through the George Street entrance, can go via steps across Wynyard Lane and then on to what you call the concourse ? A. This is a shopping court (indicating).

Q. Then, up some steps into the foyer of the front of the hotel, and thence into Carrington Street ? A. No, that is not literally true. It shows better in a section.

Q. Before I leave this, would this be true : under this design, the frontage of the area into Wynyard Lane on both sides is recessed so as to provide a modern shopping centre ? A. Indeed. I have a picture of both of those here. The footpath is vastly wider on each side to create a shopping court.

30 Q. The idea is to have about nine modern shops grouped about that court ? A. Yes.

Q. I now pass to the next sheet, Sheet No. 6. A. Sheet No. 6 comprises two sections, one going from George Street, through Wynyard Lane up to Carrington Street. The other one, which is marked on a plan sheet, parallels Carrington Street and cuts right through the bedroom and the Carrington Street block.

Q. Which is Carrington Street on the upper sections, "BB" ?
A. Right there is Carrington Street. That is termed "ground floor" in this scheme.

40 Q. And this is a section A. Running parallel to Carrington Street.

Q. And that shows three storeys of bedrooms and a ground storey of miscellaneous and reception rooms and so on ? A. Yes. This is the clear one as to how you get from spot to spot, (indicating).

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence

No. 5.
E. M.
Nicholls.

Examination.

Q. The lower one shows how you get from Carrington Street to George Street and vice versa ? A. Yes.

Q. Starting from the right of the lower diagram, you find George Street entrance underneath the existing building, which you say consists of bedrooms ? A. Yes.

Q. Then you go downstairs to a dining room, and you can go along, up some steps, to Wynyard Lane ? A. Yes, there it is, in grey (indicating). You continue on through more shops, up more steps, to the public concourse bounded by shops at Carrington Street level, and thence to Carrington Street. 10

SIR GARFIELD : Q. Is this the existing Wynyard Lane ? A. That is so.

Q. Is this the only dining room in the plan—

Mr WALLACE : I am coming to that.

Q. It is the only dining room in the 1954 plan ? A. That is correct.

Q. But in the 1956 plan, there is one underneath Carrington Street, on the Carrington Street side, for residents, with a kitchen ? A. Yes.

Q. By the way, how many bedrooms are provided for in the 1954 plan ? A. I have a schedule. It is 64. 20

Q. Do you produce a schedule which you have prepared ? A. Yes.

Q. Showing a comparison of the accommodation under the two plans ? A. Yes.

Q. Under the 1954 plan were there 64 bedrooms as compared with 76 under the 1956 plan ? A. Yes.

Q. Under the 1954 plan there were 23 twin bedrooms as compared with 39 ? A. Yes.

Q. Nine doubles as compared with three ? A. Yes.

Q. 32 singles as compared with 34 ? A. That is correct.

Q. Under the 1954 design, 12 twin bedrooms had baths, five had 30 showers

HIS HONOR : You are just reading a document really, Mr Wallace.

Mr WALLACE : I only want to come down to the baths and bedrooms. I did want to inform Your Honor by evidence at this stage that under the 1954 plan there were 28 persons, residents, who had to rely on public pan and bath facilities, and under the 1956 plan every room had its own bath or shower room.

Q. Is that so ? A. That is correct.

HIS HONOR : Q. Under the 1956 plan did they have their own pan, to use your words ? A. Yes, they each have a pan and a basin and/or 40 a bath or shower.

Mr WALLACE : Q. Whilst under the earlier plan there were only 43 of the 64 bedrooms that had bath or shower rooms ? A. That is correct.

Q. Six twin rooms, one double room and 14 single rooms had neither baths nor showers ? A. That is correct.

Q. Is the rest of the information on this schedule to the best of your belief ? A. Yes, I prepared it all.

Q. You have said that the 1954 bedrooms are designed on an obsolete basis and there you have given your reason ? A. Yes.

10 Q. Are those matters all important in your opinion ? A. Yes.

SIR GARFIELD : Is this document more than a mere extract of the plans ?

Mr WALLACE : Yes, it does contain opinions as well as facts.

(Abovementioned document by which witness compares previous and present schemes tendered and marked Exhibit 5.)

Q. What does Sheet No. 7 show ? A. Sheet No. 7 comprises two levels. The lower one is as you stand in Carrington Street, looking at the building. The upper one is as you stand in Wynyard Lane, looking at the building towards Carrington Street.

20 Q. But which building ? A. This (sheet 7) is the 1956 scheme.

Q. What is Sheet 2 ? A. Sheet 2 is a plan of the work that occurs at the Carrington Street level and confined between Carrington Street and Wynyard Lane.

Q. I notice here a room called a coffee lounge with a kitchen annexed to it ? A. Yes.

Q. Was that designed to service the residents with breakfast, lunch and grills ? A. Yes. It is more than that. I used this coffee lounge parlance, having come back from America, where in so many hotels they have dining rooms at different levels, and the cheaper ones are often called coffee lounges; but this has a complete kitchen to serve meals in the same way as Repins and Cahills serve meals.

SIR GARFIELD : This is a dining room, as it was called before ?

WITNESS : Yes. That will take about 100 people.

Mr WALLACE : Q. That is on the ground floor level of Carrington Street ? A. Yes.

Q. Under the 1954 design there is no such dining room provision at all ? A. None.

Q. Do you regard that as an advantage ? A. Most desirable, I think ; economically and geographically.

40 Q. This concourse is the method by which members of the public can go ultimately right through to George Street ? A. That is correct.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence

No. 5.
E. M.
Nicholls.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.
Examination.

Q. Do you say you have got Wynyard Lane widened out with a cover and roof, to allow for modern shops? A. It is roofed over, in contradistinction with the 1954 scheme. As soon as you step onto Wynyard Lane, going towards George Street, you are in the open, because it is underneath the well. Then you make a run for it and get under cover again.

Q. Underneath the centre light well? A. Yes.

Q. Before I put these Exhibit "L" sheets to one side, is there any matter which you yourself wish to refer to? A. Only insofar as the comparative document refers to the merits of each. 10

Q. That is, Exhibit 5? A. Yes. I think that covers all that I have to say as regards the two.

Q. I will now take you through the sheets making up Exhibit "H". Is Sheet 1 a design of these pillars we have heard about? A. This is a plan of the existing building at the Hunter Street concourse level.

Q. Are you actually speaking of the entrance in Hunter Street itself, where you turn to the left just above Fairfax & Roberts, go down a hollow which turns to the right, and go down to George Street? A. Yes. This has been called by all and sundry the Hunter Street level. 20

Q. Where would it be, underneath? A. That is Carrington Street and that is George Street. You can always identify the wider end as Carrington Street and the narrower end as George Street. Wynyard Lane goes across there (indicating).

Q. This is George Street, isn't it? A. Yes.

Q. If I came in here off the footpath of George Street I would be above what this represents? A. Yes.

Q. A storey above it? A. Yes. The two main ramps that you walk down to the buses and such are virtually above those.

Q. And shops in the centre? A. Above, yes. 30

Q. Is this a dining room here? A. No, this is nothing here.

Q. This is in the bowels of the earth. All this is black and gloomy stuff? A. Yes.

Q. And on this side too? A. Yes.

Q. It goes underneath Wynyard Lane, which is about there, and it comes out there? A. Yes.

Q. There might be cool rooms or some lift belonging to the Railway Commissioner there? A. That is the main lift of the Railway Commissioner for the lorries.

Q. Neither design touches that? A. The 54 design touches it 40 only insofar as that lift shaft is created for the new lift to come in. Our design affects it in those little individual bits of drawings around the lift shaft. I did not reproduce the whole floor,

Q. (Exhibit "L" now shown). A. These five columns here are those five columns there. Had I drawn this whole plan, that little piece would have been there, at the George Street level, and this little piece would have been drawn there at that level, and that little piece would have been drawn there on a lower level that you might have (indicating).

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

SIR GARFIELD: Have we any means of recording that? Have we any means of indicating on this the relationship of these two plans?

*Defendant's
Evidence.*

Mr WALLACE: Could I put a blue cross in a blue circle just above the diagram on Sheet 5 of Exhibit "L", which contains a sort of
10 circular

*No. 5.
E. M.
Nicholls.
Examination.*

HIS HONOR: Call it the plan "lift enclosure, George Street building".

SIR GARFIELD: I would be content with a ring around this and a notation "Plan, lift enclosure, George Street level" and "Lift enclosure Hunter Street level".

HIS HONOR: I do not think you need that. These are all one above the other. If you mark it with a cross I will know precisely what is is.

SIR GARFIELD: Put a ring around those four columns and put "Lift enclosure".

Mr WALLACE: Q. Sheet 2 shows what? A. This is one floor level
20 below George Street, where you come down the dining room steps, and you enter there. By virtue of the George Street ramp cutting away, you cannot continue this floor through.

Q. The floor diminishes? A. The George Street ramp is going down all the time.

Q. And under here is an ever receding triangle? A. You can look up here, see the preceding one

Q. This is the dining room? A. The only alteration that is affected here is the lift shaft, which is newly constructed on the 1954 scheme. I think it is common to both plans that the new work is coloured.

30 Mr WALLACE: Q. That is to say, new work presupposed by either scheme. The architectural custom is you either leave the existing work black or grey. A. Yes. This (sheet 3) is a plan at the George Street level, and they are the two main ramps that go down to the trams and trains, and that is where you go down to the dining room first entrance, or you can go down to the dining room second entrance. If you wish to walk up to the present bedrooms above George Street, you walk up that stair. This is the new lift, shaded by the other plan. That is the comparable section. There is the island bar, with those five columns that occur there, so if you put a cross there and a cross there
40 (indicating), they are comparable.

Q. I now turn over to Sheet 4. A. Sheet 4 is at the Wynyard Lane level. There are stairs existing that you go up to Wynyard Lane.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Examination.

Q. From the ramps ? A. Yes. This plan maintains the narrow Wynyard Lane and narrow footpath, where they splash muck all over you. Then you start your stairs there, to go up. This area (indicating) is substantially unused. The footpath is increased in width by roughly 12 feet on either side, with shops there and shops there.

Q. That is in the 1956 plan ? A. Yes.

Q. But in the 1954 plan the footpath is left untouched and very narrow ? A. Yes.

SIR GARFIELD : What is the bit of pink there ?

WITNESS : That would be a wall, looking on the top. When you show 10 an elevation you use a lighter colour. Then you start to get here the first indications of the building above the Wynyard Lane. That is an escape stair coming down, and that is a stair coming down.

Mr WALLACE : Q. All these are existing rooms, untouched, over George Street ? A. Yes.

Q. I now turn over to Sheet 5 ? A. I have never seen this one before. This is nothing like the final one submitted to the Licensing Court, I understand.

SIR GARFIELD : This is the Licensing Court's document.

HIS HONOR : But do not forget that there were two sheets put in. 20

WITNESS : This is completely changed.

Mr WALLACE : This is not the thing that went to the Licensing Court.

SIR GARFIELD : It did originally.

Mr WALLACE : Q. What is this one ? A. I am quite sure this is not the last one before the Licensing Court, because the last one before the Licensing Court has a foyer entrance there.

Q. What is the next one ? A. That is at bedroom level. That is the roof above the bedrooms.

(Plans part of Exhibit "H" now shown to witness).

Mr WALLACE : Q. What is this ? A. This is a plan of the 1954 30 scheme.

SIR GARFIELD : We will call it "5A".

WITNESS : This is the plan of the 1954 scheme at the Carrington Street level showing substantially the whole area between Carrington Street and Wynyard Lane is built over, and comprising the public concourse whereby you go through to George Street, bars, bottle department, drinking lounge, foyer, office, toilets.

Mr WALLACE : Q. And no dining room ? A. None.

Q. What is this on the right-hand side ? A. Plant room. There is air conditioning—not air conditioning, ventilation plant there. 40

Q. What about 6A ? A. This is a plan of the 1954 scheme at the first floor level above Carrington Street and showing new floor and bedrooms.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. That is only one floor: that is the last floor ? A. The one and only floor.

Q. The one and only floor under the 1954 design ? A. Yes.

Defendant's
Evidence.

Q. What is the blue area ? A. That would be the roof of some of the bar down below.

No. 5.
E. M.
Nicholls.

Q. Where is Wynyard Lane ? A. Wynyard Lane is just there, because the lower building is built right to the edge of Wynyard Lane.

Examination.

Q. It is built over Wynyard Lane ? A. Yes.

Q. Where is the light court ? A. There is the light court. This is the inner court. There are the outer courts.

Q. Have you anything to say in relation to that bedroom plan about the length of corridors or efficiency from administrative viewpoint ? A. Yes, it is more inefficient.

Q. In what respect ? A. The greater the length of corridor you get, the greater the amount of walking. Supposing people try to get into this place, and supposing they are driven to George Street, and then they fight their way in the traffic to get to this one little lift that is almost on George Street, and then you get up in the lift, here, and if your room is some distance, you can have quite a hike to get to it. Then, in the little comparative statement I have made, if you are one of the 28 guests who have no toilet facilities and you try to go to some of these public toilets—there are some public toilets there (indicating)—if those few are occupied, then you have to come around here, climb up here, go across the roof, and you find some more on the roof: which is rather bad. You come out in the open. If you have the few toilets here occupied by the 28 odd guests, then you either stand and wait, or climb up and go to some on the roof, which seems to me to be archaic.

Q. Have you made any other comment ? A. I have spoken about the narrowness of some of these bedrooms—down to 6 feet 6 inches in width, a single bedroom. Nearly every bedroom is a different shape, which reflects itself in the fantastic cost of this scheme. When you have all different shaped bedrooms they are hard to furnish uniformly and you can put an extra cost on for that. When it comes to living in the bedrooms, substantially all these bedrooms are designed on the old-fashioned idea in that when you walk into a bedroom, somewhere in the bedroom protruding from the wall is a wardrobe. All that went out of date so long ago. The scheme we have in the 1956 arrangement is uniform, and one of these two types fairly well practised throughout the world. You go from the corridor, and there is the wardrobe. Then, if it is a twin room, you walk into the bathroom, which has the pan and basin and bath. As a consequence that is a bed-lounge room. It has not a wardrobe protruding, breaking it all up. Then, if you get onto the

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

single bedroom, there is the same principle exactly. There is the wardrobe, there is the basin and pan—no bath—but with a shower, with a plug, and if you wish to have a plunge

Defendant's
Evidence.

SIR GARFIELD : A bath in the bottom of the shower ?

WITNESS : That is quite common. Lots of motels do that now.

No. 5
E. M.
Nicholls.

Mr WALLACE : Q. Where do you enter ? A. You enter through there.

Examination.

HIS HONOR : Q. You put the wardrobe alongside the shower, which is smaller than the bath ? A. Yes. That keeps your bedroom clean for bed-lounge purposes. You enter there, and that is like a little hollow, and here is the wardrobe, and you go straight into your bathroom. This is so common that is is standard practice in all hotels—all these illustrations are from all over the world, and they all show the same thing—and that is how you do it. 10

Mr WALLACE : Q. What is that plan ? A. That plan (Sheet 7) is the last plan over the roof of the bedroom, showing the flat roof on top and showing where I indicated. If you cannot get a toilet, then you have to climb up these stairs, get outside here, run around here in the open, and go in there.

Q. And that is just flat roof, is it ? A. Yes. 20

Mr WALLACE : Your Honor has indicated you consider you have full power to order the release of the Court's plans.

HIS HONOR : I consider I can release the Court's plan provided I am satisfied no harm will come to the plan and provided I get an undertaking from the appropriate officer, and provided the administration of justice in this Court will not be hampered.

Mr WALLACE : I have plans which I am now informed are similar to these that the Licensing Court, through Mr Perrignon, has requested to be lifted.

HIS HONOR : It might save time if I adjourned for a few minutes and enabled the witness to look at them properly, because he has to pledge himself on whether they are copies. 30

(Short adjournment.)

Mr WALLACE : Q. Take the 1956 plans first of all, that is to say Exhibit " L ". You have compared Exhibit " L " with the copy plans that were handed to you just before the adjournment, this bundle which I show to you. You have compared Exhibit " L " with that bundle, haven't you ? A. Yes.

Q. What do you say in regard to the similarity ? A. The two sets are substantially similar, when it comes to the actual printed drawing. They are microscopic, and incidentally it is all colouring by my staff. 40

Sometimes a hand rail is coloured blue and not on another, and sometimes a gate is coloured blue on one and not on another. On one plan it says "Public Bar" and on the other plan it says "Saloon Bar" for the same place. It has been altered. Then, on this set, having been to the City Council, there are a good number of stamps and notations by the City Council which are not on the Exhibit plans.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

SIR GARFIELD: Then there are some ink notations as well as the City Council notations.

Defendant's
Evidence.

WITNESS: I think they all relate to the City Council. They all stem
10 from it.

No. 5.
E. M.
Nicholls.

Examination.

Mr WALLACE: Q. In your opinion, as an architect, is there any difference between the two which is of any consequence, so far as obtaining an idea and an understanding of what the plans involve? A. On that basis there is no difference at all.

Mr WALLACE: In regard to the 1956 plans my request is that they be substituted and that Exhibit "L" be given into the custody of the Licensing Court's representative.

HIS HONOR: They will not be substituted. I will have them marked with the same number and I will use them, and the others will come
20 back whenever I ask for them. I can only adopt this procedure, to see whether I can use these conditional ones for the purpose of administering justice in this Court.

Mr WALLACE: Q. With regard to the 1954 plans—Exhibit "H", and the set that was shown to you—are there some substantial differences? A. Yes, every sheet is substantially different.

Q. So that you could not say the same thing at all of the 1954 plans? A. On the contrary, you could have confusion.

Q. By the way, the evidence that you gave about the 1954 plans was based on Exhibit "H"? A. That is true.

30 Mr WALLACE: I cannot make any application about the 1954 plans.

SIR GARFIELD: All I want to say about the others is that there are notations on these plans, and it is not possible at this moment for me to say yea or nay as to whether they may be of materiality. It is all very well to say that one can put them out of mind, but when the choice is between keeping your exhibits and dealing with them, and letting them out of hand and dealing with something that has endorsements on it which may be relevant and damaging, I do suggest there is no such balance here which calls for Your Honor releasing Your Honor's exhibit and taking in exchange that which is not in every respect identical.
40 I am now talking about the endorsements. As I say, I saw one which is not a mere City Council endorsement. It is a notation which touches on certain aspects of this matter, and if it were that Your Honor could not

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.
Examination.

get a plan that was written on, then, of course, we would have to use it, but when Your Honor can get something which is regular, then I say we should use that.

Mr WALLACE : Your Honor is sitting without a jury, and my friend has obtained in evidence a lot of correspondence and other material which if one did not have trust and confidence in the learned Judge might be calculated to prejudice the Judge's mind.

HIS HONOR : I have decided to let the bundle that the witness identified be called Exhibit "L2". Every sheet will have to be marked in the same fashion as the others. The crosses on the lift part I can 10 remember, and if it is necessary to check them at any time I will get the originals back.

What I am going to do is to say that you or somebody on your side will take the responsibility of marking those sheets with the same numbers that are marked on the original exhibit, and Mr Perrignon, then giving the undertaking which I mentioned before, can take them in his custody on the condition that I mentioned before, and Mr Perrignon, on behalf of the Licensing Clerk, will sign for the documents, so that this Court puts them into his custody, and he, through his client, will have to get them back if I want them. 20

SIR GARFIELD : What is going to happen if somebody starts putting markings on them down below ?

HIS HONOR : I shall also extract the condition that they should not be marked. It amounts to this : the document is released on the basis that when I call for it back it will come back as that document.

Mr PERRIGNON : Those conditions will be made clear.

Mr WALLACE : Q. Under the 1956 plan, do you have a roof or structure over Wynyard Lane ? A. Yes.

Q. Just elaborate what it is and what it is for. A. The roof over Wynyard Lane is primarily to give coverage to pedestrians walking from 30 George Street across Wynyard Lane to Carrington Street. It also adds great use and convenience to shoppers who are there in this newly created shopping court.

Q. How wide is this planned for ? A. From memory, about 40-ft., up and down Wynyard Lane.

Q. I think you explained to His Honor yesterday that under the 1954 plan, the 22-ft. wide light area in the centre would go right across Wynyard Lane, straddling so to speak, the steps in the centre leading across from George Street, across Wynyard Lane, I think to the Carrington Street side ? A. That is so. The light well coincides with the passage- 40 way of pedestrians

Q. Would you take the 1954 plans ? Could you direct your evidence for the moment to the position regarding the distance from the small lift which gives access under the 1954 plan to the dining room—the

distance between the small lift and the furthest removed bedrooms in that plan; how residents in bedrooms removed from the lift would journey to it and the distances they would travel? A. The most distant bedroom from the lift would be about 200-ft.

Q. That is along a corridor and around the corner of a corridor?
A. Along one direct corridor, and a long irregular corridor.

Q. Would you check on that and see if you can get it a little more accurately? A. A more careful check is about 240-ft.

Q. Do you offer any comment on that situation? A. Well, it is most undesirable for people to have to come up in the lift and then carry their luggage for 240-ft. It is not quite what you call modern hotel standards.

Q. Going just for one moment to that question of George Street again, in accordance with modern architectural thought, is it desirable or not to have bedrooms overlooking such a busy street as what George Street is there, from the point of view of noise? A. Most undesirable.

Q. Would you say there would be serious traffic problems if you had a big hotel frontage at Wynyard Station, facing George Street?
A. Yes. I can imagine occasions when it would be quite impossible, if you happen to arrive by taxi or other means at about traffic peak time, when there is a surge of people coming or going, it would be very difficult getting to this lift.

Q. Actually under the 1956 plans—you are the designer of them, I understand, aren't you? A. That is so.

Q. Do you envisage in the future development of the site that the Carrington Street frontage would be the hotel accommodation and that the George Street frontage could be for commercial offices and so on. Would that be one desirable method of development? A. Yes. In my judgment that is the best way to develop it as a site. On the Carrington Street frontage facing the park, where it is pleasant to overlook and quieter, that is where you can develop your hotel and get 300 bedrooms, which in my judgment is as many as you would want of that class and for that location. Then, on George Street, the quite separate block could well and very profitably be commercial.

Q. So far as the 1956 plans are concerned, you have pointed out to His Honor what the dining room described in the plans as a coffee lounge on the Carrington Street side is? A. Yes.

Q. I think it is on the Carrington Street level? A. Yes.

Q. To service the residents? A. Yes.

Q. I think you indicated that that sort of thing is in accordance with modern trends? A. That is quite true.

Q. The dining room, under the 1956 plans, does not actually have a lift to it. Is that so? A. I think we are a little at cross-purposes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.

E. M.
Nicholls.

Examination.

Q. I am speaking of the other dining room presently existing in George Street ? A. Yes, the 1956 plans have no direct lift connection with the existing dining room.

Q. Can you explain to His Honor how, if it were desired to have a lift to it, under the 1956 plans it would be readily possible to do so with the slightest additional area ? A. The lift in the 1956 plans is located in the lift shaft that was originally designed for lifts in the major building, but no provision was made in the early plans for connection from that lift directly to the dining room ; but by simply stopping the lift at the dining room level and creating as it were a landing down above the 10 Hunter Street unused level, you could walk directly from the lift along the landing straight into the dining room.

Q. That is the part you have marked yellow in this plan you now produce ?—

SIR GARFIELD : This is not part of the plans that have been submitted to anybody ?

Mr WALLACE : No.

HIS HONOR : This is a suggestion as to how a lift could be got over.

Mr WALLACE : I wish to make it quite clear to my friend that there is no provision under the 1956 plans to have direct lift access into the 20 George Street dining room as it presently exists.

Q. Without that alteration, the position then would be that the residents of the 1956 building would be serviced for their meals in the so-called coffee lounge with a proper kitchen alongside it, and if they wanted to go to the existing dining room on the George Street side, they would walk through the concourse and the public channels, down steps, leading in to it ? A. That is one of two ways. That is the longer of the two ways. The shorter way is simply to take the lift down to the George Street northern ramp level, get out of the lift, cross the ramp and enter the dining room by the lower of the two existing stairs. 30

SIR GARFIELD : He means you would walk through part of the public part of the station to go to the dining room.

WITNESS : That is what the present residents now do.

Mr WALLACE : Q. I am not sure whether it is you or another architect that I have to ask this, but if you do not know, say so. Is it a modern trend in America and elsewhere in most modern hotels to have the public dining room serving the hotel physically removed from the hotel altogether, independently servicing and available to the hotel as well as the public ? A. I understand and to the best of my research that is the common practice now in modern hotels. 40

(Plan of proposed lift alteration tendered and marked Exhibit 6.)

Q. In Para. 26 of the plaintiff's statement of claim in this suit, it is alleged that the 1956 plans are for a building considerably smaller than and of less value than the 1954 plans. What do you say to that ? (Objected to by Sir Garfield ; pressed by Mr. Wallace ; allowed.)

Q. Smaller than and of less value than the 1954 plans. What do you say about that?—

HIS HONOR: Take them one at a time.

Mr WALLACE: Q. "Smaller" first. A. The allegation that the 1956 plans are smaller than the 1954 plans is incorrect. If you measure an area of the two you will find that the 1956 plans are approximately, as I remember it, about 500,000 sq. ft. more in area than the 1954 plans. Then it comes to a question of a building of less value. Then you have to consider what you got for your money. I understand that the 1954
10 plans which gave only 62 bedrooms were going to cost about £525,000.

Q. That was the tender? A. Yes, which per bedroom is approximately £9,000—which is one measuring stick. The 1956 plans, which comprise about 75 bedrooms and more shops, work out pro rata at about £5,000 per bedroom. If you compare the two bedrooms you will find that on the average the 1956 plans have bigger bedrooms than the 1954 plans. Not only are they bigger bedrooms but also they all have toilet facilities. Then, I think if you impartially compare the two groups of bedrooms you will find the 1956 bedrooms are much better and individually more costly than the 1954 ones. Therefore, the only
20 conclusion you can draw is that in 1954 plans somebody is not getting their money's worth.

HIS HONOR: That is an argumentative way. It conveniently puts things which one would take into account.

Mr WALLACE: In your opinion, if the building envisaged by the 1954 plans were constructed and the building envisaged by the 1956 plans were constructed which would be the more valuable on completion? (Objected to by Sir Garfield; rejected).

HIS HONOR: The witness has already given his reasons, and one can summarise his reasons as follows: run as an hotel it would bring in more
30 money.

WITNESS: It is a better standard building and a bigger building.

Mr WALLACE: Q. Is it, within architectural terminology, correct to describe the 1954 planned building as a beam and slab building, whilst the 1956 one is described in such terminology as a flat plate type of building? A. Yes, that is substantially so.

Q. Going to the pillars that we have heard about, what purpose if any do those pillars serve at the present time?—

SIR GARFIELD: Which pillars are you speaking about?

Mr WALLACE: I am speaking of the pillars which are referred to in one or more of the letters that you have had tendered in evidence, referred
40 to by the Railway Commissioner in the correspondence.

SIR GARFIELD: The witness has not seen the correspondence.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

Examination.

Mr WALLACE : Q. Where are those pillars shown ? Was it the 1954 plan ? A. At which level ? Do you want to go right down to the bottom ?

Q. Yes. First of all, this building goes down three storeys, down below the level of George Street at present, doesn't it ?—

SIR GARFIELD : Which building ?

Mr WALLACE : The site. There are railway premises between George Street, Carrington Street, going over Carrington Street into Wynyard Park.

Q. If I were standing on the platform that is furthest west in 10 Wynyard Station, say, the platform where I would take the train to Pymble—do you follow that ? A. Yes.

Q. That would be underneath where ; Wynyard Park ? A. Yes, it would be. It would be outside the limits of the lease ; under the road or under Wynyard Park.

Q. Some reference is made in the correspondence in evidence to some pillars, and in that Exhibit H—on all the sheets—we see smallish—in some cases rectangular, in others hexagonal, in other octagonal—markings, and in some cases rectangular and square markings. What do they represent ? A. They are the structural pillars that hold up the whole of 20 the building and all within it.

Q. When you say they hold up the building, can you say whether any of them, and if so which of them, are serving the purpose of holding up railway buildings at the present time ? A. I am not fully conversant by what “ railway buildings ” mean.

Q. I mean the ramps leading on to Wynyard Station ? A. Well, that is very clear. There are ramps at two levels, one at the so-called Hunter Street level and one at the George Street level—a pair of ramps in each instance—and a whole bracket of columns right in the centre of the buildings hold up the ramps at those two levels. 30

Q. And Wynyard Lane itself ? A. Yes, indeed.

Q. Wynyard Lane itself is held up by some of these pillars to which you have referred ? A. Yes—because we go underneath it.

Q. Would these pillars be shown on Sheet No. 1 of Exhibit H ? A. Yes.

Q. Could you indicate which of the pillars you are referring to ? A. Yes, starting from there, to there (indicating).

SIR GARFIELD : These pillars are bearing some particular load ?

Mr WALLACE : Q. These pillars are supporting the Railway ramps and also Wynyard Lane, which are used by the Commissioner in 40 connection with Wynyard Railway Station ? A. If we take the ramps for a start—they are the columns (indicating)—if you take that whole group of columns through there, they are the ones that support the ramps

at those two levels. Then, Wynyard Lane goes there and there (indicating), so therefore, you take that bracket of columns and that bracket of columns that help to hold up Wynyard Lane.

Q. And they were always necessary to give structural stability to the Railway Commissioner's works, right from the inception?—

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

SIR GARFIELD: Does he say these that are there were necessary to hold up the ramps?

Defendant's
Evidence.

Mr WALLACE: Q. Were pillars necessary from the Railway Commissioner's viewpoint to serve those ends right from the inception
10 of the planning of Wynyard Railway Station? A. Do I understand you call the ramps part of Wynyard Railway Station?

No. 5.
E. M.
Nicholls.
—
Examination.

Q. Yes. A. The answer is most certainly.

Q. When I speak of the ramps, to make it clear, I am speaking of the following: if I, as a traveller, were walking along George Street and I went to Pymble, I entered the entrance to the station and I turn into the ramp and walk down to the Railway ticket collectors, and then on to the various parts of the station. That is one thing that I call a ramp. A. Yes.

Q. To enable the public to have access to the Wynyard railway
20 platforms? A. Yes.

Q. Now there is another ramp below that, isn't there, leading down to the Hunter Street entrance? A. Yes.

Q. And you get on to that by steps halfway down, towards the ticket gate? A. Yes.

Q. That I also describe as a ramp? A. Yes.

Q. Are both those ramps supported by pillars today? A. Yes.

Q. Were pillars necessary to give support to such ramps right from the inception of the planning of Wynyard Railway Station? A. Yes.

Q. Assuming the public were to have access from George Street?
30 A. Yes, the ramps could not have been there without pillars to hold them up.

Q. And also those ramps, of course, go right underneath Wynyard Lane? A. Yes.

Q. Do you know how far below Wynyard Lane? Is there anything between the top of the ramp and Wynyard Lane? A. As I remember it, just a thick slab. I think it shows here. There must be more sheets somewhere, the sections sheets.

Q. In connection with the 1954 plans? A. Yes. We had them yesterday.

40 HIS HONOR: Q. Do you say that yesterday there were other sheets here? A. Yes, yesterday there were sections here.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Examination.

SIR GARFIELD : I came in here this morning and there were people here—I do not know who they were—but they had a lot of blueprints and the plans.

HIS HONOR : Who made the comparison yesterday between those plans and some others ?

WITNESS : I did, with two other gentlemen.

Mr MAY : I was present.

HIS HONOR : It may be that the sections were in the other set.

Mr MAY : That would not be so, because I can tell Your Honor what happened. First of all we examined them with reference to Exhibit L— 10 the 1956 plans—and then L.2, which we were satisfied could be substituted. It was apparent to me, a book having been produced to me with a number of plans folded up in it that were said to be possibly a copy of Exhibit H, it was apparent to me on first glance that they might at one stage have been the basis of the development of Exhibit H, but it was quite clear to Mr. Nicholls and myself and the officers of the Railway that in no sense could they be considered satisfactory copies.

There would be no possibility, so far as we were concerned, of any of these plans being abstracted, because these others were in a folded 20 book form in which they were bound. May I add that, through going through the sheets, my recollection is I do not recall seeing any sectional elevations. My recollection is what is now in front of the witness was all that was actually tendered by the plaintiffs out of the file, and it may well be that some other aspect of the plans are still with the file. Therefore, there would not have been any possibility of their being abstracted and taken away yesterday afternoon.

WITNESS : I could be confused. I just take it for granted that there are sections with these drawings, and I automatically look for them.

SIR GARFIELD : The witness said he saw them.

WITNESS : I think I saw them. 30

Mr MAY : My recollection is to the contrary, that there were no sectional plans there.

HIS HONOR : It looks to me on this material that these are the only sheets. There is only one other possibility. Two people looked at the plans in my Chambers.

SIR GARFIELD : They were here when I came here this morning. Somebody had blueprints and I do not know who the people were. They may have had authority—I do not say they did not have authority—but I do not know anything about them, and whilst I was talking here with others, they went. 40

WITNESS : The more I think of it, the more I am convinced I spent time talking about the sections on the 1956 plans when Your Honor was here and saying how the section was parallel to Carrington Street. I think that is where I spent the times of the section, and I think that is how I became confused. I think that is right, now that I think over it.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

HIS HONOR : I have a recollection we went through these sheet by sheet, and I think they were all marked on the bottom corner.

*Defendant's
Evidence.*

Mr WALLACE : I marked them up to Sheet No. 7, and Sheet No. 7 is here. I did not mark an " 8 ".

*No. 5.
E. M.
Nicholls.*

10 Q. I want you to tell me from Exhibit L.2, and tell me if you can inform the Court as to what space, if any, lies between Wynyard Lane and the top of the ramp that the public use just as they go through the ticket barrier ? A. I am sorry. My section does not cut that deeply. My section merely shows the slab under Wynyard Lane. It does not relate to the floor below that.

Examination.

Q. So you cannot tell me ? A. No.

Q. At all events, you say some pillars were in the two areas you have indicated, being sections at right-angles to each other in the form of a cross—were necessary for the Railway Commissioner's own works ?

20 A. To hold up Wynyard Lane, certainly.

Q. Would you be able to express any view as to whether the pillars which are in fact erected are heavier or stronger than would be necessary for such work or not ? A. I could not answer that.

Q. You have seen what we have called the Joe Gardiner or Kerr plans. For the purposes of identification I described the outline of them as " The World's Biggest Building ", perhaps jocularly, but that will identify it. You have seen those plans, haven't you ? A. I have seen part of them only. I have seen plans up to about one floor up above Carrington Street. I have seen a perspective in the office of my clients, 30 and last night, when I was rolling my drawings, I saw other drawings here, which presumably are the Kerr drawings, down on the floor here.

Q. But are you competent to say whether the 1954 plans bear any resemblance whatever to the Kerr plans of some years before ? A. My cursory viewing of the Kerr plans—I would say the 1954 plans differ considerably from the Kerr plans.

Q. Would you indicate very approximately how much you would say it would cost to erect the Kerr plans ? (objected to by Sir Garfield on the question of competence ; allowed.)

Q. I am only asking it in the very roughest sense. Can you give 40 an outline or a suggestion of what it would cost ? A. Yes, on the experience I have had with City buildings I am sure the Kerr plans now would cost approximately £4,000,000.

Q. We know they were designed or prepared either between 1925 and 1930, or 1934 or thereabouts ? A. I would not know.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.
Examination.

Q. You told us that you have been practising as an architect for 30 years, didn't you? A. Yes.

Q. Is that in Sydney? A. Partly in Sydney, partly in Melbourne.

Q. You were a practising architect in Sydney in about 1941, weren't you? A. Yes.

Q. Very roughly, how much do you think it would have cost to erect that building somewhere in the years 1941 or 1942, had people been allowed to build any hotel. Assuming they had been allowed to build . . . (objected to by Sir Garfield; pressed; allowed.) A. I fear it would be just a guess, but I would say about one-third of that. 10

Q. When you say "just a guess", would you say that your answer of about one-third would be a rational sort of estimate? A. Yes, based on the relative costs of buildings then and now.

HIS HONOR: You can work it out another way, by taking a remark made by Sir Garfield during the course of this case; that what was worth £116,000 in 1941 was now worth three-quarters of a million.

Mr WALLACE: Q. Would you tell me the estimated cost—I think there is something in the correspondence—of the 1956 plan? A. We have a signed contract with the builder. I think it is a little over £400,000.

SIR GARFIELD: Q. Has that got a rise and fall clause in it? A. As 20 I remember, it has a clause which said that if the work does not proceed within a certain time . . .

Mr WALLACE: Q. No: a rise and fall clause. A. No, there is no rise and fall.

Q. It is a lump sum, something like £400,000? A. I speak from memory, but I know it is a contract very similar to what we have in Caltex House. It substantially fixes the cost, except on site labour only there is a rise and fall.

SIR GARFIELD: Perhaps I should object so that the document can be produced. 30

Mr WALLACE: Q. Have you a copy? A. No. The proprietors have a copy and the builders have a copy.

HIS HONOR: If the witness is basing it on the contract, the contract must be produced.

Mr WALLACE: My question was not directed towards a contract, my question was based on an estimate.

HIS HONOR: But the answer you got was based on a contract.

Mr WALLACE: Q. Can you tell me as an architect what you yourself estimate would be the cost of building the 1956 plan? Leave out any question of contract. What do you estimate would be the cost of building 40

as at 1956 or 1957. Would there be any difference in your estimate ?
 A. Yes, the cost would have increased since the time we had the contract signed, which is about five months ago.

Q. Are you able to answer this question : I want you for the moment to forget about any contract. I am asking you, as an architect what would you estimate would be the cost of building the 1956 plan in or about the year 1956, or in the period 1956/1957 ? A. About £400,000 to £420,000.

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*

Defendant's
 Evidence.

No. 5.
 E. M.
 Nicholls.

CROSS-EXAMINED

10 SIR GARFIELD: Q. Have the engineering drawings for this 1956 scheme been prepared ? A. Yes, to a point.

Examination.

Q. What do you mean, "to a point": to the point where you could get to work ? A. No.

Cross-examination.

Q. What is the point to which the engineering drawings have gone ?
 A. The engineers approximately sized all their measurements . . .

Q. I am asking you about some drawings. To what point have the engineering drawings gone of this scheme ? A. To a very elementary point.

20 Q. Where are the engineering drawings ? A. In the possession of Stanley & Llewellyn, the consultant structural engineers.

Q. Have you no copy as architect ? A. I think I have a copy.

Q. Whereabouts would your copy be ? A. If I had one, in the office.

SIR GARFIELD: Perhaps Mr Wallace would accept a notice to produce the engineering drawings about which he speaks.

Mr WALLACE: I cannot, very well.

SIR GARFIELD: I shall have a subpoena issued.

HIS HONOR: If the witness promises to look for them and is willing to produce them . . .

30 Mr WALLACE: I am going to call Mr Llewellyn, and I will request Mr Llewellyn to bring his drawings with him.

SIR GARFIELD: Q. How far away is your office ? A. Caltex House, Kent Street.

Q. Is there anyone in the office who could bring those plans up, if you phoned him ? A. I think he is down in the Licensing Court now.

Q. Is there anyone in the office ? A. He is the one that deals with the job and knows about it.

40 Q. Do you think you could get them here in a quarter of an hour; get them here, or get somebody to bring them here in a quarter of an hour ? A. I am not sure about a quarter of an hour. I have to get there, and I have to get back, and I have to look for them.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

Q. Would you be willing either to send for them or to go and get these engineering drawings? A. If I have them, yes.

Q. But I thought you said they would be in your office? A. If I had them.

Q. In this contract with the builders, how is the structural steelwork dealt with—if there are any engineering drawings? A. The engineering sizings and information that the engineer gave to the builders was of sufficient nature for him to give a cost.

Q. You mean it is not a prime cost item? A. No.

Q. So you have a builder who has been willing to give you a firm price 10 without engineering drawings, simply on engineering sizings. Is that right? A. No, I did not say that. I am sorry, I do not remember it exactly. The drawings are done at considerable speed and I do not remember all of the intimate details. I do not draw these things with my own hands, and I do not remember all of the details.

Q. But is this the position: you found a builder who will give you a firm price with no structural engineering drawings, simply some sizings given to him by an engineer? A. I did not say that.

Q. What more was given to your builder on which he was to give you a price than some sizings by the engineer, so far as the structural steelwork 20 is concerned? A. I will be pleased to look and tell you.

Q. You are the architect. You let this contract, didn't you? A. Yes.

Q. What more did you give your builder but engineer's sizings to get a price off him? A. I am sorry, I don't remember the exact nature of the drawings, and it is no good my saying I do if I don't remember.

Q. But did you give the builder the drawings in order to get a price? A. I think there were preliminary drawings as well as sizings and other data. 30

Q. You told us this contract was let but five months ago? A. Yes.

Q. You negotiated it? A. Yes.

Q. What was the material you gave the builder on which he gave you the price? A. We gave him drawings such as have been submitted to the City Council.

Q. Let us get them specifically in relation to the Exhibits. Just take this bundle and satisfy yourself. Was your builder given that plan or a facsimile of it? A. He was given one of these (indicating Exhibit L.2) and a specification as well. 40

Q. Have you a copy of the specification? A. Yes, I would have a copy.

Q. Would that be in your office too? A. Yes.

Q. Would you be able to get that for us when you are looking for the structural steel drawings ? A. I will be pleased to.

Q. He would be given the specification; what else ? A. That would be on the plans, the specifications, the structural information such as it is.

Q. What is the structural information to your recollection that was given to this builder ? A. I will tell you after I go through my files and see.

Q. Was it given to him wholly in writing ? A. From my
10 memory, I would think so.

Q. Is that the best you can do, as architect ? A. Yes, it is the best I can do at present.

Q. By whom would the writing be made to give to the builder ?
A. By the structural engineer.

Q. Would you have a copy of that information forwarded to you as architect ? A. I would think so.

Q. Would you have that in your office ? A. I would think so.

Q. Would you be prepared to bring that up ? A. I would be pleased to.

20 Q. Did you firstly give the builder any oral information with respect to the structural steel ? A. No.

Q. In your presence did the engineers give him any oral information ?
A. I cannot recall any.

Q. Does that answer mean you neither heard it given nor heard of it being given ? A. I cannot recall it being given in that manner.

Q. Are you still a partner with Mr Ham ? A. No.

Q. When did you cease to be a partner of Mr Ham ? A. In 1952 I terminated an arrangement I had with him to be architect in association with him for one job. That commenced in 1946—to do certain
30 alterations to bar work within the Hotel Plaza. The work ran on until about 1950 and then ceased. It was not until 1952 that we unravelled certain financial matters between us, and our architects in association for that job then terminated.

Q. You were associated then with Mr Ham in connection with the Hotel Plaza, from 1946 ? A. The bars.

Q. You yourself produced drawings, didn't you, which were not limited to bars. Just think, will you—between 1946 and 1952 ? A. I do not recall them.

Q. Would you be prepared to deny that you did not ? A. No,
40 I would not be prepared to deny it.

Q. And you personally called on officers of the Department to discuss generally plans which finally took form in the 1954 scheme ?
A. Called on whom ?

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

Q. You called on officers of the Department ? A. I do not think that is so.

Q. You do not think that is so ? A. No, I do not.

Q. You would not have forgotten it ? A. I could have.

Q. You saw the 1954 scheme in the course of its preparation, didn't you ? A. I did not.

Q. Never saw any of the documents ? A. No, I had nothing to do with Ham.

Q. Nothing to do with Ham ? A. In that scheme.

Q. Did you never see these plans, do you say; the 1954 plans ?
A. I do not recall seeing them until relatively recently. 10

Q. What was the bar work you say you were doing ? A. The bar work was at the George Street level, mostly on the northern side of the northern ramp. That was the substantial

Q. But what were you doing in connection with the bars ?
A. They were reconstructed and extended. We also did certain work in the dining room.

Q. Who is "we" ? A. Ham and I, in association for that one job.

Q. During that time you tell His Honor you did not see any plans which related to the final 1954 scheme ? A. I cannot recall having seen them. 20

Q. And he never discussed them with you ? A. He certainly did not.

Q. Were there no other schemes for an hotel at this site discussed with you before 1954 by Mr Ham ? A. No, I cannot recall having discussed any other schemes.

Q. What sort of architectural work were you engaged in then, between 1946 and 1952 ? A. I think mostly Industrial at that time.

Q. What do you mean by that, what sort of buildings were you connected with ? A. Factory work. 30

Q. Of any dimension; give me the largest of the industrial buildings you dealt with between 1946 and 1952. A. I think at that time we were doing one for W. E. Smith, about 150,000

Q. That would be a fairly small factory, wouldn't it, in that span of years ? A. On the contrary: it was quite a substantial factory.

Q. How many storeys ? A. One storey.

Q. What, it was a saw-tooth industrial building ? A. Yes, a typical factory.

Q. A typical factory; saw-tooth construction ? A. Yes. 40

Q. I suppose steel, closed in with fibro cement ? A. No.

Q. But it would have to be steel if it were saw-toothed, wouldn't it ?
A. Steel columns, brick external walls and concrete floor.

Q. May we take that as typical of the work you were doing between 1946 and 1952 ? A. That was the predominant character of the work.

Q. Prior to your coming to Sydney, what was the sort of work you had done in Melbourne ? A. I was there a partner of Walter Burley Griffin, and I think the largest of the jobs we did there was the Capitol Theatre and office building in Swanson Street.

10 Q. What was the general type of the work you did; theatre construction work ? A. No, we were general practitioners, not specialists in any field.

Q. What does that mean; predominantly domestic ? A. No, office buildings, factory work, domestic work.

Q. Was the factory buildings the type of work you did like that which you told us ? A. Similar work. There was an office building in Elizabeth Street—Leonard House.

Q. What size is that ? A. Six-storeys, concrete structure.

Q. What year was that ? A. I am sorry, I could not tell you.

Q. Broadly, in the 30's ? A. Oh, about thirty years ago.

20 Q. It is not unfair to you to say that in Melbourne your work was in a relatively small industrial field and domestic field, with an occasional office building. Would that fairly describe the practice ? A. I do not think so. The Capitol Theatre and

Q. Well, I will add the theatre. A. . . . office building was a substantial undertaking. It was a maximum height concrete office building on top of a huge theatre.

Q. That was with Burley Griffin ? A. Yes.

30 Q. What was your particular function with it ? A. I was in charge of the job, the whole of the work. I made most of the drawings myself.

Q. But you mean planned by Burley Griffin, and you carried out the drawings and supervised the drawings. Is that right ? A. Yes. That is partly so, yes.

Q. From 1952 onwards you have been practising on your own or in partnership ? A. From 1952 ?

Q. You say you terminated the arrangement with Ham in 1952 ? A. I have been practising on my own all the time. Ham was just a convenience of geography for one job. I am not his partner.

40 Q. Were you in the same office as Ham then ? A. No. We had quite separate practices. It was a matter of convenience for one job.

Q. Now, let us come forward from 1952 to 1956. Were you mainly engaged in industrial work ? A. No, I had industrial as well as civic and municipal work.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

Q. Let us take them piecemeal. Was the industrial work of the same sort that we were talking about? A. Yes—except more of it.

Q. Buildings about the same size, but more of them. Do you mean that? A. Yes, and larger.

Q. But still of the same type of construction? A. Not necessarily.

Q. But were they? A. Well, I will tell you. Most of them were saw-tooth work. One large factory at Parramatta has a complete concrete roof with permanent water on the top.

Q. But for the rest, they were all saw-tooth construction? 10
A. Yes which is the characteristic type of factory.

Q. Yes, that is a sort of industrial stock-in-trade, isn't it? A. Of course.

Q. You say you did civic work for a period? A. I did work for the Willoughby Municipal Council.

Q. Doing what? A. Altering their Town Hall, doing the whole of their stores and yards and so forth for all their equipment; also work for the Mittagong Shire Council.

Q. This alteration of the Town Hall—you mean some internal alteration of the structure? A. Adding to it and altering it. 20

Q. That is a brick building, I suppose? A. Yes.

Q. You say you did something in the yards? A. Yes, in their yards, to keep all their equipment and machinery and stores.

Q. Sheds in the yards and things like that? A. Series of brick structures and things like that.

Q. What about the Mittagong Shire? A. Before I leave Willoughby I have done several Baby Health Centres for Willoughby.

Q. I suppose in the main they are single-storey brick buildings?
A. Yes.

Q. Of a more or less rectangular kind? A. Yes; semi-domestic. 30

Q. Now, what about Mittagong? A. We have architected their Shire Council Chambers, absorbing in the process certain buildings that were there. For the Berrima County Council we are now doing a small branch place at Moss Vale, at Picton.

Q. These are relatively small, and I suppose semi-domestic sort of architecture in brick? A. Not semi-domestic. They are municipal and civic.

Q. Some, I suppose, single-storey; any multiple storeys?
A. Mittagong two storeys; the others single storeys.

Q. And you say, besides that, domestic work? A. Yes. 40

Q. When you were asked to prepare plans for the Plaza Hotel, you might first give me the date when you were first asked to do that?
A. Amongst the list of work that I have been doing now, of course, you know we are doing Caltex House.

- Q. Yes, I will not diminish you there. A. On the 8th June, 1956.
- Q. I want to be quite clear about this; prior to that you had not seen the 1954 plans? A. No, I did not say that.
- Q. Well, you had not seen them when you were with Mr Ham? A. I certainly had not.
- Q. You had closed your association with him in 1952. A. Yes.
- Q. Had you seen the 1954 plans between 1952 and 1956? A. I could have seen them perhaps a week or so before the authority to proceed and give a design for the remodelled hotel.
- 10 Q. You have no recollection of that, but you think you could have? A. I think I most likely did.
- Q. Until a week prior to the 8th June—or a fortnight, if you like—you had not seen the 1954 plans? That is what you tell me? A. That is to the best of my memory.
- Q. You had not seen the sub-structure plans, covering the sub-structure at Wynyard, prior to that time? A. Do you mean the existing building when you say the “sub-structure”?
- Q. I mean what I say, the sub-structure plans? A. Oh, I have seen the plan of the existing work from time to time over the years.
- 20 Q. In Mr Ham’s possession? A. Yes, and possibly also in the possession of Avrom Investments; also in the possession of the structural engineers.
- Q. But you yourself did not have copies of them in your own office? A. I might have had proofs of certain drawings.
- Q. So at any rate, at this date about a fortnight before the 8th June, the material you had in the way of plans would be limited, would it, to the plans of the existing structure, including the sub-structure, which you may have had, and at any rate you had seen. Is that right? A. And including the drawings that were made when Ham and I acted
- 30 in association for this one job.
- Q. That only touched the bars, you say? A. Oh no, the work touched that, but the plans could well have gone beyond and shown in black, as these do, some of the existing work.
- Q. They could not have been the 1954 plans or the prototype? A. No, not for 1954.
- Q. Or any prototype of them? A. No.
- Q. But merely the existing building? A. The existing building, yes. As I remember it, the plans that Ham sent to me to supervise did include drawings of some of the lower floors, blacked in in this same
- 40 manner.
- Q. I included that in the sub-structure plans. I took you to understand that from me. And you began then, sometime about the 8th June or a fortnight before, to devise a scheme. Is that right? A. That is correct.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.

No. 5.
E. M.
Nicholls.
—
Cross-
examination.

SIR GARFIELD : Q. Have you now with you the structural drawings which existed at the date of the contract ? A. Yes.

Q. May I have them ? A. Yes (produced).

SIR GARFIELD : May I have the contract ? Mr Wallace, have you been able to get a copy of that contract ?

Q. Or did you ? A. I haven't a copy.

Mr WALLACE : I produce a contract with some drawings which have been given to me by my solicitor.

(Three sheets being structural drawings in existence at date of contract, m.f.i. 10.)

10

SIR GARFIELD : Q. Do you call those structural drawings, these things that you produced to me as m.f.i. 10 ? A. They are preliminary structural drawings.

Q. They are not such as you could build to or with ? A. Certainly not.

Q. Did you find any correspondence with the builder giving him any further structural details ? A. Not correspondence, but the specification which defines the provisional quantity of reinforcing steel.

Q. What is produced here does not include the specification ?

HIS HONOR : The witness has that specification.

20

SIR GARFIELD : Q. It is a provisional item of 500 tons of reinforcing steel ? A. Yes; quantity, not price.

Q. Without any reference to price ? A. Then, to make the matter fully clear, the small structural drawing you have before you there was produced at a later time than the two previous ones and it covered the shops on Wynyard Court and you will see it has its own structural size there, and also an additional provisional quantity for steel for that section.

Q. Do you mean this small sheet, part of it, was not produced at the time of the contract ? A. No, no. It is part and it was produced later than the two other sheets underneath. It is part of the contract. It enlarges the quantity of steel provisionally beyond the 500 tons.

Q. There has been no amendment to the specification ? A. No.

Q. So, so far as the building contract is concerned, there is a provisional quantity for steel, the two large sheets of m.f.i. 10, and no mention in the specification of structural steel in the third small sheet in m.f.i. 10 ? A. No.

Q. Is that right or wrong, what I say ? A. I think that is correct. The two sheets and the 500 tons form one part for the main building. That secondary sheet with its notation on it covers the quantity of steel and the amount of concrete for the shops and the hood over Wynyard.

40

Q. But does the contract extend to the building of these shops and of the cover over Wynyard Lane ? A. Yes.

Q. It does ? A. Yes.

Q. There is no special mention in the specification of the work comprised in the small sheet of m.f.i. 10 ? A. No. The reason for that was that our clients wondered whether they would do the shops at this juncture and later asked the builder for a full price and the two prices were consolidated into the contract. That is why it appears in two parts.

10 Q. But there is no separate specification for this ? A. No, because the general specification would cover the general things in the shops. The shops had been specified previously.

Q. You are quite clear that this contract covers the shops and the cover over Wynyard Lane ? A. Certainly.

Q. In one price ? A. Yes.

SIR GARFIELD : I will need to look at this quietly for the other detail and I will do that through the lunch hour.

Mr WALLACE : I would like to see it at the same time.

WITNESS : I have an office copy.

20 (Specification produced to Sir Garfield by witness, m.f.i. 11.)

SIR GARFIELD : Q. You are quite sure that these three sheets would be called structural steel drawings ? A. It would be better to say preliminary structural steel drawings. The procedure is as follows : The City Council, prior to giving their preliminary approval, need the general sizing. This supplies the general sizing, the specification provides the quantities of steel for the builder's guidance, then as the job proceeds the usual arrangement is you give the City Council, for approval, detailed drawings.

Q. Have they yet been completed ? A. No.

30 Q. And, of course, at the stage of the actual drawing, a number of questions of practicability and so on, often arise ? A. Indeed.

Q. Which, not infrequently—(Objected to)—necessitates a re-design of other drawings, architectural drawings ? (Objected to). A. I wouldn't think so.

Q. My question was directed as a general question, that generally speaking the experience is that when you get down to the structural detail, not infrequently you find you have to re-design the architectural—(Objected to; allowed). A. I think that is quite wrong.

Q. Quite wrong ? A. Yes.

40 Q. It has not been your experience at all ? A. No.

Q. When you got your instructions on or about—8th May, was it ?

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 5.
E. M.
Nicholls.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

HIS HONOR : June.

SIR GARFIELD : Q. Did you then get a set of the 1954 plans ?

A. No.

Q. Have you never had in your own office a set of the 1954 plans ?

A. Yes, I had them when I made the comparison for the two jobs to which we referred yesterday and which Mr Wallace tore out of his brief.

Mr WALLACE : Q. For the purpose of giving evidence in this case ?

A. Yes.

SIR GARFIELD : Q. But you didn't have them at any stage before you were asked for the purpose of giving evidence to compare them ? 10

A. I can't remember having them.

Q. Then I may take it you were instructed to prepare designs for a hotel on part of the site ? A. Yes. I had my instructions in writing.

Q. Might I see them ? A. (Folder handed to Sir Garfield by witness). That letter.—That is not part of the instructions.

Q. This is the third sheet before your signature ? A. My apologies.

(Letter dated 8th June, 1956, to witness, m.f.i. 12.)

Q. We are quite clear that at the date of your instructions—and I 20 now particularise to 8th June—you did not have a copy of the 1954 plans in your possession ? A. No.

Q. And prior to that you would never have seen them. Had you seen them at all ? A. I don't recall having seen them before that at all.

Q. Had you had any discussions prior to the receipt of this letter with a representative of the defendant, in particular, Miss Randall ? A. Yes.

Q. As to any of the past history of the planning of this hotel ? A. She had a discussion with me as to whether I would be prepared to 30 make plans for them. She explained to me the difficulties they were in with their licence and the vast cost of the previous plans, but I recall she made a point of saying she did not wish to show me the previous plans.

Q. So she told you in short that she wanted you, if you could,—or would you undertake or endeavour to produce plans within certain financial limits which might satisfy the licensing authority seeing that they were in difficulty with respect to their licence ? Does that fairly sum up what she said to you ?

Mr WALLACE : That is not what he has said. 40

SIR GARFIELD : Does that fairly sum up what she said to you, the substance of it ? A. No, I don't think you could put it quite like that.

Q. She did tell you they were in some trouble about their license ? A. Yes, that was apparent from reading the press, but I can't remember exactly what she said. But the general tenor was that they had lost their license, somewhat on account of the type of building they had designed for them and the cost—

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. And what she wanted you to do was to get a cheaper building which might satisfy the licensing authority ?

Defendant's
Evidence.

Mr WALLACE : There are two questions there—

No. 5.
E. M.
Nicholls.

WITNESS : No, it wasn't put that way.

10 SIR GARFIELD : Q. She did mention the financial limit to which you might go in designing the building ? A. Yes.

Cross-
examination.

Q. And did she tell you that it would have to be less than the sum they anticipated spending on the existing plan ? A. I recall she told me this, that they did have it represented to them by their previous architect that the 1954 plans would cost them about £300,000, and that, as a consequence, much of their difficulty—particularly economical—stemmed from the fact that when they opened tenders the lowest tender, from memory, was about £525,000 for only 62 bedrooms making it economically impossible to go ahead. There, in a nutshell, was their
20 problem and they wanted me, without reference or knowledge of the plans prepared in 1954, to prepare a new scheme that was economical and could be built. I recall she mentioned to me that it had been suggested by their previous architect that the building should be built for about £5,000 per bedroom and in a measure, that was my target.

Q. And you were told you would have to hurry up with these plans ? A. I was asked could I, in three weeks, make a new design, make the drawings ready for the City Council and substantially save £200,000 out of the cost.

Q. At that point of time, you had never designed a hotel ? A. No.
30 Q. You mentioned that you had been in America ? A. Yes.

Q. You said Caltex sent you to America but that was prior to June 1956, wasn't it ? A. Yes, it was.

Q. How long prior to June 1956 was it that you went to America ? A. About the end of 1955.

Q. And you were there how long ? A. About six weeks for the whole trip.

Q. And you had covered what ground ? What cities were you in ? A. San Francisco, New York, I went North to Vancouver—

Q. Toronto ? A. No, up in Canada ; not Quebec, Montreal ;
40 Vancouver, Honolulu and back.

Q. You were in two American cities of size and two Canadian cities of size ? A. Yes, and Hawaii—Honolulu,

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

Q. And your task was to look at industrial buildings ? A. No, it wasn't.

Q. You were then engaged on the design of Caltex House, were you ?

A. That is not an industrial building ; it is a commercial building.

Q. You are right. Your interest was commercial buildings ?

A. Primarily.

Q. You had no thought at that time of becoming a hotel designer, did you ? A. From memory at that time, I had started to make preliminary drawings of a scheme for Eastern Markets in Melbourne.

I will have to check the dates of that. 10

Q. Perhaps you will, will you ? A. Yes.

Q. Eastern Markets, Melbourne—where would you check your dates ? What is it you look at to refresh your memory ? A. I would have some dates of drawings or file notes and relevant files.

Q. Would you bring with you those notes you look at to refresh your recollection ? A. Yes.

Q. In order to answer me that question ? A. Yes.

Q. What are these Eastern Markets ? A. Do you know Melbourne at all ?

Q. Vaguely ? A. Well, there are two major properties in the 20 city owned by the City Council and undeveloped. One is called the Western Markets in Collins Street and the other one is the Eastern Markets up off Bourke and Exhibition Street and Little Collins Street and the City Council have been semi-offering to whoever might be interested, they would consider schemes for their development.

Q. It is not exactly a competition but it is some plan whereby you are going to offer a scheme gratuitously and if the City Council adopted it you would then be architect to the project, is that it ? A. That is quite wrong.

Q. I thought you said— 30

HIS HONOR : You put it to him about—

WITNESS : I would be pleased to explain. A client of mine asked me would I prepare a scheme for him which he could put to the City Council.

SIR GARFIELD : Q. On somewhat that basis to see whether they would accept it ? And does that scheme involve a hotel ? A. Yes, for about 400 rooms, I seem to think—I am trying to think—my memory is not good on back dates. I think in time I must have had all the relevant data for that prior to this Plaza Hotel design.

Q. Do you say you studied any hotels in America ? A. Only in the sense of living in them and going in them. 40

Q. What are those hotels, the ones you were in in America? San Francisco, which of them? A. I stayed at the Plaza.

Q. That is not in the top flight of hotels in San Francisco, is it? A. No. It is a good average hotel. In New York, at the Lexington.

Q. Again, that is not a new hotel? A. No, and at Montreal at the Lawrentian.

Q. That is not a modern hotel, is it? A. On the contrary, it is very modern.

Q. Whereabouts in Montreal? A. Right near the station. It is 10 the most modern hotel they have.

Q. What about the one in Vancouver? A. I didn't stay in a hotel in Vancouver.

Q. While in America there was one modern one and one in San Francisco which is not modern or top-flight? A. No.

Q. And the Lexington in New York, that is not modern? A. That is so.

Q. And really not top-flight? A. No.

Mr WALLACE: The top-flight ones are not modern though. The Waldorf Astoria is not modern.

20 WITNESS: I deliberately dined at the Waldorf Astoria coffee lounge to see how they functioned.

SIR GARFIELD: Q. Is it called the coffee lounge, by the way? A. Yes.

Q. And you went in to see whether it would make a good dining room or not? A. Partly so that I could boast when I came back that I had been to the Waldorf Astoria.

Q. That is usually the reason for visiting, isn't it? A. You tend to go to the coffee lounges because you are short of dollars.

Q. When you got this assignment on 8th June or thereabouts you 30 went up to the Public Library, as you say, to get some photographs and detail? A. I think I might be wrong in setting the time. I think we must have had a lot of data in the office for our Eastern Markets project.

Q. Well, you said before when you gave evidence on another occasion—let me read it to you and see if this is right: "Before doing that"—that was to proceed to draw certain plans— "did you consider in detail the modern type of hotel construction overseas? A. Yes, in this manner: I was given a letter of instruction asking to produce a hotel having, amongst other things, 63 bedrooms. 40 Not having had a large hotel experience I did as we ordinarily do, searched in our office records for what others have done, made a research inquiry from the Public Library and then get the best of what people

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 5.
E. M.
Nicholls.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

have done all round the world". Does that mean that this research inquiry was made after you got your instructions? A. I would have to check the times of that. That reply is correct in substance. It could be wrong in time as to when I did the research.

Q. Is this folder the research? A. This is the products of the research.

Q. By the Mitchell Library? A. Yes, partly Mitchell Library, partly our own office records.

Q. Would you indicate in it what part came from the Mitchell Library and what part from your own records? A. I am sorry, I 10 couldn't do that, because I have had my staff compile all this and I wouldn't know which came from the library.

Q. Is there no marking on it which will tell? A. I don't think so. You get these photographs reproduced—

HIS HONOR: Q. You get them from journals and— A. We usually photograph some journals but the Library don't put the stamp on the photographs they sell you.

SIR GARFIELD: Q. So you can't tell what was what? A. No.

Q. Then, having got that, you got to work on these plans? A. That is correct. 20

Q. Have you designed any other hotels since? A. Yes.

Q. Which ones? A. For the project that you know of.

Q. The Eastern Market? A. No, the Kosciusko Park Trust of which you are a member. We designed a hotel in the Thredbo Valley.

Q. And that building, of course, has no semblance—no resemblance whatever to a city hotel? A. In fact, it resembles a city hotel remarkably in its planning.

Q. Does it? A. Yes.

Q. That is a good augury?—

HIS HONOR: No, it depends on which city hotel you have in 30 mind.

SIR GARFIELD: Q. You had told me you had designed one hotel—one other hotel—and you named it. It would be right to say that you have never supervised the building of a hotel? A. The only supervision of hotel work I have done is the alteration of the bars and such at the Plaza and a small alteration at Moss Vale.

Q. In that letter of instruction I had marked—

SIR GARFIELD: It might be convenient if I tender this contract about which I was asking him so that these drawings can now pass into Your Honor's custody and out of mine. This is the bundle which was 40 given to me.

Mr WALLACE : I object to that on the ground of irrelevancy.

HIS HONOR : I will admit them at this stage. I find it almost impossible to work out what is relevant and what is irrelevant. On this issue of reasonableness it is almost impossible to define it.

(Contract dated 24th August, with accompanying documents, marked Exhibit Q).

SIR GARFIELD : They have a stamp on them that would identify them. I did not check that as to all the sheets but I did notice that the sheet of which I am speaking was the same as m.f.i. 10. That had a stamp on it.

Q. Your instructions gave you a financial limit to include architect's fees and engineering fees ? A. That is so.

Q. And the limit was £300,000 ? A. Yes.

Q. Have building costs increased since 8th June 1956 ? A. Yes, they are increasing all the time.

Q. And does that go both for labour and for materials ? A. A little of each, not—

Q. Each are increasing, I mean ? A. Some of each, yes.

Q. Have you in your mind any percentage figure of increase ?
20 A. No.

Q. But it is a substantial increase progressively ? A. Not substantially in the last year.

Q. An increase, and it is still progressing ? A. Progressing.

Q. When you gave that figure of £420,000 to my friend, as at what date were you fixing that price ? A. That was about the date when we finished the drawings, if I remember rightly.

Q. You gave it as at when you finished the drawing, June 1956 ?
A. Yes.

HIS HONOR : Q. What is the figure £420,000 ?

30 SIR GARFIELD : That is his estimate of the cost of this building according to the 1956 plans and he says that was his estimate as at June 1956.

Q. You were also told, of course, that the area that was to be used was the Carrington Street frontage ? A. I wasn't told that, as I remember it.

Q. Were you not told that that was to be the main part of the hotel ? A. It could be I was; I don't remember.

Q. You don't remember ? A. No.

Q. However, you at no time contemplated utilising the whole of the
40 leased area ? A. For the immediate 60 odd bedrooms—

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

Q. What were you told to do? A. I was told to think out the beginnings of a hotel development that could be added to economically so that as time went on and circumstances permitted, they could add more and more bedrooms. My design had to be basically sound to be added to.

Q. The question I asked you was, did you at any stage consider utilising the whole of the leased area? A. For a hotel, no.

Q. And I would be right, would I not, to conclude from—

Mr WALLACE: I didn't object to that last question for obvious reasons but I am sure Your Honor will appreciate, when it comes to addresses, 10 I will be submitting that there is such a question as development.

SIR GARFIELD: Q. Would I be right in concluding from Exhibit 2 that the scheme which you propounded in 1956 when fully developed would still not utilise the whole of the leased area? A. That is so. It would not cover it all.

Q. And the scheme necessarily left the space which is shown between two blocks on what, to you, is the right-hand end, Exhibit 2— A. Yes—it left—?

Q. It necessarily left that space when completed which is shown between the two blocks of buildings in this exhibit? A. The answer 20 is no.

Q. It didn't? A. Not necessarily.

Q. What did you think might be done with the area between when you had built up the way you have got it at the extreme right-hand side of this exhibit? A. It is a little difficult to see what the future use of those two blocks might be. It could be that on George Street a hotel would be needed. Then you could connect the two blocks at each floor or at certain floors.

Q. I am speaking of what you have drawn? A. Yes.

Q. Two blocks, as you have drawn? A. I am answering exactly 30 what you have asked.

HIS HONOR: I think he is right; he is answering your questions.

SIR GARFIELD: Q. What you have drawn here necessarily leaves the space between undeveloped? A. The answer is no.

Q. What would happen to your light and your first-class bedrooms on the George Street side of your Carrington Street building if you connected it with a building on the George Street frontage? A. The answer to that is, it is dependent upon where you put the connection and in what manner.

Q. Well, to be of any use, a connection would have to be of sufficient 40 width to make a serious inroad on what you claim to be a virtue of this design? A. No.

Q. What you think is that the economic way to join these two buildings might be by some narrow construction which would not interfere with the light to the bedrooms in the Carrington Street block ? A. If it were necessary, you could put a covered corridor at floors, as you wished.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. The sort of development when you told me it was not unsusceptible of development, what you had in mind was covered corridors across from one building to the other at various levels ? A. If necessary.

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

10 Q. If necessary ? A. Yes.

Q. But there could be no more substantial development of the intervening area than that ? A. There could be.

Cross-
examination.

Q. Tell me what, without endangering the developments you have extolled in your Carrington Street block ? A. Not without endangering the development. You can build over the whole of the inner area and get very poor class space.

Q. You have thought of this chiefly as a hotel site, have you ? A. No.

Q. As far as a commercial building is concerned, the access to external light is not of so much moment in modern days, is it ? A. The answer is the opposite; it is most paramount.

Q. You don't agree that the tendency in commercial buildings today is to rely much more on artificial light than on natural light ? A. I quite disagree. Indeed, modern buildings in Sydney and generally round the world will support that view.

Q. Do you think that the need for natural light is as great in commercial buildings as in a hotel building ? A. I think it is more necessary.

Q. In this development that you show on the extreme right-hand side of Exhibit 2 do you envisage this building will have to have a separate lift of its own ? A. If it were a commercial building, yes.

Q. Well, any sort of a building 150 feet high would need lifts, would it not ? A. Yes.

Q. So that the development that you show on the extreme right hand side of Exhibit 2, if both blocks are devoted to hotel use, would virtually entail construction of two independent hotels ? A. No.

Q. You think that one hotel could be run satisfactorily with these two blocks with no other connection between them than the covered way over the Wynyard Lane or the concourse below ? A. If both George Street and the Carrington Street sides were developed as a hotel you could connect the two sections near where the main lift shaft is without trouble and with convenience of operation.

Q. Just where would this connection be, again ? A. Where the main lift shaft is now, and always has been.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

Q. You mean on the Carrington Street side ? A. Yes.

Q. And you could connect that through to where ? A. You could put covered ways from there to George Street.

Q. This is over Wynyard Street ? A. Yes, if that were a hotel.

Q. And your knowledge of hotels and hotel administration lead you to think you could satisfactorily run a hotel with that means of communication between the two blocks ? A. There might be more efficient ways.

Q. Would that be a satisfactory administrative project ? A. To the best of my knowledge, yes. 10

Q. Now you have produced amongst the plans a plan of some shops to be built at the Wynyard Lane level ? A. Yes.

Q. That was not part of the original plan ? A. It was, yes.

Q. Well, that is to say, not something that was originally proposed to be done, to be done by you ? A. It was originally proposed by me to my clients and wondered by them whether they would do that section simultaneously with the first section of the hotel.

Q. Is it right to say as of 2nd August—first of August to be precise—that it was not intended that this shop project should form part of the proposal at the present time ? A. That could be so. I don't 20 remember all the dates.

Q. I notice the date on this additional sheet of what you call preliminary structural drawings and the small sheet is 15th August 1956 ? A. Yes.

Q. How long before the 15th August were you instructed to prepare that sheet or did you instruct anybody else to prepare it ? A. The structural engineers prepared that.

Q. How long before ? A. I am sorry, I can't remember.

Q. Was it some time between the 1st and 15th August ? A. I couldn't remember. 30

Q. You have no diary with you or anything of that sort ? A. It wouldn't be recorded.

Q. Did you get a plan of the sub-structure of this area before you began to design the 1956 proposal ? A. I would have had in the office a drawing from the time of my association with Ham.

Q. What drawing would that be, in relation to anything we know here ? A. That would be, from memory, a drawing at George Street level and possibly a drawing at the Hunter Street level and there may or may not have been a drawing at lower levels.

Q. (1954 plans handed to witness). Did you have any of these 40 sheets or copies of any of the sheets of that exhibit when you began to produce this design in 1956 ? A. I would think not.

Q. Have you still got the plans which you say you had when you began to draw this design, conceive this design? A. I wouldn't remember that.

Q. Would they not be filed in your office? A. They might be. I might have borrowed them. I might have had a loan of some from my clients and returned them. There has been a lot of taking and giving of plans in connection with getting sets for all these legal proceedings.

10 Q. But you must have some better recollection than that of what material you had when you began to design that building? A. I don't remember all of these individual sheets. I don't work on the sheets personally.

Q. You must see them at some stage? A. I do. I regret I can't remember every sheet that comes and goes through the office.

Q. But this is a very special job you have got, isn't it? A. No.

Q. As at 8th June what other jobs were going on in your office of comparable magnitude? I know the Caltex building? A. That is the only one of comparable magnitude.

20 Q. And you can't tell His Honor what were the plans of the substructure you had before you when you began examining this 1956 proposal? A. No, I cannot remember.

Q. I suppose a very important thing for you to know would be their strength if you were going to build on them? A. That is the function of the consulting structural engineer we had employed who has all these plans.

Q. But what about the position of them, as well as their strength? A. I would have had some plans showing the position but which plans I could not remember.

Q. What were they like? Were they like that? A. Similar.

30 Q. What do you mean by similar? A. As we have found in trying to compare these plans with others and then with others, they all seem to differ a little. They were substantially like some of these lower level plans.

Q. And do you think you kept them so that they are still in your office? A. I might have.

Q. Would you look for them over the adjournment? A. I will.

Q. The plans which you may have had? A. Yes.

40 Q. When you began this design. Was there no peculiarity about any of the columns or pillars of the substructure which figured in your mind when you were preparing this proposal? A. Yes, there were.

Q. What were the columns with respect to which there were peculiarities that were important to your design? A. When I first started on this job I had a consultation with our consulting structural engineer and he warned me that at the best of his knowledge at that

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Defendant's
Evidence.
No. 5.
E. M.
Nicholls.
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

stage,—his partner, Mr Stanley, having died and he having just taken over the work—that certain of the inner columns were only designed to go to a certain height.

Q. Did you not get anything more than that when you began to design this proposal? A. That is a substantial matter in itself. Then he told me he would have to look into some of the perimeter columns as he didn't know their final loading capacity and we actually drew a design in a certain manner which we had to change in one particular when the structural engineer, who was able to gain from his records the information he needed, as to the columns to carry certain 10 loads.

Q. Did you get this information from the structural engineer in writing? A. No, never.

Q. Did you make no notes of what the structural engineer told you with respect to the capacity of the columns? A. No, it does not happen like that.

Q. So that there is no record, is there, in your possession which we can see which records what the structural engineer told you about the capacity of these columns? A. None whatsoever. You must appreciate that when we started to design this hotel there was a great 20 rush and the structural engineer spent quite some time in our office giving personal advice as to which columns could carry the load required and which were doubtful and he guided us as we went.

Q. Who is responsible for the precise design of this 1956 proposal? A. I am responsible, as the overall architect.

Q. But, I mean, whose idea was it? A. Mine.

Q. That goes to the shop and the building, amongst other things, doesn't it? A. Yes.

Q. And the fact that the building is stepped back from Wynyard Lane is part of the idea, isn't it, the upper floors of the building? 30 A. Yes.

Q. Was that your idea? A. You mean the upper floors? The bedroom floors?

Q. Yes? A. Yes.

Q. Was that your idea? A. Yes.

Q. Well, you had some reason for that? A. Yes.

Q. When you decided that you wanted to step back the bedroom floors did you not think to get specific information as to the capacity of the substructure? A. Yes.

Q. And did you get that in writing in some way? A. No. 40

Q. Are you able, from recollection, to tell us which were the columns of the substructure which you have told had peculiarities, relevant peculiarities for your purposes? A. Yes. I think if I looked at the set of plans that I prepared I could locate those.

HIS HONOR: That is L2.

WITNESS: I think we can see them here. (Documents handed to witness.) Yes.

SIR GARFIELD: Q. Could I see them? (Approaches)? A. Yes. Those two (indicates).

Q. Perhaps we better mark these. He has sheet 1 of L2. This is the column? A. That there.

Q. I will mark them. "A", is that so? A. Yes. Those there.

Q. And I will mark those "B"? A. They were the only ones I was interested in.

Q. The ones that concerned you? A. Yes.

Q. The peculiarity about these columns was that they were designed not to go up higher than a certain height? A. Yes, approximately. I understand the first floor above Carrington Street.

Q. That was apparently to suit some earlier design or plan? (Objected to).

Q. It was evident to you as an architect there had been a reason for these columns being so constructed? A. I was advised—(interrupted).

20 Q. From your observation? A. No, you couldn't tell it that way.

Q. At any rate, these two columns (A and B) were only designed to carry a certain height? A. That is what my structural engineer advises me.

Q. And what is shown here, these two, long rectangular green things which I mark "C"? They represent two heavy beams, do they not? A. That is so.

Q. Which bear back on the columns which I mark "D"? A. That is so.

30 Q. And then your superstructure is borne on the beam? A. Portion of it.

Q. Well, the superstructure shows it is above this area—it is carried on those beams? A. Yes, portion of them.

Q. Well, that is the portion that rises above the area? A. Yes.

Q. Marked out by the beams? A. Yes, that is partly true.

Q. What is wrong with that statement? A. Because the whole of them—half of it throws its weight back to there.

Q. But it is carried on the beam? A. No, it isn't.

Q. Well, there is nothing below the beam except these four columns? 40 A. That is true.

Q. And the building proceeds up on the top of these two beams? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 5.
E. M.
Nicholls.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

Q. That was dictated because of the fact that these beams were not designed to go up higher than a certain height, higher than the certain height I speak of? A. No, not fully.

Q. Was that an element at all in the decision? A. No.

Q. It wasn't? A. No.

Q. This construction of the two beams was unrelated in your design and in your consideration to the fact that the columns A were not designed to go up beyond a certain height? A. That is so.

Q. Quite unconcerned with it? A. Yes.

Q. Of course, if a building was to be built up above the columns "A" 10 or for that matter, above the columns "B"—it would be necessary at some stage to put a very substantial truss across the opening constituted from "A" to "A"? A. That is not correct.

Q. Could be built over with no truss? A. No truss would go from there to there.

Q. From the two outside? A. Yes.

Q. I will mark that with "E". That makes it a bigger truss still? A. Yes, about 80 feet.

Q. A very big truss? A. Fantastic.

Q. Was your placement of these beams "C" in this position dictated 20 by the consideration that you wanted to avoid putting a truss from "E" to "E"? A. No.

Q. Not concerned with that at all? A. Unrelated.

Q. Quite unrelated? A. Yes.

Q. What was the consideration that led you to use these two beams rather than to build over the existing columns, on the existing columns? A. If I could refer to the plan I will show you.

HIS HONOR: That is sheet 4.

WITNESS: The basic design of a modern hotel as per my research and as is now being built is that you have a corridor. You walk into 30 your hall for your wardrobes or bathroom and your bedroom and that is the basic unit. You build up from the basic unit. So where this wall comes is dictated by an assemblage of the best type of basic units giving the best light and air.

SIR GARFIELD: Q. It is right to say that the extent to which you used this area was dictated by two factors: One, that you decided it was to be dedicated to use as a hotel and, secondly, that it was to be used with bedrooms of a particular dimension? A. Taking those separately—

Q. With the combination of them? A. No, I won't take them as a 40 combination. I did not assume that this was dedicated as a hotel but while it is used as a hotel, I have designed it to be an efficient one.

Q. Well, you designed it to be a hotel ? A. Yes, but not—not unchangeable.

Q. Well, if it was cut into offices the considerations that you mentioned about the corridor and place for the bedroom would disappear ? A. Of course.

Q. So it is right to say that the position of the wall was dictated by the fact that you were building a hotel and a hotel that, to your mind, was of a particular size ? A. Yes, that would determine where it is.

10 Q. And you tell me that was the only consideration that caused you to use those beams "C" and to build above them in the manner the plan provides ? A. That is the only consideration.

Q. You have told me that the putting of a truss across from "E" to "E" would be a very costly business ? A. Indeed.

Q. I suppose it occurred to you that the development of the central portion of this site, that which lies across Wynyard Lane, would not be possible without the use of such trusses, at some level ? A. Yes. When the structural engineer mentioned to me the weaknesses of these columns I was then aware of it.

20 Q. And you agree with what I have said to you, that the development of the centre of that area would not be possible without the use at some level of trusses of the kind I described ? A. I am so advised by my structural engineer—(Objected to by Mr Wallace).

Q. Don't you accept him or have you no opinion about it yourself ? A. I haven't got the calculations. I accept his advice.

Q. Have you not yourself gone into that very question of the development of the centre of this area and the manner in which it might have to be done structurally ? A. I have, and the answer is negative; I don't think it should be developed in the way you are implying.

30 Q. I am speaking on the assumption that somebody wants to do it ? A. Yes.

Q. Have you gone into the question as to how it would have to be done ? A. No. We have merely left everything as it stands unimpeded.

Q. And I am to take it that you at no stage considered the development of the entire area or so much of it as, subject to regulation, might be built upon ? A. I considered the development of the whole site and my consideration is shown on my diagrams.

40 Q. Which means not to develop the centre of it ? A. Most certainly not. It should be open.

Q. You scheme virtually pledges the owner not to develop the centre of the area ? A. That is not so at all.

HIS HONOR : What has been said so far doesn't prove it.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

SIR GARFIELD: Q. I thought you just—A. I just said the whole of the centre columns were unimpeded, they were not touched, and none of their load was taken, so the whole of the centre can be filled up with buildings to the carrying capacity of the columns untouched.

Q. But you told me that you yourself had no opinion as to what would have to be done in order to carry a building up over those central columns. When I put it to you, about the trusses, you said you had not considered that? A. No, it is not part of the scheme.

Q. But you did tell me you had not considered it? A. I have not deeply considered it. 10

Q. So you have given no consideration to the practicability of development of the centre of this area if your full proposal as shown at the extreme right hand side of Exhibit 2 were carried out? A. I have given consideration, in my judgment, to the best development of the site. I have not been asked to give consideration to filling up the centre with buildings. If I am asked to give consideration to filling up the centre with buildings I will be pleased to carefully do so.

Q. I accept that answer. That is what I thought it was from the beginning. You have told me that you have prepared these plans in some three weeks? A. Yes. 20

Q. And you were told to prepare them so that they might be—the number of bedrooms could be increased a little, were you not? A. As I remember it, yes.

Q. But you were asked to provide for the possibility of another 37 bedrooms? A. Yes.

Q. And to permit the building over, what you were providing for at any future time to the full limit of 150 feet? A. Yes.

Q. Have you any structural drawings or calculations which would enable you to satisfy, yourself, that what you have designed would carry a building up to 150 feet above it? A. My only advice is verbal 30 advice from my structural engineer who tells me that is so.

Q. You have no documentary matter and you have no personal opinion about it yourself? A. No. I accepted the advice of my structural engineer. I made no investigation myself.

Q. I suppose you looked at the lease before you drew these plans? A. I looked at the diagrams on the lease. I didn't read the lease.

Q. And you still, I suppose, have you yet got a complete set of substructure plans in your possession? A. No.

Q. (Plan No. 6 handed to witness). When you drew this plan did you have the substructure plans with you, near you? A. Yes, 40 I think I would have had a Hunter Street level.

Q. Did you have the diagrams of the lease there? A. Yes.

Q. Do you agree that what you have drawn intrudes into areas withdrawn from the lease? A. Yes.

Q. And do you agree that the head room of what you have drawn there is between 7 feet and 7 feet 6 ? A. I don't remember the measurement. I merely know it is a prolongation of what exists a little further along.

Q. Will you agree that the headroom is somewhere in the area of 7 feet to 7 feet 6 ? A. I don't know, and I tried to help you by that answer.

Q. (Approaches with 1954 plans.) Do you remember telling my friend Mr Wallace that a number of these columns were necessary to support the ramps ? A. Yes.

Q. And other things. Did you mean to convey that columns of that dimension were necessary to do that particular function ? A. No.

Q. Did you know when you were making those answers whether or not those columns had been specially strengthened to do more than the work of carrying the ramp ? A. My advice from the structural engineer is that they are stronger than is necessary to only carry the ramps.

Q. Did you not at some stage see in the possession—either your own possession or possession of your client—plans of the substructure coloured the same as the documents I am showing you ? A. I don't recall ever seeing such plans.

Q. Did you have your plans which showed which of these columns had been put in for the account of your clients and which for the account of the Railway Commissioner ? A. Not ever.

HIS HONOR : When you say " his client "—

SIR GARFIELD : I mean the defendant.

Mr WALLACE : What would he know about the document—

SIR GARFIELD : I suppose I should say his predecessor in title.

HIS HONOR : That is what I was going to put to you.

SIR GARFIELD : He said he didn't know and he has not seen that plan.

(Plan of substructure No. 10C172, m.f.i. 13).

Q. You say you had the drawings or the diagrams which are annexed to or form part of the lease when you were preparing this scheme ? A. Yes.

Q. And you had to keep within the confines of the leased area ? A. To the best of my knowledge we are within the confines of the leased area. That was my purpose.

Q. Would you agree that you show a concrete slab which extends out of the denised area and through the Commissioner's lift area ? A. I am not aware of it.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

Q. Through the motor room. (L2 handed to witness.) Would you pick out the plan that showed the roof over the ground floor? The first floor of bedrooms, I suppose? A. That is the roof (indicates).

Mr WALLACE: Q. What does it consist of? A. It is a concrete roof.

SIR GARFIELD: Q. It is a concrete slab? A. Yes.

Q. The floor beneath it will be which? A. Carrington Street, the ground level, so-called. That is the substituted one.

Q. That is the 1954 plan? A. That is the Ham plan.

Q. I want to get one that easily superimposes this withdrawn area.

I want you to agree with me—you see the diagram? “K” is it not? 10
A. Yes.

Q. Which should join on to “G”, should it not? A. Yes.

Q. I want you to agree with me—and you can check it for yourself—that you have got that roof right through the motor room and that one of those walls is some two feet in size, outside the demised area. You just check it for yourself. I have marked it on mine, if that would assist you. I suggest to you the wall goes through like that. There is the slab, and your walls lead over here? A. If it does so, it is my error, but I will see, firstly.

Q. Mr WALLACE: Would you need any accurate scale or anything 20 of that sort? A. I have to study these for a little while.

HIS HONOR: You study them and when you are ready to give an answer, you can give it.

WITNESS: I will agree with you that this roof slab is wrongly coloured. I will disagree with you that our slab goes through.

SIR GARFIELD: Q. It is shown to cut through on the plans? A. It is coloured on the top there quite erroneously.

Q. There is nothing to indicate it is cut off anywhere? A. I regret to say it is a mistake on our drawing.

Q. At any rate, my proposition that your plans, as presented both 30 to the Court and to the Commissioner, show that roof as going through the motor room—A. Could I just see the structural plans? (handed to witness).

Mr WALLACE: This has nothing to do with the ground—is this the ground that you refused our building on? If so, why didn't you put it in writing?

SIR GARFIELD: We were given about two days to look at these.

Mr WALLACE: You have been fighting in the Law Courts for six weeks.

WITNESS: This matter clarifies itself quite simply in our favour. When the structural engineer prepared his plans in which he gave thought 40 to all these things, then he showed those two areas as existing slabs.

SIR GARFIELD : Q. But the structural plans are not part of the plans presented either to us or to the Licensing Court ? A. I can't answer for that.

Q. First of all, in answer to my question, the plans as presented do show the feature I speak of ? A. The architectural plan erroneously colours the roof where it should not be.

Q. Now, what about the wall that is encroaching by about two feet ? A. I haven't found that. —I am sorry, I still can't find that.

Q. If you would like to look at it during the night you can. I suggest it is there, because—

Mr WALLACE : Could you show it to him ?

SIR GARFIELD : I don't propose to give evidence on his plans.

(Discussion ensued during which Mr Wallace contended that both he and the witness should be informed of the location of the feature mentioned by Sir Garfield)

SIR GARFIELD : It is into the lift shaft of the motor room.

HIS HONOR : Into one of the withdrawn areas which is described as the lift shaft of the motor room.

SIR GARFIELD : I have asked the witness can he see it on the drawings and if he can't I am entitled to my own comment when, later on, I prove clearly where it is because my experts will, later on, give evidence about it. I have told him the wall, staircase No. 1.

WITNESS : That is the Eastern wall of staircase No. 1.

SIR GARFIELD : Q. Which encroaches about two feet into the left shaft of the motor room ?

Mr WALLACE : Is that this wall there (indicating on plan) ?

SIR GARFIELD : It is where the staircase is. It may be inconvenient for him to do it now.

HIS HONOR : If you think you can do it now, by all means do so. If you think you would like to look at it more carefully, then do so.

WITNESS : I would prefer to look at it more carefully this evening.

SIR GARFIELD : That is what I suggested. My question, I may say, is based on what is here. As far as I know it is identical. I am not suggesting—if my friend wants to look at the originals and answer the question for the witness, he can do it.

HIS HONOR : What he is saying, Mr Wallace, is that this is L2, not L. This is the same as L and, for the purposes of this question, L2 will do, otherwise I will get L back.

Q. Are you satisfied that, for the purposes of the question, L2, the copy, will be the equivalent of the one called L ? A. Yes. I will check it on my base drawings in the office, from which these were printed.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 5.
E. M.
Nicholls.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

(Cross-
examination.

Q. And after you do that, you will have to come back and identify it there? A. Yes, identify it there.

Q. Then, if you do find the area you will be asked about it and you will be ready for that? A. Yes.

SIR GARFIELD: I am not to be taken that—the fact that something is on his base drawing—

HIS HONOR: The witness is going to use his base drawings because he has more figures on it and then he will come back and look at these.

Mr WALLACE: I will be submitting, in any event, that it is irrelevant.

SIR GARFIELD: Q. This area you have marked "Coffee Lounge", 10 how many square feet per person is the rate you worked out that it will hold 100 people dining? A. About eight square feet per person.

Q. What is regulation requirement of the licensing authorities for a dining room in licensed premises? A. I do not know.

Q. Do you know it is 12 feet? A. No.

Q. If it is 12 feet that won't hold 100 people, will it? A. No.

Q. About 80? A. Yes. We would have to enlarge it a little if we needed 100.

Q. And you intended this as a dining room right from the beginning? A. Yes. 20

Q. As a dining room? A. Yes.

Q. Not as a coffee lounge in the sense of some places where you get some very light refreshment, but as a meal room? A. More in the nature of a Repins.

Q. As what? A. The class of place that Repins run where you can get a light meal.

Q. I have never thought of that as a coffee lounge or a dining room—

HIS HONOR: It is neither one nor the other. It is a bit of both. The dinners are not sumptuous but you can get dinner there.

WITNESS: Yes. 30

SIR GARFIELD: Q. You contemplated this as a place where hot meals, for example, could be obtained by the occupants of this hotel? A. Yes.

Q. Their friends? A. Yes.

Q. And members of the public? A. Yes.

Q. How was the food to be taken into this kitchen place you provided, to get your food supplies in? A. Bring it up the lift or take it through the foyer or up the lift from the service and take it around there (indicates).

Q. Carry the food in through the main foyer? A. Yes.

Q. Or you brought it up some lift that opened on to the main foyer? A. Yes. 40

Q. And carry it out through the dining room into the kitchen ?
A. Yes.

Q. And that went for all supplies, whether eggs, potatoes, fish or ham ? A. Yes, which is also very common.

Q. And very modern ? A. In the Repin class of—

Q. That is very modern in a modern hotel ? A. It is very common in this class of place.

Q. This is not a Repin class ? A. This particular section is.

Q. So the main foyer of this hotel is to have a Repin-class—I can't
10 say a word about Repins—the Repin-class dining room or whatever you call it ? A. You can lift it to a Cahill's if you like.

Q. Carting all the food through the public places ? A. They do it early when customers are not there.

Q. But in a hotel close to a railway terminal, not so far from your termini, do you feel it is going to have long dead periods when food can be ferried in and out ? A. I think there will be.

Q. So that your modern dining room depends upon convenient dead periods to ferry the food in—A. Yes, I think that would be desirable.

Q. You think it would be desirable ? A. Yes.

Q. When you have managed to scrape all the plates and you have a
20 lot of garbage how do you get it out of the kitchen ? Somewhere through the public dining room and out the main foyer ? A. You can take—you go into the lift.

Q. You have to get it out of the kitchen first ? A. Yes.

Q. Through the public place with the garbage, in the lift or carry it out into the main—A. No, you would go to Wynyard Lane.

Q. Who is intended to use this lift ? Who is going to be serviced by this lift ? The guests, aren't they ? A. Also.

Q. So the food comes in to the lifts and the rubbish goes out in
30 them, too ? A. Yes.

Q. A very modern feature ? A. Yes.

Q. What about the area of this kitchen ? Have you ever gone into the question of how much gear you could get through it ? A. Yes.

Q. Have you got a note somewhere of what the proposed gear in that kitchen would be ? A. Yes.

Q. It is 18 x 16, isn't it ? A. Yes.

Q. 18 feet 9 by 16 ? A. Yes.

Q. Have you a list there ? A. Yes.

Q. Tell me what it is you propose to put in ? A. A pie heater, a
40 griddle plate, a hot cupboard and Bain Marie combined, counter-type deep fryer, water boiling urn, two-compartment urn, coffee percolator, heavy duty range, boiling table, potato peeler.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

Q. Did you, by any chance, get the dimensions of any of these items and work them out against the floor space in that area ? A. Yes.

Q. Did you do that ? A. No, one of my staff did it.

Q. Would his workings be about ? A. They could be.

Q. Would you look overnight and see whether you can find the workings to show—

HIS HONOR : You will have longer that ; over the week-end.

SIR GARFIELD : Q. And you think that lot of gear would be adequate to serve meals to 100 people ? A. Yes. We took some expert advice, from kitchen experts from that and that was the product. 10

Q. For a dining room service ? A. Of that character.

Q. When the cook is finished and wants to get changed into his clothes and tidy himself up, where does he go, in this luxury hotel, this most modern hotel, from that kitchen ? A. He would have to go down to some of the staff rooms that exist in the present building.

Q. He would have to come out here through the public part ? A. Yes.

Q. And down with the guests in the lift, somewhere to the bowels of the building where there were some staff rooms ? A. If he takes the lift, yes. 20

Q. Otherwise, he can walk ? A. Yes.

Q. And when he is putting his cap on again he comes back up. When did you first think of using this coffee lounge as a substitute for a dining room in this hotel ? A. I never thought of using it as a substitute for the dining room.

Q. So it is still true that anybody who wants dining room facilities in this hotel must go down and get through Wynyard somehow or other to the dining room on the George St. side ? A. It is not true. They can dine in the coffee lounge. If they wish to dine at another level they can go to the existing dining room. 30

Mr WALLACE : Q. Or the Hotel Australia ? A. Yes.

Q. SIR GARFIELD : Or else walk through Wynyard through the concourse as you have described to get to your George St. dining room ? A. They can go two ways to the George St. dining room.

Q. Both of which take them through part of the concourse of the station ? A. Yes, they traverse a little of the concourse.

Q. Did you provide there a separate lounge for the house guests from the public lounge in the scheme ? A. Yes.

Q. Just show me where that is. (Sheet No. 4 shown to witness.) What level is that on ? A. It says it there (indicates). 40

Q. That is up in the bedroom part ? A. Yes.

Q. A sitting room and writing room on the second floor, 17 x 19 ?
 A. This is in addition to the large lounge at the Carrington St. level.

Q. The one that was for guests as distinct from the public lounge—that is the one for guests ? A. Yes, for guests.

Q. When this hotel in your scheme was extended to 300 bedrooms, where was the dining room to be ? A. Consideration has not been given to any change in the location of the dining room.

Q. It would still be that coffee lounge, that size, and the same kitchen ? A. Not necessarily at all.

10 Q. You have told us that this was appropriate for extension to 300 bedrooms ? A. Yes.

Q. Where would the dining room be when you got 300 bedrooms ?
 A. Perhaps I could answer a good deal of your questions by this simple reply : I have been commissioned to do certain work to a certain stage. I have not been commissioned in detail to plan the whole building in full detail to its maximum size.

Q. Tell me if this is unfair : Your answer is this, that you have not really given consideration to what would have to be done to this building to increase its accommodation beyond the point to which you
 20 were going in your present scheme ? A. Yes, I think it would be fair to say that I have confined my thought to the present extensions.

Q. You were told, with respect to the dining room, this : I am quoting from your letter of instruction : “ Remember present dining room is on George St. Frontage. Access from bedroom to it. May consider if within cost limit transfer to Carrington Street or new dining room there whilst retaining the old one ”. Do you remember that ?
 A. Yes.

Q. Do you say that that coffee lounge so provided by you was provided in pursuance of the instructions to provide a new dining room
 30 in Carrington Street whilst retaining the old one ? A. That is not quite so.

Q. Is the answer yes or no ? A. The answer is neither yes nor no. They were general requests given to me by my client asking for my advice and my advice resolved itself in these drawings.

Q. What do I take from that, that you didn't—

HIS HONOR : Q. That, in the circumstances, that coffee lounge was the best proposition, having regard to the rest of the plan, I take it ?
 A. Thank you, Your Honor. That is exactly correct.

SIR GARFIELD : Q. You produce, do you,—or somebody produced
 40 the contract. Are you familiar with its provisions ? A. Reasonably well. I was not in at the final stage, the negotiations of it, and I have not a copy.

Q. Have you never read it ? A. No, I haven't seen either of the signed copies.

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*

Defendant's
 Evidence.

No. 5.
 E. M.
 Nicholls.

Cross-
 examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

Q. You have never seen a copy of one ? A. No.

Q. Or read a copy ? A. No.

Q. I asked you whether there was an escalator clause in this contract ? A. Yes.

Q. Did you remember when I asked you that there was an escalator clause as to labour—I think you made some remark to that effect ?

A. I told you to the best of my knowledge it was a similar contract to what we had at Caltex House but the material prices are fixed and the only variable was on site labour. That is what I have been led to believe. It is the same builder. I also commented that I understood if a certain 10 period of time went by, then the builder would have an opportunity of revising his price.

SIR GARFIELD : You know the contract fairly well. That is what I was going to ask you about ? A. I said that before.

HIS HONOR : He said that earlier. That was one of the first things he said.

SIR GARFIELD : Q. It is provided that if the approval of the Railway Commissioner amongst other consents is not obtained within sixty days, the builder has the right—either party has the right within two years, for a period of two years—to terminate the contract, or, in the case of 20 the builder, after 60 days to increase the contract price by an amount equivalent to the increase in the cost of materials by reason of any variation or variations in cost of materials or services or otherwise occurring between the 2nd July 1956 and the date on which possession of the land is given to the general contractor for the commencement of the building ? A. Yes.

Q. I suppose you realise the sixty days has gone by ? A. Yes.

Q. So at the present moment there is no fixed and settled price as between the builder and this owner—as a money sum ? A. It is not definite as a money sum. It is definite as a formula. 30

HIS HONOR : It could be specially endorsed.

SIR GARFIELD : I do not want to say any more than this : I would disagree, with respect, because I do not know how you would ever apply the formula to a money sum. This is not the sort of rise and fall, where you get a formula directly. It says simply that he can increase his material price—add something for materials—if there is a variation in the cost of materials.

HIS HONOR : I have known juries to work out much more difficult things than that. I think I remember one or two cases where worse than that was endorsed. However, that is immaterial at this stage. 40 I do not think it will become material so far as I am concerned.

SIR GARFIELD : Except that it bears on estimates and things like that.

Q. You said in relation to this Exhibit 2 that any development of the centre of the building inevitably led to certain dimensions of the light area and a certain height of the central connecting structure ?

A. Yes.

Q. What do you mean by "inevitably", that it could not be done any other way ? A. Under existing regulations.

Q. It could not ? A. No.

Q. (Exhibit H shown). These columns that we marked before are numbered on this plan 29 and 30, and 55 and 53. Are they the same ones ? A. I think so, yes. That is right, they are the equivalent four.

Q. Do you recall they were apparently designed to go up to a certain level so that the area above the top of the columns could be a large open space ? (objected to by Mr Wallace).

Q. That is apparent from the look of the plans, isn't it ? (objected to by Mr Wallace).

HIS HONOR : He can say whether in his opinion that is a reasonable inference to draw, or he can say otherwise. He is an architect. If he cannot say, the answer is "I cannot say".

20 SIR GARFIELD : Q. You know these columns: you have seen them ?
A. Yes. Firstly, what you say does not apply to the two marked "B" and never has. It applies here only to the two marked "A".

Q. My question was really directed to "A" ? A. You mentioned "B".

Q. I will reframe my question so that there can be no mistake. Was it apparent to you, both from what you saw and the plans of the sub-structure, that the columns 53 and 55 and the columns in the same line as those passing towards George Street, down to the one, which on this sheet I mark "A"—(sheet 6A of Exhibit L.2)—those columns were
30 designed so that the space above them could be one large open space ?
A. It was not apparent.

Q. Is this the situation, that you could draw no conclusion as to why they were built in the way in which they were built ? A. I could draw no satisfactory conclusion.

Q. If I might return to this for the moment, as you see, this area—if that area was built over completely at the lower level, instead of leaving that light area . . . A. Yes.

Q. . . . and trussed above it, it would be possible to go up with a narrower piece, which would have the advantages of light on both sides
40 and a single corridor ? A. Yes.

Q. And go to the full limit, I suppose ? A. I can see no reason why it should not.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 5.
E. M.
Nicholls.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

Q. So if use were made of this centre section as I call it, you can see it would be possible to build up to the limit a building having light to both sides of it in this central area ? A. I think that would be possible.

Q. If your Carrington Street block was put on the land and it was then decided to develop the centre in the manner I have sketched to you there, there would have to be quite extensive alterations made to the Carrington Street block ? A. The answer is " No ".

Q. Do you mean there would be no need for any ? A. No, you would have to make certain alterations. Presumably you would have 10 to break the walls away, to walk through.

Q. Can you envisage where these trusses would go, if you were going to truss over an open area there ? A. Yes, they can go at several levels.

Q. But they would stand from the column 57 in one line and 51 in the other ? A. Yes.

Q. They would stand those columns, as you pointed out before.

Q. And they would be what, 10ft. or 12ft. deep ? A. I am sure.

Q. It would be wide ? A. Wide.

Q. And they would have two members as it were between the top 20 and the bottom ? A. I would not like to say how they would be composed.

Q. But you know they would be very large trusses ? A. Most substantially.

Q. And if one were to be put from column No. 57—do you agree 57 is " E " on the other plan (Exhibit L.2, Sheet No.1) ? A. Yes.

Q. If a truss was passed from 57 to 51 at any level, with your Carrington Street structure there, a great part of the truss would be out in the air ? A. It would be out in the air until you built something around it or on it. 30

Q. These columns are here and there (indicating) ? A. Yes.

SIR GARFIELD : I am looking at Sheet 4 of Exhibit L.2, and I put an " X " there.

HIS HONOR : These columns, once they are identified, are identified and they are easily picked up by the eye.

SIR GARFIELD : These have no numbers or anything on them. I have put " X " on them. These are not numbered on Sheet 4.

WITNESS : They are numbered on a lower sheet.

SIR GARFIELD : Q. If you were to put a truss from the column marked " X " on sheet 4 to the other column marked " X " on sheet 4, 40 and this existing structure was there, you would have these trusses in

the air for some considerable distance, wouldn't you? A. Of course you would have them in the air, until you do something else.

Q. But while your bedrooms are here, what do you do with these trusses? A. I do not follow that.

Q. I have been putting it to you that the trusses are going to carry a building up the centre, which is narrower than the full base line of the columns? A. Yes.

Q. And the trusses bear that building? A. Yes.

Q. So the building won't fully cover the truss, will it, if it is narrower
10 than the total width of the truss? A. You are quite wrong, because
the truss is under the narrow building.

Q. You are sufficiently familiar with the design of this building and with what I have suggested to you to say that there would be something under those trusses, covering them? A. I think, if you don't mind me saying, you are confused in the matter. You said to me that these trusses presupposes, with the level of Ham's bedrooms, that you have one complete block of buildings.

Q. I said at any level; I did not trouble about what the level was.
A. We start at the bottom. Then you can put your trusses over that.
20 Then you can build your narrow building over that.

Q. On top of part of the truss? A. Yes.

Q. And the truss is about 12ft. deep? A. Yes. Then, if you wish, because your truss is blanking this section, you can extend this on to that "T". It is all a matter of planning. You have to make connection between your suggested narrow and what exists. It is all a matter of architectural planning.

SIR GARFIELD: I shall explain that to Your Honor. I put to him that these two columns are to be trussed over, because below them there is an open spaced building, a building that is not bearing internal
30 columns. It is not proposed to build the full width of the truss, so that you have a building proceeding up that, narrower than the base of the truss. The truss is some 12ft. deep, so from the top side of the lower building to the underside of the next storey, there is 12ft.; and this truss, he agrees with me, is then put out in the air for the amount, I suppose, of the difference between the base width of the truss and the base width of the superstructure. I put to him that with his building there these would remain in the air, and his answer to me is you would have to extend your building out in some way over to the truss, and he says it is all a matter of architectural planning.

40 Q. But my question began with this: you would need to have substantial alterations to your building. Do you call this building-out an insubstantial alteration? A. Quite. The point you have been making is very little in fact. I shall get a rule. The trusses would be out in the air each end for a distance of about 12ft. at one floor level—at one floor level only. There is just one level of trusses.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

Q. Would you like to check your measurements about the 12ft., so that there is no misunderstanding, I suggest to you it is 25ft. You just measure it again. A. Dependent on the class of bedrooms that you put in the centre, it could be either 16ft. or 12ft.

Q. You are thinking of bedrooms. I think you said before than on a long-range view it could be that the owner of this land may prefer commercial accommodation?—

Mr WALLACE: That is at the George Street entrance.

SIR GARFIELD: No; the middle.

WITNESS: I will be pleased to work it out for you. If it were a 10 commercial building, the exposed length of truss each end would get down to about 8ft.

SIR GARFIELD: Q. At what floor level are you speaking; it does not matter where you put the truss in. A. Whichever floor you select to put your truss, then you will have 8ft. of truss each end. Then the truss is finished—and it is normal building. So you are concerned with an alteration to a piece about 8-ft x 12-ft each end, which is not substantial.

Q. Of course, you—through or over the truss—must make communication with the Carrington Street building, must not you, 20 because it is this part which will provide the means of joining the two buildings? A. Are we still talking about the central block you presupposed?

Q. Yes? A. Yes.

Q. What is the ceiling height of your floors? A. I think we have it 9-ft floor to ceiling.

Q. What would you do with the 12-ft truss in relation to the floor levels? A. 12-ft is an arbitrary figure. The truss has never been designed by anybody.

Q. As far as you know. What warranted you for making that 30 statement? A. Structural engineers' advice.

Q. What, Stanley & Llewellyn? A. Mr Llewellyn.

Q. Nobody from the Department? A. No, I do not deal with the Department. I have not met the gentleman.

Q. When you say "nobody" you exaggerate, so far as your knowledge is concerned? A. That is a misstatement, yes.

Q. If the truss in point of actual structure needed to be 12-ft. deep in order to carry the superstructure, what would you do about the levels once you had this building to contend with? A. Well, I think the answer to that is you would not have a 12-ft. truss. 40

Q. My supposition was something neither of us knows. Suppose the engineers say it must be 12-ft. What do you do then? A. Then you make it deeper than 12, if 12-ft. is the minimum.

Q. You make it 18-ft., to make it two floors instead of one ?
A. Yes, with holes in it for doors, and you walk through the truss.

Q. Have you any actual knowledge or experience that would warrant you saying that that could be done, having regard to the loads which the truss might have to carry ? A. Yes.

Q. This bedroom space was, you told us, first, second and third class space in the 1954 plans ? A. Yes.

Q. I think you told my friend—I have not the precise expression in my mind—that it was a regular professional expression ; that in your
10 profession that was a regular method of dividing up space as for light. Do you remember saying that ? A. I remember something of that character, yes.

Q. Would you be able to offer me some professional journal in which that is mentioned or referred to ? A. I cannot think of one offhand, but I could refer you to a very good precedent in this matter.

Q. Your statement was that this was a sort of regular professional method of division of rooms or space in relation to light. You say you cannot offhand tell me of any journal or periodical. A. No.

Q. I want to put to you straight that that is not an expression known
20 at all in your profession, amongst your professional men ? A. Then you are quite wrong.

Q. Your answer at p.5 was “ Q. Does your profession describe or rate lighting according to classes—1st, 2nd, 3rd and so on ? A. Yes.” Do you mean it is in common parlance amongst your profession that lights and rooms are associated with 1st, 2nd and 3rd class ? A. I would not put it that way. It has come into being with the advent of the modern flat building, where you get all obviously 1st class prime space.

Q. How would you define a slab building ? A. A corridor in the
30 centre. rooms on either side.

Q. How would you define a thin slab structure building ? A. I do not understand that.

Q. Or a flat plate building ? A. That is structural, quite apart from planning. They are two things you are mixing.

Q. I did not say they were the same. How do you define a flat plate building ? A. That defines it. The ceiling is just simply from the underside flat. There are no beams coming down, nor are there any column caps coming down.

Q. This building in your 1956 plan, do you describe that as a flat
40 plate building ? A. It is substantially flat plate.

Q. The essence of the flat plate building is it does not have beams, isn't it ? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

Q. This building has a lot of beams in it ? A. The beams have been eliminated as far as possible, and the engineer is still to investigate the elimination of other beams, to get as near a complete flat plate as we can.

Q. Is it right to say that the building that is in the Exhibit of the 1956 plan is rightly described as a flat plate building, in the way those words are understood in your profession ? A. It is not a pure flat plate building, nor is it a pure beam and slab building.

Q. At any rate, it could not be properly called a flat plate building without qualification ? A. Without qualifications. 10

Q. I understand you are still in the process of altering the structural details of this proposal, in the way of eliminating beams ? A. Yes, our engineers are working in that direction.

Q. Is this building rightly called a slab building or a slab constructed building ? A. Yes, you could call this a slab building.

Q. Your instructions require you to contemplate another 37 bedrooms ? A. Yes.

Q. How many bedrooms are there on a floor of this 1956 scheme ? A. Each floor, one-third of 75 whatever that is.

Q. 25 ? A. Yes. 20

Q. Where were the 37 bedrooms you were instructed to provide for, to go ? A. Both the 62 requirement in my instructions and the 37 were as it were arbitrary amounts, arbitrary numbers. Then I set to work designing this thing and found, consistent with the site and with the columns, to work in a unit of 62 was not economic. As I could see it the only economical way was to design along Carrington Street and get units per floor of about 25, and that is why there are 75 bedrooms, and that is the explanation somewhat as to why the cost has increased from the £300,000 in the instructions. Then I showed to my clients how they can add in units of 25. 30

Q. How does the level of your bedroom floors in this proposal compare with the level of the George Street bedroom. Do they correspond or not ? A. No, they differ in about the same measure as the 1954 plans differ.

Q. But they do differ ? A. Yes, they do differ.

Q. You told me that they differed to the same extent as the 1954 plan would. Just show me what this difference was in the 1954 plan, say, in the floor level ? A. Unfortunately the section we desired is not here. It is not one of this set you remember.

HIS HONOR : That is the one we thought was missing, and I made up 40 my mind it was never there, so it was never missing. This witness at one time has obviously seen a section which is in none of the plans.

WITNESS : I have.

SIR GARFIELD : I did not see what the Licensing Court brought, and if the Licensing Court has not brought it naturally it is not here.

HIS HONOR : As far as I am aware nobody went through every bundle.

SIR GARFIELD : But the Licensing Court would not accept them, I do not think, without the sections. They would require a section, and I would be very surprised if there was not a section there; and there must have been sections drawn because the witness has seen sections.

HIS HONOR : What Mr May says makes me certain they were not taken yesterday afternoon. Either one of two things has happened. As you
10 say, either the whole of the plans were not brought up, or, in dealing with the bundles it was overlooked that somewhere there was another plan.

SIR GARFIELD : I am not saying that anybody took them from here. All I am saying is it might not have come from the Licensing Court.

Mr WALLACE : You have copies yourself.

SIR GARFIELD : Of course I have copies. I have never denied we have got copies; we have been working on them. However, I am endeavouring to get a copy to show the witness.

Mr MAY : Having regard to the way in which the Licensing Court does
20 deal with the application, they would not be directly concerned with the detailed building construction, and it may well be they were never put in at the Licensing Court.

SIR GARFIELD : Apparently we have not got a section here. I shall have to defer the question.

Q. Am I quite right in saying that you at no stage paid any attention to the centre columns, the ones I was thinking of before ? A. Yes.

Q. When designing your project, with a view to avoiding the use of those columns ? A. Most certainly not.

Q. You have told us that the shop downstairs has now been added to
30 the contract. It was added to the proposal by the time the contract was entered into ? A. Yes. They were all drawn at the one time, but the first price of the contractor excluded the shopping court, which he later added, and it was included in the total contract price.

Q. Would you open up the sheet showing the shops at the Wynyard Lane level ? These black marks mean " existing construction ", don't they ? A. That is right.

Q. By stepping your building back off the columns marked " A " and utilising these beams marked " C ", you as it were were left with or created the area that is now marked for the shops ? A. That is
40 partly true.

Q. The shops were really dictated to an extent by the fact that you had stepped back off the line of AA. to the existing line of your proposal ? A. Most certainly not. It had nothing to do with it.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

Q. Was this area not made available by reason of the fact that you stepped back? A. It had no relationship.

Q. Had you built right on to the level of the line EE, you would still have had this provision for shops? A. The whole of this space would have been vacant, to do what one wished—shops or anything else.

Q. By the way, do you remember I showed you the 1954 plan. If one were to cover the whole of the area at the lower level across Wynyard Lane and then build above it with a narrower building on the truss, you would have a complete cover, of course, across Wynyard Lane? 10
A. Yes—not a complete cover; a partial cover.

Q. It would be a cover extending . . . A. . . . from there to there. (indicating).

Q. Where there is a downpipe, to the one over here near the duct?
A. It would complete that area partially for the site.

Q. But it would cover as much of Wynyard Lane as this cover you are talking about? A. It would cover more.

Q. What has dictated the line of the shops? A. I did.

Q. I mean, just arbitrarily? A. No, to gain width of coverage and to make access around the back of these little stems of columns 20 there.

Q. There being four columns, you stepped back? A. To circumnavigate.

Q. When you made your estimate—the original perspective that you saw—for a building on this area costing £4,000,000 today . . . A. Yes.

Q. Did you take it out and square it? A. Oh, roughly.

Q. How many squares or cubes did you make it? A. I did this a little while ago; something like 360,000 sq. feet of floor—very roughly.

Q. When you say “a while ago” . . . A. Lunch time; just sitting here at lunch time. 30

Q. Is that squares, you say? A. Yes.

Q. How many floors are there on that? A. About ten more.

Q. Eleven altogether? A. Yes.

Q. About how much per square do you calculate? A. About £10 per square foot.

Q. How much does your construction work out per square foot?
A. I have not worked it out.

Q. Is it possible for you to do it quickly? A. It is not possible for me to do it quickly. I shall do it over the weekend and have it on Monday morning. 40

Q. When you said that this site would only stand 300 hotel bedrooms, in your judgment what are you gauging that on? What experience have you got? A. Very little.

(Letter of instruction from the witness' file tendered by Sir Garfield; objected to by Mr. Wallace. Mr. Wallace suggested that Sir Garfield re-tender the document next Monday.)

Mr WALLACE: Would Your Honor rule on it on Monday?

HIS HONOR: Yes.

(m.f.i. 11 now tendered and marked EXHIBIT R.)

10 Mr HARRINGTON: (Crown Solicitor's office) Might I inform the Court that I am instructed by the Clerk of the Licensing Court that that Court has adjourned until the 9th April.

HIS HONOR: That means you will not need any other documents before the 9th April?

Mr HARRINGTON: That is so.

SIR GARFIELD: Q. Did you ascertain the date at which you began the Eastern Markets project in Melbourne, or began to design it?
A. Yes, about the year before I commenced on this Avrom, 1956, period.

20 Q. You were going to bring with you the documents you refreshed your recollection to be able to tell me that date. Did you do that?
A. I do not remember.

Q. You do not remember that? A. No. I remember I had to ascertain that.

Q. Will you make a note to get the documents by reference to which you were able to refresh your recollection? (Witness makes note.)

Q. You were going to look to see if you had a copy of the sub-structure plans with respect to which you began your design; could you find those? A. The only ones I have are the ones that have now been taken to the Licensing Court.

30 SIR GARFIELD: I call for the plans to which the witness refers. The witness said there is a copy of the sub-structure plans which came from him, which he had in his possession at some stage and which he thought were at the Licensing Court and they are the plans for which I call.

Mr WALLACE: They would be the Railway Commissioner's plan, wouldn't they? (Not produced.)

SIR GARFIELD: Q. Did you get for me the workings of one of your staff showing how they computed the kitchen areas and the ability of the kitchen to take the various items of plant? A. Yes, I have those.

Q. Have you got those there? A. Yes.

40 Q. Could you produce them for me? A. Yes. I have them written here.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Defendant's
Evidence.
No. 5.
E. M.
Nicholls,
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

Q. Do you mean you copied them out or did you get the originals ?
A. No, I have simply taken copies from the notes we received when we were given a list of all the fitments.

Q. I thought you told me on the last occasion that one of your staff had worked out something for you and it was that document which I want, not some copy that has been made ? A. Yes.

Q. Is that a document which you have now had prepared for you by your staff before this case began ? A. No, that is a copy of it.

Q. Where is the original ? A. The original is in my office.

Q. I want the document ? A. I am sorry, I thought you wanted 10 the length of footage.

Q. Did you check up over the weekend whether my suggestion to you that the wall was encroaching was correct or incorrect ? A. Yes, I checked that up and I frankly confess that my office made a mistake and I have made a drawing showing the effect of it.

Q. I did not ask you to do that. I wanted to know was what I put to you right—that the wall of staircase No. 1 encroached into the motor room ? A. Yes, it does.

Q. (Approaching witness with Exhibit L2, sheet 3) Have you got a section there through this area that way (indicating) in those plans ? 20
A. Not through there, through there (indicating).

Q. I first look at Sheet 3. Have you verified this basement at all at any time ? A. Yes, from the lease that is supposed to be taken.

Q. Have you checked on your plan this measurement to make sure it is exact ? A. Consistent with the lease, do you mean ?

Q. No—that it is exact as far as the plan is concerned ; it says 44 feet 6 inches ? A. No, I have not checked it.

Q. I do not want to know whether your plan shows 44 feet 6 but also whether 44 feet 6 ties in with the rest of your plans ? A. No, I have not checked it. 30

Q. If that measurement of 44 feet 6 is understated, the extent of the understatement would have to be added to the extent of the encroachment of the wall into the motor room ? A. Yes, if the 44 feet 6 is correct.

Q. It is understated ? A. If it is correct in itself.

Q. My question was if it is understated as a measurement the extent of this understatement would have to be added to whatever dimension had already been shown on the plan, the dimension of the encroachment of the wall of staircase No. 1 ? A. No, I do not think that is the answer at all.

Q. You do not think that is right ? A. No. 40

Q. If this was 44 feet 9 inches, for example, instead of 44 feet 6, would it have any effect on the extent of your encroachment ? A. Not the slightest.

Q. What is the 44 feet 6 said to represent—the precise measurement of those walls ? A. That is supposed to be the limit of the base line.

Q. You mean this plan does not show—if I were to scale this plan off it would not show 44 feet 6 ? A. It is supposed to.

Q. We know that at 44 feet 6 you agree that the wall is encroaching ? A. Yes.

Q. It is encroaching by 1 feet 7 or 1 feet 8, is it ? A. About that, yes.

Q. What I put to you was if your 44 feet 6 dimension is understated, 10 so that it should, for example, be 44 feet 9, the wall would encroach more than is shown on your plans ? A. If the 44 feet 6 were the correct dimension, then what do you say follows ?

Q. You mean correct in relation to the lease or correct in relation to the plan ? A. Both the lease and the plan.

Q. I am content with the plan. If the 44 feet 6 is an understatement in relation to the plan then the extent of the encroachment will be so much greater ? A. If the 44 feet 6 is correct basically.

Q. I do not follow what you mean by that ?

HIS HONOR : Q. What do you mean by that answer ? A. I mean 20 this, that I have not personally, Your Honor, checked every one of these dimensions and I cannot swear to their exactness or their rightness but if basically 44 feet 6 is right, and as it should be, then if it does not compare rightly with the plans, the discrepancy, as Sir Garfield said, would be greater if it were wrong.

SIR GARFIELD : Q. You see on this plan between the arrows is marked the figures 44 feet 6 inches ? A. Yes.

Q. Is that intended to indicate that the distance from the outer side of the two walls is 44 feet 6 inches ? A. Yes, it is.

Q. On the plan ? A. Yes.

30 Q. If one were to take the rest of your plans, for example—let me suppose this—and ascertain that that measurement ought to be 44 feet 9, then you would have to move the position of this wall on the plan by 3 inches, wouldn't you ? A. No. I think the basis of your whole thesis is incorrect.

Q. Never mind about any basis of my thesis, just answer the question If the distance between these two walls on this plan scales 44 feet 6 inches—do you see ? A. Yes.

Q. And if in relation to other parts on your plan it is apparent that it must be 44 feet 9, that would result, would it not, in this wall of 40 staircase No. 1 having to be moved on the plan some three inches ? A. That could be so, to keep the plan consistent,

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

Q. And if you did that, the extent of the encroachment on the motor room would be three inches greater than that plan shows? A. On that basis, it could be.

Q. Did you go over the plans, by any chance, over the week end to see if there were any other places where your plans encroached?

A. No.

Q. On reserved areas? A. No.

Q. Did you do any checking of them at all over the week end?
A. None whatsoever.

Q. Would you mind turning up—you see on the sheet I opened for 10 you, sheet 2, there is a block of lavatories set beside the railway lift area? A. Yes.

Q. Did you look at the lease and the reserved areas when you were preparing that sketch? A. Well, my staff presumably did; I did not personally.

Q. I want you to agree with me, if you think it is right, that that vent or shaft which is shown by small red edged rectangle at level eye amongst the reserved areas of the lease goes right through that lavatory?
A. Yes, that is so.

Q. That is so? A. Yes.

Q. And that reserved shaft goes up one floor above where that lavatory is, it goes up to the level above? A. Yes, that could be so.

Q. You see Sheet 2 that I have opened in front of you? A. Yes.

Q. This shows a lounge area, does it not? A. Yes.

Q. And it shows two columns marked C55A and C53A? A. Yes.

Q. And they are the only columns which are shown in that lounge?
A. Yes.

Q. And from the point of view of your plan. A. When you say in the lounge, that is free standing in the lounge?

Q. That is right? A. Yes.

Q. And they are the only free standing columns for which you had planned in the lounge? A. Yes.

Q. And I have no doubt you would have found it highly inconvenient to have other free standing columns in that lounge? A. No.

Q. You would not mind having another couple? A. Not at all.

Q. Over the top of the lounge there is a ceiling or floor is there not, of concrete? A. Yes, that is right.

Q. Did you compute the strength of the concrete slab that goes over the lounge? A. No.

Q. So far as you are concerned, was it designed so as to be supported 40 by those two columns to which I have called attention as well as the two columns which I will call the back wall? A. The East?

- Q. The Eastern wall of the building ? A. Yes.
- Q. What is the span between them ? A. About 39 feet.
- Q. No more than that ? A. No, not between them.
- Q. What do you mean between them—within them ? A. I mean what you said—"between them".
- Q. From inside edge to inside edge ? A. Yes.
- Q. What are they, in centres, apart ? A. 42 feet.
- Q. Not 43 ? A. Not by my scale; 42.
- Q. What is the dimension of the slab that was to span that opening ?
- 10 Do you remember how thick it was ? A. No, I do not remember.
- Q. You leave that to the structural engineer ? A. Yes.
- Q. You see, do you not, that according to your structural steel drawings there are two columns in the lounge in addition to the ones you show in that plan ? A. That is not quite correct. There are two columns in the lounge here.
- Q. In a different position ? A. Yes.
- Q. So your structural steel drawings do not show C53A and C55A, but they show 53 and 55 ? A. Yes. They show two columns in different positions.
- 20 Q. And the span between 53 and 55 from the centre of those columns to the corresponding columns on the Eastern wall is what ? A. 29 feet 6 inches.
- Q. So that your structural steel drawings provide for a slab over this lounge which is differently supported to the slab which you propose in your architectural drawings ? A. That is true.
- Q. And when you work it out, if you did, that this structure, would carry a building up to 150 feet, which of these columns, which group of columns were you thinking of—53A and 55A or 53 and 55 ? A. My instructions to our structural engineers were that the columns at first
- 30 floor level were 55A and 53A, which columns continued throughout the bedroom floor and then presumably on.
- Q. What about my question ? Which of these columns were the ones you had in mind when you said this building could be projected up to 150 feet on the structures you were providing in this proposal ? A. The ones I just mentioned, 55A and 53A.
- Q. Did you make any computations ? A. None.
- Q. Are you able to tell His Honor whether you could have gone up to this height, using columns 53A and 55A as shown in that plan ? A. When you say "this height", what is this height ?
- 40 Q. 150 feet ? A. Not with those columns.
- Q. Or with any extension of them vertically ? A. No. They would not go the full load, I was so advised by our structural engineer.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

Q. They would not go the full load ? A. The full height.

Q. I want to show you Exhibit 4 in relation to that answer. In Ex. 4 at sections BB on the left hand side, you show the projection of this building in sections up to 150 feet and by "this building" I mean the Carrington Street frontage building ? A. To be specific, I show some of it up to 150 feet.

Q. You notice at about floor 8—is it ? A. Yes.

Q. The structure steps back from the East ? A. That is right.

Q. To what extent does it step back—20 odd feet ? A. I will measure it. (Measures). About 16 feet. 10

Q. What measurement is that ? Between what points is that measurement—just you specify it will you ? A. That is from the base of column C55A to the face of column C30.

Q. Why not take the centres ? You have taken the face, have you ? A. I have taken the face, because it steps back from there.

Q. To the face of the column ? A. Yes.

Q. That apparently was necessitated in your design because the structure you were providing at lower level was not adequate to support the building called up to its full depth of 150 feet ? A. That is partly right. 20

Q. What other reason was there for forfeiting that amount of space ? A. Those columns necessitated, my engineer advised, at the eighth floor, a setting back of about 16 feet for a certain length as indicated on this plan.

Q. That was because of the strength or want of it in the members below ? A. That is true.

Q. And what would be the resultant depth of the building when you had gone back 16 feet ? A. About 28 feet for that section.

Q. It would remain 28 feet wide ? A. No, it would not remain 28.

Q. You would lose 28 feet ? A. No. The building as its narrowest point would be 28 feet for a given length, then it would assume the normal contours. 30

Q. What length of the building is the setback ? A. Could you get me an ordinary first-floor plan of this scheme ? (Shown Sheet 3.) Eighty. 16 by 80 feet.

Q. So far as the bedrooms are concerned the greatest length of the building in bedrooms is what ? A. The greatest length, you mean from there to there (indicating) ?

Q. Yes ? A. That is the whole front of 172 feet.

Q. And on the Eastern side of the building the greatest length of bedrooms is what ? When you take out the staircase and all the other appointments ? A. 133 feet 6 inches.

- Q. Of that length you include 80, due to the set back ? A. That is right.
- Q. For that 80 feet the depth of the building is 28 feet ? A. Yes.
- Q. And what is its depth prior to the setback—44 is it ? A. I will measure it. (Measures.) 44.
- Q. One of the major virtues of this plan, according to you, is that it enables this structure with a central corridor to take place; that is right, isn't it ? A. No. I think you are putting the emphasis on the wrong thing.
- 10 Q. Didn't you tell us it was an advantage to have the central corridor with bedrooms on either side ? A. I would put it the other way. The advantage is to have the bedrooms facing open space, which result in a central corridor.
- Q. The width of corridors is a controlled thing, is it not—controlled by authorities ? A. Yes.
- Q. What is the minimum width permissible in a hotel of this kind at this site ? A. As I remember it, about five feet.
- Q. Would you be able to have a central corridor with bedrooms on either side, and with 28 feet ? A. I would not think so.
- 20 Q. What is to happen in the 28 feet in your idea—bedrooms only along one side ? A. Yes. It was the front of the 1954 plan.
- Q. I am not worrying about any other plan, that is your idea ? A. Yes. I am just giving you an illustration of what would happen.
- Q. Along one side ? A. For the 80 feet.
- Q. Would you have the bedrooms 23 feet deep ? A. No.
- Q. With a five foot corridor ? A. No. You would just have bedrooms towards Carrington St. and then your corridor.
- Q. But between the two you would absorb the whole in bedrooms and corridor ? A. Not necessarily. You might just build the bedroom and
- 30 the corridor. You have to remember that this is simply a diagram of a general character.
- Q. You have not thought out what would be done in this setback portion ? A. No, I have not.
- Q. You gave us some figures earlier on as to the comparative floor space available in the 1954 scheme and the 1956 scheme; do you remember that ? A. Yes.
- Q. I want you to tell me what you include in the area for the purposes of these comparisons, will you ? What is included in the two schemes—the previous and the present—for the purpose of those comparisons ?
- 40 A. You mean you want to know at each and every level of the building ?
- Q. In total will do me, to start with, what is the total ? A. It includes the bulk of the building as shown on those diagrams.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

Q. So what you have compared is a completion of the 1954 scheme which you have notionally effected? A. Yes.

Q. And not merely a completion of your scheme, but a building in George St.? A. Yes.

Q. Which is not part of your scheme? A. It is part of my scheme.

Q. A building in George St. of this kind? A. Yes, the ultimate scheme. They are all ultimates.

Q. You did not, by any chance, first work out a comparison of what you were carrying out at present with what was actually proposed to be built in the 1954 scheme did you? A. Yes. I think somewhere we 10
have an exact comparison, the result of which showed that we were building about 5,000 square feet more than the 1954 scheme.

Q. Is that right? Is that what you say? A. Yes.

Q. Will you deny this, that if you were to measure up the work that you actually proposed in the 1956 scheme with the work that was actually proposed in the 1954 scheme, the comparison is of this order: 1956, 8,800 square feet—(withdrawn).

Q. If you compared a bedroom floor as actually proposed in the 1954 scheme and a bedroom floor in the 1956 scheme—did you work that out at some stage? A. Yes. 20

Q. Would you deny that on the 1956 scheme there is 8,800 square feet as against 22,348 feet in the 1954 scheme? A. I would not deny it because the simple answer is that we have three bedroom floors and the 1954 has one. By one bedroom floor, obviously, the 1956 scheme is less than 1954. If you take the bulk, we are greater.

Q. How many square feet did you include in your comparison with the George St. development in your 1956 diagram of Exhibit 4? A. You mean we are now only on this scheme?

Q. Yes. How many square feet attributed to that George St. section? A. I am sorry. I haven't the figures here. 30

Q. You could work those out, could you? A. I am not going to work them now.

Q. I am not asking you to do it now. Make a note, will you, and be able to tell me how much of the 1956 total footage was attributable to the George St. development? A. Yes (makes note).

Q. I want you to open Sheet 3 and structural drawings. Do you see there is a column marked C51 there? A. 51, yes.

Q. There is an existing column provided in the substructure, the column which is called 51? A. Yes.

Q. Your plans provide for an extension of that column, that is to say, 40
a column to be built above it, which is of lesser dimension than the existing column? A. I could not say that.

Q. You could not say that? A. No.

Q. Have you at any stage either yourself computed or had computed the load that is to be placed on C51 ? A. I certainly have had.

Q. And have you had computed the load bearing quality, the strength of the column that you propose to place above C51 ? A. Yes.

Q. Do you mean you have got that written somewhere ? A. No. The structural engineer has all of that.

Q. Do you remember telling me on the last day—I made the suggestion to you—that you put a truss in between two columns there ? A. Yes.

10 Q. At almost any level ? A. Yes.

Q. And you agreed with that answer ? A. I did not say at almost any level. You suggested the first floor or perhaps the second floor above Carrington St.

Q. You agreed with my suggestion ? A. At those levels, yes.

Q. At that time did you have in mind the load bearing quality of C51 ? A. In general principles, yes.

Q. Is it your idea, in answering me as to what should be done with the truss and what the effect of the truss would be if inserted in the way I mentioned last year, is it your idea that C51 as extended by you or
20 under your plan would carry the truss ? A. Not necessarily.

Q. What do you mean “not necessarily” ? A. Because I have not worked out C51. I do not know its load bearing capacity. My structural engineer does that. You asked me in principle could I do so.

Q. Could you tell from those structural drawings whether C51 as extended would be adequate to bear the truss ? A. Of course not. I mean you cannot tell.

Q. You cannot tell ? A. No.

Q. And you will agree that it would be essential if you were going to place the truss in at any level above the first floor that the extension
30 of C51 should be specially guarded to see that it had adequate strength to bear the truss ? A. Yes.

Q. May I take it that you have taken no such precaution ? A. On the contrary.

Q. On the contrary ? A. Yes.

Q. Have you given some instructions to the engineer about C51 ? A. Yes.

Q. In writing ? A. No.

Q. What was it ? A. The common instructions that he has in regard to all of the columns.

40 Q. I did not ask you about that. C50 we are interested in ? A. I have not given him instructions, column by column and I cannot answer

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.

No. 5.
E. M.
Nicholls.
—
Cross-
examination.

it in that form. The only form I can answer it in is this: That the structural engineer has been instructed to design the columns to go as they were originally able to from maximum height.

Q. Which columns are you talking about—the ones that are actually used by this building. A. Yes, insofar as they had originally sufficient load bearing capacity to carry it out.

Q. In giving that instruction did you have in mind, did you bear in mind the possibility of the use of a truss at any level? A. Yes.

Q. What did you tell him about that? A. Only by implication.

Q. Only by implication? A. This way: My scheme has never 10 envisaged using any of the trusses.

Q. By implication did you did not require him to have any special care about C51? A. On the contrary, I did.

Q. Although it was not part of your scheme? A. It might be done by others at a later date. Therefore, he had to allow to take the original loads for which the building was originally designed.

Q. Did you give written instructions to this structural engineer? A. No.

Q. We have got no documentary matter we could look at that would record your instructions? A. None at all. 20

Q. Are you able to read this structural plan yourself, understand the strengths of the members that are shown on there at all? A. Not from this, no.

Q. That is what the builder tendered on apparently—this thing? A. Yes.

Q. You are able to deny from a perusal of the structural plan and your architectural plan that the extension of C51 would be quite incapable of bearing the truss? A. I could not affirm it nor deny it from this, because they are not detailed drawings.

Q. Of course, it is essential to any extension across the open area 30 between your two buildings that a truss be used at some point? A. Say that again?

Q. I say this is essential, if there is to be any development across that central area, that a truss be used at some point? A. Yes.

Q. (Approaching witness) Can't you tell me from this structural steel plan the size of the extension of C51? A. You could get from this the size of the outside of the concrete. You cannot get from this the nature of the reinforcement in the concrete because it has never been detailed and these are preliminary sizings for the purpose of the builder giving a quote. They are not structural sizes for a builder to 40 work on.

Q. If you compare the sizing of the columns in the structural steel preliminary drawings, m.f.i. 10, with the substructure plans you will be able to see the relationship in size between C51 as constructed and the extension of C51 as projected, will you not? A. Yes.

Q. Will you deny that what is planned is at least no more than half the size of the existing C51? A. I will neither affirm nor deny it because I have not compared it.

Q. Does this C51 figure at all have bearing between the wall of your building? A. Yes, it was a determinant.

10 Q. When you decided to step your building back at the eighth floor it was not the weakness of C51 as extended, amongst other things, that caused that stepping back, was it? A. I am not so advised by my structural engineer.

Q. What do you mean? You do not know or were you advised to the contrary? A. I was advised to the contrary, as best I remember it.

Q. But C51 was strong enough to carry the building up to its full height of 150 feet without being stepped back? A. As I remember it that is my advice. I can only say this, that we did not fully develop the
20 upper sections of the building and the investigations were necessarily preliminary.

Q. I think I asked you the thickness of the concrete floor over the ceiling of the lounge? A. Yes.

Q. And you told me you did not know it? A. It is on the drawings.

Q. 14 inches, isn't it? A. Oh look here, I do not remember all these sizes.

Q. Have a look, will you? A. 14 inch floor slab.

Q. Would you be content to put a 14 inch slab over a 43 feet opening?
30 A. It so happens it spans two ways. I would be prepared to do whatever my structural engineer says.

Q. Take the actual span that is there on your lounges. Tell me what the other length of the projection span is? Can you tell me from that what is the dimension of the slab? A. The other way?

Q. Yes—in centres? A. Centre to centre, 26 feet.

Q. Now, answer me specifically; would you be prepared to span 43 x 26 feet with a 14 inch slab? A. If my structural engineer gives me the final details in that manner, then I would be prepared to do it.

Q. Have you no opinion on it as an architect? A. I leave it to
40 my structural engineer.

Q. That is not the question. Have you no opinion on it as an architect? A. I have no opinion at this juncture.

Q. It does not strike you immediately as an unlikely operation?
A. No.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

Q. I want to ask you about those ducts—(withdrawn).

Q. Do you remember saying this was a thin slab structure building you were projecting or partly so? A. Do you mean in the architectural or engineering sense?

Q. The way you use the word. You know what I am talking about—a thin slab construction? A. A building with a corridor in the middle and corridors or bedrooms either side?

Q. That is a slab structure, you told me before, but I am speaking of a thin slab structure building? A. You are getting mixed.

Q. You have never heard of that expression? A. No. 10

Q. What do you call the Caltex building? A. A flat slab.

Q. Well, a flat slab building. Do you say this building was substantially a flat slab building? A. I do not think I used the word substantially.

Q. Was it partly? A. It is partly. It is a transition from the present column and beam structure to a flat slab about which, if I remember rightly, I said the engineers were still working to make the transition more complete.

Q. In the case of a flat slab construction, the slab is taking the place of the more conventional beam between the columns? A. That is 20 correct.

Q. So I suppose it is essential that the slab goes up to the beam all round, makes up with the column—I am sorry, with the column? A. Yes, generally.

Q. I do not suppose you would really pass, a slab construction that had a large area uncovered by a slab adjacent to a column? A. Certainly not.

Q. If I could just point out something here before I go on—(approaching witness)—there is a beam, is there not? Does 48 correspond with the one I point to there? A. Yes. 30

Q. And what is the number of that column there? A. C24.

Q. Between C48 and C24 there is a beam, is there not? A. That is true, yes. (C24 altered to C26.)

Q. There is a beam between those two points, isn't there? A. Yes.

Q. And its dimension is 27 x 18? A. Yes.

Q. And it is placed apparently so that the beam is, in my layman's language, flush with the Western face of that column, C26? A. It is really not placed in detail at all. That is only a diagram. The detail has not been done yet. 40

Q. So I am wrong to assume from these structural drawings where the engineer puts it it will be place? A. Yes. It is purely diagrammatic.

- Q. Where, in your opinion, would it be placed in relation to the centre or the face lines of the columns? A. I would ask my structural engineer. He would design it consistent with loads.
- Q. Where do you think now? Can you tell me? A. I do not think now. That is why I pay them.
- Q. You have got a 4½ inch wall there on that staircase? A. Yes.
- Q. And have you worked out what will happen when there is a beam through there 18 inches wide and 27 inches deep, or vice versa? A. I do not follow what you require.
- 10 Q. If you have a beam there, won't you have to move the staircase?
A. I do not think so.
- Q. How much headroom is there in the staircase? A. We have nine feet from floor to floor.
- Q. There is a further floor below that floor, is there not, with a staircase in it? There is a staircase below that where there is similarly a beam? A. Yes.
- Q. What I was asking you was have you worked out what the headroom was on the staircase below this one was? A. I think it has been worked out.
- 20 Q. Do you know what it is? A. Not offhandedly.
- Q. It is very low—about six feet? A. I would not think so.
- Q. It would be very bad if it was only six feet? A. It would not be sufficient. Then you would have to change your cross-sections of your beams, as does happen, to make that a little broader and a little shallower. These are only for tender purposes and not final design for structure.
- Q. What do you think is the minimum width that can be satisfactorily be made with a beam from C26 to C24? A. I would ask my structural engineer and he would tell me.
- 30 Q. You must have some idea as to what is the thickest beam you could have to get away with? A. Yes.
- Q. There is a limit, isn't there? A. There is a limit.
- Q. And your structural engineer starts off with 27 x 18? A. Yes.
- Q. How much do you think you could get? A. I think you are working round the wrong way. If the beam is too deep and impinges on your headroom then you would make the beam wider, not thinner.
- Q. If I have a beam in there, lying where the staircase is, it is going to project out into the staircase area, is it not? A. Not necessarily.
- Q. Not necessarily? A. Not at all.
- 40 Q. When you were planning this, did you take into account there was a beam there? A. Yes.
- Q. There would have to be a beam there? A. Yes, somewhere.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

**Defendant's
Evidence.**

**No. 5.
E. M.
Nicholls.**

**Cross-
examination.**

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

Q. Did you have in mind what its approximate dimensions might be ?
A. No.

Q. Now I point out if there was a beam there that was 18 inches wide, would you not agree it would come out when you were half way up the stairs or a little more ? A. I do not agree.

Q. You do not agree ? A. No. Nobody said you have to put the beam out there, you must put the beam out this way.

Q. Out into the corridor ? A. Yes.

Q. That would mean the beam would be sticking out over the edge of the column ? A. It would not stick out over the edge of the column ; 10 it would impinge into the edge of the other beam.

Q. This is a case of moving the structure around to suit your bedroom plan on that beam ? A. No. The beam may be a little eccentric to that column. That may be so. It does happen.

Q. You have not thought that out ? A. I have not thought any of the structure out, not in sizing.

Q. Well, may I ask you straight out ; will you deny that the beam between these two columns will necessitate the removal of that staircase ? A. I can neither affirm nor deny.

Q. You are not in the situation to tell me ? A. No, indeed not. 20

Q. And I do not think you are in a position to tell me that it has very little headroom ? A. No.

Q. On the turn there ? A. No.

Q. Aren't you very familiar with these plans, which are your creature ? Don't you know them well ? A. Perhaps I could say again that the drawing of 1954 took two years to prepare.

Q. 1956 it is ? A. I am just saying what I am saying so you get some comprehension of the position. These drawings—1956—we had three weeks to design them, to draw them, get preliminary structural engineer's details and prices, and the thing that pleased me greatly 30 is that, despite the microscopic small toothcomb these have been through, nobody has found anything that has been substantially wrong.

Q. However, is it the fact that because they were put together so quickly that you ought to be excused from understanding them ? Is that what you suggest to us ? (Objected to : allowed.) A. Yes, I can answer that. I do not know every set of drawings that go through the office entirely. I have 11 draughtsmen all producing plans and I cannot know the intimate details of every set of drawings.

Q. But these are a very special lot, aren't they ? A. That is what you told me before and I said no. 40

Q. Let me come to these ducts, will you. These bathrooms in the bedrooms have got ducts ? A. That is right.

Q. And some of these ducts are adjacent to columns ? A. Yes, is right.

Q. And this point that I am pointing to, which is a duct in bedroom 19, for example, there is no beam coming up to the column ? A. Yes.

Q. There is a beam ? A. There is a beam, yes.

Q. And I may take it that the duct is above the beam ? A. It could be at the side of the beam.

Q. What does your plan show in relation to the structural drawings ? Can we tell whether the duct is above or inside or where in relation to the beam ? A. These plans do not show the setting out of the beam.

Q. With the two together, with the structural drawing, can we tell ? A. No, because these are only the preliminary diagrammatic set out of where beams are required and their sizes but eventually, structural details will position those exactly.

Q. What happens if the engineer insists upon putting a beam through where you have got the duct ? A. Well, you will shift the duct or shift the beam, whichever is the better.

Q. You contemplate in the amendment of these plans, which you say is still progressing, endeavouring to have a flat slab construction for example, around about bedrooms 18 and 19 ? A. In those matters I am guided by the engineer, to his siting it to see how best he can do it. If it eventually turns out that he cannot change this completely to a flat slab then it remains beam and slab or a combination of both.

Q. So the plans are not sufficiently finished to determine what will be done at that area ? A. Structurally, no.

Q. Tell me what is the principle of these ducts ? Are they intended to run through the building vertically—the sort of duct I was calling your attention to at bedroom 19 ? A. When you say through the building, that is an overstatement. They run parallel through the building.

Q. Parallel through the building ? A. Yes.

Q. What is the lowest point to which they would reach ? A. The ceiling of the Carrington St. ground floor.

Q. So that your plans provide for a duct and internal shaft running from above that ceiling where to—right through the building ? A. That has not been worked out.

Q. At any rate, all through the floors you have planned ? A. Indeed.

Q. What is the principle of their being used ? Do you have some air draught through them either by suction or forced draught ? A. You have various things in them.

Q. What is the plan relating to those ? A. These would have air extraction from the bathrooms and they would have pipes in them.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

Q. Pipes where ? A. Waste pipes, supply water pipes, hot water pipes, miscellaneous pipes.

Q. You use ducts for plumbing ? A. Essentially, and for small ventilation extraction ducts.

Q. And for extraction ducts from the bathroom ? A. Yes.

Q. And where is the air, according to that plan, to go when you extract it from the bathrooms and into the ducts ? A. Through the fans on the flat roof at the third floor bedroom level.

Q. How does it get from these vertical ducts to the point where the fan is ? A. The fan can either sit on top of the duct or sit on the roof 10 and combine varying ducts by overhead piping.

Q. Where is that shown on the plan ? A. Not shown anywhere.

Q. Not shown anywhere ? A. No, not the machinery of the top.

Q. These ducts are shown on the section BB ? A. Yes.

Q. These are the ducts here (indicating) ? A. That is right, yes.

Q. And this is the sheet 6 of L (shown). They are not shown there as cutting the floors but they are intended to be continuous ducts ? A. No.

Q. They are not continuous ducts ? A. Not really because structurally it is very inadvisable to have holes through flat plates, so 20 therefore you put more of a concrete bridge across, such as we are doing now at Caltex House.

Q. These are going to carry the plumbing ? A. Yes.

Q. They are going to carry the internal metal ducts ? A. That is right.

Q. For the air ? A. That is right.

Q. And all these pipes and so on are going through the slabs at each floor level ? A. They go pre-arranged holes in the slabs.

Q. When they get to the roof, the ceiling of the Carrington St. level, what happens to them then ? A. Approximately all the sewer wastes 30 turn approximately at right angles and find their way to the sewer. They are the main ones.

Q. Show me where that direction is on that plan, if you can ? A. It is really not on this section.

Q. Indicate to me where you mean "on this section" they would go ? A. I cannot. It all depends on the position of the present wastes to connect up with the Water Board's sewer and these drawings are not sufficiently far developed to show every pipe line in the job. They do not purport to.

Q. Are they even developed to the stage where the practicality of 40 taking the plumbing where you suggest has been worked out ? A. Yes.

- Q. Well, show me where practically you would take this plumbing ?
 A. You would have to go to the job and look where the wastes are and you run laterally through the false ceiling in these drops and pick up and go across to the waste but that, in its details, would take a lot of study which it has not been given yet.
- Q. You mean that may or may not prove practical, due to what is there already ? A. No. The contractor's drainage and plumbing sub-contractor has already taken these plans, walked around the job, sized the position up and given their quote based on the practicality of it.
- 10 Q. What you mean is he has to say where he will put his pipes ?
 A. No, he works consistent with the regulations of the Water Board and the location of the pipes, in a big measure, are between the plumber and the drains inspector.
- Q. What happens if the pipes go to a place that is inconvenient from the point of view of the building ? A. How do you mean ?
- Q. If he wants to run the pipe across the open ceiling or something in order to get to where he wants to get ? A. We do what we usually do, we have a conference and find the most practical answer.
- Q. So this building contract does not specify any control over the
 20 plumber of where he is going to put his waste pipes ? A. Yes.
- Q. Where can I find it in the contract ? A. Will you show me the contract (shown Exhibit R). There is general reference here under "Sanitary plumbing" which says "pipes where possible are to be concealed concealed by false ceilings".
- Q. That is just a general common specification, isn't it ? A. It means what it says, be it general or common.
- Q. Whereabouts do you suggest he could move those pipes if he followed this plan, if they come down those ducts, having in mind the beams that are there ? A. I have not studied all those individually,
 30 so I cannot tell you.
- Q. You cannot tell me whether there is a practical way of putting in the plumbing or not ? A. I can tell you that the plumbing sub-contractor has been all over the job and he has said it is quite practical.
- Q. As far as he is concerned, he is not bound to anything at the moment is he ? A. He is bound to something. He is bound to a price, which is a very material thing.
- Q. I suppose his price is like the builder's price, after 60 days it is open again ? A. It is not very open. With due respect to you, it is a very tight contract.
- 40 Q. When you drew this plan was it drawn so as to conform with the requirements of the Chief Secretary and fire brigades ? A. May I answer it my way ?
- Q. I would like it my way—yes or no ? Was it drawn so as to comply with it ? It is a simple question (Objected to.)

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*

Defendant's
 Evidence.

No. 5.
 E. M.
 Nicholls.

Cross-
 examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 5.
E. M.
Nicholls.
—
Cross-
examination.

HIS HONOR : Q. When the plan was being drawn were all Statutory requirements of the three authorities taken into account ?

SIR GARFIELD : Q. I asked was it drawn so as to show, by the manner of the drawings that their requirements were complied with ? A. I can answer that positively. The Chief Secretary has no requirements for a building of this height.

Q. By " this height " you mean what ? A. The height we are now building.

Q. What about the Fire Brigade ? A. The Fire Brigade have requirements. 10

Q. Was it built—drawn to conform with their requirements ? A. The drawings were taken to and submitted to fire brigade officers, and, to be quite sure of the position, submitted to the Chief Secretary after and, although they said they could not give us formal permission because it did not come under their purview, they were satisfied with the plan.

Q. And the fire brigade ? A. Similarly.

Q. What dimension walls have you got round those ducts that I pointed out to you a moment ago ? A. $4\frac{1}{2}$.

Q. $4\frac{1}{2}$ inch walls ? A. Yes. 20

Q. Are you telling His Honor that either the Chief Secretary or the Fire Brigade said they would be content with $4\frac{1}{2}$ inch walls around those ducts ? Is that what you are saying ? A. That is my understanding.

Q. Who was it took them—you or somebody else ? A. No, one of the men in my office.

Q. You know, do you not, that that would not comply with either the Chief Secretary's office or the Fire Brigades office ? (Objected to.) A. To my knowledge, they approved of them. We are building the same ducts at this very moment.

Q. With $4\frac{1}{2}$ inch walls ? A. Yes. 30

Q. In a hotel building ? A. No.

Q. I suppose you know there are some variations in their requirements ? A. Yes.

Q. According to the use of the building ? A. Yes.

Q. And is there not a distinct fire rating of walls which determines their dimension at certain positions in a hotel building ? A. Yes.

Q. I want you to assume then, if you know that,—will you tell His Honor that these plans comply with those ratings ? A. I am sorry, I do not know all the ratings by heart.

Q. Can't you tell us that these plans do apply with the ratings or 40 not, whether you remember them at this moment or not ? A. To the best of my knowledge they comply with the ratings.

Q. And in particular the ducts, and the large ducts, that are shown towards the Northern end of the building ? A. Generally, I understand they approve.

Q. That is as far as you can go ? A. Yes.

Q. This set of plans was drawn under your supervision, I suppose ?
A. Yes.

Q. Were they checked over by you personally at any stage ?
A. As far as time permitted.

Q. Does that mean yes or no ? You did not check them all, or
10 you did ? A. I did not check them minutely ; I did not have time.

Q. You made a remark a moment ago that the 1954 plans took two years to draw ; do you remember saying that ? A. Yes.

Q. You have told me you never saw them before until you began to compare them ? A. Yes.

Q. I think you told me you did not discuss them with Mr. Ham ?
A. No.

Q. You told me you were only associated with them for the very limited purpose of doing some work round some bars ? A. That is correct.

20 Q. And you were not occupying the same premises as Mr Ham ?
A. Never.

Q. But you know they took two years to prepare ? A. I have been told.

Q. Who told you that ? A. Miss Randall of Avroms.

Q. Since this began or before this began ? A. Well, when they contacted me as to whether I would produce some drawings, they told me, in essence, they were asking me an impossible task ; in fact, she said to me something in words something like this—could I do in three weeks what
30 their previous architect had taken two years to do and yet save them
£200,000.

Q. Do you realise that this building is being built as an investment building so far as the landlord is concerned ? A. I cannot speak for his motives.

Q. I suppose you would regard the landlord of a building which was designed to be a hotel to be in possession of an investment building, would you not ? (Objected to ; question withdrawn.)

Q. (Showing Exhibit 2.) The representation on the right hand end is of two blocks of building on the subject land ? A. Correct.

Q. And quite obviously investments buildings, buildings that
40 somebody is going to own to let ? (Objected to ; allowed.)

HIS HONOR : Q. You have drawn this plan to show, to say the least, possible future development, is that so ? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 5.
E. M.
Nicholls.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

SIR GARFIELD : Q. It is development for investment purposes; no one is going to live in the wretched thing and own it himself, is he? He is going to let it, that is what you envisage? A. That is the presumption, yes.

Q. And the distance between the two blocks internally is what—about 80 feet? A. That could be right.

Q. So that the suggestion is that the owner of the piece of land which he is devoting to investment purposes, according to you, would be well advised to develop it with two blocks 80 feet apart on his piece of land? A. Yes, that is my judgment. 10

Q. And that 80 feet, so far as you are concerned, is accidental, isn't it? A. (No answer).

Q. That 80 feet was not planned as a measurement, that is accidental? A. No, that is the result of other things.

Q. If the land, by some chance was 20 feet deeper between Carrington St. and George Street, would you still suggest what you suggest there? A. Not necessarily.

Q. But your Carrington St. dimension is determined by the corridor and the two bedrooms, isn't it? A. Yes.

Q. And, as far as possible, you could develop the George St. frontage 20 the same way? A. If it were a differently shaped site you would consider it from that aspect.

Q. I am assuming it is the same shape. If it were deeper between Carrington St. you would have a larger opening in the middle? A. I might.

Q. Are you familiar with investment properties in Sydney and Melbourne? A. Not particularly.

Q. You would not be able to tell us of any site that is developed for investment purposes by having two buildings and a large area in between them up to 80 feet undeveloped? A. I can think of none in Melbourne 30 or Sydney.

Q. I suppose the fact that underneath the site—(withdrawn).

Q. Have you ever seen calculations as to the load which the sub-structure at Wynyard would carry? A. No.

Q. But have you no ideas yourself, having looked at the columns and known their dimensions, what the load would be? A. No.

Q. Would you be prepared to deny that they are the strongest foundations, that is to say, they bear a greater load than any other foundations in the city? A. I would not know.

Q. You have not computed at any stage the portion of their bearing 40 load that your super-structure fully developed would represent? A. No.

Q. And when I asked you when you thought a development in this matter with an open space was desirable, may I now add to that, assuming the owner had already prepared very substantial foundations which would bear a building in the intervening area—(Objected to).

Q. Assume the owner with this land and with the sub-structure which you know to exist available for use over the whole area of the land, is it your view that it would still be advisable for him to develop it in the manner you suggest? A. Most certainly.

Q. Do you remember I asked you—I may not have—whether the 10 levels of the project building in George Street were the same as the levels of your projected building in Carrington Street?

HIS HONOR: He said they would be generally the same, not exactly.

SIR GARFIELD: Q. Do you say they are the same? A. I say they would relate to the George St. building in about the same way as the 1954 drawings related. Then we had the mix-up about the sections of the building. I did not ask you for any comparative statement, I asked for an absolute statement. Are they at the same level, that is to say your projected Carrington Street development and your projected George Street development? A. The first floor at Carrington St. is 20 higher than the existing roof of George Street.

Q. That is not what I asked you. I will give you the opportunity to say that. I am asking you whether the levels of the projected development as per Exhibit 4 in Carrington Street are the same as the levels as the projected development in George St.? A. I have no idea because they have not been thought out.

Q. Look at them on your plan? A. These are pure diagrams.

Q. You know, don't you, they do not correspond? A. They might not.

Q. Can't you do better than that? A. I have not compared them.

30 Q. Will you do it now? I want you to agree with me they do not correspond? A. What you say is quite incorrect, they do correspond.

Q. What is the meaning of the figures on the side which indicate the contrary? Isn't the level at Carrington St. on your second floor 87.08? Yours has not got the figures on it? A. No.

Q. Will you agree with me that the level at Carrington St. is 87.08? You can check this overnight? A. Yes. I do not agree or disagree what is that level.

Q. Second floor, Carrington St., 76.67. And on the third floor, 87.08 and then on the third floor George Street, 77.82? A. I can tell you 40 now there were no levels ever given by us to George Street.

Q. But you see, those floors have heights—we can work those things out? A. You can not. That is where we differ.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

Q. Will you say whether you can check overnight whether your third floor of George Street, according to the plans and diagrams you produce, is not 77.82 ? A. I can tell you now that there is no way of checking that because these are diagrams only.

Q. Do you want to take the figure down or do you want me to take your answer finally ? You say you cannot work it out ? A. No.

Q. And no one else can work it out ? A. No.

Q. In this 1956 scheme that you produced, you get to two floors of bedrooms, do you not, by demolishing the existing structures on the George St. front above the first floor ? A. Pardon ? 10

Q. You get two floors of bedrooms on the George St. development by demolishing the existing structures from the first floor up ? A. That is not correct.

Q. That is not correct ? A. No.

Q. You show here a series of bedrooms ? A. Yes.

Q. First floor up ? Q. Yes.

Q. I suggest to you that you have had to demolish what now exists facing George St. in order to fit in those two bedrooms in the scheme you offer there ? A. Perhaps I can answer that—

Q. What about my question ? A. Yes. 20

Q. Have you had to demolish something in order to get those two bedrooms in—floors of bedrooms ? A. No, and they are not floors of bedrooms.

Q. Those two floors, whatever they be, they are two floors of ceiling height of how much ? A. Diagrams only.

Q. But you have got the total of 150 feet ? A. Yes.

Q. You have worked out how many floors you could get into the roof. What is the ceiling height, floor by floor ? A. I would be pleased to work it out for you, but not now.

Q. You cannot work it out from here ? A. No. 30

Q. You have got two ceiling floors of some height you will tell us about tomorrow ? A. Yes.

Q. Will you deny you would have to demolish something to get the benefit of those two floors ? A. I do not deny we would have to alter the existing building.

Q. I said demolish ? A. Removing one brick is demolishing it, to alter it.

Q. Pulling it right down I mean ? A. Indeed not.

Q. You deny that, do you ? A. Yes.

Q. Do you see what is pencilled in in my copy of Exhibit 4 in the 40 first and second floors on the George St. frontage ? A. Yes.

Q. Do you see a pencil line ? A. Yes.

Q. Will you agree that that represents the existing structure that is there ? A. I agree there is an existing structure there but not necessarily as per those pencil lines.

Q. My question is specific to you ? A. I cannot tell you.

Q. Look at anything you like there. I want you to tell me if you can, whether those lines do not represent what exists there today ? A. They represent it diagrammatically.

Q. Diagrammatically what is there today ? A. Yes, diagram-
10 matically.

Q. And will you agree with me that the whole of that would have to be demolished in order for your scheme to have the benefit of those two floors as set out in this Exhibit 4 ? A. You are quite wrong. I disagree.

(Copy of Exhibit 4 marked for identification 14.)

SIR GARFIELD : Q. You were going to get me the material by which you fixed the date when you were thinking about the Eastern Markets. What were the things that you looked at to enable you to fix that date ? A. Firstly, my own data, when I shifted from NRMA House to Caltex
20 House—I threw away all my data about jobs that were defunct. The Eastern Market job was defunct, so I threw the data away, but I am trying to get here this morning a letter from my client in Melbourne, and we have also rung up the Public Library——

Q. I asked you the documents that you looked at to enable you to tell me the data—your own documents, not someone else's documents ? A. I disposed of them, and I tried to get supplementary documents.

Q. That is not what I am asking you. So far as your own documents are concerned, you have no material that I can look at to show when you were thinking about the Eastern Markets ? A. No.

30 Q. You were going to see if you could get your copy of the sub-structural plans which you had in your possession when you were designing this matter ? A. Yes, that comprised all of this (indicating).

(Document m.f.i. " 15 ".)

SIR GARFIELD: May I look at them at a later stage—perhaps in the break—so as not to waste time ?

HIS HONOR : Yes. They are the sub-structural plans that the witness had ?

SIR GARFIELD : Yes.

40 Q. I forgot to ask you yesterday—you were going to calculate out your work for me. How much a square was your basic unit price when you computed in 1954 or whatever date the original scheme for this

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

land was propounded, would have cost? Do you remember that you gave me a figure of £4,000,000, and you were going to tell me at what rate per square you got to the £4,000,000?

Mr WALLACE: I think he gave it."

Defendant's
Evidence.

SIR GARFIELD: No, I do not think he did.

No. 5.
E. M.
Nicholls.

WITNESS: I sat down here one lunch time and gave you a figure of about £10 per square foot.

Cross-
examination.

SIR GARFIELD: Q. I thought you were going to do something more?

A. Yes, I did, and I gave you the answer.

Q. That was the answer, £10? A. No; there was a second 10 answer. You asked me what our scheme cost, and I said, "About £9 per square foot".

Q. Then you were going to get what I called the kitchen work?

A. The original list?

Q. Yes, the material—the original list? A. Yes. (Document produced).

Q. May I have a look at that? A. Yes (handed to Sir Garfield).

Q. This, I take it, is in the handwriting of one of your employees?

A. No.

Q. In your own? A. No.

20

Q. Whose? A. In the handwriting of an officer of the County Council whose advice was sought about the kitchen equipment.

Q. On the basis that it was to be a dining room? A. Yes.

Q. Or a coffee lounge? A. A dining room—a coffee lounge type of dining room.

Q. What type of mechanical washing-up facilities are in this?

A. There are none in that because that is cooking equipment, separate from the washing-up.

Q. In your plan you showed two sinks—one for salad work and the other for washing-up? A. Yes.

30

Q. This is the ordinary domestic size sink, is it? A. I have forgotten what size was shown.

Q. Would you like to refresh yourself? A. Yes. (Document handed to witness).

HIS HONOR: Going back, I have just been looking at the notes relating to that £10 per foot:—

"Q. How much per square do you calculate? A. About £10 per square foot.

Q. How much does your construction work out per square foot?

A. I have not worked it out.

40

Q. Is it possible for you to do it quickly ? A. It is not possible for me to do it quickly. I shall do it over the week-end and have it on Monday morning."

Q. That was at page 68.

Mr WALLACE : And that was my recollection.

SIR GARFIELD : I had a note to ask him yesterday ; that is my note on the pad. I do not remember him telling me the £9 5s. 0d., but he has now told me, so it does not matter.

Q. You have had a look—what sort of sink is it ? A. Just two ordinary sized bowls shown.

Q. Domestic size ? A. Or a little larger than that.

Q. If you sat 100 people down to dine in this place, how many pieces of crockery do you think you would have to wash up ? This is a dining room for 100 ? A. Yes.

Q. If 100 people came in to dine you would have something in the order of 400 pieces of crockery ? A. Yes.

Q. Do you think that this single domestic sink could cope with that ? A. Most certainly not.

Q. It would not ? A. No.

20 Q. You could not run a dining room, even on your modest conception, without mechanical washing-up facilities, could you ? A. Of course not.

Q. And have you gone into the question of whether this kitchen could take the necessary mechanical aid ? A. Yes.

Q. You have, have you ? A. Yes.

Q. When did you go into that ? A. Originally there was ample aid for that.

Q. When did you go into it ? A. When we thought of the kitchen and went into the size of it.

30 Q. You did not get a price for it ? A. No.

Q. You thought, from the beginning, that there would have to be a mechanical washing-up device ? A. Yes.

Q. Did you think where you would put it ? A. Not necessarily.

Q. Can you tell me now where you would put it ? A. No ; the kitchen has not been planned in detail.

Q. That is one of the items that Mr Broadbent of the County Council dealt with—that was the man, was it not ? A. Yes.

Q. He would be dealing with washing-up devices ? A. No.

40 Q. Do not they deal with washing-up devices ? A. We went to them for the cooking side, and his advice was not sought on the washing-up side.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

Q. Who did you go to on the washing-up side ? A. Nobody.

Q. What food storage provision have you in the kitchen ? A. The food storage is mostly down below. There is very little food storage in the kitchen.

Q. There is none, is there—not very little ; there is in fact none ?

A. There is some. We could store some food.

Q. I am talking about that you show in the plan ? A. I have not shown that, so that you could not determine one way or the other.

Q. So that you had not gone into the food storage facilities for a dining room to seat 100 people ? A. Not at this upper level, no, but 10 there is ample space down below in the building for it all.

Q. So that every time you wanted something you rushed through the dining room down through the guests' lift ? A. No.

Q. How would you manage it ? A. You would manage it in a very simple way, that I overlooked the last time you examined me.

Q. What is the simple way ? A. Just next to the kitchen there is an existing service lift, only about 8 ft. away. This is an existing service lift ; it serves the floor below this (indicating), and all floors to the basement.

Q. There is no provision there for any access to that lift in the plan, 20 is there ? A. Can I finish ?

Q. Yes ? A. While these alterations were going on, I remember going through the process of reasoning that it would be quite ill-advised to stop this lift and leave the Plaza without a lift, so that therefore we did not touch that lift within the ambit of this contract, so that the arrangement I went through in my mind and determined was that as soon as this lift was put in—

Q. Which one ? A. The new one. That could serve the place of this lift (indicating), and then they would simply elevate the motors and put a doorway through there and there is the lift directly from 30 the kitchen to serve the chef, the food, and the garbage.

Q. And this was all thought out before I asked you questions the other day ? A. It certainly was, because it is a separate thing from this contract.

Q. Does this service lift service liquor ? A. From the liquor store ?

Q. Yes ? A. Well, to my knowledge.

Q. You have told me that you had thought out that that lift would not be interfered with during construction because it was servicing the Plaza. What was it that you had in mind that this lift would be 40 doing in servicing the Plaza during the constructing of this new block ? A. The functions that it is now doing, which include bringing liquor up from the storage at the lowest level.

Q. But it does not come up to the level of that lounge ? A. I think we are at cross-purposes. It serves the existing Plaza building.

Q. But that is not on that side at all—that is on the George Street side of the existing Plaza, is it not ? A. No; you are quite wrong.

Q. Is there anything on the first floor that that lift is servicing during construction ? A. The first floor of Carrington Street ?

Q. Yes ? A. No, but it serves everything below.

Q. So that you thought that it would be ill-advised to show on your plan a prospective opening into that service lift and into the kitchen ?

10 A. Yes, because it would be a separate contract later.

Q. What was there to stop that lift being connected to the kitchen while the building was being built ? A. Because the moment you break into a lift you stop it running, and therefore during the construction the Plaza would be without a lift.

Q. So that you thought all that out on the last occasion and it escaped your mind ? A. Yes.

Q. And I suppose you made some sketches of it ? A. No.

Q. Or some calculations about it ? A. No.

Q. So that you have no written data which I could see to check your
20 assertion that you had thought it out ? A. None at all.

Q. And so you say that that service lift would be available for bringing food up ? A. Yes.

Q. And you thought this out, that you would have food storage in the basement ? A. Yes.

Q. Whereabouts in the basement were you going to put the food storage—one question at a time. A. Yes.

Q. Whereabouts in the basement had you thought out that you were going to put the food storage ? A. I had not thought out the specific spot because there is so much space in the basement. Thousands of
30 square feet unused—so that you could put it where you wished.

Q. Have you thought out how much storage space you wished—cupboard space—that you would need to provide this 100-person dining room ? A. I had not put it on paper.

Q. Had you thought it out ? A. Yes.

Q. How much cubic content of storage space do you think you would need ? A. You would need a dry store of about 12 ft. square, and then you would need some refrigerator space.

Q. How much of that ? A. About 25 sq. ft.

Q. You are estimating it as you sit there, are you not ? A. Well,
40 I am trying to recall the process I went through in my mind.

Q. You are trying to recollect a figure that you thought out before ?
A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Defendant's
Evidence.
No. 5.
E. M.
Nicholls.
Cross-
examination.

Q. Are you trying to recollect a figure that you thought out before, or are you trying to think up one now? A. I am trying to think out the thought processes I went through some time ago.

Q. Of course your client was asking you, in your instructions, to try to prepare a plan with the necessary fittings and equipment for running a hotel? A. Yes.

Q. And your client set you an upper money limit within which you had to keep? A. Pro rata with the bedrooms.

Q. A total money sum within which you had to confine yourself?
A. A total money sum pro rata with the bedrooms. 10

Q. And you would have to confine yourself for food storage and all the necessary alterations to enable this dining room to function, within that total money sum? A. In a measure—they being so small as to hardly be a factor.

Q. Did you estimate the food storage? A. No.

Q. Or the cost of the alterations to enable the kitchen to have access to what you say is a service lift? A. No.

Q. What exactly is the full travel of the existing service lift?
A. It serves Wynyard Lane level, and all floors below.

Q. So that I may take it that the motor of the lift is either at or 20 lower than the Carrington Street level? A. No; the motor is higher than the Carrington Street level because you need an overrun.

Q. Where is it in relation to the Carrington Street level? A. It is approximately 10 ft. higher than the Carrington Street level.

Q. And it would not be adequately sited to enable that lift to serve that lounge dining room? A. No, because there would be no overrun.

Q. Did you go into the question of the cost of taking that service lift up any further? A. No.

Q. Could I see the next floor plan? Did you make provision in the floor plan above to raise the motor? A. No. 30

Q. That is a strange thing, is it not? A. No. I told you that it was separate, apart from this (indicating).

Q. Just lay those plans over one another, will you, so we can see where this lift would be? A. It would be about there (indicating). That corner is that corner (indicating). So that it is approximately there (indicating).

Mr WALLACE: May I put a little red cross there?

SIR GARFIELD: Yes.

(Mr Wallace marks plan.)

Q. This roof is over this area (indicating)? A. Yes. This 40 (indicating) is the existing old work.

Q. And you make no provision in this for the lift which would have to go through it, would it not? A. In fact it is already above that.

Q. It would have to go through what is shown coloured there (indicating) ? A. You cannot put it that way, because this already is through it and standing above it (indicating).

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. You mean that this black work goes up another storey ?
A. Yes; in fact that exists on a higher level. The draughtsmen, in their hurry, did not draw this wall here at the higher level.

Defendant's
Evidence.

Q. So that this sticks through this and above it (indicating) ?
A. Yes.

No. 5.
E. M.
Nicholls.

Q. And it would be necessary to extend it ? A. Yes, that is
10 true.

Q. And that is not shown on any plan ? A. None at all.

Cross-
examination.

Q. And the cost of lifting those motors and re-siting them has not been gone into by you ? A. No.

Q. You know that that is a very expensive pastime ? A. It is not an expensive pastime; it is quite a trifle in the complete cost.

Q. How much do you think it would cost you to uplift those motors and re-site them at such a height to give you the necessary lift and over-run ? A. £3,000 or £4,000.

Q. £3,000 or £4,000 ? A. Yes.

20 Q. You say that you would get over the food storage by this device with the service lift ? A. Indeed.

Q. This heavy duty range which is shown here of a given number—I want you to be precise, if you will, about this. Did you specify, when you asked for this information, that you wanted a range that would serve hot meals for 100 people—if need be several courses—in this hotel dining room ? A. I did not see this man directly, but, as I recall it, that was the instruction that I gave to my staff who went and saw the man.

Q. You did not see the range of this number ? A. No.

30 Q. You did not know whether it would do this task or not ? A. I have not personally checked it.

Q. Have you, at any stage, got the dimensions of these various items of plant, and set them out in a kitchen layout to see where they would fit and whether they would fit ? A. No, as I told you, we merely have the lineal footage, and we find that the lineal footage of this equipment, together with other equipment, takes up half the lineal footage that we have available.

40 Q. What other equipment did you go into besides what is on this page (indicating) ? A. None other, besides the sinks and benches shown all round.

Q. The cost of the kitchen equipment was to be included in the figure to which you were to confine yourself in planning ? A. Yes.

(List of utensils for kitchen, m.f.i. " 16 ".)

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

Q. You told His Honor that you could make the shower recess into a bath by increasing the height of the hob? A. Yes.

Q. Of course, the idea of tiled baths—a bath-place made of tiling—is completely out of date, is it not? A. I do not think so. I have one in my own house.

Q. Of course a lot of us have to put up with things in houses. You know that one of the great troubles is that you cannot keep that hygienic without a great deal of labour? A. I have not found that so. It is no different to a shower.

Q. You think it is modern. I was asking you about these levels 10
yesterday. Did you do any work about them overnight? A. Yes.

Q. You did? A. Yes.

Q. First of all, what you have drawn on the right hand side of Exhibit 4 is a diagram of a building to rise to 150 ft.? A. Yes.

Q. And you have built it taking the ceiling of the first floor to George Street as it now exists, as the datum, as it were, and you have built above there? A. Yes.

Q. And all the floors have the same ceiling height? A. Diagrammatically.

Q. What? A. That is diagrammatic. 20

Q. I am only asking you what is here? A. Yes.

Q. And the level of the Wynyard ramp at George Street, it is the ground level of the George Street building, is known and fixed, is it not? A. Yes.

Q. And the level at Carrington Street ground level is known and fixed? A. Yes.

Q. And do you agree, having looked at it overnight, that if one takes these known data and takes your floors as drawn, of equal ceiling height, they will not correspond with the floors in the Carrington Street block? A. I disagree. 30

Q. You disagree? A. Yes.

Q. You say that they will? A. Yes; they can be made to.

Q. I did not ask you that. I am asking you as shown here, not as can be made? A. This is a diagram only.

Q. I am only asking you as shown do you think or do you think not? A. Diagrammatically, they do not.

Q. I was asking you yesterday whether, in order to achieve these 13 floors on George Street as sketched, you would need to demolish what now exists above the ceiling of the ground floor or the floor of the first floor of George Street? Do you remember that I asked you that? 40
A. Yes.

Q. And I think you told me that you would not have to? A. That is correct.

Q. See if this is not correct. Put your own tracing away, and we will have Exhibit 4. (Document handed to witness). You show the existing Wynyard structure on the left hand side of Ex. 4, do you not?
A. Yes. No; on the right hand side.

Q. Yes, I am sorry. The left hand side as you look at it?
that is Carrington Street there (indicating). A. No;

Q. No; I mean of the whole plan? A. This is the 1954 scheme?

Q. Yes? A. Yes.

10 Q. And of that scheme what exists—just indicate it as you say it is on that plan? (Witness indicates). This is shaded in? A. Yes.

Q. So that if I put my tracing over that I can get these two marks to agree? I have traced this piece here (indicating). A. Yes.

Q. That is right? A. Yes.

Q. These points are fixed, are they not (indicating)? A. Yes.

Q. If I superimpose them, of necessity you must, in order to get your floors, cut through them? A. No.

Q. You do not? A. No.

20 Q. How do you get that floor in there without demolishing what now exists? A. Because it would not be exactly there. This is only diagrammatic of the number of floors you can get in there between this and 150 ft.

Q. You now tell me that you might not be able to get that many floors in? A. I said nothing of the sort.

Q. Could you get those floors in without now demolishing what now exists? A. Yes.

Q. You pledge yourself to that? A. Yes.

30 Q. Do you remember telling me that your 1956 plan in your diagram, Exhibit 4 would necessitate some alteration to the new existing George Street building, and you made a remark that it would be no more than the work that was to be done in the 1954 scheme by way of alteration of the existing work? Do you remember that?
A. That is in regard to the developing of the whole George Street scheme?

Q. Yes? A. I made that remark.

Q. Look at Exhibit "H". That is the sheet which indicates on the 1954 plan the extent of any amendment of the existing work, does it not, on the George Street face? A. Yes.

Q. And the coloured material is the new work, apart from the piers? A. Yes.

40 Q. And that involves some work in the way of $4\frac{1}{2}$ inch walls and a counter and some other bits and pieces—is that right? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Defendant's
Evidence.
No. 5.
E. M.
Nicholls.
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.
—
Cross-
examination.

Q. And what you are saying is that to build your 1956 plan there would be no more alterations to the George Street side of the existing building than appears on sheet 4? A. Well, if I have said that I have given the wrong impression. (Objected to).

Q. What do you want to say—that there would be more extensive alteration to carry out your 1956 plan than is shown on sheet 4? A. My 1956 plan does not touch this side at all.

Q. But the continuation of it that you have shown diagrammatically? A. Take the whole scheme developed as I have presupposed. Then, one day, this will be abandoned on George Street as a bedroom floor 10 and used as an office floor, and then of necessity you would pull out all this internal arrangement and use this as office space.

Q. And what about the ceiling height? A. The ceiling height would stay.

Q. I take it that your last remark contemplates that the licence would remain on the George Street side? (Objected to.)

Q. Does your remark to me, as to future development, contemplate that the licence would remain applicable to the George Street frontage?

Mr WALLACE: The question of the licence is a question of law, and the Liquor Act provides for half of the building to be licensed, and for 20 the area to be licensed to be shown on the licence issued by the Court.

HIS HONOR: Yes; I think the question is admissible on this basis, that this witness does not contemplate these bedrooms being part of the licensed premises.

SIR GARFIELD: I only know what the witness is saying to us.

Mr WALLACE: Wherever you see a large hotel with shops inside it, they are not part of the licensed premises.

HIS HONOR: I realise that. That is a very neat question that arises under the Landlord and Tenant Act.

SIR GARFIELD: Q. What do you contemplate there? A. As I 30 contemplate it, the steps will be as follows: the new bedrooms will be built on Carrington Street, then, at a later stage as determined by my client, they would build more bedrooms on Carrington Street and abandon the bedrooms on George Street, but in the meantime transitionally they could well use them for staff quarters.

Q. And what is going to happen to any licence activities in the George Street frontage on your view—only what I think? A. In my view it would be confined to the ground floor—the George Street ground floor level.

Q. You contemplate that the existing bars and dining room would 40 remain licensed, with an office building above? A. Yes.

Q. That is your contemplation? A. That is my contemplation? Yes.

Q. Yesterday I asked you a question about a 42 ft. or a 43 ft. span protected by a slab of some thickness of which you were not aware ?
A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. And you corrected me, that I had not given you the other dimension ? A. Yes.

Q. And then I gave you the opportunity of yourself measuring the other dimension ? A. Yes.

Defendant's
Evidence.

Q. And you told me that it was 28 ft. Now, when one is talking about the span of a slab, one is talking about the distance that it will span between beams ? A. Yes, if there are beams.

No. 5.
E. M.
Nicholls.

Q. And if there are no beams, you measure the span up to the place where you would get beams ? A. Yes.

Cross-
examination.

Q. Now open up the plan and tell me the other dimension of the slab as shown on the plan. Have a look at Exhibit "L2" (handed to witness). Yesterday you measured between "C55A" and "C53A", in their centres ? A. Yes.

Q. And you told me that the slab was 28 x 42 ? A. Yes. In that particular I made an error. There is a discrepancy between these drawings and the structural drawings. The structural drawings show columns there which should be here (indicating), and the structural drawings omit those which I have. But not one drawing or the other is correct.

Q. Do you contemplate having four columns there (indicating) ?
A. Yes.

Q. Four there ? A. Yes.

Q. I was asking you yesterday, on the assumption that there were no columns there, what would the other dimension be. There are no beams between "C57" and "C53A" ? A. I would have to look at the engineer's drawings.

Q. Here are the engineer's drawings (indicating). This is the area that would be applicable ? A. Yes.

Q. So that the beams, as far as he is concerned, come from 51 to 57—that is the beam on which that slab could lay a load, is it not ?
A. I think you are incorrect.

Q. Tell me what is the span—the other dimension of the slab between the available beams ? A. Between the supports—that is 29 ft. x 28 ft.

Q. I am speaking of the slab which, according to your architectural drawing, is over this area (indicating) ? A. Yes.

Q. I put to you yesterday that it was 43 ft. this way (indicating) ?
A. Yes.

Q. And you said that you did not have that dimension ? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Cross-
examination.

Q. I want to put to you that in lieu of the 28 ft. a proper measurement of that slab is something like 80 ft. from here to there (indicating) ?

A. No, of course not.

Q. So that as an architect you would be content to put a slab from here right across this area (indicating), from "C57" to "C51" ?

A. Yes.

Q. With no intervening beams or columns, 43 ft. wide ? A. No; I have not said that.

Q. Is not that what those plans provide for ? A. As I have just mentioned, these plans—

10

Q. I am speaking about those plans (indicating)—those plans do provide for that feature, do they not ? A. These plans on their own, yes (indicating). Read in conjunction with the structural drawings, which are a counterpart, no.

Q. Do you say that you actually planned to have four columns in that lounge ? Did you actually plan that ? A. I will put it this way ; how many columns is it the function of the structural engineer to provide, and if we need that many columns to sustain the structure then we will have that many columns.

Q. Did I not ask you yesterday that your plans would need alteration when the structural engineer got down to business ? A. I do not remember that.

Q. This is what I asked you at the bottom of page 66 of the transcript :—

“ Q. And of course, at the stage of the actual drawing, a number of questions of practicability and so on often arise ? A. Indeed.

Q. Which, not infrequently—(Objected to)—necessitates a re-design of other drawings, architectural drawings ? (Objected to.) A. I wouldn't think so.

Q. My question was directed as a general question, that generally speaking, the experience is that when you get down to the structural detail, not infrequently you find you have to redesign the architectural—(Objected to; allowed,) A. I think that is quite wrong.

Q. Quite wrong ? A. Yes.

Q. It has not been your experience at all ? A. No.”

In point of fact, you are telling me that you will have to re-design your architectural drawings ? A. You will have to put two or more columns there, yes (indicating).

Q. And that does not trouble you as a feature of this hotel ? A. No.

Q. How far up will these columns go ? A. They go to the underside of the Carrington Street ground floor ceiling.

Q. They are just there to carry the ceiling ? A. That is all.

- Q. That does not trouble you as a piece of design— ? A. No.
- Q. To put a pair of columns in the middle of a public area just to hold up the ceiling ? A. No.
- Q. Of course, you cannot, with your design, do without 53A and 55A, can you ? A. No.
- Q. Have you, at any stage, tied in the levels of your plan with the levels shown in the lease ? A. I am not aware of doing that.
- Q. You are not aware of doing that ? A. No.
- 10 Q. So that you are not able to say " Yes " or " No " as to whether there is any correspondence in level ? A. No. I will have to check up with those who worked on it.
- Q. Do you remember that I was asking you last night what would happen to the plumbing that came through ? A. Yes.
- Q. And I think you told me that it would be dissipated in some way over the ceiling of the lounge— ? A. Yes.
- Q. Where that coffee lounge is ? A. That is where the space is.
- Q. It comes down to that ceiling, does it not ? A. Well, the coffee lounge is only a small part of that ceiling.
- 20 Q. I mean the whole ceiling—I am not suggesting that it will only go out over the coffee lounge ? A. No.
- Q. But it would get away, according to you, somewhere, using the whole of that ceiling ? A. Yes.
- Q. How high is that ceiling ? A. I would need the plans again. (Plans handed to witness.) Is this the false ceiling or the structural ceiling ?
- Q. The total available height to the underside of the beams, I suppose ? A. That is the dimension—12 ft.
- Q. That is to the underside of the beams ? A. To the underside of the vault ceiling.
- 30 Q. So that you are contemplating getting the pipes there (indicating) ? A. Possibly.
- Q. There is no other place for the piping to go ? A. Yes, there is.
- Q. Where ? A. Piping can come down the wall and be boxed in.
- Q. But what has the builder got to do—what is your plan ? A. I told you yesterday that these plans are not sufficiently developed. The whole of the pipe runs are not set out until a lot of study is given to it, and I therefore cannot answer your question.
- 40 Q. So that any criticism of them ought to be postponed until they are finished ? A. Yes.
- Q. One of the things that you have told His Honor is that this design or plan is suitable for extension up to 300 bedrooms ? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

—
No. 5.
E. M.
Nicholls.

—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Cross-
examination.*

Q. And you contemplated, according to your instructions, some extension by another 37—at any rate up to 100 bedrooms in all, at some near future date? A. Yes, that is true. There have been varying schemes.

Q. Let us take it in steps. Of course, when you had 300 people there the coffee lounge would be a little bit overcrowded would it not? A. Yes.

Q. And you would need more public rooms? A. Yes.

Q. Where would you put those when you got the 300 bedrooms? A. I have not fully designed that, but there are possibilities to put those at the Carrington Street first floor level, over the present lounges, and perhaps absorbing some of the bedrooms there. 10

Q. It is not unfair to say that when you told His Honor that this scheme could accommodate 300 bedrooms, you had not thought out the matter in such detail as to be able to justify that statement? A. I had not thought it out, no.

Q. You made a suggestion that the first floor might accommodate the public rooms? A. Yes, that is one way, and extend the ground floor level and absorb the coffee lounge in that way at the expense of the drinking lounge space. 20

Q. So that you would cut down the drinking lounge space? A. Yes.

Q. Not the bar space? A. No.

Q. Do you think that you could successfully put public rooms on the first floor as you have designed it? A. Yes.

Q. What is the ceiling height on the first floor? A. 9 ft. 5 ins.

Q. Do you know sufficient about the regulations in this city to realise that they would not stand for 9 ft. 5 in. ceiling height for public rooms? A. No.

Q. You do not know whether they would or not? A. I could not speak positively. 30

Q. However, if you wanted to use the first floor for public rooms and dining rooms and so on, you would be limited, on your plan, to 9 ft.?

HIS HONOR : 9 ft. 5 ins.

SIR GARFIELD : Q. 9 ft. 5 ins.? A. No, you would not necessarily be at all.

Q. Well, what would you do? A. Because on the open deck, which you would mostly use, you can get a ceiling height of about 12 ft.

Q. What happens to the lighting of the bedrooms if you put a dining room out there? A. As I told you before, you would absorb some of that run of bedrooms. 40

- Q. And you think that you would be allowed to build on that slab ?
 A. Without a doubt.
- Q. Have you gone into the dimensions of that slab ? A. No.
- Q. What is the permissible live weight on those slabs ? A. I am
 sorry; I haven't that all from memory.
- Q. Haven't you an idea ? A. About 100 lbs.
- Q. And are you able to assess the position now, as to whether you
 think that that slab, as you have designed it, would carry this live load ?
 A. I could not assist you.
- 10 Q. You could not assist us ? A. No.
- Q. There is one thing more. You produced the contract, or
 somebody produced the contract here for these 1956 buildings ?
 A. Yes.
- Q. Were tenders called at the time ? A. No.
- Q. That was the only price obtained then, I take it ? A. Yes.
- Q. No other builder's price was obtained ? A. No.
- Q. And you negotiated the contract with the builder ? A. Yes;
 it was what was called a negotiated contract.
- Q. And this builder is building the Caltex building ? A. Yes.
- 20 Q. Which is a flat-plate building ? A. Yes, that is correct—
 substantially.
- Q. Not entirely ? A. No.
- Q. Were there any oral understandings with the builder which were
 not recorded in the document ? A. No.
- Q. None at all ? A. No.
- Q. As to the manner of building, or anything of that sort ?
 A. No; there has been a discussion, but not an understanding.
- Q. What do you mean by "a discussion" ? That touches what
 he is to be asked to do ? A. Well, this was mentioned before, and I
 30 repeat it again. The builder is anxious, as far as is structurally possible,
 to build a flat-plate structure at the Plaza. These plates can be produced
 at great speed, and as I said previously, the structural engineer has been
 working, since the signing of the contract, to try and transfer this building
 over to more of a flat-plate building than has at present been the design.
 So that if you can call that an understanding, that is so.
- Q. So that the builder has been given to understand that what he
 will be asked ultimately to build will be as near as possible a flat-plate
 building so far as its general construction is concerned—is that right ?
 A. Yes; I think you can put it a little differently to that—
- 40 Q. What is wrong with my way of putting it ? Is my way of
 putting it sufficiently accurate ? A. No.

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*

Defendant's
 Evidence.

No. 5.
 E. M.
 Nicholls.

Cross-
 examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.

Nicholls.
Cross-
examination.

Q. Well, was he told that by the time he was asked to build, the plans would be so altered that the building would be a flat-plate type of construction ? A. No.

Q. Was he told that the plans would be altered before he was asked to build ? A. He was told that the engineer would investigate the structural design to see whether it was possible.

Q. His price was to remain the same ? A. Yes.

Q. So that his price was given on at least the representation that you were going to endeavour to alter the plans to make them as near to a flat-plate type of building as possible ? A. Yes. 10

Q. And of course none of that can be discovered from your architectural drawings tendered to the landlord ? A. No.

Q. You show some shops projecting into Wynyard Lane. Do you remember this additional work for shops to go into the Wynyard Lane area ? A. Yes.

Q. You would agree that in any development of the centre of that area—the centre of the demised area—those shops would need to be demolished ? A. I would not think so.

Q. You would not think so ? A. No.

Q. You think that you could develop that centre area and leave 20 those shops as they are ? A. Yes. In fact these shops are under the permanent construction of this site (indicating), so that there is no reason—

Q. All right, as long as it is your idea ? A. Yes.

RE-EXAMINED

Re-
examination.

Mr WALLACE : Q. A little while ago you were asked a question by Sir Garfield as to whether you had made sufficient investigation to justify your statement to His Honor that the plan for 1956 was capable of development to have 300 bedrooms—do you remember that ? A. Yes.

Q. You answered to the effect that you had not made a detailed 30 investigation ? A. Yes.

Q. What I want to ask you is, have you made a sufficient study of the 1956 plan to justify your statement that it is capable of development to the extent of having 300 bedrooms ? A. Certainly.

Q. And are there several ways in which the dining room and lounge problem—if it may be called a problem—in connection with the 300 bedroom extension, could be dealt with ? A. Yes.

Q. And do you, as an architect of experience, envisage any great difficulty or untoward expense in connection therewith ? A. Indeed, no.

Q. And have you made your position clear to His Honor that you 40 have gone into the 1956 plans with more detail than any development of a 300 bedroom accommodation plan ? A. Would you say that again ?

HIS HONOR : It is an awkward question. I suggest that you reframe it.

Mr WALLACE : I withdraw that question.

Q. At all events, you assure His Honor that in your opinion the 1956 plans are quite capable of extension to 300 bedrooms ?

A. Certainly.

Q. With appropriate lounge-dining room accommodation ?

A. Certainly.

10 Q. This morning you were asked about two extra pillars in the lounge— ? A. Yes.

Q. To support that concrete slab of 14 inch thickness ? A. Yes.

Q. Would there be anything from a designing viewpoint wrong with having say lounge settees around pillars in a lounge of that size ?
A. On the contrary ; it is quite a desirable feature.

Q. You were asked about storage space below the kitchen serving your Carrington Street coffee lounge or dining room, and you said— I was not sure whether it went in the record because some other conversation took place at the time—but I think you said that down below there were thousands of spare feet lying idle ? A. That is so.

20 Q. And would there be more than abundant space to have the dry storage and refrigeration space to which you alluded ? A. Oh goodness, yes.

Q. And in regard to the extension of the motor site upwards, some few feet would be all that would be involved, is that so ? A. About 10 ft. approximately.

Q. And you have given His Honor a rough estimate of the cost thereof—£3000 to £4000—(Objected to). A. That could be a little high. I said “ £3000 to £4000 ”. On reflection I think that is a little high.

30 (At the direction of His Honor the following questions and answers were read from the shorthand notes) :—

“ Q. How much do you think it would cost you to uplift those motors and resite them at such a height to give you the necessary lift and overrun ? A. £3000 or £4000.

Q. £3000 or £4000 ? A. Yes.”

Q. Anyhow, you now think that that is somewhat high ? A. Yes.

Q. As far as you are aware as an architect, is there some complication in design involved ? A. No ; it is a very simple task.

40 Q. And you assured His Honor that in the planning stages you did give thought to the question of raising that service lift ? A. Yes ; as a matter of fact I spoke to one of the lift firms about the matter, I recall now.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 5.
E. M.
Nicholls.
—
Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Re-
examination.

Q. Do you remember which lift firm it was? A. Yes, I think Elevators. They are doing quite a lot of work for us.

Q. And at all events, whether you thought about it or not, does that lift, in your opinion as an architect, supply the full answer to my learned friend's questioning of you the other day as to what you would do about food coming in and garbage going out, and so on? A. Yes; that is complete answer.

Q. You have not, during the minute cross-examination of my learned friend, on your own plan—(Objected to).

HIS HONOR: Just "cross-examination".

10

Mr WALLACE: Q. You have not, during the cross-examination, been asked any questions with a similar wealth of detail about the 1954 plans, have you? (Objected to as not being a question in re-examination; rejected.)

Q. Have you any views about the details of the 1954 plans? (Objected to as not being a question in re-examination; pressed.)

HIS HONOR: If you think that there is some evidence that you wish to get, and it is not strictly in re-examination, and if I think that it is proper for you to get it, I will allow you to get it, because my view is that all relevant evidence in this case gets in, but I think that Sir 20 Garfield is right at this stage, that it is hardly re-examination.

Mr WALLACE: Q. You were asked to prepare, the other day, some figures, or to produce some figures regarding the areas to be occupied or taken up by the kitchen equipment? A. Yes.

Q. And some document went in this morning?

HIS HONOR: No; it did not go in.

(Document m.f.i. "16" tendered and marked Exhibit "S".)

Mr WALLACE: Q. What does "W.H.D." on this mean (indicating)?

SIR GARFIELD: "Width, height and depth".

WITNESS: Yes.

30

Mr WALLACE: Q. Have you also had any other document prepared relating to that kitchen equipment, showing the areas occupied and the remaining space? A. Yes; I prepared some suggestions that I thought of at Sir Garfield's request, but he did not want them.

Q. May I have a look at them? A. Yes. (Document handed to Mr Wallace.)

Q. In this document, which is dated 8th March 1957, you show—? (Contents of document objected to; pressed.)

Q. What is the lineal footage of space available in the kitchen for fittings and for bench tops? A. As I remember, about 65 ft.

40

Q. And what is the lineal footage of space for the kitchen cooking equipment as set forth in Exhibit "S"—how much lineal footage would it occupy? A. 25 ft.

Q. And does that leave a balance of 40 ft. 6 ins. for workbench tops and sinks? A. Et cetera.

Q. Et cetera? A. Yes.

Mr WALLACE: Q. Is there any difference between costs of construction by the flat-plate method on the one hand, and slab and member method on the other? A. Yes; we have found that the flat-plate method
10 is cheaper.

Q. So that if Mr Llewellyn, your construction engineer, in this case is successful in achieving a greater measure of flat-plate work, the difference between the quote in the contract and the ultimate price would be for the owner's benefit? A. Indeed.

Mr WALLACE: That is not what he told me, but still I do not mind.

HIS HONOR: That does not follow.

Mr WALLACE: He said the opposite.

HIS HONOR: He said that the contract price would remain the same.

Mr WALLACE: Q. Did you say that the contract price would remain
20 the same? A. If I did, I said it in error.

HIS HONOR: Q. You said it? A. I am sorry. I said that in error.

Mr WALLACE: If I had known that I would have put my question differently.

HIS HONOR: The witness definitely said it, because I remember noting it mentally.

(Copy of instructions from Avrom Investments Pty. Ltd. to Mr Nicholls, dated 8th June, 1956, tendered.)

SIR GARFIELD: I do not mind as long as the originals are kept in their present condition.

30 HIS HONOR: Q. You understand that you have undertaken to keep the original document? A. Yes.

Q. You undertake in Court to preserve it in its present condition? A. Yes.

(Copy of instructions from Avrom Investments Pty. Ltd. to Mr Nicholls admitted and marked Exhibit "7".)

Mr WALLACE: Q. The instructions were as regards costs not to exceed £300,000, including building furniture but excluding other furnishings, and the requirements included a requirement for 63 bedrooms with ancillary services? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Re-
examination

Q. It was designed for 75 bedrooms and at a cost which considerably exceeded £300,000 ? A. Yes.

Q. Did that meet with your client's subsequent approval ?
A. Yes; it was increased pro rata substantially.

Q. So that in the result, reading Exhibit 7 with your subsequent verbal instructions—were they verbal when you agreed to the 75 bedrooms, or was that in writing ? A. Not in writing.

Q. Reading Exhibit 7 with your subsequent verbal instruction, it amounted to this, that you were authorised to design the immediate erection of 75 bedrooms at a cost of something of £400,000 ? A. Yes; 10
that was upon the representations of my client.

HIS HONOR : It was £420,000, was it not ?

Mr WALLACE : Yes.

Q. Something has been said or indicated by Sir Garfield with regard to the area of the site which your design covers ? A. Yes.

Q. Is it your opinion in accordance with modern architectural planning to occupy the whole site when a building of a commercial type or this type of building is required ? A. Certainly not.

Q. Do you have photographs there of some modern buildings, showing the modern practice of using only a portion of the site ? A. Yes; 20
I have collected photographs.

Q. They are in America, are they ? A. Most of the buildings ?

Q. Yes; the photographs that you have ? A. Yes.

Q. Can you tell me of any construction of buildings in Sydney at present on valuable sites which do not occupy the whole site area ?
A. The ones that I know are I.C.I., Melbourne; M.L.C., North Sydney—what is the new one down at the Quay on the right-hand side ?

HIS HONOR : Q. Lever Bros.? A. Yes, Lever Bros.; and Caltex House.

Mr WALLACE : Q. And of course the 1954 plans were not designed to 30
occupy anything like the whole site, either ? A. No.

Mr WALLACE : Q. I think I.C.I. in Melbourne only occupies about 60% of the site, does it not ? A. I have diagrammed that, which show it exactly. I think it might be even less than that.

Q. Is the modern trend away from the solid block or the lightwell type of building occupying the entire site, or substantially the entire site and going to the narrow slab type of building occupying only a portion of the site ? A. That is the modern trend in many buildings around the world.

Q. Does that gain better light and air, the modern tendency ? 40
A. It gains better light and air and the better light and air is preserved for all time.

Q. Under modern methods of constructions is it also considered cheaper to build up narrowly to a height ? A. Yes.

Q. It is cheaper to build to a height these days than it used to be, is that the position ? A. Yes, and it is cheaper to build to a height than to spread in bulk in a city building.

Q. It is you or Mr. Bunning who has a photograph, by way of example, of the United Nations Building on the Hudson River ? A. That is Mr. Bunning. I have others.

10 Q. And you have photographs here in this folder which I show you ? A. Yes.

Q. I hand you the folder. Will you indicate to His Honor which you refer to as illustrating this point ? A. The whole of this latter bracket of photographs, commencing with the I.C.I. in Melbourne.

SIR GARFIELD : Very little of this arises out of cross-examination. This is all fresh.

HIS HONOR : I know.

SIR GARFIELD : I would respectfully submit—

HIS HONOR : I think you are right, but I will allow Mr. Wallace to ask it.

20 Mr WALLACE : Q. First of all, you see a building shown as I.C.I.A.N.Z. in Melbourne ? A. Yes.

Q. Does that show occupation of only part of the site ? A. Yes.

Q. And of a building of the thin slab type ? A. Yes. It shows a comparison between a building with a surrounded lightwell and a building of the slab type with no light well.

Q. What is the next one ? A. The Chase Manhattan Building in Wall St., near Wall Street.

Q. Wall Street is notorious for the height of buildings going straight up from the footpath, is it not ? A. Yes.

30 Q. A high type of old building ? A. Yes, and very expensive land.

Q. And the modern building design shows this Chase Manhattan Building standing well back and occupying portion of the site, and of the thin slab design ? A. Yes.

SIR GARFIELD : Q. Is there a space index system in operation in Wall Street ? A. I do not know. I think not.

Mr WALLACE : Q. I turn now to the next one, the Chicago Greyhound Bus Terminal, is that so ? A. Yes.

Q. Another illustration of this point ? A. Yes.

40 Q. The rest of the book also contains photographs of modern buildings of this type built on portion of the site ? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Re-
examination.

Q. And here is a photograph (indicated) of Lever House in New York, is that so? A. Yes.

Q. In your cross-examination you were asked from time to time questions about the centre arrangement on the pillars on the subject property? A. Yes.

Q. And how on the outside of the centre on each side there were some much stronger pillars than those in the centre? A. Yes.

Q. And Sir Garfield put to you that was to provide for planning whereby somewhere about the 4th floor, very large trusses were to be put across these outside strong pillars and which would support the 10 ballroom with uninterrupted space, uninterrupted that is to say by pillars? A. Yes.

Q. And the trusses to be 80 feet long, I think? A. Yes.

Q. And a figure of 12 feet in depth has been mentioned to you by my learned friend? A. Yes.

Q. I want to ask you this as an architect, is that in your opinion an acceptable type of planning for this type of building according to any modern standards of architecture? (Objected to; rejected.)

Q. Could that be considered in your opinion as a satisfactory modern design of architecture for a building of this type? (Objected to; 20 allowed subject to relevance later.)

Q. What do you say to that? (Answer struck out by direction of His Honor.)

Q. What do you say, is that satisfactory? A. No.

Q. With regard to the cost of such architectural planning, in your opinion would the cost of such a design be of an excessive nature, having regard to the results to be achieved . . . A. Quite excessive. (Objected to; allowed.)

Q. What do you say with regard to the cost of such a design, to have an 80 feet truss, 12 feet deep or a series of 80 feet trusses 12 feet 30 deep, four floors up, do you offer any comment on the cost of constructing such a design? A. I would think it would be economically unsound.

Q. Have you yourself ever designed such a length of truss for commercial or other buildings? A. I had experience once with a wide truss, but to take no superimposed load such as these trusses would have to take, and even that truss to carry one floor with that little load was terrific. When you add the superimposed load of the building it would be fantastic.

Q. Would you give me your opinion as to whether on this site for this type of building such a design would be favoured by you or not? 40 A. Not.

Q. You were asked about portion of the projected or developed completion of your 1956 plan being the portion which is stepped in from the eighth floor upwards over a width of 80 feet? A. Yes.

Q. And you pointed out that the width of that stepped-in portion would be 28 feet ? A. Yes.

Q. I think yesterday Sir Garfield was asking you questions as to whether that portion could be satisfactorily used or whether it otherwise conformed with the general planning of the completed building. Do you remember some questions to that end ? A. Yes.

Q. I think you indicated to His Honor that details of course had not been gone into ? A. No.

Q. I want to ask you this general question, is there any reason
10 after you have listened to Sir Garfield's questions and given your answers why you should think that the stepped-in portion could not be fully useful and correct designing ? (Objected to.)

Q. From an architectural viewpoint ? (Objected to.)

HIS HONOR : As I understand it, he has already said although he has not given attention to any details he has no doubt in his mind that it can be usefully used. He cannot take it any further than that, Mr Wallace.

Mr WALLACE : Q. Can you offer any example of the way in which it might be used, without committing anybody, just as an illustration ?
20 Can you give me just one illustration of how it could be properly and efficiently used ? A. Yes. I could give you two illustrations.

Q. What are they ? A. Instead of it being used just as a bedroom suite, it could be a bed-lounge suite of a larger dimension.

Q. On those upper floors ? A. On the upper floors, or alternatively you could replan your suite a la the Swedish fashion and elongate it and get some in your width.

Q. That is the Swedish planning, is it ? A. They tend to plan that way.

Q. Then you were asked about the two feet encroachment on that
30 Northern end of your Eastern side of the Carrington St. building, is that correct ? A. Yes.

Q. Have I correctly positioned it ? A. Yes, the North-eastern corner.

Q. If you brought the wall in by two feet, what would be the consequences ? A. The consequences practically would be nil.

Q. Something would have to be done ? A. Yes.

Q. What would that detail be ? A. The only element that is changed is an escape stair which previously was over-size in the landings and we simply shrink the landing to bring it down to normal size and
40 take out the protrusion and everything else remains the same, for which purpose I made a plan showing it.

Q. Overnight ? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Re-
examination.

HIS HONOR : Q. Did you not have it yesterday ? A. I have had this with me, yes.

Mr WALLACE : Q. You had that with you yesterday, did you ?
A. Yes.

Q. When did you make that ? A. The same evening as I—

Q. The question was originally asked last week apparently ?
A. Yes. (Handed to Mr Wallace.) We, in error, drew those two lines through there (indicating). They should have been here. The whole of that remains constant the two landings are shrunk to normal size.

(Plan of scheme to remove encroachment, Exhibit 8.) 10

Q. How many floors that that pertain to ? A. This is from the Carrington St. level upwards.

SIR GARFIELD : Q. All floors above ? A. All floors above.

Mr WALLACE : Q. The next matter is this, you were referred to what I described as a tiny duct preserved from the lease which appears to go through your lavatory block ? A. Yes.

Q. That is shown in one of the sheets of Exhibit L2 ? A. Yes.

Q. What is the size of the duct, can you inform the court ?
A. From memory it is about 3 ft. some inches, by 4 ft. some inches.

Q. And it is a fact that it goes through your lavatory as designed ? 20
A. Yes it goes through one of the W.C.'s at the Carrington St. level.

Q. What do you say about that and what are the consequences ?
A. The consequences are that we lose one W.C. and we would have to replan this little sector to gain it in another position, but the sum and substance would be within this same little area, less the duct, we would have the same toilet facilities.

Q. Is it a matter in your opinion of an appreciable consequence ?
A. Not at all.

Q. By the way, speaking generally, is it infrequent for architects of original drawings or designs to require some amendments as the progress 30 of the work takes place ? A. I would have to answer that this way, as I originally answered it to Sir Garfield, if the instructions are clear and you go ahead with the work undisturbed, then there are not usually amendments. When drawings are done at great speed such as when we did these, then amendments are often inevitable.

Q. How many draughtsmen were working on these plans ? A. I had 11 simultaneously.

Q. Working on this preparing this exhibit ? A. Yes.

Q. Is there anything unusual or abnormal about the expert structural engineer checking or amending the architect's design so as to make it more structurally sound? Is there anything unusual about that? A. No.

Q. Is that one of the reasons why the structural engineer comes in and goes into detail? A. Yes. You could explain it another way, that ordinarily the architect makes his sketches, submits them to the structural engineer who presents his considered thoughts and then the sketches are modified accordingly. In this building we had no time to go through those stages and things were proceeding concurrently, working drawings and structural engineers and then conflicts came into being.

Q. When you say working drawings, do you mean working drawings or structural drawings? A. I mean this exhibit which, to a stage, were working drawings.

Q. Did you tell His Honor why you stepped back the bedroom floors from Wynyard Lane? A. Yes. The reason was that I took as a type of modern hotel building and you start on the park side, Wynyard Lane, then you measure the dimension of one bedroom, then your toilets, then your corridor, then your toilets, then your bedroom and the product brings you some distance from Wynyard Lane which was left open.

Q. You told Sir Garfield that you could get the same number of floors shown on Exhibit 4 without demolishing the existing George Street building? A. Which is Exhibit 4?

Q. The one on which I drew a red line across and you stressed that was diagrammatically only (handed to witness)? A. Yes.

Q. Can you explain to His Honor why you can get the same number of floors as shown on Exhibit 4 without demolishing the existing George St. building? A. Yes. It is simply a matter of mathematics. If you work from the top downwards you would have a gross height of 150 feet from George St. Then if you take 11 floors, being 9 feet 8 from floor to floor, that is 9 feet ceiling height plus the 8 inch slab, that gives you 106 feet. Then if you measure from George St. upwards to the top of the present slab that is 30 feet 6. So you have a difference of 13 feet 2 for the extra floor consistent with this diagram which has to be fitted between the top 11 and the room existing, and that 13 feet 2 is in excess of the 9 feet 8 by sufficient to adjust your floor lines to conform with the floor levels of Carrington Street.

Q. Will you look at these two documents I show you. Do they in any way help you to answer Sir Garfield's question as to the date when you did some work or planning in connection with the Melbourne project, the markets? A. Yes.

Q. What are those documents? (Objected to.)

Q. What are those documents that you have? (Objected to; rejected.)

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
F. M.
Nicholls.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Re-
examination.

Q. Those documents do refresh your memory, do they ? A. Yes.

Q. Now what date do you say it was that Sir Garfield was asking you about when you did some work on the Melbourne markets project ?

A. Prior to 9th September, 1955. (Objection by Mr Wallace to Sir Garfield seeing documents. His Honor ruled Sir Garfield entitled to see them).

SIR GARFIELD : Q. (By permission). As to some of the photographs you were shown by Mr. Wallace, they are not photographs of buildings at all, apparently, they look like models. May I take it that you or your staff have combed through all the available journals, architectural 10 journals and trade building journals to get illustrations of buildings built in various parts of the world upon less than the total available area of land ? A. My staff looked through fairly recent journals.

Q. As many as they could lay hands on ? A. I would not say that.

Q. You will agree that this compilation here has been a case of putting your best foot forward to give us illustrations of what you are speaking of. You have done your best to get as many illustrations as you can ? A. I would not say that. I think that is a fair representation of modern buildings. 20

Q. I did not ask you that. Does this represent the best, the greatest number you were able to get together ? A. No.

Q. Were there others and you have discarded them ? A. We did not search as assiduously as you said.

Q. And you put forward the Chase Manhattan building in this as an illustration of an owner who has deliberately utilised merely part of his available land for the benefit of light and air do you ? A. Yes.

Q. First of all, you know that New York city has a space index system which requires the buildings to step back as they go up ? A. Yes. 30

Q. And the effect of the space index system is to fix a height limit in relation to any given block of land ? A. That is the practical effect.

Q. And you know from the letterpress with this illustration, do you not, what happened in this case was that architects found that by building on a portion of the land without restriction as to height limit they were able to get more space than if they built over the whole land and conformed to a space index system ? A. Yes.

Q. So that the utilisation of part of the land in that case was simply to get more available space for letting ? A. I would not agree with 40 that.

Q. Does it not say so in the letterpress ? A. That is one factor.

Q. Just look at the letterpress. Is there anything said there about getting light and air ? A. There might not be but that does not mean it could not have been a consideration.

Q. But the whole panegyric is devoted to the ability to get more space by building on a smaller area of the land than if one built on the whole area and stepped back. You will agree that is the whole point made in the letterpress, will you not? A. As far as it goes, yes.

Q. As far as what goes? A. The letterpress.

Q. Have you got the rest of it? A. No.

Q. You took Chicago as the next one. This Chicago terminal is said to have been built down in the loop area. Do you know where that is in Chicago? A. Yes.

10 Q. Where the overhead runs around? A. Yes.

Q. It is a particularly dense little area? A. Yes.

Q. And you do not know what various reasons the designer had for using this particular type of structure? A. No.

Q. In that special site? A. No.

Q. And the next one you show is a railroad site in Boston, apparently and again I suppose you do not know what local conditions caused what was designed? A. No.

Q. The next one is the Parelli building at Milan, which is apparently a model? A. Some scheme.

20 Q. You do not know whether it has been built or anything? A. I think it has not.

Q. Take the case of the Lever building in New York. You know that too was built because of the space index difficulties. They get more space by stepping back in one line than if they had attempted to go back in steps? A. I had not known that and I doubt it.

Q. What material have you got on which to doubt that statement?
A. Because I think you could build a much taller building in New York than that.

30 Q. You mean with a space index? A. Yes, simply by judging the other buildings which have been put along Park Avenue which are higher.

Q. With space index? A. Yes.

Q. The next one is the Carnegie building in New York is it?
A. Yes.

Q. Do you know anything of the site where it is? A. No. Perhaps if you showed it to me I might.

Q. That building has been built to house, apparently, some part of the Carnegie Foundation offices? A. Yes.

40 Q. Specially built for their purposes? A. I do not know the facts as well as that.

Q. The one in Havana, again I suppose you do not know what are the particular reasons for building this Havana building? A. No.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 5.
E. M.
Nicholls.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 5.
E. M.
Nicholls.*

*Re-
examination.*

Q. And the same is true of Prudential of New York which is a building of no very great height considering what you find in Los Angeles, is that right? A. It still has to do with site coverage and cost. The base of the whole scheme is that you have a building not too thick.

Q. Of course, you realise that an owner in a particular site might have no use for a building above a certain capacity? A. He might not.

(Book of photographs from what is called I.C.I.A.N.Z. Melbourne, to the latter end of the book; Exhibit 9.)

No. 6

10

Evidence by H. A. Llewellyn.

*No. 6.
H. A.
Llewellyn.
Examination.*

TO Mr WALLACE : I am a chartered engineer and an Associate Member of the Institute of Engineers and an Associate of the Sydney Technical College.

Q. Have you been engaged in the profession of structural engineering for the last 23 years? A. Yes.

Q. Were you up to about 10 years ago chief engineer for Trust Concrete and Steel Co. Ltd.? A. Yes.

Q. Have you been in partnership in a firm known as Stanley & Llewellyn, the other partner, Mr. Stanley, having died a few years ago? 20
A. That is so.

Q. Have you been in partnership since then? A. Yes. The firm name was carried on with another junior partner.

Q. Has your firm been responsible for the solution of structural engineering problems in a number of large structures? A. Yes.

Q. Would you be good enough to give His Honor some illustrations? A. On City building, the Berger House, Caltex building, Phoenix Insurance building, and at present working on a new multi-storey hotel at King's Cross.

Q. What about the Shell building? A. That was in my previous 30 firm, not this present partnership.

Q. And other large buildings elsewhere? A. In Melbourne and in Brisbane, yes.

Q. What is this multi-storey hotel at King's Cross? Where is that? A. It is in Springfield Avenue.

Q. Are you the structural engineer for that building? A. Yes.

Q. What stage has that reached? A. The revision stage. It was designed, estimates taken out, proved slightly too costly and the architect is now revising his plans to slightly reduce the building.

Q. It is part of your professional duties, routine work in connection therewith, to examine the original architect's drawings and designs and advise as to whether they need amendments from the constructional point of view, from the design of strength and stability? A. Yes, it usually starts earlier than that with the architect getting us in conference, he having a germ of an idea, producing a sketch plan and then asking us would it work, and the scheme is really evolved together.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

Q. Going somewhat out of my order of questions, I want to ask you at this stage something about the 14 inch concrete slab which is over the lounge room and other rooms on the ground floor of the Carrington St. level in this 1956 design? A. The slab over the ground floor, at first floor level?

No. 6.
H. A.
Llewellyn.

Examination.

Q. The concrete slab ceiling or roof to the lounge. In your structural drawings you show supporting pillars in a somewhat different position from those shown in the relevant sheet of Exhibit L2, that is to say, the architect's drawings. I show you the exhibit? A. I think that is one of those things that came out of the terrific rush to get both architectural drawings and structural drawings completed on this particular scheme.

20 Q. Will you show His Honor and Sir Garfield what you are speaking about?

SIR GARFIELD : I do not know what this rush is you are talking about. You have had since last July.

(Plans previously m.f.i. 10 now Exhibit 10 (1), (2) and (3).)

Mr WALLACE : Q. Taking now sheet 1 of Exhibit 10 and using also sheet 3 of Exhibit L2, will you explain to His Honor what has taken place?

A. C53A and C55A are new columns which go down through the Eastern face of the Carrington St. building and are carried on two heavy concrete beams between columns 30 and 55, 28 and 53, but in order to support this roof section as shown in our structural drawing marked 1, it was necessary to continue the original columns 53 and 55 up to the first floor level and that is why they actually appear on structural drawings.

SIR GARFIELD : Q. Does 55A and 53A appear on the structural drawings? A. No. The strange thing has arisen—as a matter of fact since these drawings were prepared we have been continuing on with our detail drawings and you can see where the engineer working with them has pencilled on them. This is again part of the rush and tear to get them out. Those two columns, if both these drawings were complete, 55 would appear approximately there (indicating), 53 would appear approximately there (indicating) and in our drawing of this floor C55A would appear there and 53A would appear there (indicating). They would be picked up on the detailed sheets.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.
—
Examination.

Q. You as an engineer draw what is below the floor, whereas the architect draws what is above it ? A. That is usual.

Q. They would not be sticking up through the floor ? A. No.

Q. Would you mark them for us ? A. (Witness marks on sheet 3 of Exhibit L2, the position under the ceiling of columns 53 and 55). Actually, they would be on another drawing below this.

Q. Would you locate them for us from an architectural point of view ? A. I refer to sheet 2 of Exhibit L2. Column 55 would appear there (indicating). As a matter of fact, I recall now I rang Mr. Nicholls to mention this to him in the rush and bustle and I was worried as to whether these columns would affect his margin and he looked at the plan while I was on the phone and he mentioned he could easily incorporate this one into this one (indicating). He intended, I think, swinging this part out (indicating).

Q. Would you line them exactly ? A. (Witness draws in columns 53 and 55 on sheet 2.)

Mr WALLACE : Q. Going back to sheet 3 now, they come up and stop as the support— A. Come up and support that (indicating).

Q. Come up and support the roof ? A. Yes.

Q. Does that give a satisfactory structural support for that roof ? A. Yes.

Q. No doubt about that ? A. No question about that.

Q. We know of course that you were the structural engineer whom Mr. Nicholls consulted ? A. That is right.

Q. At what stage did you come into the matter ? A. With Mr. Nicholls ?

Q. In connection with this 1956 plan, when was the first that you knew about it ? A. May I refer to my diary ?

HIS HONOR : Yes.

WITNESS : The first calculation sheet is dated 13th June 1956. It may have been a few days earlier than that when we consulted together.

Mr WALLACE : Q. Were you also conversant with the 1954 plans ? A. Yes.

Mr. Stanley had died just before the completion of the structural design and I had to take over the completion of that design and prepare the final documents for tender.

Q. You spent some time on the 1954 plans did you ? A. Yes. Mr. Stanley died in June 1955 and I think tenders were called somewhere about April 1956, so I was working on them during that interval. Mr. Stanley, of course, had discussed the 1954 scheme with me on numerous occasions while he was working on the job.

Q. So you are quite conversant with the 1954 plan as well as the 1956 plan ? A. That is so.

Q. The walls in this 1956 building, do they carry any load at all ?
A. No. It is what we know as a drum building, in which the walls are purely used in filling the openings between the floors and the columns.

Q. So if at a later stage, in development in years to come, it were desired to have access to, say, the Eastern wall at any floor, would that be a comparatively simple matter ? A. Quite simple. The whole of the Eastern wall could, in effect, be demolished without affecting the
10 stability of the structure.

Q. I want to ask you straight away, does the 1956 plan in your opinion in any way interfere with the use of a big truss 80 feet in length or a series of trusses about which we have heard earlier and which you know about— A. Yes.

Q. Does that 1956 plan interfere with any person who might be so desirous as to want to put 80 feet by 12 feet trusses on the 4th floor level ?
A. No, not at all.

Q. Not at all ? A. Not at all.

Q. Does the 1956 plan interfere or prejudice the use of pillars
20 presently existing there at any future time if anybody might be so desirous ? A. You mean the pillars beyond the confines of this ?

Q. Yes ? A. No. The only limit is the residual carrying capacity of the columns. On any scheme that is the only limit.

Q. I asked you about column 51. Can you call to mind without reference to the plans which is column 51 ? A. Yes.

Q. That is the big one ? A. Yes.

Q. Has that been extended or planned for extension in the 1956 plan ?
A. It is used in the 1956 plan. The extension is actually expected, on the site, to amount to an extension that would be used and that has
30 been used.

Q. Would that extension be of sufficient strength to take this portion of the trusses, the big trusses, to which I referred, if it were further extended ? A. Yes.

Q. There has been a suggestion made in cross-examination, suggesting that it is not. You do not agree with that ? A. I requested a check last night but I was sure of it and I am doubly sure now.

Q. You were sure last night and you made a check and you are doubly sure now ? A. Mr. Stanley investigated all the columns for the original 1954 scheme and that came under check at that stage. In
40 trying to complete the job we had largely carried on from that and assumed it was right. I have a letter in the office files which I have here. It says column 51 is capable of carrying the trusses, amongst other columns and also our calculations on this 1956 scheme since show that it is quite ample to carry the load.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Examination.

Q. Generally, from a structural engineer's viewpoint what do you say of the 1956 plan, from a constructional viewpoint? By that I mean how would you comment on them from the point of view as to whether they are clean or clear, straightforward or difficult or offer structural difficulties? A. The whole problem of the Plaza Hotel was the central core of weak columns so any plan which avoided that central core must of necessity from the structural engineer's point of view be a better one than the one over it, and therefore we think that any scheme which builds over the perimeter columns—and the 1956 one used that perimeter facing Carrington St.—as being a much cleaner better scheme 10 involving many less problems than any scheme that went over the centre core of the building.

Q. What comment would you make from that point of view of the 1954 plan? A. It works in reverse then. The 1954 plan brought in a tremendous amount of a number of problems because of the greater number of columns affected. That is, of course, thinking in terms of an ultimate 150 feet building. The checking of each of those columns and avoiding the weak ones presented a tremendous amount of work wherein there was only revision that had to be made to Mr. Nicholls' Carrington St. scheme—the 1956 plan—because of one column that was found not 20 capable of carrying the load where he wanted it.

Q. Were there revisions necessary in the 1954 plan? A. Dozens of them. The procedure was that Mr. Ham would produce a sketch, Mr. Stanley would then check the columns affected and say "You can't do this" or "You can't do that". It would go back to Mr. Ham, and from the architect's point of view he would produce another sketch and we had at least four such sketches from my memory, and towards the end of the job that caused a long delay in tidying up the odd bits and pieces because of this characteristic of the site, building a building over a series of columns and their foundations not designed to carry it. 30

Q. We know that the use of those very large trusses is associated with the weak design of the central columns? A. That is right.

Q. But you say that there is nothing to prevent the centre columns and the big trusses being exploited at some time in the future if someone saw fit to do so? A. Nothing at all. The central weak column could go to the fourth floor. Your trusses would then go between the 5th and 6th floors and then the only restriction on the site is what I call the residual carrying capacity of all the columns affected.

Q. In the 1956 design, in your opinion, as a structural engineer, is it quite competent for a building to the present maximum height of 40 150 feet to be added to the immediate building projected by those plans? A. Yes. We have just about completed that design in our office.

Q. You have? A. Yes.

Q. With regard to what has been referred to in this Court as a flat plate building, in your experience is there such a thing as a 100% flat

plate building ? A. No. I have not seen one here or any buildings overseas.

Q. What is the reason for that ? A. Mainly because part of the building is lift shaft and wells that have to have walls around them, and usually fairly substantial walls, and while it is possible to carry these on a flat plate, in other words, eliminating beams, which is an essential of the flat plate construction, it is much more economically to put beams in at those points. The same thing applies to an external wall unless that external wall be what is known as a curtain wall, the glass and
10 aluminium front you see in the modern building.

Q. A very light wall ? A. Yes. The flat plate is really a relative term usually applied to the central part of the building. May I use as an example this King's Cross hotel and Caltex House, two examples of what is probably the ultimate in what we can get of a flat plate in modern building in which about 80% of the floor is flat plate and then the remainder around these difficult surface areas has been in slab.

Q. Is there a sort of intermediate method of building associated with mushrooming of pillars ? A. Yes. The flat plate is a modern development of what was known as the mushroom floor system, the
20 columns flared out on the capital before they merged into the ceiling. That was the mushroom floor. The original Joe Gardiner scheme for the Plaza had many such mushroom capitals. The existing lower floors there now are mushrooms in many cases.

Q. Would they be the beams which are presently supporting the two railway ramps ? A. Yes.

Q. They are mushroomed ? A. Yes.

Q. And that is a sort of transition development between the old slab and member, and the modern flat plate ? A. That is so. The mushroom caused a lot of inconvenience to the architect in his finishing
30 trades, putting his partition walls and such surfaces on ceilings and that sort of thing, so that the cleaning up of the design by eliminating the mushroom gave us a flat plate which makes the formwork for the initial concrete so much cheaper, makes the architect's job and his finishing trades so much simpler.

Q. I understand the formwork for the concreting of an ordinary slab and member type of building involves very expensive labor, carpentering and joining ? A. That is right. The general contractor on the Caltex House job quotes it at six times the cost of flat plate forming. They are his own words.

40 Q. We do not have to have the wooden framework when you are doing the flat plate ? A. You have wooden framework. It is a combination of wood and steel framework but it is somewhat simpler and there are many man-hours less in erecting it. Generally laborers can do it in place of carpenters.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Examination.

Q. We have heard from Mr Nicholls that you have for some unspecified time past been engaged in endeavouring to eliminate as many members as possible from the 1956 plan? A. As many beams, that is so.

Q. Have you come to any result yet? A. Yes. We have been able to make the central core of the building flat plate. There are still beams around the perimeters of the building and in the staircase and lift areas, but the central part is free of beams.

Q. Have you gone so far as to be able to offer a view as to what portion of the 1956 structure will be flat plate? A. That is difficult 10 to answer in percentages because it would be misleading. The only way would be to take the number of lineal feet of beams in the original beam and slab scheme and compare it with the final flat plate scheme. I have not done that accurately but I assume it would be about 50%. The perimeter beams of that Carrington Street front form a big proportion of the total.

SIR GARFIELD: Q. You have eliminated 50%? A. That is right.

Mr WALLACE: Q. I think you said even Caltex has quite a number of beams? A. That is right, around the lift and stairs area, in fact around the lift area the beams serve a dual purpose. They help to 20 support the lift doors and the internal lift gear. It would not be desirable to eliminate them.

Q. We have in evidence here some structural drawings prepared by you? A. Yes.

Q. For what purpose were those drawings prepared by you? A. To enable the contractor to give a ceiling price for the construction of the 1956 scheme.

Q. Were they sufficient for that purpose? A. Yes. We had no complaints from him at all.

Q. Is the contractor who gave that ceiling price, in your experience 30 a highly experienced contractor? A. Very experienced. He is an overseas man, much better than any local contractor I know. He is the same contractor of Caltex House.

Q. A man who does good work? A. Yes, first class work.

Q. Is it usual or unusual for structural drawings to be developed only to the extent that you had developed them at the time they were offered to the contractor for tender? A. That depends on the interpretation of "usual". On this sort of ceiling price contract, say, the M.L.C. building, Phoenix Insurance, this Kings Cross hotel, and many other jobs are done on that basis, where a ceiling price is 40 given by the contractor, that type of structural drawing is quite sufficient. Where open tenders are called, the structural drawings and architectural drawings are developed another stage so that a quantity surveyor, an independent man, can take off accurate quantities. Then there is the

third class which is very rare and only done for government departments where all complete details are done long before the building starts. The obvious reason is that, say in the middle class, if all complete details were done and the job did not go on, then the client has to pay quite high fees for sheets of paper, and that happens with government work quite a lot.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. It does? A. Yes, quite a lot. We had an example in our office only last week.

Defendant's
Evidence.

Q. What is that? A. A big technical college at Wollongong estimated to cost over one million pounds and the drawings will be torn up. I have several sets at home of a big domestic science school at Penshurst which have never ever been issued by the department.

No. 6.
H. A.
Llewellyn.

Examination.

Q. Is that because of a change or policy? A. Not always. Sometimes it is shortage of money.

Q. What is the position about the M.L.C. Building? Was that a ceiling price? A. I do not know the exact details but it was not open tender. Only one contractor was ever in the picture. It has been called a negotiated contract. Sometimes on a schedule rate basis he gives rates for various materials, and as in that case, the client does not know what he pays until the job is finished.

Q. The next matter is this, are you able to tell His Honor can this architectural plan of Mr. Nicholls, be built, from a structural viewpoint? Is there any reason why it should not be built? A. No, not that I know of.

Q. We have heard something about an error of 2 feet on the Northern end of the Eastern wall where some land of the Commissioner, reserved for a lift shaft leading to the motor room has been encroached upon by Mr Nicholls' plan by approximately a couple of feet. Do you follow where I mean? A. Yes.

30 Q. Would any amendment of that so as to give that part of the wall two feet further to the West make any alteration or create any difficulties in your structural task? A. I do not remember the exact details of that but I think we had picked that up on our structural drawings. I would not be sure of that point but I think we had shown the limit of our structural work on our drawings, but in any case I would imagine there would be many such cases arise on the job during construction. On an alteration job such as that, where the building was not originally designed to go up as it is being built would of necessity involve many changes that would have to be made in construction.

40 Q. (Approaching) I show you sheet 3 of Exhibit L2. I think the portion of the wall in question is along there (indicating). At all events, on the lease the position is that there has been a part reserved for a shaft to a lift well. I show you also sheet No. 1, in particular with the goods

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 6.
H. A.
Llewellyn.*

Examination.

lift and sheet No. 2 which also shows the goods lift. This well, which is said to encroach a couple of feet forms one of the containing walls of the stairway well, is that so? A. That is right.

Q. And if we had to move that wall over two feet to the West would that create any structural problems of any sort which would prejudice the construction of this architectural design? A. I do not think so. It would depend whether columns C49 and C48 are reserved as part of that reservation in the lease but I should not imagine so because they always carried the upper part of the building and if C49 and C48 are not reserved there will be no structural difficulty at all. 10

Q. None whatever? A. No.

Q. The only guide to that is the red enclosure on the annexures to the lease, and that is the lift well shown on D, is it not? I want you to assume there is no reservation on the pillars? A. Then there is no structural difficulty in moving that wall back.

Q. Again, if you were told there is a small duct going down through one of our plans in a lavatory, would there be any structural reason why you could not either build around it or otherwise take no notice of the duct? A. What sized duct approximately?

Q. About three feet by four feet? A. No. 20

Q. No structural difficulty? A. No.

Q. Does the 1956 scheme utilise the minor pillars to the limit of their capacity? A. Two of them.

Q. Which two are they? A. 53 and 55, the ones you were speaking about this morning.

Q. With regard to the thickness of the concrete slab over the lounge, is that in your opinion structurally sound? A. Yes.

Q. And the pillars which are not shown on this particular plan, what are their numbers? A. 53 and 55. 30

Q. Now shown? A. That is right.

Q. Did you describe them as new pillars or pillars which exist but which were not shown on his plan? A. They are extensions of existing pillars.

Q. Are those extensions actually in being? A. No.

Q. They are planned extensions? A. Yes.

Q. And those planned extensions are shown on your structural drawings? A. That is right.

Q. Is there the slightest structural difficulty about those extensions? A. No.

Q. Going to the inset of the 1956 plan which occurs on the isometric 40 sketches, those dealing with the complete development which occurs about the 8th floor, if I remember correctly, the inset being some 16 feet over the width of about 80 feet, can you give His Honor any structural

reason why that inset occurs ? A. It is brought about because of the lack of any further carrying capacity in columns 53 and 55. Had the building been completed out to the eastern wall, those columns would have been overloaded so it is a question of taking up that eastern wall of the 1956 scheme until the limit of the carrying capacity of columns 53 and 55 have been reached. Then it was necessary to recess the building so that no more load came on those two columns from the new building.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

SIR GARFIELD : Q. Do you mean 53A and 55A ? A. The load goes down through 53A and 55A and then it is transferred partly to two
10 columns in front.

No. 6.
H. A.
Llewellyn.

Examination.

Q. You mean 53 and 55 ? A. Yes.

Mr WALLACE : Q. I want you to show diagrammatically, what is the design down below where the first extension occurs. Is there a position down below where you use one of the strong pillars and one of the weaker ones and put a member across ? A. Yes.

Q. Where does that occur ? A. That occurs between the Wynyard Lane level and the Carrington St. level.

Q. Do you remember the number of the pillars concerned ?
A. No. Well, 53 and 55 would be the easterly pair of stanchions
20 affected. I have just forgotten the Westerly ones.

Q. Could you explain on a piece of paper diagrammatically what is taking place there ? A. Yes, (witness draws sketch) I think this will explain it. That is Wynyard Lane level, Carrington St. level, the building alignment and the front of the building (indicating). There is a large reinforced concrete beam between that line. In two places this occurs in a north-south direction across the job, spanning from those two columns to columns 53 and 55. That carries 53A and 55A which start from the Carrington St. level and go right to the recess we spoke of. Then there is a small extension of 53 and 55, above the large
30 beam to support the roof garden. Those are the columns left of Mr Nicholls' plan. That occurs once on the line or 53 and once on the line of 55.

(Sketch of loads on beams; Exhibit 11.)

Q. Have you got to the stage where you can tell His Honor whether the building from the ceiling of the ground floor as you enter Carrington St.—where does that finally disappear on the 1956 plan ? A. On the alignment of Wynyard Lane and steps down to become a narrow covering over Wynyard Lane and widens again on the other side.

Q. Would that covering be about 40 feet in width ?
40 A. Approximately.

Q. Then it re-appears ? A. Over the shops.

Q. It crosses Wynyard Lane at a height of 20 feet ?
A. Approximately.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Examination.

Q. And then steps down on the George St. side of Wynyard Lane and becomes the roof of the shops? A. Yes.

Q. And widens out again? A. Yes.

Q. What would be the width of that ceiling on the Carrington St. side of Wynyard Lane where it widens out? A. The roof over the shops?

Q. Yes? A. I am sorry, I would have to refer to the plans. It was wider than 40 feet, but I could not remember exactly without reference to the plans.

Q. I show you sheet No. 3 of Exhibit 10. Can you work it out from there? A. Yes. It is 82 feet 6. That is the roof over the shops on the Eastern side of Wynyard Lane.

Q. How far towards the East does that go? I also want the width of the western side of Wynyard Lane? A. It is in two widths, the roof over the shops. That is the narrower width of approximately 21 feet 6, and the wider of the two is approximately 31 feet 6. Those dimensions may be accurately marked on Mr. Nicholls' plan. I was scaling those dimensions.

Q. What does sheet 3 of Exhibit 10 represent? A. That is the roof over Wynyard Lane (indicating) and that is a lower level roof over 20 shops facing Wynyard Lane on the Eastern side.

Q. What would be the position West of Wynyard Lane? A. That is on both the architect's and engineering drawings of the main scheme. The main building stops on that line (indicating) in the area over that, that is between columns 51 and 53. That area (indicating) is mainly flat roof area at the first floor ceiling on Carrington St. between Carrington St. and Wynyard Lane.

Q. Could you give me the approximate dimensions of that? A. It would be much easier and more accurate if I could measure that off the architectural drawings. It is an irregular area and its maximum width 30 is 43 feet and its length is the total length of Carrington Street which is 172 feet 11 $\frac{1}{8}$, 172 feet by a maximum width of 43 feet, and the narrowest width is 19 feet.

Q. Is the part you have just been alluding to which is coloured pale green on sheet No. 3 all one level? A. Yes.

Q. And that is all concrete slab? A. Yes.

Q. 14 inches in thickness? A. Yes.

Q. Are the stands such that they can take a load? A. Yes. It is designed in what is known as an accessible roof, a roof on which people can walk around.

Q. Going to the 1954 plans for a moment, would it be in your opinion easier or more difficult to extent and develop the 1956 plans than the 1954 plans? A. That is a building construction question and there is

no question about it because of the multiplicity or re-using of this concrete form work—this is from a structural point of view—re-using the same units a number of times instead of having to provide a great number of units once and then they are scrapped.

Q. Is that what happens in the 1954 plan ? A. The 1954 plan is one floor largely, over one area, and so the form work for the concrete a great deal is largely non-re-usable, whereas in the 1956 scheme the units are used a number of times so that it would be much cheaper to extend the 1956 scheme than the 1954 scheme. It is basically the 10 problem of a small building going a long way as a building spread out.

Q. Would there be a difference obviously in the cost of development ? A. Yes. That is a basic reason for the modern trend in developing buildings vertically rather than horizontally, from a cost point of view, not only structural.

Q. The 1954 plan, if it were to be developed later, would there be some material alteration or semi-demolition required of its roof in the central part ? A. The roof of each scheme is a concrete roof which forms the floor in any future extension but on that concrete roof is a very costly water-proofing material because the concrete itself 20 is not watertight. That concrete roofing material would have to be removed and wasted. It is non-recoverable. The effect of that is that there is a greater area of such material in the 1954 scheme making it more wasteful than the 1956.

Q. You say that would be a very costly thing, would it ? A. I could not give you figures per square foot.

Q. Going to the George Street side of the 1956 plan, can you envisage that for a moment ? A. Yes.

Q. There again, have you got the repetitive work to which you refer in going upwards being able to re-use the form work and so on ? 30 A. The same thing.

Q. If someone were so minded and wanted to reproduce to its full development the 1956 plan, and have those two buildings in that isometric scale which I think you have seen, said to be 80 feet apart from the centre, if someone were so minded and wanted to join them with some right-angled building, say, in the centre of the two, would there be any structural difficulties in so doing ? A. Not up to the 4th floor, not difficult but a great cost of providing these trusses to avoid—assuming the plan covered the areas of the small weak columns—if the area of those columns were covered then it would be necessary to provide the heavy trusses to 40 carry the work above the 5th floor.

Q. Would that be the same with the 1954 plan ? A. Exactly.

Q. So that whoever wishes to build on the centre of that site on the pillars that have been laid down would be confronted with that heavy truss difficulty or complication about the 4th floor ? A. That is so.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 6.
H. A.
Llewellyn.
—
Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.

H. A.

Llewellyn.

Examination.

HIS HONOR : Q. Unless I suppose you build pillars underneath that were strong enough ? A. That was the original scheme, to build these trusses, and would still I think be more costly than the most economic way. It is always possible to go down into foundations of buildings and underpin and put new columns in, but to do that in this case would be very costly.

Mr WALLACE : Q. I want to direct your mind to the 1954 plans which I now hand you (Exhibit H).

Q. I want to go to the 1954 plans that you now have in front of you—Exhibit “H”. There are just a few things that I want to get out of the way, first of all. In connection with the design of the 1954 plan, the columns continued up to the first floor on the Carrington Street level ? A. Yes. (Objected to.)

Q. Were some of the columns planned to be continued up to the first floor on the Carrington Street level ? A. That is so. Some of them went higher.

Q. Which of them were planned to go up to the first floor ?

HIS HONOR : Q. Have they numbers on them ? A. Not on this plan.

Mr WALLACE : Q. Would they be on the western side, or the southern, northern, or eastern ? A. They would be on the western side of Wynyard Lane, but not all of them on the western side went up.

Q. Well, what about those on the western side that did ? A. They went up.

Q. They were planned to go above the first floor ? A. They went above the first floor to the second floor.

Q. But supposing any extension of the building in height were to be erected at some future time on that inside portion of the building—that is to say the portion Mr Nicholls does not use—do you follow ? A. Yes.

Q. Would those columns involve the erection of those heavy trusses ? A. Once you go above the fourth floor. 30

Q. What do you say the depth would be ? Sir Garfield suggested 12 ft. A. Well, it would depend on the height of a storey. Normally that is 9 ft., and approximately 1 ft. for the thickness. So that they would be approximately 10 ft. If for structural reasons they could not be got within the 10 ft., then they would have to go through 20 ft., to the next floor. They would be almost certainly approximately 10 ft.

Q. Have you ever used an 80 ft. x 12 ft. truss in a building ? A. Not in a building. 40

Q. Have you seen a few ? A. It has been used.

Q. You yourself have not used it ? A. No, and it certainly has not been used in recent years. In the good old days they had plenty of money.

Q. In connection with the 1954 building, once he got above the fourth floor on that central portion which Mr Nicholls had not used, he was all set for the central trusses ? A. Yes.

Q. He had to have them ? A. Yes.

Q. How many of them would there be ? A. Four.

Q. And with the approximate width of these big columns, they would have to carry many hundreds of tons ? A. Not many hundreds of tons—approximately 100 tons per truss.

Q. Yes, I see—per truss ? A. Yes.

10 Q. And going to the 1954 plans—the first floor thereof—have you the plans there ? A. Yes. Originally all the floors were named from the George Street level.

Q. I think I am referring to the floor above the first floor on the Carrington Street level ? A. That would be the first floor of bedrooms ?

Q. Yes; the first and only floor of bedrooms on the 1954 plans ? A. Yes.

Q. The 1956 plans having two floors of bedrooms above that ? A. Yes.

20 Q. Directing your mind to that first and only for the bedrooms, can you say whether it appears or not that those enormous trusses, if built, would cut off a portion, and if so, what portion, of the floor area on the floor above that first floor on the Carrington Street level ? A. It would not be above this (indicating). The columns would go up to support the fourth floor, and the fourth floor would be completely free of central columns, and then this truss would be required on the fifth or sixth floors. That truss would be of the order of 3 to 4 ft. wide, running in a north and south direction across the two bedroom wings with suitable access doorways through it—corridor doorways—and therefore it would reduce the bedrooms. It looks as if apparently 8 bedrooms would have
30 to be replanned, because the amount taken off would make the remainder unusable as a bedroom.

Q. When you say “replanned”, do you mean that at all events as presently planned they would have to disappear ? A. Yes.

Q. And then, after the huge beams have been erected, the smaller columns would reappear ? A. Yes.

Q. And the loss of bedrooms, I suppose, in fairness to the 1954 plans, would be confined to the one floor where the big trusses are ? A. Yes.

Q. It does involve eight of them ? A. Yes.

40 Q. And if you stood at the bottom of the central light well of the 1954 plan, would you see what are called the huge beams crossing the light well at the Carrington Street level, being then about 4 ft. wide and 12 ft. in height—is that right ? A. Not at the Carrington Street

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.
Examination.

level. In Wynyard Lane looking up you would see four which appear as concrete walls—they would be steel trusses encased in concrete, approximately 10 ft. deep x 3 or 4 ft. wide—they would be flying beams.

Q. And would there be bedrooms in the walls near them ? A. Yes.

Q. So that the inhabitants of those bedrooms would have the trusses on either side of them or around them ? A. Yes; on that particular floor they would be looking up at them or down at them.

Q. And with all that treatment on the 1954 plans with these trusses and heavy beams and columns, does that have repercussions in the regularity or lack of regularity of the bedroom design ? A. Yes. 10
The plan, as I see it here, on the third floor, could not possibly repeat exactly on the fifth floor.

Q. Then you would have on some floors irregularly shaped bedrooms—of different sizes, and it has been said here, by an earlier witness, that some of the bedrooms would be only 6 ft. in width ? A. That would be so.

Q. You agree with that, do you ? A. Yes. There is a bedroom 8 ft. wide, and one of the trusses would be running along one wall of it, so that that particular bedroom, if left as is, would be less than 6 ft. wide. 20

SIR GARFIELD : You cannot have it both ways.

WITNESS : That particular bedroom is 8 ft. wide (indicating). The truss must come in that position so that whatever the width of the truss is would have to be taken from the bedroom. The immediate trouble I see from the architectural plan is that that white line (indicating) is a duct, and the architect would have to replan his bedrooms within those points, dodging that wall (indicating). The same would apply there (indicating), and there is another small one there. The nett effect means that he has 10 ft. less in the length of that wing in which to plan bedrooms. I was taking it as 3 ft. wide. 30

Mr WALLACE : Q. There was another aspect, a sort of corollary to what I have been asking you, and I will put the question in this form. Is there any other consequence of irregularity in the shape of the bedrooms which necessarily flows from the presence of those big trusses and pillars—irregularity in the shape of the bedrooms in order to dodge them and make allowances for them, and that sort of thing ? A. The columns as they exist would dictate the planning of the bedrooms.

Q. Some of the columns in that portion of the building vary in size and diameter, do they not ? A. They do vary, but this architectural plan is not correct, in that the column shown on that 40
particular floor—the inside column—is not of that size. The architects have not transferred the accurate size of the column on our column schedule onto this plan.

Q. I understand that what you are indicating is that although on this sheet of Exhibit H the columns appear to be of much the same size— in fact, they are marked different, is that so? A. Quite markedly. That particular column is shown as 4 ft. wide, whereas in effect it would be any more than 3 ft. or 2 ft. 6 ins.

Q. And then how would that column compare in width or diameter with this one (indicating)? A. Roughly the same. There are eight columns obviously drawn oversize.

HIS HONOR: Which sheet is that again?

10 WITNESS: That would be six.

Mr WALLACE: Q. What is this (indicating)? A. This one is 6A. That is a duplicate of this one (indicating).

(At this stage Mr Wallace marked a plan "6A".)

WITNESS: I see that the architect has corrected the column size on 6A. I would suggest that this one (indicating) was prepared after the receipt of our column sizes. He then corrected this plan (indicating).

HIS HONOR: What I am not certain of is this, that that document you are now looking at is part of the original exhibit?

SIR GARFIELD: We numbered every sheet originally.

20 HIS HONOR: If it is not numbered I think it must have got in somewhere.

SIR GARFIELD: Perhaps they may be removed.

Mr WALLACE: I removed temporarily the sheet which was numbered 7 by me the other day, and a new sheet which was numbered 6A today.

HIS HONOR: Those two documents can be pinned together and kept here, and marked for identification.

Mr WALLACE: They both have been marked part of Exhibit H.

30 HIS HONOR: Well, they were both marked when they were put in, because my Associate marked them immediately. I will rescind the direction that I gave for marking them for identification, and what I am going to do is put those two sheets together and call them part of Exhibit H, and I will keep them out of the way until they are wanted. Sheets 7 and 6A will be pinned together and marked part of Exhibit H, but kept out of the way for the time being.

Mr WALLACE: I am afraid that there is something still wrong somewhere, and I would like to get it straightened out.

Q. Take sheet 7 (indicating). What is that? A. That is the roof plan.

40 Q. That is the only roof plan amongst all these documents, is it not? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.

H. A.
Llewellyn.

Examination.

Mr WALLACE : Therefore, that ought to come off that and be part of the original Exhibit H.

HIS HONOR : Very well. Leave the one out that is duplicated for the moment. Sheet 6A will be kept separate from the rest of Exhibit H but will remain part of Exhibit H.

Mr WALLACE : I have marked two of them " 6A ". I will call the one taken out " 6B ".

HIS HONOR : Very well, provided it is out of the way, it won't get mixed up.

Mr WALLACE : Q. Look at 6A, is that the same as 6B ? A. No. 10 There is quite a wing which has been put on it. They both represent the third floor. That drawing (indicating) is dated January 1954, and this one (indicating) is dated June 1955. That (indicating) is a major amendment.

HIS HONOR : I have a faint recollection, from the other case, that there was some amendment that the Licensing Court agreed to.

Mr WALLACE : I have now taken 6B out.

HIS HONOR : Yes; only for the purpose of conveniently referring to the plan. Another way of doing it would be to call it 6B and only refer to 6A. What is the best way of dealing with it ?

20

Mr WALLACE : I will re-number part of Exhibit H.

HIS HONOR : I will simply say that Mr Wallace renumbers part of Exhibit H, and that sheet (indicating) will be numbered " 6B ".

Mr WALLACE : The difference between " 6A " and " 6B "—there are two differences, are there not, that I can see at once. One is that the pillars in " 6A "—the later of the two plans—have been drawn more accurately, according to your belief ? A. That is right.

Q. As regards their diameter ? A. Yes.

Q. And secondly, " 6A ", the later of the two, has had added to it a small bedroom ring—is that right ? A. That is right. There is 30 also this roof section.

Q. What is that blue thing at the foot of 6A ? A. That is a roof at the third floor level over the Carrington Street level—the roof of a public bar.

Q. Before I leave you here I just want to ask you this. In the 1954 plans, Exhibit H, do we find considerable irregularity in the size and shape of the bedrooms, due to the presence of those columns ? A. I cannot say that it is entirely due to the presence of the columns. I imagine so. It may have been due to the architect's layout, but he certainly would be controlled, in designing the bedrooms, by the presence 40 of the columns.

Q. The 1954 plans use the beam and slab method of construction, do they not? A. Yes.

Q. And because of the existence of the beams, on each floor must there be a false ceiling? A. Not necessarily must, but usually so, because the architect likes to have a flat ceiling, and it also serves the purpose of concealing a lot of service pipes.

Q. If you do not have a false ceiling you have ungainly beams sticking out, do you? A. Yes.

Q. So that invariably a false ceiling serves a dual purpose?
10 A. No; I would not say invariably. In many cases the architect is content to let the beams project.

Q. But at all events, that does not arrive with a flat-plate system of construction? A. No.

Q. And of course a false ceiling would mean added expense, would it not? A. Yes; much added expense.

Q. Another matter is this. If you compare the 1954 with the 1956 plans, is there any difference with regard to flexibility of future building?
A. Yes. The 1956 scheme, because it completely builds over one area of columns, leaves the remainder of the site to be developed as any
20 future planner may wish to develop it, keeping in mind the restriction laid down by the columns. The 1954 scheme, of course, almost dictates that any future development must be only upwards. I hesitate there, because it may be possible to fill in some of these areas left as light courts, but of course they would be controlled by light-well regulations—the light-wells to the bedrooms.

Q. Well, assuming that they were covered by existing ordinances, we can eliminate that possibility, can we not? A. Well, the 1954 scheme would be fixed in its plan development.

Q. Its future is pegged for all time? A. Yes.

30 Q. Whereas in the 1956 building there is plenty of room for flexibility in regard to future planning if desired? A. That is so.

Q. Were you ever fully satisfied, as a structural engineer, that the 1954 plans were capable of being developed to the full 150 ft.? A. No, not completely satisfied, but satisfied to this extent, that we knew it could be done with the possibility of the "could" being changed because of cost later on. In other words, if we find that a certain column will not carry any more load at, say, the second top floor, it may be possible to span a beam across to two columns which are able to carry that load, and that proviso applies to any future development. In other words,
40 we won't really know until the last floor goes on what the engineering solution will be, until we get that floor there.

Q. What does the structural engineer say now, that you will or will not be able to build to the full 150 ft. on the 1954 plans—within reasonable expense limits, of course? A. We can say that now. I hesitate,

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Examination.

because the regulations regarding these columns are in a state of flux, and also building materials. For example, the original columns on the Carrington Street were not designed for the same loads as on the George Street, but since then regulations have changed as regards fire-proofing. It is now possible to use a $4\frac{1}{2}$ inch wall, rendered on both sides, whereas a 9 inch wall was required before.

Q. If you went back to 1954 your doubt would have been much greater—that is the position, is it? A. Yes.

Q. Some comment was made, during my learned friend's cross-examination of Mr Nicholls regarding the thickness of the walls 10 surrounding the ducts in the 1956 building. Does that you said about the $4\frac{1}{2}$ " walls apply to them? A. The instructions we have in regard to the Kings Cross Hotel are that the walls to the ducts are to be $4\frac{1}{2}$ inch, rendered on both sides. It was 9 inch.

Q. Providing it was rendered on both sides? A. Yes.

Q. What are you doing in Caltex? A. The duct walls there are $4\frac{1}{2}$ inch, rendered on both sides, but in the older city buildings they are 9 inch.

Q. But that is apparently a fairly recent change? A. Yes; 20 12 months. I doubt whether it is in ordinance.

Q. But the $4\frac{1}{2}$ inch, rendered on both sides, has been approved by the authorities? A. Yes.

Q. Did you have any doubt about some of the outside columns in the 1954 building plans—doubts about their ability to stand the 150 ft. height—the side columns? A. The columns on the adjoining property sites?

Q. Yes? A. Originally some of those columns were not designed, for architectural reasons, to go to the full height, and some of those were just used to their capacity, and they have already been stopped off.

Q. When you say "used to their capacity", do you mean used to 30 the full extent of height that they intended to go? A. In some cases another storey was added because of this allowable increase in stress, in which case the foundation then becomes the determining factor. The column, because of the modernising regulations, becomes stronger, but the foundation—

HIS HONOR: Q. The margin for safety, in effect, was too great? A. Yes.

Q. It was discovered? A. Yes.

Q. And they allow the lesser margin? A. Yes, that is so. As 40 an example, the highest concrete strength that we used in the city was 3,000 lb. per square inch, only a few years ago, but the columns in Caltex House are 5,000 lbs. per square inch, so that the limiting factor of any column becomes the foundation to that column, which of course has not

changed unless the City Council, or in this case the Railway Authorities, say that we were conservative with the loading on the rock, and that we can increase. From the investigations that we have made, we are just about at the stage that we can say that it looks as if there will be no trouble about all of the Carrington Street 1956 scheme going to 150 ft., with the exception of that internal recess on the eastern face.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Examination.

Mr WALLACE : Q. I think you were asked to direct your mind to the question of the extention of the lift in connection with the 1956 plan, so as to give access to the existing dining room ? A. Yes; there was
10 an extension of the lift in both schemes. There was one on the western side of Wynyard Lane in the 1956 scheme.

Q. The western side of Wynyard Lane ? A. Yes. There was also one involved on the eastern side in the 1954 scheme.

Q. I think that there is only one lift legislated for in the 1954 plan, is there not ? A. One additional lift, yes.

Q. Where is that ? A. That is on the south-eastern side—I am sorry, the south-western side of the George Street block.

Q. The south-western side of the George Street block ? A. Yes.

Mr WALLACE : Does Your Honor see that ?

20 HIS HONOR : Yes, that goes down to the dining room, does it ?

WITNESS : Yes.

Mr WALLACE : Q. If in future development that portion of the 1954 plan only goes up to the seventh floor—do you follow ? A. Yes.

Q. Whether it be due to height or area restrictions of the City Council or structural difficulties or otherwise ? A. Yes.

Q. And if the George Street portion goes up to 150 ft. ? A. Yes.

Q. Then, under that sort of planning, there would be no lift access to the upper storeys of the George Street building in the 1954 planning ? A. That is so. There is no lift provided in the 1954 scheme.

30 Q. There is no lift provided in the 1954 scheme whatsoever ? A. Yes, that is right.

Q. That would be unusual in your experience in a city building, would it not ? A. As a citizen, yes.

Q. What I want to stress is this. In the 1954 plans no liftwell whatsoever is planned for—not even the liftwell, in the 1954 plans, in the George Street building ? A. Where that lift is shown was an existing well in the old scheme.

Q. Yes, but there is no liftwell shown in any part of the George Street building ? A. I am sorry—no.

40 Q. Not at all ? A. No.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Examination.

HIS HONOR: You got to the stage that there was no liftwell in the 1954 scheme on the George Street side.

Mr WALLACE: Q. Yes. Of course that was only a lift that would hold two or three people? A. It was a small lift. I could not say its capacity.

Q. Would that be suitable, in your opinion, for the servicing of the George Street building, as the only means of lift, disregarding the fact that it does not go up the final four floors? A. Architects do not allow me to have such opinions.

Q. I have been reminded that to provide a liftwell in this 1954 plan 10 in the George Street building—would that be a matter of some structural consequence? A. Quite a problem, yes. It is possible, of course, but to cut a hole through a building for a liftwell that has not been planned is possible, but quite difficult structurally, and as regards the replanning of the area around the liftwell.

Q. With regard to the service lift—I am referring to the 1956 plan—do you know that there is a service lift on the Carrington Street side—? A. Yes.

Q. Coming down at present to the floor immediately above where the kitchen is planned for near the coffee lounge? A. Yes. 20

Q. And only a few feet away from it? A. Yes.

Q. A service lift which is actually in use at the moment? A. Yes

Q. Mr Nicholls has indicated— (Objected to; pressed.)

HIS HONOR: Why not ask him that?

Mr WALLACE: Q. Could the continuation of that service lift down below so as to service the kitchen, present any structural difficulty? A. I have not investigated it, but I should not imagine so, because the columns surrounding that area to trim that lift well would be in existence.

Q. They would be in existence? A. They would be in existence because they go beside the existing lift. Taking it another floor down 30 should be a fairly easy matter.

HIS HONOR: No—another floor up.

SIR GARFIELD: The question was “down”.

WITNESS: I am sorry. If it is a floor up it depends on the carrying capacity of the columns, and seeing that we have not gone very far with our building I doubt whether there would be very much difficulty.

Mr WALLACE: Q. It was my mistake; I had forgotten. The service lift at present services two or three floors below where the kitchen is to be? A. Yes.

Q. And then there would be the question of bringing it up to the 40 kitchen floor level with corresponding raising of the motor? A. Yes.

I see no real difficulty at all about that. That is done many times in a building.

Mr WALLACE : Q. Yesterday you gave me an answer directed to the weight that the proposed beam would carry. I suggested that it would carry some hundreds of tons, and you said, "One hundred tons." I think you want to correct that? A. Yes. My mental arithmetic was not too good. An approximate estimate would be 800 tons per truss. My mental arithmetic gave me "80".

Q. So that the correct answer is "800 tons"? A. Yes; that depends on the height that that centre court is taken to. But the 800 tons is based on the diagrammatic sketches that we had from Mr. Ham.

Q. Would 800 tons be the maximum or the minimum? A. If the centre court was taken to the full 150 ft. height and entirely closed over, of course it would be much more than that. The 800 tons was based on the Ham scheme—the 1954 scheme—taken to 7 floors.

Q. But if, contrary to evidence that has been given about ordinances relating to permissible heights and having regard to angles, and so on, they went up to 150 ft., it would be much more than 800 tons? A. Yes.

Q. I want to ask you this in the event that I have not already done so. Is it possible to apply the flat-plate system of construction to the 1954 plans? A. Not those plans. The flat-plate system preferably requires three spans to the columns. In the 1956 scheme it only covered two spans on the Carrington Street frontage. That was the reason why we did not give a direct answer to Mr Nicholls when first asked, but we have been able to develop a scheme for the two-span column, so that it is completely possible to do a flat-plate.

Q. You said something about the service lift yesterday. Do you wish to add something to what you said yesterday on that? A. Yes. Because I was depending on memory, I inspected the site last night after the Court. The motor room of the lift at the moment is one floor above Carrington Street, so that it looks as though it may be possible to use the lift as existing, but that is for the lift people to say, but at the most it will necessitate raising the motor room about 6 ft. We did extensions around that area about 1947. The motor room floor is a temporary floor and it would be quite a simple matter, if necessary, to extend the lift and get overrun to serve the Carrington Street level.

Q. No constructional problems at all? A. None at all.

Q. Have you any idea of costs at all, assuming that you had to lift it? A. Assuming that you had to lift it—it is purely an estimate—£2,000.

Q. You said something about doing work in 1947? A. Yes.

Q. That was around the service lift? A. Yes.

Q. As a matter of fact, you have done other work relating to cool rooms, and pillar work, in recent years, have you not? A. Yes, that is so.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.

H. A.

Llewellyn.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.
Examination.

Q. Just tell His Honor briefly what has been the nature of that work ? A. The structural part of it was the building of a single-storey structure over the Wynyard Lane level, which brought the roof of the cold rooms to the Carrington Street level. That was on the southern side of the site, and approximately between the boundary line of columns and these heavy steel columns in this case.

Q. When was that done—approximately ? A. About 1953.

Q. I think the cool room was enlarged, or the position of it was raised. Was something like that done ? A. No; there were additional steel stanchions erected. That was last year. 10

Q. Was there what you know as contract No. 2— ? A. That was contract No. 2.

Q. Let out to the building firm of Whittles ? A. Yes. In the construction of the cool rooms several large steel stanchions were affected, and they were constructed as part of the cool room contract.

Q. That was earlier than the contract No. 2 ? A. Yes. The cool room contract had steel stanchions, but additional steel stanchions were put up under contract No. 2.

Q. And did those additional steel stanchions consist of extensions to some of the pillars we have heard about ? A. Yes. 20

Q. And was that done under a separate contract to Whittles ? A. Yes. Mr Whittle actually was a contractor for both schemes.

Q. And the work that Whittle did in contract No. 2, was that shown on the 1954 plans ? A. It was not part of those documents. The 1954 plans took those stanchions to be then existing.

SIR GARFIELD : Q. When the work was being done on contract No. 2, were these stanchions then existing ? A. Yes; these stanchions were put in under a separate contract, and they would be then existing.

Mr WALLACE : Q. But at the time that the work was done there were no detailed drawings at all of the 1954 plans, were there ? A. There 30 may have been preliminary sketches, but there were no detailed drawings.

Q. By the way, that ran into quite a sum of money, did it not—the extension of columns ? A. Yes ; it was about £20,000, I think. I cannot remember exactly.

Q. And I think that about that time there was some pressure from the Licensing Court to show sincerity on the part of the lessee in connection with building ? A. Yes; that was the reason why it was decided to proceed with the design of these columns, and in discussion with the Railway Department it was agreed because nobody knew at that stage what sort of building would be put on the column. The existing columns 40 which were projecting slightly above the roof at Wynyard Lane level were continued up on the same side so that no matter what buildings went up on top they would be capable of carrying the full load.

Q. That work was proceeded with and done by Whittle? Has it concluded? A. Yes; only just completed. There was a question of the plumbing.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. By "plumbing" you mean whether they were truly vertical?
A. Yes.

SIR GARFIELD: Q. They were in fact straightened up? A. Yes. It was a question of allowable tolerances, and there is a disagreement amongst engineers as to what are allowable tolerances in plumbing.

Defendant's
Evidence.

No. 6.
H. A.

Llewellyn.

Mr WALLACE: Q. Another matter is in connection with the step-in
10 towards the west on the 1950 isometric plans—that is the fully developed plans? A. Yes.

Examination.

Q. The step-in towards the west on the Carrington Street building?
A. Yes.

Q. You have explained why that was stepped? A. Yes.

Q. If some person in future were so advised as to want to build on the central portion of this site, would it be structurally possible to fill up that step by cantilever processes? A. Yes. After these heavy columns were built and the trusses taken up, the floors could be cantilevered over into that recess.

20 Q. Is cantilevering common enough in building work? A. Yes.

Q. It is the foundation of a major type of bridgework, is it not?
A. Yes; one form of bridge construction.

Q. Assuming that in the 1954 plans they did not have false ceilings under the beams—assume the two cases, one where they did and one where they did not? A. Yes.

Q. Now, where they did not have false ceilings, would the cost of maintenance be higher? A. The re-decorative cost would be higher. Obviously the flat surface is much easier to redecorate than in the case where beams are projecting.

30 Q. Something was said about breaking up the light effect also?
A. Yes; beams cast shadows on the ceiling, which reduced the reflection.

CROSS-EXAMINED

Cross-
examination.

SIR GARFIELD: Q. Have you finished your structural designs for this 1956 scheme yet? A. No.

Q. To what point have you got? A. To the stage where they are practically ready to hand over to the draughtsmen. There will be another fortnight's work.

Q. Have you been working at that continuously since you were instructed? A. No.

40 Q. How long have you been working on them? A. I would have to remember the time.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination.

Q. When did you start on them ? A. We started on them in June 1956, and what has happened is that because of the pressure of other work the engineer directed to continue the design after the preliminary framework had been done, has been called upon to do other work.

Q. I suppose for costing purposes you keep account of the time occupied ? A. Yes.

Q. Could you look up and tell me how many hours your staff has been engaged on the job ? A. Yes.

Q. And are your designs actually in existence on paper, that I could look at ? A. No; the designs are done on calculation sheets. 10
We could show the calculation sheets.

Q. And you have nothing on paper in the way of a structural design—planwise ? A. The procedure in our office is to put tracing paper over the architectural drawing, and the designing engineer uses coloured pencil to mark out the different members of the structure.

Q. You have that ? A. Yes.

Q. And you also have your calculations ? A. Yes.

Q. Could you get them at half past 11 when we have a break, and bring them up ? A. Yes.

Q. And you will do that ? A. Yes. 20

Q. And your staff has spent on them many hours ? A. Yes.

Q. What would it run into—hundreds of hours ? A. I am guessing, but I would say about 100 hours.

Q. You have told my friend that you would not be sure that what you are contemplating to be built immediately on the Carrington Street frontage could carry a building to the 150 ft. height ? (Objected to).
A. I say that we are not 100 per cent. sure yet, but we could tell the architect with confidence that that could be done.

Q. As a result of recent calculations ? A. Calculations that have been going on. 30

Q. You have got to that stage ? A. Yes.

Q. You are not sure, but you think you could advise him ? A. I am trying to explain the assumptions that we have to make. When the building goes to the full height there will be superstructures on the roof which we will have to just guess at—tank rooms and services on the roof. What will probably happen is that, with regard to the columns that are in doubt and that are causing me to say that we are not 100 per cent. sure, we will probably have to say that any such superstructures cannot be put on that area and will have to go to another area. Those are the sort of doubts that we have. 40

Q. They are doubts as to what can be done on the existing proposed work ? (Objected to). A. No; it is a restriction on whoever completes the building, as to where he puts certain parts of his work.

Q. Of course the job of determining a sub-structure to carry a projected 150 ft. building is not novel to an engineer, is it ? A. No.

Q. But, as you say, it takes a long time to work out and check up ?
A. It takes a long time when you are not designing the foundations, which are already there, and you are putting a centre section in.

Q. It takes some time ? A. Yes.

Q. I want you to take this bundle of plans (handed to witness), and just look at them quietly yourself, will you ? A. Yes.

Q. Could you tell me, from those plans, whether what is there
10 projected would be capable of extension up to 150 ft. ? A. Assuming that these were the same drawings— ?

Q. Yes ? A. If these are the exact copies of those we are working on in the office, with the same proviso, yes.

Q. Assuming that I was an engineer and I was just given that plan— ? A. No.

Q. So that if you were merely given what you are shown, you could not tell whether it was capable of extension to 150 feet ? A. If given time for checking you could. I mistook your first question. If given this set of drawings and given time, it is a matter of calculation as to
20 whether you could take it to 150 feet.

Q. But it is a matter of design ? A. Yes.

Q. But if you were given no structural plan and if you were asked that question and given a short time— ?

HIS HONOR : What do you mean by a “ short time ” ?

SIR GARFIELD : Three weeks.

WITNESS : Yes.

Q. Would you be able to tell whether it would go to 150 feet ?
A. Yes.

Q. What would you have to do ? A. It would have to be
30 calculated for each floor. It is easy to see how many bedrooms you would have to 150 feet, and by allowing for those loads—taking the loads on each floor and taking them down to the foundation—you could determine the total load. When it is put in that form it is not a detailed design, but it is possible to calculate whether it could go to 150 feet.

Q. But in order to determine what is proposed by these plans could be carried up to 150 feet, you would need to design a structural plan for it and would out loads and so on ? A. Yes, but it would only be an estimated design.

Q. And it would take you some time ? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination.

Q. And could you tell, by looking at these plans, whether a building built to that design and carried up to 150 feet was susceptible of lateral extension across Wynyard Lane ? A. I am sorry. Are you presuming that the substructure is existing ?

Q. Yes; I am assuming that. A. Across Wynyard Lane ?

Q. Yes. A. Well it is not a general case; it is a particular case. We have done a lot of investigation in relation to the substructure for the previous 1954 scheme, and therefore it is a question of saying that any structure could be put across that easterly extension, the only limit being the carrying capacity of the columns. 10

Q. But where can you get to the carrying capacity of these columns from these drawings ? A. We say that any structure can be put over the columns according to their carrying capacity.

Q. The columns need not be made any stronger for that design so far as those drawings are concerned—is that the position ? A. The internal columns on the Carrington Street frontage are not affected by—

Q. I am not asking you that. So far as these drawings are concerned, the columns could be made just strong enough to carry any structure so far as those plans are concerned ? A. Yes.

Q. From those plans alone can you tell me whether a building built 20 in accordance with those plans could have been extended laterally across Wynyard Lane ? A. I am sorry; I do not follow you exactly because these plans do not indicate anything.

Q. Exactly—that is what I mean. A. Well, the answer is “ No ”.

Q. And from those plans alone you could not even tell whether that building was structurally possible ? A. Given time I could.

Q. By drawing other plans ? A. Yes.

Q. But from these plans, I mean ? A. No. Remember again that we did a lot of investigation into the 1954 scheme, and we could say that that part in the 1954 scheme would be possible because the loadings 30 are similar.

Q. I am asking you about this plan ? A. Yes.

Q. In point of fact, that bundle is little more than a design, is it not ? I do not want you to be answering me in this sense, that you have done a lot of work since.

Mr WALLACE : Or before.

SIR GARFIELD : Q. It does not matter when. I do not want you to be answering me in the sense that because you have done a lot of work since you have certain advantages ? A. Could I put it this way ?

Q. What is the date on those plans (indicating) ? A. 25th June. 40

- Q. Put out of your mind the work you have done since the 25th June. Then your answers to me would stand, would they not? A. No. What in fact happened was that Mr. Nicholls came along with some such plan and said, "Would it be possible?"—
- Q. Let me withdraw the question. Supposing you had not prepared any structural design for this building at all? A. Yes.
- Q. That you were simply an engineer with a knowledge of what was at Wynyard? A. Yes.
- Q. And you were given this plan only (indicating)? A. Yes.
- 10 Q. The question is, firstly, could you tell from those plans the strength of the columns? A. On the spot, no.
- Q. Or could you tell from those plans? A. These plans do not give any detail of the structural carrying capacity of any parts—no.
- Q. Nor could you tell, from those plans, whether that building was susceptible of extension to 150 ft.? A. Well, I find a difficulty in putting myself in this hypothetical position. If another engineer looked at that, he would say, "Well, if the columns are to scale they look as if they would be capable of carrying a lot more", and he would have to investigate.
- 20 Q. But he could not tell from this plan alone? A. No.
- Q. And if I asked you whether the building could be extended laterally across Wynyard Lane, that indicates nothing? A. That is so.
- Q. And those plans are little more than a design? A. Well, they are the sorts of plans that are put before us regularly, from which to prepare material.
- Q. But from that point of view it is little more than a design? A. An architectural design.
- Q. After you get these architectural designed plans, the normal practice is that you set to work on structural plans? A. Yes.
- 30 Q. And when you have finished your structural plans, it is quite common for the architectural plan or design to suffer modification? A. Yes.
- Q. And sometimes drastic modification? A. Yes.
- Q. And that is common experience? A. Except this, that they run parallel. As soon as the engineer finds something he lets the architect know.
- Q. And in this case the parallel running has not finished yet? A. No; it does not finish until the building is completed.
- 40 Q. But there comes a time when you do get structural plans which accord with the architectural plans, or vice versa? A. Yes; that depends on the contract. If there is a multiple tender, that happens at the time you are going to tender.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 6.
H. A.
Llewellyn.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*No. 6.
H. A.
Llewellyn.
Cross-
examination.*

Q. You remember some preliminary structural sketches?
A. Yes.

Q. In Exhibit 10—which were produced to your office? A. Yes.

Q. How long would these take to prepare? A. A matter of days.

Q. They are so preliminary as to be the result of very short preparation? A. Yes. No, that is not quite right, because those columns usually take a long time, as regards work, but they had already been investigated in connection with the 1954 scheme.

Q. Is the date on these plans true? A. That would be the date on which our office system works. The final date would be when they 10 were amended. If there is a letter after the number it would indicate that they had been amended, and they are supposed to change the date each time they are amended.

Q. There is a number on the plan—"1A"? A. That indicates that there was some slight amendment made, and it was called "1A", and then it would be immediately printed.

Q. This is dated 18th June (indicating)? A. Yes.

Q. And you said that you made your calculations on the 13th June?
A. Yes.

Q. And these are the product of your calculations in the intervening 20 days? A. Yes.

Q. Well, it would be fair to say that they are very preliminary, would it not? A. Except that the architect was asked to prepare plans so that the builder could give a ceiling price.

Q. I am not criticising what you did. A. If they were so preliminary that there was a tremendous extra on the job, we would be very unpopular, so that they are made with an eye to the fact that a builder is pricing on them. When the jobs are prepared to the stage of going to tender, that is the position.

Q. What about the provision of reinforcing steel? A. Yes. 30

Q. That gives you great latitude of course, does it not? A. No; the P.C. item is always a self-adjusting item in the tender, so that it does not give you great latitude. Those plans show the amount of concrete and the amount of formwork needed for the concrete, that the builder has to provide. Therefore, if they are a long way out, they are misleading to the builder. The reinforcing is a provisional item, anyway, and while it gives you a bit of latitude, it is not very much.

Q. Any change in these columns necessitated by this redesign is for the account of the building owner, is it not? A. Yes.

Q. And any diminution, once you have a price from the builder, is 40 not for the account of the building owner, is it? A. In this case, yes.

Q. You do not know that, do you? A. Yes; I do know that. These plans were prepared on the beam and slab system, and the particular contractor who was giving the price was very keen on the flat-plate system. His prices were taken out on that drawing, and we are now preparing a flat-plate design, and savings will be made.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. That is what you think, is it? A. Yes.

Defendant's
Evidence.

Q. Would you deny that the builder's price was to be on the understanding that you would try and get it on a flat-plate design?

No. 6.
H. A.
Llewellyn.

A. I did not know that. All I was asked for was to make a flat-plate design, and I said that we would.

10 Q. You were asked about a scheme in 1954. Am I right in thinking that the basis of your comparison is ease of construction? A. To build, you mean?

Cross-
examination.

Q. Yes, to build, and perhaps simplicity of structural design. You have prepared them to see which is which from that point of view, have you not? A. Yes. Simplicity of structural design would be a matter of individual design by individual engineers.

Q. But they were the factors that you had in your mind? A. Yes.

Q. You were a partner of Mr Stanley, were you not? A. Yes.

20 Q. And were you working with him when he was designing the substructure at Wynyard? A. I was a partner with him. I was not actually working on the job.

Q. And you know that he was the then lessee's engineer? A. Yes.

Q. And he was working in conjunction with Mr Innes Kerr, the architect? A. In what scheme was that?

Q. In the original scheme? A. Yes.

Q. He was working with Mr Innes Kerr, the architect? A. Yes.

Q. And he was the lessee's architect? A. The then lessee's architect.

30 Q. I suppose you would know, would you not, that the actual dimensions of the columns in the sub-structure, as they now exist, were dictated by Mr Stanley's design? (Objected to; pressed.)

HIS HONOR: On this question that we are now debating, as I understand, it is a question of reasonableness.

SIR GARFIELD: From the lessor's point of view.

Mr WALLACE: My friend says "from the lessor's point of view," but I do not agree with him.

HIS HONOR: Well, from both the lessor's and the lessee's points of view—what is reasonable in one case may be unreasonable in another.
40 I propose to let this evidence in. The logical thing in this class of case is to go through the pleadings, look at the documents and then say,

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination.

“ Well, these are the issues ; this is the true construction of the document ; that is relevant and that is relevant, and this is irrelevant ”, and to shut out everything on that basis which is irrelevant. What happens when the case goes on to appeal is that the position sometimes is hopeless, and the whole thing comes back. I propose to allow it in. It is not getting too far afield, by any means. An objection has been raised and that position has been protected. I think that it would be impossible for me to conduct this case on the line of dealing with everything strictly as we go along ; we would never get finished. I may be doing a wrong thing, but my present intention is to let all this in. It is not getting too 10 far afield, anyhow.

SIR GARFIELD : Q. Were not the sizes of the columns in the sub-structure at Wynyard dictated by Mr Stanley's design ? A. I cannot answer that except from the evidence that I see in our office. I was not in his office then. I was not a partner of Mr Stanley. I joined him in 1946, so that I can only say that from the evidence in our office.

Q. You still have Mr Stanley's calculations ? A. Yes.

Q. And you still have his drawings in your office ? A. Yes.

Q. Could you get those for me ? A. Might I explain that Mr. 20 Stanley was a man who was too impatient to put calculations on paper. I can show you lots of calculations that were prepared by his staff, to summarise the position. There are plenty of them—there are drawers full of them. They are not indexed. Those are the sorts of things I am referring to (indicating).

Q. Do you recognise these as copies of Mr Stanley's calculations of the sizes of these columns that the Railways were asked to build for the lessee ? (Objected to.)

HIS HONOR : That does not prove that, Sir Garfield.

WITNESS : They appear to be copies.

SIR GARFIELD : Will you see whether you have the originals of his 30 calculations ? A. I would not have the originals. These are the originals I think (indicating).

Mr WALLACE : If you do not recognise, say so. Please be very careful.

WITNESS : May I produce some ?

HIS HONOR : Yes.

WITNESS : These are the sorts of things that we take to be calculations for the Plaza.

SIR GARFIELD : Q. Those are Mr Stanley's records ? A. Yes. Some of them are marked “ Copy No. 1 ”, others are marked “ Copy 40 No. 2 ”, and so on.

SIR GARFIELD : I want to directly establish that that actual plans of these columns and their dimensions were stipulated by the lessee for the lessee's purpose for a structure designed by the lessee, and that we build them at the lessee's direction.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Mr WALLACE : I submit that it is grossly irrelevant, and I think that I am fully justified in taking technical objections, and I do not want this witness to gloss over what I regard as technical matters.

Defendant's
Evidence.

HIS HONOR : Very well; you may take objection to anything that is bad in form.

No. 6.
H. A.
Llewellyn.
Cross-
examination.

10 SIR GARFIELD : That is why I wanted the witness to get the drawings.

Q. Will you, without subpoena, bring all the drawings that you have in Mr Stanley's records—all the drawings that relate to the Plaza Hotel, its substructure and its superstructure ? A. Yes.

Q. And secondly all his calculations which are still in the records, of the sizes of columns ? A. When ?

Q. You can fix your own time for that ? A. I have a space in the roof over my place at home, stored full of them. Mr Stanley had these drawings stored at his home. The Chief Draughtsman and I went through a lot of them. We destroyed what we thought were preliminary schemes, and there are still bundles and bundles of them. I am prepared to bring them to Court, if given transport, but I think they are going to clutter up the Court. I can bring in all documents relating to the Plaza Hotel, but it is a difficult job.

Q. Have you got his final set ? A. That is the difficult problem to determine—what is the final set. The original design was done in 1933. There was an amendment to that design in some form that we are not able to find, in 1938, but . . . (The concluding portion of this answer was objected to and directed by His Honor to be struck out from the notes).

30 Mr WALLACE : If Sir Garfield wants documents produced, I do think on this particular matter that he will have to have a subpoena. I will argue this subpoena the same as he has argued all my subpoenas.

HIS HONOR : Let us take the matters one at a time. The first submission is that that is not an answer to the question, so that it has been struck out. Therefore, he had better go back to where he was describing the documents.

WITNESS : May I say this— ?

SIR GARFIELD : You had better not.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 6
H. A.
Llewellyn.*

*Cross-
examination.*

HIS HONOR: The next thing is that the witness is asked, in the witness box, whether he is able to do something. He is not to be put into any worse position than if a subpoena had been served on him; so that I think that the better thing to do would be to give him a subpoena.

SIR GARFIELD: Yes, and I give him foreknowledge of it now.

HIS HONOR: Yes. As far as bringing them to the Court is concerned, I think he ought to have a subpoena; otherwise it is not fair to the witness. Mr Wallace, you have said that this matter of the earlier plans is quite immaterial and irrelevant. You may be right. Is it not possible for your side to check up the facts, and even if it be an irrelevant fact it could be admitted if it be a fact? 10

Mr WALLACE: I would certainly do that. My learned friend would only have to come to me and ask, and I would admit it for the purposes of the suit.

HIS HONOR: Yes; that is what I would thoroughly recommend. I have already said that I am going to allow evidence in which I think should go in. It might take weeks to do this technically, to get all the plans. The inference I have to draw is whether or not these columns which are actually there were put substantially in the form that they are there because of an earlier plan. Take an extreme case. If it be a fact that the sum of £109,000, that £109,000 must have covered specific work. It should be possible to discover whether those columns, for which £109,000 was expended, were columns to take the superstructure to a certain height, or whatever it was. That admission may be made without deciding whether the matter has got any relevance whatever. 20

SIR GARFIELD: I submit that this is an issue in the pleadings. I want to bring the documents out in this way. The alternative way is very cumbersome.

HIS HONOR: I think that it should be possible to answer the question without going into all this detail. As a matter of common sense, it is apparent that interest would be paid on the £109,000, and that ought to be able to be checked up. 30

SIR GARFIELD: There is somewhere in our possession here the actual allocation showing which ones were paid for and which ones were not.

HIS HONOR: You may want some little time, Mr. Wallace, to think about this matter. In the meantime, this witness will have to get his subpoena.

Mr WALLACE: If my friend wants to establish something which I think is irrelevant, I would, nevertheless, meet him in every case, but where I think the matter is grossly irrelevant and where he was attempting to get it in this very inconvenient manner from this witness, then I would ask why cannot he get it from his own records? 40

HIS HONOR: When we come to the records we will deal with them but if the records are available I cannot see why they cannot be shown and the question asked whether they were put there for the upper structure in this plan.

Mr WALLACE: If, during the adjournment at half past eleven, my learned friend shows me what he has and asks me to make an admission subject to relevance, I may be able to assist him.

HIS HONOR: Yes. That is an obvious suggestion.

SIR GARFIELD: Yes. That is the first time we have had that.

10 HIS HONOR: Have you asked for admissions on that?

SIR GARFIELD: Not specifically. My friend said that he was going to put me to formal proof and I indicated what were the specific facts I wanted to get out.

HIS HONOR: We won't waste any further time on it for the moment, but you might have a discussion during the short adjournment.

SIR GARFIELD: I obtained from Mr Nicholls certain plans which he had at the time and which were marked for identification No. 15.

Mr WALLACE: My clerk took those down to my chambers, and they are at present there.

20 SIR GARFIELD: Perhaps we could get those back again and I am prepared to discuss the matter.

HIS HONOR: Have you enough material to go on with, with this witness, on other matters between now and the short adjournment?

SIR GARFIELD: The next thing I have noted was to take him to m.f.i. "15", but if I ask him some questions now perhaps he could look at m.f.i. "15" himself.

HIS HONOR: Yes.

(At this stage a set of plans dated 25.9.56 were m.f.i. "17".)

30 SIR GARFIELD: My friend might later be prepared to admit that they were sent to us.

Q. You have, from time to time, looked at the plans of the sub-structure prepared by Mr. Stanley? A. Not to any great extent. Remember that Mr Stanley had carried on the job up to the 1954 scheme. Now we are presented with a number of columns sticking up at their respective levels, and with figures indicating what load they would carry, and that is where I start.

Q. But did you not look at any stage at any plan of Mr Stanley for the projected use of these columns? A. Not for the use of the columns, no; for minor details on the job, that each architect requires—
40 not for the use of the columns.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 6.
H. A.
Llewellyn.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 6.
H. A.
Llewellyn.*

*Cross-
examination.*

Q. When we get these documents m.f.i. "15" I want you to have a look at them and see whether you have seen them or their duplicates.
A. Yes.

HIS HONOR: Q. You say that you started with columns showing above certain points? A. Yes.

Q. And with figures showing earlier calculations? A. Yes; as to what loads they were carrying.

Q. Did you accept those earlier calculations? A. Yes; otherwise it would have meant checking right through.

SIR GARFIELD: Q. And you had the advantage of seeing physically 10 what was there? A. Yes, and Mr Stanley had said that he had checked with the Railway Department and they had agreed that that was the carrying capacity of those columns.

Mr WALLACE: Q. When was that? A. Some time before his death. I would not know when. It would be approximately somewhere about 1953/1954 when he first started the thorough investigation of the 1954 scheme. He himself was in doubt as to which were the final calculations. That is why it is impossible for me to tell you.

SIR GARFIELD: Q. You say that figures were agreed to with the Railway Department? A. Yes. 20

Q. And were they recorded? A. I cannot find any letter or any note of Mr Stanley to show that those are the final figures. I have two drawings, one indicating a set of final figures, and another set of drawings indicating another set of final figures, and—

Q. Show me the drawings. (Documents handed to Sir Garfield). This is one of those documents that you have got (indicating)? A. Yes.

Q. Whose handwriting is on it? A. That is definitely Mr Stanley's handwriting. Those (indicating) are his initials. "These loadings were determined on the basis of the 1933 designs and are modified 30 by the 1938 designs; see the new third floor sheet No. PXIII." I found what I took to be "PXIII" (indicating) which gives another system of loadings.

Q. You, with your knowledge of plans, think that this PXIII coincides with the PXIII in Mr Stanley's handwriting on the first of the sheets that you produced? A. Yes.

(Documents tendered).

HIS HONOR: Mr Wallace has indicated that he may or may not make admissions. I think, however, that these documents are only loading the case at the moment. The witness does not mind leaving these 40 documents in the custody of the Court.

WITNESS: No.

HIS HONOR: He wants them back because they are part of his permanent records.

(Two drawings m.f.i. "18".)

HIS HONOR: The witness has indicated that he does not mind them remaining in the custody of the Court.

SIR GARFIELD: Q. You have two other column plans, one relating to the second floor level? A. Yes.

Q. And the other relating to the fourth floor level? A. Yes.

Q. And with a column loading calculation on each? A. Yes.

10 Q. And these (indicating) you have got from Mr Stanley's records, I take it? A. Yes.

Q. What is this one (indicating)? A. This is a photostat which I think Mr Stanley got from the Railway Department.

Q. You found them in his records immediately? A. Yes, it indicates—again I have no means of showing that this is the final plan—it indicates a foundation plan.

Q. This has a date—1934? A. Yes.

Q. Does this show any floors (indicating)? A. That is the foundation.

20 Q. This other document that you produced—what is that? A. This is a Department of Railways plan of column 51, immediately below where we started to extend. It would be the last length of column 51 built under the Joe Gardiner's scheme.

Q. It carries up to where? A. That section, SL36.76 (indicating).

Q. SL is street level, is it? A. No, standard level. That amount of it (indicating) would be projecting above the concrete. 51 would have been at the Wynyard Lane level.

30 Q. When you said "that much", you meant that much which is above the line 36.76? A. Yes.

Q. Did you see anything amongst Mr Stanley's records like plans of columns at Wynyard? A. Yes.

Q. There were a large number of them? (Objected to). A. There would be 5 or 6 such sheets.

Q. Whether or not there were more would depend upon a search of his records? A. Yes.

(Four sheets of plans forming part of Mr Stanley's records m.f.i 19).

40 HIS HONOR: Q. Do you mind if they remain in the Court temporarily? A. No.

Q. You can always have them back later. A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 6.
H. A.
Llewellyn.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 6.
H. A.
Llewellyn.*

*Cross-
examination.*

SIR GARFIELD: Q. At the bottom of some of these documents I notice the name of James Bell? A. Yes. James Bell was really retained in those days—(Objected to).

Q. Mr Stanley had some connection with James Bell? A. Yes.

Q. Do you know the James Bell referred to? (Objected to).

Q. Do you know what James Bell did? (Objected to; pressed; admitted). A. I know one of the things they did; they supplied the coke breeze, the blocks used in plaster.

Q. Do you remember telling my friend something about what you called weak columns? A. Yes. 10

Q. And by "weak columns" do you mean columns which were only designed to go up a certain distance in a projected building—therefore to carry a limited load? A. Yes.

Q. Have a look at Exhibit 10, sheet 1 (shown to witness). What are the weak columns on that? A. 53, 55, 78 and 79 (indicating).

Q. They are not the only weak ones in the sub-structure? A. No.

Q. There are more? A. Yes.

Mr WALLACE: I want to make an application for the sake of convenience. I wish to call, amongst others, an architect named Mr Laurie 20 who has been waiting to be called for some days and who has important engagements out of the city after this afternoon. I think that his evidence will be much shorter than either of the two witnesses already called. Could I have Your Honor's permission, with my friend's concurrence, to interpose him at 12 o'clock, and finish his examination and cross-examination so that he may get away?

SIR GARFIELD: That would be contingent, as far as I am concerned, in having him perhaps recalled if I ascertain something from a witness during the course of the case.

Mr WALLACE: The only difficulty is that tomorrow he will in the 30 ordinary course be in another part of the State.

SIR GARFIELD: Well, the day after will do. I would rather not interrupt this witness, but of course I would like to meet Mr Laurie's convenience.

HIS HONOR: If he is not here tomorrow, nobody will demur.

Mr WALLACE: He will be away from the city tomorrow.

HIS HONOR: The convention is that that will not prejudice you.

SIR GARFIELD: I show you document m.f.i. "15". (handed to witness). You have the sheet which shows all these columns which you call weak? A. Sheet 1. 40

Q. Sheet 1 of m.f.i. 15? A. Yes

Q What are the numbers of them? A. 53, 55, 78, 79, 98, 99, 114 and 117.

Mr WALLACE: Q. That is eight? A. Yes.

Mr WALLACE: The witness has pointed out on sheet 1 the weak columns.

SIR GARFIELD: Q. Did you see in this set of drawings—just look to see if you can see in this set of drawings anything that would indicate to you that these columns were originally designed to be trussed over? A. In this set of drawings?

10 Q. Yes, m.f.i. 15. (Witness peruses documents). You do not see anything in that bundle. You do not see anything in that bundle? A. No.

Q. Do you see anything in that bundle that indicates the purpose of having those columns with less carrying capacity than other columns? A. No purpose, but some are indicated to be steel, and some are indicated to be concrete.

Q. Some are not as strong as others? A. That is so.

Q. Does it indicate any purpose of having some weaker than others? A. Yes.

20 Q. Have you seen a copy of that bundle of plans in Mr Stanley's records? A. I certainly have not seen a bundle like that (indicating). I recognise individual sheets.

Q. I do not mean bundled up in that way. Just take them sheet by sheet and tell me if you have seen duplicates of those in Mr Stanley's possession? A. I cannot answer precisely that I have seen a duplicate of that, but I have seen sheets like this (indicating).

Q. What do you call those (indicating)? A. Reinforcement detail plans of one section of one floor.

30 Q. See whether anything is indicated on those plans of the purpose of not having that line of columns as strong as the rest? (Witness peruses documents). A. No, nothing.

Q. Do you notice that these are all plans bearing Mr Stanley's initials? A. Yes.

Q. What do you call these plans (indicating)? A. Engineering working details of the sub-structure.

Q. Are you sufficiently familiar with the existing sub-structure to be able to agree with me that what is at Wynyard in the sub-structure is in accordance with these drawings? A. Only in the external shape but not the internal details, with this proviso, that all of this was not
40 built.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

No. 6.

*H. A.
Llewellyn.*

*Cross-
examination.*

Q. But so much as is there? A. Yes; so much of that as is there is in accordance with the drawings.

(Bundle of engineering plans m.f.i. 20.)

Q. I want to now show you m.f.i. 4. (handed to witness). The first question is whether you have seen copies, either originals, tracings, or blueprints, of the same drawings in Mr Stanley's records? A. I have memories—

Q. I do not want you to strain your memory. A. I have not seen any of these recently. I did think we had copies of those, but I have not been able to find them of recent weeks. 10

Q. But you have seen things like those amongst his records? A. Yes.

Q. Looking at m.f.i. 4, can you say whether you can see the purpose of not making that line of columns which were mentioned as not as strong as the others? (Witness peruses documents).

MR WALLACE: These are all produced by my friend from his archives.

WITNESS: Could I have the question again?

SIR GARFIELD: Q. The question is, can you now see the purpose, from those plans, of not making the line of columns which you called "weak" as strong as the others? A. Yes, the reason for it is— 20 (Objected to).

Q. Can you see the reason? A. Yes. (Objected to).

Q. Can you tell me what the apparent reason is on those plans? (Objected to).

HIS HONOR: If the argument is that the columns that were there were columns to suit a certain design, and the design called for trusses across and so on, then it is only a detail of the general picture. Anyway, I am very hopeful that you will have a fruitful conference, and if you do I would suggest that you put down in black and white that which is admitted and that which is not admitted as the case may be. If 30 any time you spend produces an admission covering the field we are now discussing it will save so much time and expense that it will be worth while extending the short adjournment a little longer. I regard this as very important.

SIR GARFIELD: Yes, but I have an expert witness here at the moment, and I would like to put a question to him.

HIS HONOR: The evidence can be taken in this form, that to his expert mind, those plans show certain things which can be linked up later.

SIR GARFIELD: I can talk to my friend afterwards on this matter.

HIS HONOR: I will admit this question on the basis that those plans m.f.i. 4 will be subsequently linked up.

SIR GARFIELD: Q. Having looked at these plans (indicating), are you able to say that they indicate to you that the strength or weakness of that line of columns and the fact that they only were designed to go up to a certain level, was dictated by features of the design which are shown in this set of drawings (indicating)? A. Yes, because of that ballroom (indicating)— (Objected to).

10 HIS HONOR: Q. A ballroom shown on one of the sheets? A. Yes.

SIR GARFIELD: Q. And was the necessity to insert trusses in a building to go over the Wynyard Lane area—the centre area of this site—determined by features of this design? (Objected to; admitted). A. Yes, because the building was continued with internal columns above the ballroom.

HIS HONOR: Q. That is what those plans disclose to you as an expert? A. Yes.

HIS HONOR: That is not evident yet; it depends on the plans being linked up.

20 Q. You have been asked to produce something? A. Yes.

Q. And you made a promise that you would go somewhere and get it? A. Yes.

Q. How long would it take you? A. Twenty minutes.

Q. If it would take longer, you might say so. A. No, 10 minutes.

SIR GARFIELD: If we could adjourn till 2 o'clock I might be able to get an admission that would obviate a tremendous lot of evidence.

HIS HONOR: Mr Wallace is quite well aware of the general situation. Are you now in a position to discuss the matter with the other side—this question of any proposed admission?

30 Mr WALLACE: I do not know what the proposed admissions are. I would want to know with precision what the form of the admissions sought is.

HIS HONOR: Well, the first step will be that Sir Garfield will write down the form of the admissions that he wishes you to make. You will get that in a short time.

SIR GARFIELD: Within half an hour.

HIS HONOR: You will then be in a position to look at it and discuss it, and you have your clients here who may be able to help you. I would suggest that you discuss the matter between now and 2 o'clock.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Defendant's
Evidence.
No. 6.
H. A.
Llewellyn.
Cross-
examination,

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 6.
H. A.
Llewellyn.*

*Cross-
examination.*

Mr WALLACE: Yes, but I make no promises. I would want to know what the admissions sought are, and what they are aimed at. I will have to think very carefully whether I ought to make these admissions but I will do whatever I can.

HIS HONOR: I will make this comment, that it seems to me that this matter ought to be able to be decided "Yes" or "No"—that those columns were the result of a certain idea. However, I will say no more.

Mr WALLACE: I will give the matter very serious consideration.

HIS HONOR: On Sir Garfield undertaking to put his suggested admissions in writing, and Mr Wallace undertaking to look at them and consider them carefully, I will adjourn till 2 o'clock.

SIR GARFIELD: I drafted and gave to my friend the admissions in principle that I wanted. There was not time to tidy the language completely. I supplied such files and other material as he asked for. My friend tells me he is as yet uncertain, and asks me to defer it. I do not mind that to a point, though I may not be able to go along with trespassing on the ground. I tried to phrase what I asked him in accordance with what I firmly believe can be proved from documentary matter. It will need to be pieced together because of the lapse 20 of time. Having given my friend the admissions I am content to let the matter rest for the afternoon, but I would not be prepared to let it rest indefinitely. We have prepared a subpoena for this witness and when he is in a situation he can be served he will be served.

HIS HONOR: Mr. Wallace, you will no doubt as soon as possible go into these matters.

Mr WALLACE: Some of the admissions put to me by my friend I will note. The ones causing me doubt are due to the fact that I do not have sufficient information in my possession to make an intelligent decision, nor has the material which my friend has been good enough 30 to supply me with just before lunch seemed to me to quite cover the position.

SIR GARFIELD: You remember before we adjourned I showed you m.f.i. 4 and you answered certain questions in interpretation of those plans. Will you agree with this, that the real problem in the development of the leased area stems from the fact that in order to build over the line of weak columns it is necessary to construct large trusses?
A. Above the fourth floor.

Q. At some level? A. Yes.

Q. The 1956 design of Mr Nicholls avoids those difficulties? A. 40
Yes.

Q. By not delving into the area where the line of weak columns is?
A. Yes.

Q. In short, his design takes a portion of the demised land where there is no such problem? A. Yes.

Q. And in short, it leaves the problem of the development of the centre of the area for somebody else in the future? A. Yes.

Q. You remember seeing the 1954 plans? A. Yes.

Q. You made certain comments to my friend as to them? A. Yes.

Q. There would be no difficulty in (leave out questions of economics for the moment; I am talking about structure) trussing over this line of weak columns if the trusses were placed at say the first floor level, viewing the matter from the Carrington St. level? A. No difficulty.

Q. Column 51 and its counterpart, column 57, on the Northern end, are already constructed up to that level, in steel? A. Yes.

Q. If you were to truss over the line of weak columns at that level, that is the first floor level, you would be able to carry on on the platform formed on the trusses a building which did not extend to the full width of the trusses? A. Yes.

Q. From your knowledge of the columns and of the possibilities of structure with the trusses there would be nothing to prevent a building built on the platform on the trusses at that level from going up to the full permissible height? A. That would need checking for one small point. The so-called weak columns, the low load bearing columns were designed to carry loads up to the 4th floor. In your suggestion you are taking some of that load and putting it on to the trusses, which transfers it across to 57 and 51, thereby putting more load on 57 and 51.

Q. You could check that for me? A. Yes.

Q. Columns 57 and 51 are calculated to something like 6½ million lbs. You could check that? A. It needs a lot of checking.

Q. You have not enough information to which you have already been? A. You mentioned the building, not the full width of the space between 57 and 51. Obviously it is a question of how wide the building is as to how much load. I would have to make some assumption.

Q. You know what load could be transferred to those two columns, 51 and 57, and those in the same line East and West of them? A. We know the load they will carry.

HIS HONOR: Q. That is the load they are capable of carrying? A. Yes.

SIR GARFIELD: Q. You could compute the load which a building from the first floor Carrington St. Level up to the building height would constitute. You can take for example its width arbitrarily to begin with? A. Provided we have a plan of what the proposed building is, we could do that.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination.

Q. Either just a plan commercial building or a building of hotel rooms? A. It is capable of calculation.

Q. I was wondering what the great difficulty about it was? A. Firstly what does this building look like? Do we take something out of the air or have we a sketch plan of what the building is to be? I got from your question that you were not going to fully enclose the space between 57 and 51. Obviously if it is a quarter of the space you have a quarter of the load.

Q. You could tell me without very much calculation what percentage of the width between 51 and 57 could be occupied by a building up to 150 feet? A. It is not quite as easy as that. It would be a long calculation. 10

Q. I suppose when m.f.i. 17 was offered it would have been a singularly long calculation to determine what was offered in m.f.i. 17 to carry up to 150 feet? A. At that stage we had checked the columns and knew the loadings. Now you are asking me to check a column remote from that which is carrying quite a different loading.

Q. You know the loading? A. I know the carrying capacity but not the new load. Most of that had been checked for the 1954 scheme, and only a few columns had to be re-checked. 20

Q. I was asking you about taking it up to 150 feet high? A. We had to check that for 150 feet.

Q. Did that take a long time? A. The complete thing took nine days.

Q. You do not think you can answer me firmly if you trussed over the first floor level Carrington Street you could send the building up on trusses? A. I think it could be done, but it would have to be checked for me to say yes.

Q. From your knowledge gained from the past association you have with the original scheme, the 1954 and 1956 schemes, and any intervening work, you see nothing improbable or unlikely in that? A. That is so. 30

Q. You told my friend that there was a contract called contract No. 2 to do something connected with the cool room? A. Contract No. 1 was the cool rooms. Contract No. 2 was additional steel stanchions.

Q. Can you show me on one plan where the cool rooms are? A. Yes.

Q. Which plan would you need? A. The 1954 scheme, Wynyard Lane. 40

HIS HONOR: Q. You were speaking of Nos. 51 and 57. Show me them on the plan (shown). You get over the difficulties of getting

across by putting a hole through the truss? A. Yes. My main difficulty in answering Sir Garfield's question was that he said the first floor. This truss is on the fourth floor.

SIR GARFIELD: Q. You would see no difficulty if I posed the question by suggesting a truss at the 4th floor? A. That is so.

Mr WALLACE: Q. The reason is that with the trussing on the first floor you would be putting additional weight on the outside big columns which would have been taken by the inside small columns at the fourth floor level? A. Yes. (Sheet 4 of Exhibit H shown). That is the cold room area there. It is the South-western corner.

SIR GARFIELD: Q. It is the portion edged black on the South-western corner of Sheet 4? A. The roof slab extended beyond those columns to a point approximately a quarter of the distance between that line of columns and that line.

Q. Can we fix the numbers of those columns? A. That is 51.

Q. Beyond the line of columns of which 51 forms part? A. That is so. The steel columns were constructed at that stage and a concrete bridge taken over.

Q. That was the cool room work that was done? A. Yes.

20 Q. Were some of the columns extended after this work on the cool room? A. Yes, those columns taken in in No. 1 contract were extended higher.

Q. Let us get the numbers of them. Take Exhibit P. Can you see the numbers on that one? A. Column 76.

Q. These are the columns that were extended? A. It is a little difficult because the first lift of 76 and 51 were in contract No. 1, but then an additional storey of the same column was put on under contract 2. Columns numbered 76, 51, 28, 30, 32, 57 and 81 are the columns.

30 Q. Do not worry at what stage or under what contract. They were at some stage extended in steel? A. Yes.

Q. Up to what level? A. From memory one floor above Carrington Street.

Q. A whole floor? A. One complete storey height above Carrington Street. I am not certain of that.

Q. You can verify that. Not 26? A. 26 should have been included. 26 was structural steel.

Q. The full order is 76, 51, 26, 28, 30, 32, 57 and 81? A. Yes.

Q. They were carried up to one floor level above Carrington Street in steel? A. That is right.

40 Q. What year? A. 1956.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 6.
H. A.
Llewellyn.
—
Cross-
examination

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 6.
H. A.
Llewellyn.*

*Cross-
examination.*

Q. Tell me what plans you will need to answer this question. You are familiar with what exists at the existing Plaza Hotel? A. With large slices of it.

Q. Tell me if you need another view to answer me. Is not everything that is constructed there, with the exception of the cool room, in conformity with the documents m.f.i. 4 that I showed you and m.f.i. 20, which was the preceding detail of the sub-structure? A. The early part of your question was "is everything in conformity with this"?

Q. Yes? A. No.

10

Q. What divergence? A. The 1947 minor additions. There are several fan rooms, motor rooms built on the Wynyard Lane that do not conform.

Q. Apart from those things, the rest that is there conforms to the plans which were shown to you as m.f.i. 4 and 20? A. To the best of my knowledge.

Q. And the extension of those columns is in conformity with the original plans? Would you like to look at them? A. Yes. These are architectural drawings and they would be correct as regards location but not as regards size. These drawings do not indicate any size of column.

Q. Are the steel extensions to the same specification as the immediately sub-jacent portion of the same column? A. The subsection of the same column, yes. That sheet shows reinforced concrete columns. The ones we have been talking about are steel.

MR WALLACE: Which sheet shows reinforced concrete?

SIR GARFIELD: He has m.f.i. 20.

WITNESS: There is a reinforced concrete schedule. The sheet No. C660—39A, 40A and 51.

SIR GARFIELD: Q. First of all the sheet shows the columns we are talking about ought to go up in the area where these now go up in structural steel? A. Yes.

Q. Now you want to see the dimension? A. Unfortunately it is marked "C60—" and it is blank. "Structural steel column 51 typical for all columns." There are no structural steel sizes.

Q. Cannot you tell the sizes from that? A. No.

Q. You may have to look right through it quietly. It may not be there. I will reserve that question whether the plans do not demonstrate to you that the extension that has been effected in structural steel, the columns we spoke of, is in fact in accordance with the original drawings.

40

I think you were satisfied that that column as extended to that distance in steel—that column and those in the same line—would have been sufficiently substantial to carry these trusses of which I have spoken? A. Yes.

Q. So as to permit development over the centre of the leased area? A. Yes.

Q. Do remember telling my friend that you were in some doubt as to whether you could carry the building up over the Carrington St. 1956 project to its full 150 feet height? A. Yes.

10 Q. Did I understand you to say that one of your reasons was some doubt as to the strength of column 51? A. No, 51 is one of the ones we know are all right.

Q. You told my friend that any person who came to this area after the 1956 Carrington St. project had been built, would be able to insert trusses at, I think, you said, the 4th or 5th floor levels; that would be the 4th or 5th Carrington St. levels? A. Between the 5th and 6th floors, but measured from George Street. They are the historical floor levels.

Q. What would they be in relation to Carrington St. A. Carrington St., 2nd floor.

20 Q. At any rate that would be at least one floor above the upward limit of the extension of those columns in steel? A. That is right. I cannot quite remember where the tops of those stanchions are at moment. They would be higher.

Q. Whether a whole floor or part of the floor? A. Yes.

Q. The steel stanchions do stand up a little more than one floor level. They would have to be decapitated? A. They are spliced.

Q. In the engineering structural preliminary plans, Exhibit 10, sheet 2, you have a columns schedule of sorts? A. Yes.

30 Q. The two columns that would be concerned with a truss if you went to go into it subsequently between the 5th and 6th floor would be Nos. 51 and 57? A. That is so.

Q. They are carried up according to your column schedule above their existing level in reinforced concrete? A. That was the intention at this stage.

Q. Assume that schedule to be the building project, you will agree that it would be impossible to put a truss in between the 5th and 6th floor on a reinforced concrete extension of columns 51 and 57? A. I would not agree with that.

40 Q. You have your dimensions of the reinforced concrete? A. Yes.

Q. Are you prepared to say that you could insert on that reinforced concrete extension a truss and carry a load upon it to the building limit height? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination.

Q. Have you worked it out? A. That column was designed to carry the full height building. I have not worked that particular one out.

Q. I am not talking about your Carrington St. building. If someone came along and put in a truss to carry a further load of a building in the centre of this area up to the height, you say that reinforced concrete member would carry it? A. Yes.

Q. You do? A. Yes.

Q. Have you calculated it? A. No.

Q. Do you want time to calculate it or are you prepared to pledge 10 your reputation on it? A. I will put my reputation on it. May I explain why?

Q. No. You know why. You say notwithstanding the fact it is extended in reinforced concrete it would carry the trusses we are talking about? A. Yes.

Q. That is both 51 and 57? A. Yes.

Q. Do you remember that was an isometric drawing of the possible extension of the 1956 scheme both in Carrington St. and in George St.? A. Yes.

Q. (Exhibit 2 shown and also Exhibit P). You will agree that the 20 Western wall of the suggested George St. extension in this isometric drawing and in Exhibit 4 (shown), that is to say this wall in section BB at the left hand corner and the same wall below in the plan view and the Western wall of this isometric drawing is intended to go above the line of columns in Exhibit P which run from 117 to 119; is that right, that that wall is vertically above that line of columns? A. I have never checked it.

Q. I want you to check it? A. That necessitates scaling this drawing, which has not a scale marked on it. I should imagine so. There is nothing to indicate columns. 30

Q. It has dimensions on it to calculate floor areas? A. I did not calculate it.

Q. Just look at these two exhibits, P and the diagram. Can you see any other place that this Western wall could be placed except over the line of columns 117 to 119? A. It could be between columns. I should think the architects would determine the back wall by the width of the bedrooms, corridor and bedrooms and if that came over the line of columns it would be good luck.

Q. You will agree with me that if the Western wall in George Street came over that line of columns it could not be built without 40 trussing over 117 to 119? A. Not above the fourth floor.

Q. If this does indicate a wall which is over that line of columns, it could only be built by trussing above the fourth floor? A. It could

be built by trussing; not "only", there are many other ways, but that is the logical way.

Q. On the Carrington St. side the architect obviated the need for trussing by stepping back and putting the line of columns on a beam borne on a heavy truss below it? A. Hardly the architect.

Q. You did? Between the two of you? A. It was avoided.

Q. It was avoided by that device? A. Yes.

Q. You could not repeat that device on the George St. side without demolition? A. I have never investigated that.

10 Q. I may take it that Mr Nicholls at no time asked you as to the practicality of the point of view of structure of that George St. projected development? A. No.

Q. (Exhibit 10 shown.) You made a remark to me when you were looking at these that at the time this column schedule showed an extension of columns 51 and 57 in reinforced concrete? A. That is right.

Q. Do I take from that that you have altered that subsequently? A. No.

Q. Not as yet? A. No. This design is not complete, as I explained.

20 Q. Have you yet altered it in some way? A. No.

Q. Do you project altering it in that respect? A. We do not know until the design is completed.

Q. This extension of 51 and 57 in reinforced concrete above the first floor is a reinforced steel column 44 x 44? A. Yes.

Q. That is true of 51 and 57? A. No.

Q. 57 is slightly smaller; is it 44 x 40? A. Yes.

Q. Where do I get any reinforcing steel sizes on this preliminary sketch? A. You don't. They are included in the p.e. items.

Q. There is nothing to indicate looking at this? A. No.

30 Q. (Exhibit L2 shown.) That is L2, which is the architectural drawings of the 1956 project. Do you recall that all the columns are shown in the architectural drawings as new or extended columns are shown as reinforced concrete columns on the drawings? A. You would not take the architectural drawings to indicate what the columns are made of. They colour them green sometimes whether they are steel or concrete.

Q. One could not tell by looking at L2 or any plan coloured similarly to it, whether the columns proposed to be built were in steel or reinforced concrete? A. That is so.

40 Q. May I take it that without your structural preliminary drawings and the column schedule you could not tell their size from the architectural drawings? A. That is so.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction,*

Defendant's
Evidence,

No. 6.
H. A.
Llewellyn.

Cross-
examination .

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 6.
H. A.
Llewellyn.*

*Cross-
examination.*

Q. If one had beside the architectural drawings, your preliminary structural drawings one could still not tell the size of the reinforcing material that was to be used in the columns? A. No.

Q. If one had in addition to the specification (Exhibit R1 shown) one could not tell the size of the reinforcing material? A. No.

Q. One would observe from the specification that there is no provision for structural steel except, I think, in connection with some awnings? A. That is so, I think.

Q. Other than that, there is no provision for structural steel? A. That is so. 10

Q. If one did have the architectural drawings and the specification one could conclude that the columns were all to be of reinforced concrete? A. That is so.

SIR GARFIELD: Q. You did agree, did you not, at the Licensing Court where you gave evidence—? A. Yes.

Q. That the 1954 plan could be so adjusted as to make a flat-plate building? A. The 1954 scheme?

Q. Yes? A. No.

Q. You did not? A. No.

Q. Down at the Licensing Court the 1954 plan was called "Scheme B", was it not? A. No; the other way round. Wasn't it scheme A? 20

Q. Well, that was my mistake. The 1954 plan was scheme A? A. Yes.

Q. This was what was said at the Licensing Court:—

"Q. And could scheme A be varied to make it a flat plate?

A. It could, but not this plan."

A. I think that we must have been discussing the filling up of the section.

Q. Let me read you the questions on each side of it—p. 11. You were being asked about flat plate in Scheme B? A. Yes. 30

Q. You were asked these questions:—

"Q. You cannot produce an actual plan showing a flat plate scheme for scheme B? A. I think we can—I would like to be sure of this—we were asked to go ahead preparing details to save time when the contract was ready to proceed, and we have gone further than the preliminary exploration needed to get the thing under way. I think the flat plate was not shown.

Q. It shows a beam and slab the same as scheme A? A. Yes.

Q. And could scheme A be varied to make it a flat plate? 40

A. It could, but not this plan."

A. Yes; that is it.

Q. That means that it could be adjusted? A. Yes, if the plan shape was altered.

Q. And that is my question—it could if the plan was adjusted? A. Yes.

Q. And if you had a truss either at the first floor level at Carrington Street or between the 5th and 6th floor level—?

HIS HONOR: George Street.

SIR GARFIELD: Yes; George Street.

Q. One could built a flat-plate without any difficulty? One could design a flat-plate building? A. Structurally, but not generally, because of the absence of light courts.

Q. You are understanding what I am putting to you, that instead of trying to get an internal light court, as in the 1954 effort, you had a narrower building? You had light on both sides? A. Provided that building covered more than one span between two columns, the answer is “Yes.”, but if you had a narrow building spanning only between two columns, the answer is “No”.

Q. It depends on the width of the building? A. Yes.

Q. The wider you made it the more likely you would be to succeed in a flat-plate design? A. Yes.

HIS HONOR: Q. That depends on the width of your rooms? A. The span between the columns.

Q. If you wanted light on either side, it would depend on the width of your rooms? A. Yes.

Q. And whether you used one or two lines of columns would depend on economics? A. Yes; it is tied up with the architect’s economics, and other things. There are a lot of factors.

SIR GARFIELD: Q. But when you come to build a commercial building, there is no limitation on the depth of a room from a window, is there? A. Yes there is.

Q. Is there a statutory regulation governing the matter? A. Yes. Well, I must be careful here. It is not directly within my province, but it happens so often that we come up against that particular problem of architects.

Q. But they do not like to go too far—(Objected to). A. I am pretty certain there is a restriction on them. The City Council By-laws govern the matter, I think.

Q. You think they do? A. Yes.

Q. Just look at this plan which shows the columns at the level of the ramps (handed to witness). A. This would be the one, I think (indicating).

Q. Have they got the column numbers on them? A. Yes,

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant’s
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 6.
H. A.
Llewellyn.*

*Cross-
examination.*

Q. The ramps are hung, are they not, between a line of columns which includes 57, 81, 101 and 119 on one side, and 30, 55, 79, 99 and 117 on the other side? A. Yes.

Q. We know, from what has already been said, that in the line that I have spoken of are the weaker columns? A. Yes.

Q. On the other side the ramps are hung between 51, 76, 96 and 112? A. Yes.

Q. And on the inner side, 53, 78, 98 and 114? A. Yes.

Q. You know, of course, from your various associations with this project, the approximate bearing capacity of these columns the numbers of which I have mentioned? A. Not at that level, I am afraid. I am more familiar with those at the Wynyard Lane level.

Q. But, at any rate, you would be able to answer this, that just to hold the ramps up would not require columns of the strength and dimensions of those that I have mentioned previously? A. No.

Q. Columns 51 and 57 would take 6½ million pounds? A. Yes.

Q. And you tell me, as an expert, that it is quite obvious, from the plans, that these columns that I have numbered were designed to bear a building above and not merely to carry the ramps? A. Yes.

Q. I suppose, so far as the ramps are concerned, you could have carried the ramps on reinforced concrete columns? A. Yes; these are reinforced concrete columns (indicating).

Q. Yes, but the others are not? A. That is so.

Q. You did want to tell me, a little while ago, why it was that you said that column 51, extended in reinforced concrete according to this column schedule in Exhibit 10, could bear a truss between the 5th and 6th floor levels? A. I wanted to explain—

Q. I will give you a chance, but I want to ask you this first. When this Carrington Street project is carried up beyond the 6th floor— A. Yes.

Q. Carried up higher than that—with reinforced concrete columns in extension of columns Nos. 51 and 57 above the first floor of Carrington Street—? A. Yes.

Q. There would have to be a very considerable amount of demolition in the first place to make an entry in order to insert a truss? A. No; I am sorry. The existing steel columns finish at—oh, you mean in the future?

Q. Yes? A. I am sorry. Unless provision were made in the present scheme there would have to be.

Q. There is no provision made in the scheme as drawn, is there? A. Well, it has not been detailed.

Q. Well, there has not been any provision in the scheme as drawn?
A. That is right.

Q. Could you just give me any idea of what would have to be done if you were going to put a truss between the 5th and 6th floor rating from George Street—? A. Yes.

Q. A truss of sufficient dimension to bear, with other trusses of a like kind, a building above the Wynyard Lane area to the permissible height—what would have to be done in order to structurally get in?
A. Assuming that the reinforced concrete column is there?

10 Q. Yes? A. It would be a question of holding the building up, but of course the prudent thing would be to provide for that in the detail plan.

Q. Assuming that nothing is done? A. Assuming that nothing is done, it is possible.

Q. Well, what would you do yourself? A. Well, that is difficult without knowing the reaction of the truss to the amount of load coming down on the column—in other words, it is a question of how much of the existing concrete column has to be exposed for this work. If it was more than 33½ per cent. it would mean “tomming” the building, probably—that is supporting it. If it were less than that it would be a difficult but normal building construction job and it would mean replacing the concrete around it.

Q. That is a substantial and risky operation in some respects, is it not? A. All operations are risky in some respects. It is a difficult but normal building practice.

Q. Have you seen, amongst Mr Stanley’s records, a design of the truss to go across from 51 to 57? A. All I have seen is a representation, and it was not a truss; it was one of his famous arches. It was not detailed or designed; it was purely an idea of what might be done.

Q. Have you ever yourself made any calculations as to the size of the truss? A. No, only to the extent of saying that I think that it could be done within the 10 ft. depth.

Q. Do you know a man called Weniger? A. No.

Q. Or a man called Crookes? A. Yes, Crookes, engineer; he has since retired.

Q. Were you with Mr Stanley at any time when Mr Crookes had anything to do with this project? A. No; I did not know that he had.

40 Q. Mr. Weniger? A. I have never heard of Mr. Weniger.

Q. Did you ever work on the 1954 plan before? A. Only to tidy up the structural designs.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant’s
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination.

Q. Did you have anything to do with Mr Nicholls in respect to the 1954 plans? A. Not that I remember.

SIR GARFIELD: I think that that is as far as I can go at the moment.

HIS HONOR: Was not this witness going to bring back something?

SIR GARFIELD: His calculations.

HIS HONOR: Yes.

WITNESS: Yes (documents produced).

SIR GARFIELD: Q. These calculations, as far as you have gone, are in connection with the completion of that scheme? A. Yes.

Q. Are they just a series of mathematical calculations, or are they 10 diagrammatic representations? A. They are diagrammatic, but I do not know whether they are intelligible. That is the sketch plan which is put over our architectural plans to see what loads are carried. These are the calculations for each unit of the structure.

Q. Are these other sheets similar? A. Yes, for different parts of the building and for different schemes. That (indicating) is a terrible mess along that wall. We were trying to take the load there from the weaker columns and put it on to the stronger columns (indicating).

Q. This is the staircase at the northern end (indicating)? A. 20 Yes. It is linking up with work that is there existing.

Q. Did you hear anything about an encroaching wall? A. That is it there (indicating).

Q. Along B4 and B5? A. That beam would have to move back sufficiently far to avoid an encroachment. It would be quite a simple matter to move that beam back.

Q. Have you done anything on headroom there? A. No.

Q. In connection with the flat-plate construction, it is very inadvisable that the plate should not meet with the column all the way round? A. It could all be carried on three faces. It is a question of the intensity 30 of shear.

Q. Have you worked out, in relation to this architectural plan, whether such openings as are shown adjacent to columns will be permissible from a structural point of view? A. No.

Q. Have you any objection to giving us access to these calculations that you have made available today? A. I would not mind going through them with any engineer, but I would not like access being given to anybody else.

Q. You have no objection to an engineer——? A. Discussing them with me.

Mr WALLACE: I object to this procedure.

HIS HONOR: The documents belong to the witness, as far as I know. If they belong to your client, that is another matter.

Mr WALLACE: I thought that my client has some proprietary interest. I object to my friend asking this witness to hand over some confidential documents to put them under the microscope.

HIS HONOR: Surely the witness can make up his own mind. You can give him advice if you wish to.

Mr WALLACE: The procedure is so unusual that I would prefer that the witness not hand them over.

10 WITNESS: I have no alternative but to say "No".

SIR GARFIELD: What we want to do is to look at his calculations, because we are making some calculations, and it may be that we might be able to obviate a lot of evidence.

Mr WALLACE: I do not want it that way.

HIS HONOR: Well, the witness, on reflection, has decided that he would rather not hand his documents over.

SIR GARFIELD: Q. I suppose you will keep them—preserve them—until something else happens? A. Yes.

HIS HONOR: He is not likely to destroy them.

20 SIR GARFIELD: Q. You have said that there was some argument about tolerances in connection with the steel extensions of that group of columns of which you gave the numbers, beginning with 51 and running round to 57? A. Yes.

Q. The question is whether they were out three-quarters of an inch from the vertical? A. Yes; one was out three-quarters of an inch from memory.

Q. That is not an argument about tolerances, is it? A. No.

Q. At any rate, there were some that were quite beyond the question of just an argument about tolerances? A. Three.

30 SIR GARFIELD: That is as far as I can take this witness until I know what my friend wants to do.

HIS HONOR: Mr Wallace, you have permission to go on with such re-examination as does not touch the other problems, without binding yourself.

SIR GARFIELD: I had forgotten that I had said that I would give the witness a chance to say something that he wanted to explain.

HIS HONOR: Yes.

SIR GARFIELD: Q. You wanted to explain why columns 51 and 57, extended in reinforced concrete above the first floor of Carrington
40 Street, as shown on your column schedule in Ex. 10, would bear the

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination .

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Cross-
examination.

Re-
examination.

truss between the 5th and 6th floors, from which the building may be built up to the permissible limit? A. It seemed to me that someone had indicated that the column would not be strong enough. I remembered that the columns in the Caltex building, which are carrying 20 floors of building, are much more than those which have only to carry another 8 floors.

Q. That was your reason? A. Yes.

RE-EXAMINED

Mr WALLACE: Q. You were explaining to Sir Garfield about some work you were doing on the southern and northern sides of the Car- 10
rington Street buildings, and he might have misinterpreted something that you said? A. Yes.

Q. You were looking at a plan, and do you remember that you said you would only have to look at a certain portion to see the mess that it is in? A. That is the 1956 scheme—the architectural drawings.

SIR GARFIELD: Q. They are four sheets of tracings on the architectural drawings—is that right? A. Yes.

(Documents m.f.i. 21.)

SIR GARFIELD: The area that the witness was concerned with was an area around beams 4 and 5. 20

Mr WALLACE: Q. You told the Court earlier, did you not, that in your opinion the 1956 plans may be extended up to the maximum 150 ft.? A. Yes.

Q. And I think the only note of reserve you expressed related to the siting of installations on the roof? A. Yes.

Q. Tanks and motors and the like? A. Yes.

Q. Which might have to be re-allocated on the roof? A. Yes.

Q. Apart from that, you are quite satisfied that the building could go to 150 ft.? A. Yes.

HIS HONOR: I think the witness said that he was virtually in a 30 position to say that it could.

SIR GARFIELD: He now is, by virtue of his calculations.

Mr WALLACE: Q. A little while ago you were speaking about this southern side? A. Yes.

Q. And I think Sir Garfield misconstrued what you were saying? A. Yes.

Q. In regard to that southern side, what work are you doing on that in the way of computation at the moment? A. To check which of these columns will go right to the 150 ft., and which will have to stop off because of their inability to carry further load. 40

HIS HONOR: Q. You use the one that will carry the further load?
A. Yes.

Q. You are satisfied that one would do the job? A. Yes.

Q. The question is, which one? A. Yes.

Mr WALLACE: Q. You said that on the northern side there was a mess? A. Yes.

Q. Could you elaborate that? A. In connecting the building with the existing structure which has been there since 1933, with projecting reinforcement—there is a structural mess there.

10 HIS HONOR: Q. Assuming that the steel just projects up into the air, does the air affect them at all? A. Yes. Column 81 had to be “revived”, as it is called. They do deteriorate fairly rapidly.

MR WALLACE: Q. If it is not encased it deteriorates fairly rapidly?
A. If it is not protected in some way.

Q. If it is protected, it will last more or less indefinitely? A. Yes.

Q. My learned friend was asking you about this encroachment, and he went on to ask whether you had checked the head room and you said “No”? A. That is so.

20 Q. Does that failure to check the head room mean that there was a possibility or not? A. There was a very remote possibility that head room would be affected.

Q. Some questions were put to you this morning by Sir Garfield directed to the fact that if you were a stranger to all these matters—the Plaza Hotel sub-structure and so on—and were merely given Mr Nicholl’s architectural plans, whether you could tell from them whether the building was capable of developing to a maximum height of 150 ft., and you informed the Court that you had a little difficulty in dissociating yourself from your previous knowledge? A. Yes.

30 Q. And you further informed His Honour that you could do it in about three weeks? A. Yes.

Q. I suppose if you could do it, if the Railway engineer’s architects had the same previous knowledge that you had they ought to be able to do it also? (Objected to; pressed.)

HIS HONOR: You cannot put to this witness what the Railway people could or could not do. You can only get it on the basis that a man of his knowledge would be able to do the same thing. That is a matter for argument rather than of evidence. The only way to put it is, can you see any reason why another man with the same qualifications could not do it in three weeks?

40 Mr WALLACE: Q. Can you see any reason why any other experienced engineer would not be able to ascertain the same matter in a similar time if he had your information?

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant’s
Evidence.

No. 6.
H. A.
Llewellyn.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.

H. A.

Llewellyn.

Re-
examination.

SIR GARFIELD: I object to that. The witness said that he was able to draw a set of appropriate structural drawings in three weeks, but when I asked him whether he could tell from the plans, he said that he could not because there were no sizes on them. He had to make the sizes, and the question whether some other engineer could make a set of plans is one question, but when my friend asks whether another engineer could tell more from the plans as to sizes, that is another question.

Mr WALLACE: Q. As I understand it, you told His Honor that having regard to your knowledge and work on the 1954 plans you could have 10 computed, within three weeks of seeing the Nicholl's plans, whether they could be developed to a maximum height of 150 ft. (Objected to; pressed.)

Q. Do you say that? A. Yes.

Q. And is there any reason why, in your opinion, any other engineer who had your knowledge could not do the same thing? A. No.

Q. And from your association with this project and your association with the Railway engineers in connection with the 1954 plans and earlier, also later, are you able to say whether the knowledge which 20 you had was more than the knowledge than the Railway engineers had? (Objected to.)

HIS HONOR: I won't allow that. That is an argumentative question. It may be that you will have to bring the witness back at some later stage, but you cannot ask it at this stage.

Mr WALLACE: Q. During your association with the Plaza project—by the way, to when does that go back—1947? A. 1946.

Q. 1946 and 1947—have you yourself had dealing with Railway engineers and architects? A. With engineers, not architects.

Q. Who are they? A. Mr Hutchinson is the man I was dealing 30 with after Mr Stanley's death, but I dealt with others in the Railway Commissioner's office.

Q. Mr Hutchinson was on the engineering staff? A. Yes.

Q. You dealt with the engineering staff? A. Yes.

Q. And had you had dealings with him over a long period, relating to the project? A. Yes; the 1954 scheme, and then the contracts 1 and 2 as you call them, and then the straightening of the columns.

Q. And have you had correspondence with him? A. I cannot remember any direct correspondence. They wrote to us on several occasions, and most of the correspondence went straight through the 40 lessee. We discussed things informally, but correspondence from the Railways must come through the secretary.

Q. We understand that it was the Railway people themselves who originally constructed the pillars? A. I only know that from hear-say—they were their drawings.

Q. I want you to assume that these pillars were constructed by the Railway people? A. Yes.

Q. What sort of matters have you discussed——?

HIS HONOR: You will get all sorts of objections to this because it is quite obvious that this witness saw a number of people. You can ask me to draw the inference that the Railway people knew as much as
10 he did. Why bother this witness with conversations he might have had with this one or that one?

Mr WALLACE: I am going to pass to another subject immediately, but my learned friend seemed to join issue with me on these series of questions.

HIS HONOR: If there is one inference easy to draw in this case up to this point of time, it is that the Railway people knew as much about these columns that these people did. It therefore becomes a question of argument.

Mr WALLACE: Q. Can you assist me by giving me the date of the
20 document m.f.i. 17?

HIS HONOR: It has got on it “25.6.56”, according to my notes.

SIR GARFIELD: The documents are dated 25th June. That is the date that is on the plans.

Mr WALLACE: Q. There is some matter put to you by Sir Garfield about that date. Was that the correct date he asked you—do you remember? A. I do not remember the matter under discussion.

Q. Do you remember the structural plans referred to? A. I think that they were a set of drawings that Sir Garfield brought up, which were part of the 1956 plan.

30 HIS HONOR: The ones that Sir Garfield was discussing were the ones that were sent to his client, and I made a note, “25.6.56.”

SIR GARFIELD: At the same time I drew attention to the fact that the structural drawings bore the date the 18th, and they do.

Mr WALLACE: Q. Sir Garfield asked you whether it was possible to put in a big truss at the first floor level because of columns 51 and 57—when he was dealing with the 1954 plan? A. Yes.

Q. Could that be done on the 1956 plan? A. At the first floor level?

Q. Yes; that is the way he put it to you? A. Yes, providing
40 it was incorporated in this present design.

Q. Providing you incorporated it? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

HIS HONOR: Which set of plans are you asking about?

Mr WALLACE: The 1956 ones.

HIS HONOR: The witness did not say what the nature of that truss would be.

Defendant's
Evidence.

WITNESS: I was answering the question in the same way that Sir Garfield was asking me—what would happen if it were lowered to the first floor?

No. 6.
H. A.
Llewellyn.

Mr WALLACE: Q. But at the same time, you would not be satisfied—? (Objected to as leading).

Re-
examination.

Q. If someone were to put those trusses across the first floor, do you have it clear or is there some doubt as to whether the stresses involved would give a satisfactory result because of the fact that the two internal weaker columns would not be supporting, as they are designed to, up to the 4th floor? A. Well, that would be subject to checking but I felt confident that we could put the truss across the first floor. 10

Q. Then Sir Garfield asked you in connection with the column work extension done under what I would call or what you would call contract No. 2—that is the Whittle recent contract—whether they are in conformity with mfi 4 and mfi 20. Do you remember? A. Yes. 20

Q. We are going back to the Gardiner-Kerr plan? A. Yes.

Q. I think you first of all said “No”, but later you said “Yes, with some exceptions”. A. There were no details.

Q. All I wish to ask you about it is, do they also conform to the requirements of any substantial building which might be erected in that area? A. Yes.

Q. And when the work was done, so far as you, as a structural engineer, are concerned, from anything that you heard, was there the faintest intention to revert to the Gardiner-Kerr plan? (Objected to; pressed; rejected.) 30

Q. I am not sure whether you informed His Honor whether the whole of mfi 20 is in reinforced concrete or designed for that? A. What is mfi 20?

SIR GARFIELD: That was the schedule I showed you.

WITNESS: There were some columns on the schedule, but they were not in detail. They were just marked “Structural steel—see future drawings”. They referred to future drawings.

Mr WALLACE: Q. Then, going over to George Street again for the moment, you were asked a question this afternoon about the western wall of George Street, and then Sir Garfield went on to the position arising from extending it above the fourth floor? A. Yes. 40

Q. Sir Garfield suggested that that could only be done by the use of the device of a truss—do you remember? A. Yes.

Q. And you said, I think that there were other ways in which it could be done? A. Yes.

Q. Such as what? A. His Honor suggested one yesterday. New columns could be brought up from the ground floor and a very heavy beam put across at each floor level, or an extreme way would be to bring the columns up and hang the load from roof level.

HIS HONOR: Q. That is a very costly method, is it not? A. Yes.

10 HIS HONOR: The witness did say that you went down and underpinned anything that would be a very costly method.

Q. Is that so? A. Yes.

Mr WALLACE: Q. But the device of the truss is a very normal procedure, is it not? A. The lesser of many evils.

Q. One that is frequently employed? A. Not frequently employed.

Q. But one that you employ yourself? A. It is one that is most frequently used to solve that sort of problem.

20 HIS HONOR: What the witness is saying is that if you have good engineers in the first place you do not have that sort of thing happening.

WITNESS: That is right.

Mr WALLACE: Q. And are you satisfied to say that the George Street building can also go to 150 ft.? A. We have not actually tested it, but in my opinion it can.

Q. You were asked about the circumstances in which you can use flat-plate, and I think the question arose out of some evidence you had given in the Licensing Court regarding 1954 Scheme A. Do you remember? A. Yes.

30 Q. And you said, apparently, in the Licensing Court, that it was possible to use the flat-plate method of construction in connection with the 1954 plan by changing the design? A. Yes. Well, what I intended there was that if the 1954 plan was modified to suit the engineering requirements for a flat-plate floor, then the flat-plate scheme could be used, but it would depend on the architectural layout.

Q. Would you just say briefly why it is that the flat-plate method is not appropriate to a very narrow building? A. Yes, because a flat-plate necessitates a minimum of two plans to three lines of columns.

40 Q. I think you said that unless provision were made in the present scheme when the Carrington Street scheme goes beyond the 6th floor, there might have to be a certain amount of demolition to make an entry for the truss? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 6.
H. A.
Llewellyn.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Defendant's
Evidence.
No. 6.
H. A.
Llewellyn.
Re-
examination.

Q. That is on the further assumption that somebody wanted to use a truss for the central building? A. Yes.

Q. Is this the position that provision would only have to be made at the time when plans for the further completion of the building became necessary—that is to say, when the work became imminent and detailed plans were necessary? A. Yes.

Q. The fact that no provision was made in Mr Nicholl's plans for the three storeys of bedrooms—would that have any bearing on the matter? A. That would come into our plans for the complete details of the job. 10

Q. And assuming that Mr Nicholl's plan was gone on with up to the three storeys of bedrooms overlooking Carrington Street, could provision be made to avoid the demolition when later on it was required to go up higher to the 150 ft.? A. For the provision of the truss to carry the load?

Q. Yes? A. Yes.

Mr WALLACE: That is all I want to ask at this stage. I would like to formally complete my re-examination, if I could have that indulgence, tomorrow morning.

HIS HONOR: Yes; the time between now and tomorrow could be well spent in pursuing these questions of the admissions. It seems to me expedient to make as many of them as possible. 20

SIR GARFIELD: I have those additional sheets about the size of the column that is extended up, and I do not know whether the witness would co-operate or not, but if he would care to look at these sheets, he could do so and see whether he could answer me.

HIS HONOR: Yes.

SIR GARFIELD: Q. If the columns 51 and 57 are extended in steel in the same dimensions as the sub-jacent columns, what would be the position? A. I can only check 51 by chance because we have the detail. 30

SIR GARFIELD: But I have material prepared here. These drawings may satisfy the witness and he may be able to answer me.

HIS HONOR: Yes; it will save time.

SIR GARFIELD: You may have a look at them. (Documents handed to witness.)

Mr WALLACE: Q. How long will it take you? A. About 10 minutes.

HIS HONOR: I will allow the witness to look at them out of my presence, and I will now adjourn. 40

SIR GARFIELD: Do you produce the written calculations made by you or on your behalf in connection with the 1956 Carrington Street frontage proposal for Avrom Investments?

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Mr LLEWELLYN: Yes.

SIR GARFIELD: Hand them to His Honor's Associate, and those sketches that were marked for identification yesterday.

Defendant's
Evidence.

(Certain documents were handed to the Associate, and Mr. Llewellyn was allowed to leave the Court.)

No. 6.
H. A.
Llewellyn.

10 SIR GARFIELD: I will not deal with the other subpoena at this stage. I have been instructed to inform Your Honor that if those calculations of Mr Llewellyn are mislaid in any way it will cause tremendous inconvenience.

Re-
examination.

HIS HONOR: Anyone who wants to have a look at these particular calculations will have to look at them under supervision in the Associate's room.

No. 7

Evidence of W. R. Bunning

No. 7.
W. R.
Bunning.
Examination.

Mr WALLACE: Q. Are you a qualified architect? A. Yes.

20 Q. Are you a Fellow of the Royal Australian Institute of Architects? A. Yes.

Q. And an Associate of the Royal Institute of British Architects? A. That is correct.

Q. A Fellow of the Australian Planning Institute? A. That is so.

Q. An Associate in Architecture of the Sydney Technical College? A. Yes.

Q. You are a practising architect of many years standing? A. My practice was commenced in 1945 as a partnership.

Q. You are a town-planner? A. Yes.

30 Q. And are you Chairman of the New South Wales Town and Country Planning Advisory Committee? A. That is correct.

Q. Which is the official committee established under the Local Government Act to advise the Minister for Local Government on town planning matters? A. That is so.

Q. Have you had overseas experience? A. Yes.

Q. Were you a travelling scholar from the Board of Architects in 1935, and did you travel the world for three years for the purpose of studying architecture? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*No. 7.
W. R.
Bunning.*
Examination.

Q. When you returned to Sydney you became a practising architect? A. Yes.

Q. And after the war you started out on your own? A. Yes.

Q. And is your practice of a general character? A. Yes.

Q. Did your firm win the contract for Anzac House? A. Yes.

Q. The National Memorial for World War II? A. Yes.

Q. And as Chairman of the Advisory Committee is it part of your duty to consider each and every town planning scheme that the Minister deals with? A. That is correct.

Q. Have you been to America fairly recently? A. Yes; last 10 year, between May and September.

Q. During those months did you study modern trends of architecture abroad—in America in particular? A. Yes.

Q. Did you take a number of coloured photographs? A. Yes.

Q. Which can be projected? A. Yes.

Q. You are a lecturer of the University of Sydney on town planning? A. I am not lecturing at the moment, but I have lectured for three years.

Q. And you have lectured to the Institute of Architecture on architectural matters? A. Yes. 20

Q. You have given lectures on your recent overseas tour? A. Yes.

Q. And have your lectures on town planning been printed and distributed amongst the profession? A. Yes.

Q. Do you know what I will call the “thin slab” type of building? A. Yes.

Q. What do you say about modern tendencies in relation to such a type of building as opposed to former types of city buildings? A. I would say that the type of building where the whole of the site is occupied by the construction and which has light areas to pierce the structure and therefore allow light and air to penetrate, is obsolete by modern standards. The contemporary trend is to have a base which may occupy the ground floor and then on top of that to have a tower type of building which projects upwards and which in some cases is square and in other cases is a slab on its end, and which enables better light, better air and a better view to be obtained and is more efficient in planning and also of lower cost. 30

Q. Does it also have an effect on town planning in relation to facilities for car parking in congested city areas? A. That is correct in the sense that the tower part of the building has to conform to certain economic standards. For example, the bay spacing may be between 20 and 25 feet underneath the tower, and the remainder of the site which is not occupied by the tower can have any spacing to suit car parking underneath, which is a big advantage. 40

Q. Do you know of important modern buildings which only occupy a portion of the site on which they are built? A. Yes. Overseas in America there are several very good examples, and the trend is now so established that a good number of the new buildings which are under construction also take this tower form. In Australia, in Sydney, there are already several examples, Caltex building, the I.C.I., Lever House and also the M.L.C. building at North Sydney, which in some cases do not occupy the whole of the site; I am not certain of my grounds in the case of Lever House but I understand that Caltex House and the

10 M.L.C. building do not occupy the whole of the site. In the case of the building that my own firm has constructed and which is to be opened on the 25th April, Anzac House, quite a large part of the site has been "given away" in order to give a more efficient structure on the upper floors.

Q. And you have some slides which can be projected in this Court room in order to illustrate the point you are making? A. That is so.

Q. Have you studied plans which are Exhibit H, the 1954 plans of Mr Ham, and Exhibit L2, which are the 1956 plans of Mr Nicholls? A. Yes. I have.

20 Q. And you have also studied the Exhibit which shows in isometric fashion the projected full development of these buildings, have you not? A. Yes, that is so.

Q. That is Exhibit 2. Would you tell His Honor which of those two plans, in your opinion, evidences a more efficient or satisfactory design?

SIR GARFIELD: I suppose, Your Honor, will take this subject to the same objection?

HIS HONOR: Yes.

Mr WALLACE: Q. First of all, which, in your opinion, represents the more efficient and satisfactory design? A. Well, in general and in particular what I referred to as Scheme B. Is that how it is referred to in this Court?

30

Q. The 1956 scheme is exhibit L2 and the 1954 scheme is Exhibit H? A. L2 has considerable advantages over H. In the case of L2 it has better light, to start with, in that 39 bedrooms in Scheme H are in light areas out of a total of 64. The light areas are as small as 22 ft. 6 in. across in one case. There are three light areas in scheme H, the central light area being only 22 ft. 6 in. across. That will mean that the light is not as good in Scheme H as in Scheme L2. The ventilation will not be as good and the outlook will not be as good, and the privacy in the case of Scheme H will also be poor in that one series of bedrooms looks across only 22 ft. 6 in. away from another series of bedrooms.

40

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 7.
W. R.
Bunning.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 7.
W. R.
Bunning.

Examination.

Q. I presume you are speaking of the windows of the bedrooms?

A. Yes; the windows of the bedrooms will be only 22 ft. 6 in. away from the windows of other bedrooms. In the case of outlook, Scheme L2 has 39 bedrooms looking down on to a roof garden. In the scheme of Scheme H there are 10 bedrooms looking over Wynyard Park, 15 overlooking George Street and the remainder looking into light wells, so that there is a large proportion of the bedrooms in Scheme H which have a poor outlook, poor ventilation and poor light. In the case of sun, 15 bedrooms in Scheme H are without sun at all because they face south. In the case of Scheme L2 two bedrooms are without sun, and 10 it is of considerable advantage to have sun in all bedrooms in order to make them healthy and so on. In regard to efficiency, Scheme H is capable of being developed to an area of 205,800 square feet under the by-laws of the City Council, whereas Scheme L2 is capable of being developed to an area of 234,800 square feet, an advantage of 30,000 square feet more in the case of L2 over H. In regard to the physical efficiency of the building the antiquated plan of Scheme H in which guests are required to circulate around light areas, finding their way as they go, is outdated because the new slab type building, with a long central corridor has this advantage that one can go along it and 20 find one's way to one's bedroom more easily. In terms of actual length it is 243-feet from the lift in the case of Scheme H to the furthest bedroom. In the case of Scheme L2 it is only 184-feet, a difference of about 60 feet of walking from the lift to the furthest bedroom. From the management point of view it is very difficult to know where the staff are in this light area scheme because they are around all sorts of corners, whereas in the case of the slab type building, with a single corridor, supervision may be much more easily maintained, and as for guests I think that applies also. In the case of costs, a hotel is naturally high in costs because of the plumbing which is required. 30 The modern standard of having one bathroom to every bedroom means that the plumbing costs are very very high. If one can concentrate the bedrooms so that they are one on top of the other, and the bathrooms one on top of the other, naturally the plumbing lines, which drop vertically can be concentrated and reduced in cost, and the same applies to the construction of a vertical building as opposed to a horizontal type one, where the structure is reduced by economic bay spacing in order to give a more efficient arrangement. Another item is the flat roof construction, which is also very costly. In the case of Scheme H the flat roof covers an area of the whole of the ground floor, less 40 the light areas. In the case of Scheme L2, the bedrooms, being concentrated on to three floors, the area of the roof is reduced by approximately one-third of the size of Scheme H. In order to emphasise the reduction in cost, I might mention that when a quantity surveyor is estimating the cost of a building—and the quantity surveyor is the specialist who is called in by architects to give estimates—he usually

uses a rate per cubic foot of the volume of the building. In an office building he can estimate the current cost for a particular type, but when it comes to the top floor, which involves the roof, he inevitably takes two feet above the level of the roof in order to cover the excess cost of the roof area. In Scheme H he would take the volume of the building, plus an additional two feet above the level of the flat roof and keep it at that cubic foot cost whatever the rate is that he decides upon. Therefore, in making the comparison between scheme H and Scheme L2 if the roof area is reduced by one-third, that additional cost
 10 equal to two feet above the level of the roof is reduced by one-third also.

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*

Defendant's
 Evidence.

No. 7.
 W. R.
 Bunning.

Examination.

Mr WALLACE: Q. Before the luncheon adjournment you were explaining to His Honor that one of the effects or the advantages of what are called thin slab buildings was in relation to the cost of the roof, and you were giving details of the two feet extra in relation to the cubic reckoning of costs by quantity surveyors? A. Yes.

Q. Will you proceed from there please? A. The next item of cost which would be reduced by concentration of the building—that is putting one floor on top of another instead of spreading it out over a
 20 much larger area, is that the plumbing is reduced because it runs vertically. The pipes already have to run vertically and the horizontal ones in the plumbing are omitted. It is the usual practice to build one bathroom on top of another. You plan it in that way as scheme L2 has been planned. So that from those two points of view the cost would be reduced. That is in regard to cost in this particular building. There are other items, though, which I would like to mention, which are of particular moment from a town planning point of view. The first of these is the access. Under town planning considerations, the entry to the building is one of greatest consequence. In the case of
 30 Scheme H the main entrance is from George Street, and guests would be required to take taxis or public transport—tram or bus—to the entrance to Wynyard Concourse, and then to carry their bags down to the lift, which would be on the left hand side of the left hand concourse entering from George Street. At peak hours I foresee that this would be a tremendously difficult thing because the traffic flow from the city of Sydney going into either Wynyard Concourse is considerable and it would be a battle to take any big suitcases and so on down against the flow of traffic, quite apart from the difficulty of getting taxis to stop anywhere near that major vortex of the whole of Sydney.
 40 Against that, the scheme L2 has its lift access from Carrington Street, which, although it is a bus terminal the eastern side of the one-way street is free from major traffic.

HIS HONOR: Q. At the moment? A. Yes.

Mr WALLACE: Q. At the moment George Street is a tow away area? A. Yes, but it could be arranged, as with all hotels, that certain areas

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 7.
W. R.
Bunning.*

Examination.

could be kept free for the hotel access, and it would be relatively freer than the Wynyard Street entrance—

Q. The George Street entrance? A. Yes, I am sorry, the George Street entrance. It would be comparatively easier to get luggage in from the Carrington Street entrance to the lifts than to take luggage down that concourse of Wynyard. That is a major town planning feature in favour of Scheme L2 as against Scheme H. Now, there is another aspect in relation to traffic access and flow. In Scheme H pedestrians are able to go from the eastern end of Wynyard concourse to Carrington Street by means of a staircase which emerges from the concourse behind the milk bar at the eastern end of the concourse. It is a ten feet wide flight of steps. It arrives at Wynyard Lane and I think it is 25-feet in width at that point. There the course is under cover and up another flight of stairs 10-feet wide, eventually arriving at Carrington Street. That enables people to get from the concourse to Carrington Street without going right round George Street via Margaret Street or Wynyard Street—all that distance. But, in the case of Scheme L2 that has been improved. The same flow is maintained, but it is improved by the fact that Wynyard Lane is widened. I have not got the plans in front of me, but from memory it is a good deal wider and this would make it a great deal more attractive for shops and moreover, it is covered over so that pedestrians would be able to go, under cover, from the concourse at Wynyard to Carrington street, emerging at or passing through a very nice shopping court on the way which gives a much more attractive arrangement from the point of view of the retailers, by being wider, by being covered over and by having a bigger variety of shops—fourteen as against six. Therefore, that town planning aspect is important in the case of pedestrian access from George Street to Carrington Street. 10

Q. That is a thing that appeals to you? A. Yes; it appeals to me tremendously. When we come to the matter of the bedrooms, it appears to me that quite a lot of the bedrooms do not have a good outlook, good access or good ventilation in the case of Scheme H. Some of the bedrooms in Scheme H have no bathrooms attached—I think it is 20. It is true that some suites are arranged so that one bathroom to two bedrooms is all that is required, but I would suggest that 20 bedrooms without bathrooms is too much in a scheme of 64 bedrooms. 30

Q. In the case of L2, of course we know that every room has a bath or shower? A. Yes.

Q. What about the shape of the bedrooms? Do you have any comments to offer on the general layout and design of the bedrooms in the two schemes? A. In the case of Scheme H the bedrooms fronting George Street and the bedrooms fronting Carrington Street have their bathrooms internally arranged; that is, the bathrooms are not on the outside walls, they are on the inside corridor walls, and 40

one passes through a narrow entrance, past the bathroom into the bedroom itself. In the case of the inner bedrooms, this is not the case; the bathrooms have been planned on external walls. In the case of those on external walls, it is inefficient. Bathrooms need not occupy external walls; mechanical ventilation is all that is required under modern standards, and in fact all the hotels I saw in America and in Honolulu had the bathrooms on the internal corridors, the big advantage being that the external wall is fully used for the bedrooms. Also, the shape of the room is better. In the case of the type of room where the bathroom is parallel with the bedroom, doors are necessary to get from the bedroom to the bathroom, and these destroy the long walls of the bedrooms, which, under modern conditions, have settees and are arranged like bed-sitting rooms. So that, in that case L2 scores over H.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 7.
W. R.
Bunning.

Examination.

Q. Is there any advantage, in your opinion, in having uniformity in size and design of bedroom? A. Yes, from the point of view of

Q. We have been told here that some of the bedrooms in the Scheme H design are as narrow as six or eight feet, 7' 11" x 6' 6"? A. Yes; I would say that it would not give the same freedom of arrangement of furniture. It makes the room look rather long, and, to use a colloquialism, it is "narrow-gutted". It is a long narrow bedroom which never has the same sense of space that a broader room has. One has to achieve a sense of space and homeliness which one cannot achieve in a long narrow bedroom.

Q. Can you say whether, on the whole, the bedrooms in one scheme are larger than those of the other? A. Well, have seen an analysis which leads me to believe that they are larger in the case of L2 as against H.

Q. Have a look at Exhibit 5 (Handed to witness) Have you seen a copy of that before? A. Yes.

Q. And have been through it carefully? A. Yes.

Q. Do you agree with such of it as is comment? A. Yes. In general terms, I have not seen anything in detail or principle that I would criticise.

Q. Well, do you agree with it? A. Yes.

Q. In regard to the future development of the two schemes—the possibilities of future development, in your opinion does one lend itself better to future development than the other? In other words, is one more rigid and is the other more flexible so far as future development is concerned? A. Yes. In regard to that I would say that if one adopts this light area plan, as I will call it—Scheme H—one immediately sets the pattern which would necessarily have to be followed in general

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 7.
W. R.
Bunning.*

Examination.

terms for the upper floors and this would be unfortunate in view of the trend away from that style of design. This is not the case in regard to L2.

Q. You have read of the bill that is going through Parliament at the present time for increasing the height of buildings? A. Yes.

Q. According to the report in The Sydney Morning Herald provision is made in the bill for this, that where a building exceeds 150 feet it shall not accommodate more people than a similar building of 150 feet? A. Yes, that is so.

Q. Is it, as you understand it, in conformity with the principle of 10 the thin slab type of building not occupying the whole site? A. Yes; I have read that report, and the Minister goes on to point out the advantages of having a tower type of building, better ventilation, better light and lower cost.

Q. And the provision of better parking facilities? A. Yes.

Q. And he spoke of the departure from the box type of construction as obviously making for better light and air? A. Yes.

Q. And making provision for better off-street parking? A. Yes.

Q. Do you say that this bill exemplified the principles you have been advocating? A. Yes. That is the result of the Building Com- 20 mittee's recommendations to the Minister, and that Committee contains Architects whose views are as I have stated.

Q. Does the question of the availability of space around the buildings contemplated in L2 have any effect on the facilities of effecting repairs and maintenance, and of implementing development—does the question of space affect that? A. Yes; it would certainly make it easier, if one was able to use the rest of the site, for any development which may be considered necessary.

Q. Can you envisage useful parking facilities being readily made available in connection with the L2 scheme, in future development? 30 A. I have not considered the matter in detail, but I would say that if the flat roof above the George Street frontage of the existing building could be made into a parking area with access from Wynyard Lane, where the levels enable it to be, I should think, readily done, it would be of advantage from the point of view of providing very good space in a very critical part of the city.

Q. I am directing your mind, if I may, to the area between Wynyard Lane and eastwards to the western edge of the building proposed facing George Street, do you follow? A. Yes.

Q. And you say that that lends itself readily to development as a 40 parking area? A. Of constructional detail I would not have knowledge, but it is a principle that is being followed in modern buildings, and particularly in American hotels, where they go to quite a lot of expense in order to provide parking facilities for their patrons. Con-

structionally it is possible—my own firm is carrying out a million pound building project in Parramatta for Grace Bros. and the whole of the building has car parking facilities on top, which are reached by a ramp from below.

Q. If you have car parking facilities in this building, you would get access from Wynyard Lane—the eastern side of Wynyard Lane for a building to go up on the George Street frontage? A. Yes.

HIS HONOR: But if there is only one-way traffic, how are you going to get out again?

10 Mr WALLACE: Q. It is only a question of arranging the entrances and exits of the parking area? A. It is usual to have the entrance and the exit parallel.

Q. You would enter on the northern side and you would come out the southern side, I think that is the way it goes? A. Yes.

Q. During your inspections in America, I suppose no doubt you observed something of the Hilton group of hotels? A. Yes.

20 Q. What do you say about the tendency exemplified in the Hilton group and other hotels, where there is a two-street frontage—one with heavy traffic—of providing a commercial building on one, and a hotel on the other? Is there some modern trend in that regard? A. That is followed consistently by both the Hilton and the Stattler chains. In each case they grant commercial concessions on their ground floors, where they will have shops, and a coffee lounge which will be let usually to another enterprise to run, but associated with the hotel is a commercial development of another character—particularly professional rooms and things of that nature.

30 Q. Are there any advantages in having dining and restaurant facilities serving a hotel physically detached from the hotel itself? A. Yes. In the case of the Stattler Hotel at Los Angeles, one has to go out the front door in order to go into the restaurant below. In some cases that seems to be the position; in other cases, it is run as an ordinary hotel restaurant by the establishment itself.

Q. Can you think of any illustrations where the Hilton group have built slab types of buildings in America? Have you been to the Istanbul? A. No, but I have seen illustrations which follow the usual single corridor type running the full length of the building, with bedrooms on each side, and the Istanbul design is the same as the Beverley Hills design, which is the same pattern; it only occupies a small portion of the hotel site.

40 Q. The modern hotels in Honolulu, you have told us, are of the slab type? A. Yes; the Matson Line have them. The Princess Kailau is one.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 7.
W. R.
Bunning.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 7.
W. R.
Bunning.

Examination.

Q. Those are the hotels which are at the back of the beach? A. Yes. Moana and The Surf Rider are all slab types, with bedrooms off long corridors.

Q. This L2 thin slab type of building—the fact that it runs north and south, has that any special advantage? A. It is very advantageous, from a hotel point of view, in that as the length of the building is north and south, the bedrooms all face east and west, so that both sides are able to get the sun at some part of the day.

Q. Do you favour the main bedroom part of the hotel facing on to the Carrington Street frontage or the George Street frontage? A. 10
Well, I think, in view of the fact that I do not consider the George Street frontage satisfactory for bedrooms in view of the noise and also because it is not a particularly delightful outlook, that it would not be good practice; whereas it is a very convenient spot for commercial houses.

Q. If you were advising in this particular case, which particular design would you advise? A. I would unquestionably advise in favour of L2.

Q. And would L2 be the one you would favour if you had the original design of it? A. I would say, "Yes", but exploration would 20
be necessary before I could say that it is the only possible solution, but there is no question in my mind that of the two I would favour that.

Q. Are you able to speak of any trend towards commercial tenants wanting good natural light? A. Yes; it seems to be the case that any office building which provides other than first class lighting conditions will not command the same rentals as one which provides 100 per cent efficient light, and in Denver, Colorado, I saw the latest building which is being done for a commercial enterprise—Webb & Napp was the firm which built this building, and it has become a sort of 30
pace-setter for office buildings in America and overseas. The general principle of this building is that it is planned over only 26 per cent of the whole of the site area. It is on a corner of two main streets, and it is approximately 150-feet by 125-feet in dimensions, and therefore the whole of the exterior walls get 100 per cent good lighting conditions. It is reckoned that the value of the space will be equal on all sides, and this has been proved by the fact that it is commanding rentals double the other commercial rentable buildings in that area. It is commanding six dollars a square foot as against three dollars a square foot for the other commercial buildings. The reason for 40
this is the excellent light and ventilation and so on, and the owners were willing to omit building over the whole of the ground floor in order to provide these conditions.

Mr WALLACE: I would like Your Honor to witness a few coloured slides at this stage to illustrate what is happening abroad with regard to these thin slab buildings.

HIS HONOR: That has an ephemeral result to my mind. Surely you have these little viewers that we could use?

Mr WALLACE: Q. Do you have those slides there? A. Yes.

Q. Have you a little viewer as well? A. Yes. (Slides and viewer produced).

HIS HONOR: Sir Garfield Barwick will have to have a look at them before cross-examining and before they are tendered.

Mr WALLACE: Q. Perhaps you might come forward to the bar table and identify a few of the more arresting illustrations that you have in 10 mind. His Honor will allow you to leave the witness box.

HIS HONOR: Yes.

SIR GARFIELD: Perhaps he could look at them in the witness box.

Mr WALLACE: Q. I suppose they have descriptions on them? A. Unfortunately no.

SIR GARFIELD: Let him write on them what they are.

Mr WALLACE: Can you write on them? A. I can write the title of the building. The explanatory remarks could hardly be written, I am afraid.

SIR GARFIELD: Well, the transcript may be used then.

20 Mr WALLACE: Could you write on the cardboard surrounding the slide what it is, and then give a short explanation of it?

SIR GARFIELD: He could reduce his explanation to writing and we could look at it afterwards.

Mr WALLACE: After the witness leaves the box this afternoon I will ask him to be good enough to do that.

HIS HONOR: No; you will ask him now.

Mr WALLACE: Q. Will you be good enough to mark on the slides you have in mind some identifying material . . . ? A. Yes.

30 Q. And then have typed out your comments, respectively, on those slides—each one of them—and then perhaps on Monday afternoon you can come back and tender them? A. Yes.

HIS HONOR: The witness can put the slides away for the moment.

CROSS-EXAMINED

SIR GARFIELD: Q. I suppose you would agree that what you can do with a given piece of land depends very much first of all on where it is? A. Yes; that is true.

Q. What city it is in? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 7.
W. R.
Bunning.

Examination.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 7.
W. R.
Bunning.

Cross-
examination.

Q. The nature of the city? A. Yes; that is also true.

Q. I suppose you will agree that what you can do in Denver would be quite inappropriate in Sydney, in many respects? A. Well, in general principle, no, because the general development of plans always follows certain lines.

Q. But you know Sydney's peculiarities? Sydney is what you might call a narrow-lane—a very narrow area of land? A. I can assure you that Denver is even queerer so far as street lay-out is concerned.

Q. That may be, but Sydney is very narrow? A. No; I should say that it has characteristics which differ from London. 10

Q. And from Denver? A. Yes.

Q. And from Los Angeles? A. Yes.

Q. And also what you can do with a piece of land depends on the particular wish of the owner—as to what he ultimately wishes to achieve? A. Yes.

Q. And a great deal of the development has been from the town-planners point of view? A. And from an architectural point of view.

Q. An architectural desideratum point of view—what the Architect would like to do if he were free to do it? A. Yes. 20

Q. And I suppose your painful experience has been that first of all your town planning desires have frequently to give way to commercial expediency? A. Yes. Well, it is true that the town planning ones are statutory and the other ones

Q. I am not thinking of the statutory ones. I am speaking, not of these idealistic things, but things that the town planner wants to do—they tend to meet with commercial expediency when he discusses the matter with his client? A. It is a matter sometimes of compromise.

Q. And they have to yield to commercial practicability? A. That is true. 30

Q. And so far as this site is concerned, you have been comparing L2 and H? A. Yes.

Q. I am right, I suppose, in saying that your comparison is as between those two precise plan schemes? A. Yes, because those are the two schemes before the Court.

Q. And your criticism of one, and your praise of the other—it is fairly uniform, is it not?

HIS HONOR: It is all one way.

SIR GARFIELD: I think it is fair enough to say that your condemnation of one and your praise of the other have largely stemmed from your comparison of the two proposals as immediate and present hotel 40

proposals? A. Well, I went further in the case of total space, if you will recall. I mentioned the total amount of space given by Scheme L2 as developed and Scheme H as developed to the full extent.

Q. I will come to that. Apart from that, what I put to you would be right, that they were comparisons of them as hotel schemes for present and immediate use? A. Yes, except that cost came into the question of future extensions—the cost of future extensions, one as against the other.

Q. I will come to that too, in a moment. When you speak about 10 buildings abroad, not using the full limit of the available land, I suppose you will agree that building regulations abroad have had a distinct bearing on that tendency? A. Well, I would think that building regulations must have, yes, but, on the other hand the conditions to be satisfied in every country are very similar.

Q. But under the building regulations abroad, it has been found economically more profitable to build on less and go higher? A. In the case of the buildings mentioned, yes.

Q. So that this stepping back and not using the area to the full extent is a commercial tendency abroad, rather than a mere architectural tendency? A. I would say that they go hand in hand. The 20 Architect approves of the form of the building.

Q. But the building owner only agrees in the main because it is demonstrated that he can get a better return in that way? A. Yes.

Q. So that when you come to the development of this site that we are speaking of—whether it be built over wholly or in part, in the long run it would depend upon the commercial view of the owner? A. Yes, that would be so.

Q. I may take it that you have not approached, at any stage, either scheme L2 or Scheme H, from the point of view of the owner who has 30 nothing on the land? A. No. I have considered it as being what exists now.

Q. Nor have you really considered it as from the point of view of an owner who is not committed to anything above one floor above George Street? A. No, if I was approached to design a building of another type, then I would take another view altogether.

Q. You were telling us, in praise of this Carrington Street project, that sunshine is a great advantage? A. Yes.

Q. Do you really say that about buildings which face to the west in this city? A. Well, I would say that it would be an advantage to 40 have some facing west than to have some facing south, with no sun.

Q. If I were to take you around the city at the moment and show you the western facing windows, you would see the blinds all down, would you not? A. Well, I would say that in winter time it would

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 7.
W. R.
Bunning.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 7.
W. R.
Bunning.*

*Cross-
examination.*

be very unlikely that you would find that, and in the case of Lever House they have taken the trouble to face that building with glass walls to the west.

Q. The complete glass wall is dictated, to some extent, by this thin slab construction? A. Yes, and in recommending it to the clients, they must have given them the sort of answer that they were looking for.

Q. I suppose you might consider that in five years time the curses of the people in that building would be on the persons who designed it—you would not deny that, would you? A. No, but I 10 would not imagine people of such standing recommending that to be done if they thought there was any possibility of those rooms being most uncomfortable.

Q. But at the moment there is a fashion for a thin slab construction? A. Yes.

Q. And I suppose you claim to be the pioneer of it with your Anzac House building? A. It is true that that is a building of that type of design.

Q. That is the first one? A. It was the first one for which construction was started, yes. 20

Q. And the form of this type of construction stems very largely from economic factors, does it not? A. Well, it is a matter of gaining light and air, etc., and first class conditions, as against the other form, and also a matter of reducing the cost.

Q. But you, as an Architect, claim that it is cheaper to build thin slab and to maintain thin slab? A. That is true, but that is one of the considerations and perhaps one to be considered against a number of others.

Q. And this thin slab construction inevitably involves one of these rectangular shape buildings? A. In general terms, yes. 30

Q. And, of course, if you have a piece of land that is either irregular in its shape or is a little too wide to be covered neatly with one of these slab type buildings, then the inevitable thing is that you forfeit a bit of the ground space and build the slab type building, don't you? A. I do not quite understand that question.

Q. Let us suppose that I have a piece of land of such a width as to enable me to build one of these thin slab type buildings, and that the width of the building that it is economical to build, does not go to the full width of the land? A. Yes.

Q. Inevitably I would forfeit a strip of land? A. Yes. 40

Q. And afterwards, by prettying it up, the Architect puts some development on the land to make the best of the fact that the land was not needed for his building? A. Yes. It is true that they develop them as public areas to attract people—make them attractive.

Q. But the basic cause of it was the decision to use or to build a thin slab type of building of the width to which that slab type could be taken on the particular site? A. The basic thing was to give the light and ventilation up to 100 per cent in the design.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. But when a person who has a piece of land which is in a monopoly position in the city sets to work, he is not merely interested in providing light and air, is he? A. Yes; I think he is very definitely concerned. In the case of I.C.I., for instance, in Melbourne, they have taken a case to the Committee for a building over 150-feet, not to let but
10 to use it themselves.

*Defendant's
Evidence.*

*No. 7.
W. R.
Bunning.*

Q. But again there are other factors; for instance, where you get a big bank or corporation or the I.C.I., there is always a certain matter of prestige or an advertising factor in the designing of their buildings? A. Yes; I would say so.

*Cross-
examination.*

Q. And we have seen it lead to many divergent forms of buildings?
A. Yes.

Q. And when you come to these buildings that you have mentioned in Sydney—Caltex for instance—what part of Caltex building is not covering the sub-jacent area? A. I understand that there is a small
20 portion—it is not large

Q. You made the statement. Have you been over the site yourself? A. No.

Q. I thought you had from what you said?

HIS HONOR: The witness did mention Caltex.

WITNESS: I did mention Caltex and M.L.C. as not being built over the whole of the site.

SIR GARFIELD: Q. We had Caltex, I.C.I., and M.L.C. First of all, Caltex: you say that you have not been over the site? A. No—only past it.

30 Q. Can you say what the area is that has not been built over?
A. I could not tell you the square footage.

Q. I suppose you know sufficient of the project to agree with me that the reason why it is not completely built over was on the basis that the flat slab just came to a certain point? A. Yes; I would think that that is the case.

Q. And on that site they are not troubled by shadows from other buildings and that sort of thing—(Objected to; question withdrawn).

Q. Now take I.C.I. . . . ? A. I know that. And in the case of Caltex the Architects had recommended that that site be purchased in
40 order to enable them to have the type of slab construction which would give them this 100 per cent efficiency in regard to light and air.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 7.
W. R.
Bunning.

Cross-
examination.

Q. Yes, but if the Architect could, by any chance, have bought the piece of land without the land not used, he would have bought the residue would he not? A. Well, it is rather hypothetical.

Q. In the case of Caltex you cannot tell me what percentage of the site is occupied? A. No.

Q. Would you agree that it is well over 90 per cent? A. Yes.

Q. And what about I.C.I.? A. I think it is 100 per cent.

Q. Lever House? A. I think 100 per cent.

Q. The M.L.C. at North Sydney—do you know the site? A. Yes.

Q. Do you know whether there are any factors connected with the 10 future widening or altering of the street which have contributed to the decision as to the actual position in regard to that building? A. Well, from observation only. I have no actual knowledge.

Q. Did you gather from looking at it—? A. Yes.

Q. That future street widening has something to do with it? A. Yes, but I do not refer to that. I refer to the fact that the building is an H shape in plan, and it does not occupy the whole volume of the site with light areas. There are no light areas in the accepted sense of the words.

Q. It has two light areas within the two spaces of the H? A. It 20 has two external light areas, which are not completely enclosed.

Q. Now take an H shaped building built on the site at Wynyard—what do you say about that? A. I would say that an H shaped building may give some advantages over Scheme H, but I cannot say that it would give the same advantages over Scheme L2, in the sense that in the H shape building there are certain spaces with internal angles which are not useable at all; they are completely cut off from light and air.

Q. You would have no objection, from any of your town planning thoughts or your architectural desiderata—no objection to an H shape 30 of building on that land, of a dimension that had its centre line of the H of the order of 45-feet or 48-feet wide and a total length of 172-feet—nearly 173 feet on the Carrington Street frontage. The George Street frontage is a little less. 173-feet along the western face? A. Yes.

Q. And the space between some 80-feet? A. I really would not be able to comment unless I saw a plan.

Q. You cannot envisage just that simplicity that I put to you—the H is made up of two sides, one is 173-feet by, say, 60-feet, roughly, and the other is about 150-feet by 60-feet? A. Yes.

Q. The intervening space between them is some 80-feet? A. 40 Yes.

Q. Running east and west? A. Yes.

Q. And I suppose the centre member of the H would be a building going up to the same height as the rest of it, of some 45-feet to 48-feet in width—north and south. Can you envisage that? A. I can envisage the plan, but I would not be able to say what advantages it would have.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. But would it meet with your wholehearted approval? It is like the M.L.C. building. 80-feet by 50-feet or 60-feet would not constitute light areas in your sense? A. No; I grant that those are better than internal light areas, but as for the economic use of the space, I would
10 not be able to pass an opinion.

Defendant's
Evidence.

No. 7.
W. R.
Bunning.

Cross-
examination.

Q. But we have been talking from town planning desiderata, mainly. Would not that accord with all the criteria that you suggest? A. No, because the H link between the Carrington Street front and the George Street front would have a large number of bedrooms facing south. The whole of the bedrooms on the southern side would have no sun at all, which I think is bad, and furthermore the link in itself would cut off the light.

Q. Let me test it for you with commerce. If a person had that available piece of land and he put up a 45-feet deep building running
20 up to 150-feet, or thereabouts, because one side of the building was facing to the south, you think it would be a bad proposition? A. Yes . . .

Q. It would be better not to build it at all if you had to have some of the bedrooms facing to the south? A. Well, you might be able to build some building with a better return, avoiding the south facing bedrooms.

Q. In that suggestion I gave you of occupying Carrington Street by one block 173-feet by 60-feet and in George Street, 147-feet by 60-feet, you would suggest that it would be better not to have a con-
30 necting building, than to have one 45-feet thick and 150-feet high because it would have some southerly facing bedrooms? Is that what you say?

HIS HONOR: And some in the joins.

SIR GARFIELD: Yes, in the joins.

Q. Do you say that, or don't you? A. Well, I am afraid that I have lost the track of that question.

Q. I think it is a very simple question. Supposing a block of building is 170-feet by 60-feet . . .

Mr WALLACE: Have you some plan of this?

40 SIR GARFIELD: Q. You have a block in Carrington Street 170-feet by 60-feet thick. The other, the George Street frontage is 150-feet by 60-feet thick? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 7.
W. R.
Bunning.*

*Cross-
examination.*

*No. 8.
H. A.
Llewellyn.
Examination.*

Q. The question is if we joined them by a building 45-feet to 48-feet running up to 150-feet, which would have some rooms to the south, and which would make shade on some rooms in the corners, would it be better not to build that block because it would have some southerly facing bedrooms? A. I would say that those additional bedrooms would not be worth it economically because assuming that you have bedrooms in the east facing wall of the western block and the west facing walls of the eastern block, the number of bedrooms gained in that way may be lost by the southward facing wall of the building.

Q. But you say that it would be quite possible? A. Yes.

10

No. 8

Further evidence of H. A. Llewellyn

Mr WALLACE: Q. Can you envisage any structural difficulties if one wanted to put up some parking facilities on the site to be occupied under the L2 scheme, the 1956 scheme, east of Wynyard lane—between there and the west side of the George Street building to be so erected? A. No; no structural difficulties.

Q. In connection with the 1954 plan, if you want to take a straight line through from the Carrington Street end to the George Street end, have you checked up to see whether that involves a false floor on the George Street side of the H plan? A. Yes; the existing roof over the bedrooms would want a false timber floor to bring it to the similar level to Carrington Street. 20

Q. About how much? A. About 1-foot 6-inches above the existing concrete.

Q. Have you checked up again to see whether the so-called coffee lounge in the 1956 plan, if desired, could be extended out over the concrete slab? A. Yes; the slab could be capable of supporting the coffee lounge.

Q. You were asked by Sir Garfield something about the George Street side of the 1956 plan, and as to whether any demolition would be rendered necessary if you went in for the beams there on the Carrington Street side—do you remember? A. Yes. 30

Q. What do you say as to that? A. Some demolition would be necessary, but it could be avoided. The engineering solution would be to put those beams on the next level above.

Q. Thus avoiding any demolition? A. Yes.

Q. And is that quite a feasible and workable plan? A. Yes.

Q. You say that the George Street component of the 1956 plans is capable of extension to 150-feet? A. Yes. I might say that we are morally certain of that. We have not investigated it, but from our investigation of the existing columns, there does not seem to be any reasonable doubt. 40

Q. No reasonable doubt in your mind? A. That is so.

Q. Then you were asked a question in connection with the Carrington Street component of the 1956 plans, and the question in regard to that was about the installation of trusses—? A. Yes.

Q. At the fourth floor level? A. Yes.

Q. And may be, should it be so desired, to employ trusses in the centre at any time? A. Yes.

Q. Is that subject matter recalled to your mind? A. Yes.

10 Q. I ask you whether, in planning for the development of the Carrington Street component of the 1956 plans developing above three stories, would it be easy or otherwise to legislate for those trusses in some obvious manner?

SIR GARFIELD: What do you mean by "legislate"?

Mr WALLACE: Plan for it.

WITNESS: Above three stories?

Mr WALLACE: Q. Developing the Carrington Street frontage above the third floor? A. Detailing would be necessary to pick up the trusses for further development.

20 Q. What detailing would be necessary? A. Possibly a set-back or a bracket.

Q. A ledge or a bracket? A. Technically, a bracket.

Q. Just a bracket on the extended part of the column to hold the truss? A. It would be quite an extended bracket, but a bracket. It is a question of designing a bracket to carry a load; so that it is a bracket on the column.

Q. Is there any engineering difficulty about that? A. No; it is only a matter of magnitude.

30 Q. I think you have had a look at the structural drawings that went with, or followed the architectural plans of Mr Ham in connection with the 1954 scheme? A. Yes.

Mr WALLACE: I call for the plan that went to the Railway Commissioner from us by our letter of the 21st April, 1954. (Document produced).

(Plans sent to Railway Commissioner by Defendants' Solicitor Messrs Sly & Russell, under cover of letter of 21st April, 1954, tendered and marked Exhibit 12.)

Mr WALLACE: I also call for an amendment thereto, submitted by letter of the 7th May, 1954. (Documents not produced).

40 Q. Have you seen the structural drawings prepared in connection with the 1954 plans? A. Yes.

Q. Where have you seen them recently? A. In our office.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 8.

H. A.
Llewellyn.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 8.
H. A.
Llewellyn.

Examination.

Q. Did they show any more detail, or go to any further stage, than the structural drawings which you drew for the 1956 plans? A. The structural steel is detailed slightly more, but there was no structural steel in the 1956 plans, or very little. The concrete work is about the same amount.

Q. Would you look at Exhibit 12, which has just been tendered, and tell me, comparing it with Exhibit L2, whether there is any more detail in the set of plans which constitute Exhibit 12 than in the set of plans, Exhibit L2, Mr Nicholls' plans? A. The amount of sheets is obviously more. (Witness peruses documents). No. 10

Q. Can columns be designed either in steel or in concrete?
A. Yes.

Q. And it is a question which depends on the nature of the building? A. Usually.

Q. Is it possible to generalise as to which is better than the other or vice versa? A. No.

Q. And in the present instance, was it better or not to use reinforced concrete? A. As the main part of the building had a mushroom floor slab, it would be more natural to use reinforced concrete—that is the 1954 scheme. The early part of the 1954 plan—the existing 20 work there is mainly reinforced concrete. The heavy columns were to be in structural steel, but all the minor columns, and there are many more of them, were to be in reinforced concrete, mainly because of the mushroom floor.

Q. Is there any provision in the 1954 scheme—Mr Ham's plan—for the truss that we have heard about—as to where it would have to go in future development? A. No.

Q. None whatever? A. No provision at all.

Q. Some questions were asked of you yesterday by Sir Garfield, based on an assumption of trussing from the first floor. Do you 30 remember that series of questions? A. Yes.

Q. Can you detect any discernable engineering object in trussing from the first floor? A. No, not now that the existing structure lends itself to trussing at the fourth floor.

HIS HONOR: Q. The higher the truss goes, the less heavy it need be?
A. That is so.

Mr WALLACE: Q. Assuming that any set-back was desired in George Street, would it be more difficult to set back on that street than on Carrington Street? A. No.

SIR GARFIELD: Q. Which setting-back are you talking about. There 40 are two setting-backs in Carrington Street? A. I think Mr Wallace was referring to the setting-back that occurs in Carrington Street at the eighth floor.

Mr WALLACE: Q. There has been a progressive increase in the permissible weight on columns of a given diameter in recent years, has there not? A. Yes.

Q. Can you give us any approximate idea of the extent of that increase? A. Yes. In concrete it has gone from .225 to .35.

SIR GARFIELD: Q. What? A. That is the percentage of the ultimate strength of the concrete. It has increased quite considerably. It is in the process of being increased again. As to the carrying capacity of the columns, there is another important factor, and that is the live load that each type of tenancy is called upon to carry. That has been modified, and in addition what we know as the live load reduction has been increased. As a tenancy goes further up, you can reduce the total live load on the columns. The building is never completely occupied at one stage, so you get an ultimate lesser load from the same tenancy under modern regulations.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 8.
H. A.
Llewellyn.

Examination.

CROSS-EXAMINED

SIR GARFIELD: Q. You said that there is as much structural information on the 1956 plan as there is on the 1954 plan? A. Yes.

Q. With the 1954 plan there was a structural steel plan? A. Yes; 20 a structural steel and reinforced concrete plan.

Q. You know that your Exhibit 10 was not sent with the 1956 plan, do you not, or do you think it was? A. No, I did not know.

Q. If I tell you that your structural steel preliminary drawings did not accompany the 1956 plans, but structural steel preliminary drawings and steel column details did accompany the 1954 plans—?

Mr. WALLACE: I called for them and you did not produce them. I called for all plans that were sent in our letter, and that is what I asked you to produce.

HIS HONOUR: You did in principal and not in fact. You called for 30 one set of plans. Really what you wanted was all the sets of plans.

SIR GARFIELD: They were sent to us shortly afterwards, but you were asked for what was sent with the letter.

Q. In 1954 you and departmental officers were in constant collaboration at the time that these 1954 plans were being evolved? A. We were in collaboration, yes.

Q. And before the 1954 architectural plans were finished, you had discussions with Railway officers? A. It would be Mr. Stanley.

Q. And you were coming into the picture more frequently, at that time, were you not? A. Not until after his death.

40 Mr. WALLACE: Q. When did he die? A. In June, 1955.

Mr. WALLACE: I object to this.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

HIS HONOUR: Ask the witness was he present.

*Defendant's
Evidence.*

*No. 8.
H. A.
Llewellyn.*

*Cross-
examination.*

SIR GARFIELD: Q. Were you present at any discussions with Railway officers?

Mr. WALLACE: Before the 21st May, 1954?

WITNESS: No, not before 1954.

SIR GARFIELD: Q. Do you know that Mr. Stanley was in discussion with Railway officers? A. Yes.

Q. Do you know that he was in discussion with Railway officers with respect to the steelwork and the columnwork connected with the 1954 project? (Objected to; rejected). 10

Q. Of course you know Mr. Hutchinson? A. Yes.

Q. And you know other Railway officers connected with the structural branch? A. Yes.

Q. And you had seen them in the partnership offices before these structural drawings were sent on to the Commissioner? A. They were very seldom in our offices. The only definite interview I remember in our office was with one man, and I do not recall his name.

Q. But you saw officers in your office? A. Once. Mr. Stanley met them on the site.

Q. Were your structural drawings, and in particular the steel 20 drawing details, in preparation by Mr. Stanley before April, 1954, or whatever the date was? A. I do not think so. I think that the structural details of the 1954 scheme were prepared mainly after Mr. Stanley's death. I would not be sure of that.

Q. But there would be many discussions before they were prepared—finally settled? A. Yes.

Q. The 1954 structural drawings were very difficult? A. Yes.

Q. And they took a long time? A. We are only talking about the steel stanchion details.

Q. And the concrete work. You told us earlier that they took a 30 long time to prepare? A. I can tell you that the Railway Department did not have any knowledge at all of concrete column sizes.

Q. If you look at the 1954 scheme you will see that it did contemplate utilising what you call that weak line of columns up to the second floor above George Street? A. The second floor above Carrington Street?

Q. Or George Street? A. Carrington Street.

Q. And that was all that was to be asked in respect of those columns? A. Yes.

Q. From the point of view of mere load, that was all that was to 40 be asked of them? A. Yes.

Q. And columns that were to carry the trusses were being carried out in structural steel? A. Yes.

Q. And the detail of that structural steel was known at the date that these drawings were finished? A. No, I do not think so. It was only agreed that whatever went on those structural steel columns would be carried up exactly as then existing.

Q. And the concrete columns that you are talking about are the extensions of the weak ones? A. No, not only those, but dozens of those on the George Street frontage and the Carrington Street frontage. There were at least 30 other columns.

Q. And I suppose there was some agreement in principle as to those, too? A. No. As I saw, the Railway Department had no idea of the sizes of the columns. The only thing we knew about them was a typewritten schedule.

Q. And that is why you say that the Railway Department did not know it? A. That is so.

Q. It is not true to say that there was as much information available in 1956 as there was available at the date in 1954 when the architectural plans were prepared? A. As to a detailed discussion between Mr. Stanley and the Railway Department I could say that it is true, and the information given to the Railway Department gave them less in the 1954 scheme than it gave them in the 1956 scheme.

Q. They did not get any information in the 1956 scheme? A. I am sorry. In the 1954 scheme they had concrete sizes with no reinforcement details; they had this agreement that the steel stanchions would be carried up but they had no detail at all as to the concrete columns.

Q. But the important thing to know, from the point of view of the 1954 drawings, was the detail of the steel columns that were to be extended? A. It was critical. The size of the concrete columns would be equally critical.

Q. You do not suggest that Mr. Stanley was other than a very competent engineer, do you? A. No.

Q. You told me yesterday that you thought that columns 51 and 57 carried up in concrete in the way you provided in Exhibit 10 would be good enough to carry a truss between the fifth and sixth floors? A. Yes.

Q. And you say that why you said that was because in the Caltex building you had greater weight on the same or lesser columns? A. I did not say greater weight. You asked me to give an answer, and I did a quick analysis between the two buildings.

Q. I suppose you compared them? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 8.
H. A.
Llewellyn.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 8.
H. A.
Llewellyn.*

*Cross-
examination.*

Q. And I suppose one of the basic considerations when you are considering the bearing qualities of a reinforced concrete column is the class of concrete that is in it? A. That is true.

Q. In your thoughts yesterday were you thinking that the Caltex concrete was of the same class as the concrete in the 1956 scheme?

A. Yes; I did think that. I realise that it is not the same as in this building.

Q. In fact there is a very big difference? The Caltex concrete is 5000 pounds per square inch compression at 28 days? A. Yes.

Q. And in the 1956 scheme it is 3000 pounds per square inch compression at 28 days? A. Yes.

Q. That must affect your answer? A. Yes. My answer yesterday was on the assumption that we would have 5000 pounds concrete.

Q. If I ask you now, on the assumption that columns 51 and 57 were extended to your satisfaction with concrete of 3000 pounds per square inch compression and not 5000 pounds per square inch, would you say it would bear that truss? A. I would say that I would want to check it.

Q. You would not like to repeat yesterday's answer? A. No.

Q. When you were comparing the position yesterday with the 20 Caltex situation, did you have in mind that the load on the Caltex column is practically a vertical load? A. Yes, but that is not quite correct. There is some bending moment present.

Q. But in the case of a truss coming in at right angles the load would be at right angles, would it not? A. No.

Q. When I asked you the question yesterday, did you have in mind that the truss to be inserted into or against the Carrington Street project was coming in at right-angles and was not a vertical load with some bending moment? A. But when it comes in it must be a vertical load on the columns.

30

Q. You do not want to vary even your tentative answer this afternoon when I remind you that the load would be coming in at right-angles? A. The load is not coming in at right-angles. The truss is at right-angles, and the load on the column is a vertical load, because gravity acts vertically; the weight of the building coming on to that column is a vertical load.

Q. But does it alter in any way, the fact that the truss comes in at right-angles, the answer that you want to give? A. No; it is still a vertical load . . .

Q. I asked you yesterday, and you were prepared to pledge your 40 reputation on your answer yesterday? A. Yes.

Q. I have reminded you of a factor and to-day you state that you would like to check it up? (Objected to) A. It is a different class of concrete.

HIS HONOR: The witness was speaking, I thought, of sizes, with the concrete suitably based to take weights of that size.

WITNESS: Yes.

SIR GARFIELD: Q. To-day you told me that your specification is for concrete of only 3000 lbs per square inch, and you told me that you want to check it? A. Yes; I would not be so sure without checking it.

Q. In your checking is it not the fact that the truss to be built is at right-angles to the columns—is that a factor? That is all I ask you.

A. No, it is not a factor.

10 Q. You are still going on with these engineering details? A. Not now. We have lost our calculations.

Q. Well, up to the time you gave me the calculations? A. Yes.

Q. Do the calculations extend to the thicknesses of the floors?

A. Yes.

Q. Are you able to tell me the thickness of the floors at Caltex House? A. They vary. The garage parking floors, from memory, are 7-1/2 inches I think, the ground floor is 12 inches, and the upper floors at 9-1/2 inches.

20 Q. And the base at Caltex would be smaller than the base in this building? A. Yes.

Q. And that, of course, affects the load too, does it not? A. Yes.

HIS HONOR: Q. Of course we are all making the assumption that Caltex House will remain standing? A. Yes.

Q. It may be that somebody has made a mistake there? A. Yes, my reputation would be at stake.

SIR GARFIELD: Q. You told my friend that you could not find any purpose in putting a truss in the first floor? A. To-day you mean?

30 Q. Yes? A. The obvious structural solution is to put it as high as you can.

Q. Of course, you do appreciate that if you put it low you can obviate that idea of a light area? A. It is up to the Architect to say where he wants it, from my point of view.

Q. But you were confining yourself to structure? A. Yes.

SIR GARFIELD: That is all I can ask this witness until I have had access to those calculations.

HIS HONOR: There is one thing you should check up. That is the call which was made for certain documents in a letter. I think you should check it up.

40 SIR GARFIELD: Yes; I will check that up.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 8.
H. A.
Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 8.
H. A.
Llewellyn.

Re-
examination.

RE-EXAMINED.

Mr WALLACE: Q. Do these, (indicating) appear to be a roll of structural drawings in the Ham Scheme? A. Yes.

Q. They were prepared, apparently, by Stanley and Llewellyn? A. Yes.

Q. And the typewritten paper on it, who was responsible for the dates on that typewritten paper? A. I am.

Q. Did you get those from your office records? A. That is so.

Q. Would that indicate that the structural drawings . . . ?

(Objected to.)

10

Q. When do you say that the first structural drawings for the Ham plan were sent by Stanley and Llewellyn to the Railways? (Objected; pressed; rejected.)

Q. Are you able to say that structural drawings were sent by Stanley and Llewellyn to the Railways? (Objected to.)

Q. Are you able to say? A. Yes; I checked to see . . .

SIR GARFIELD: Q. Not from what you looked up, but from what you knew at the time? A. Well, I did not see anybody actually post them, or take them to the Railways.

Mr WALLACE: Q. Well, you have records in your office? A. Yes. 20

Mr WALLACE: Would my friend be good enough to produce any letter from Sly & Russell or any expert working for the defendant company—any letter forwarding engineering drawings?

SIR GARFIELD: I do not accept that call. That is not a call that my friend can make on me.

HIS HONOR: To save time the records will be looked up to see whether they were sent.

No. 9.
E. M.
Nicholls.

No. 9
Further Evidence of E. M. Nicholls

Examination. Mr WALLACE: Q. Since you were last in the witness box you have had a further examination of the 1954 plans, have you not? A. Yes. 30

Q. And, as a result of your further examination of them have you collected a number of matters which are, in your opinion, either errors or discrepancies? A. Yes.

Q. Some of more moment than others? A. Yes.

Q. And is what you have done of an exhaustive nature, or only a part examination? A. Part only.

Q. And have you set forth the result of your examination, so far as it has gone, on a document? A. Yes.

Q. And do you have it there? A. Not here—no.

Q. Where is it—with me? A. You have all the copies.

Q. I have two carbon copies—that is all I know. Where is the original? A. I think the original is in my office.

Q. Have a look at that document (handed to witness). Is that a copy of the document which you prepared? A. Yes.

(Document tendered; objected to; pressed.)

10 HIS HONOR: Having regard to the way in which I have allowed the case to be conducted, I am going to admit this evidence without in any way commenting on its relevance, but you should not have it in this way without showing it to the other side. You might take the witness out of the box and recall at some convenient time.

(Document m.f.i. “22”.)

MR WALLACE: There is just another question that I would like to ask the other witness, with Your Honor’s permission.

HIS HONOR: Yes.

Mr WALLACE: Q. Have you considered whether a car park can be
20 sited on the space in the 1956 plans between Wynyard Lane and the projected completion of the George Street area? A. Yes, I have considered it.

Q. Is it possible or impossible? A. It is possible.

Mr WALLACE: That is all I wish to ask the witness.

SIR GARFIELD: Could I ask one question?

HIS HONOR: Yes.

CROSS-EXAMINED

SIR GARFIELD: Q. Do you remember that you made some calculations of comparative floor areas of the two completed schemes, the 1956
30 scheme and the 1954 scheme, which were diagrammatically represented both in section and in isometric drawing? A. Yes.

Q. When you were making those calculations, to what depth did you suppose the George Street building to go back from the George Street frontage? Would you like the plans to tell me? A. Yes; I can show you on the plans.

Q. Exhibits 2, 3 and 4 are the plans. (Exhibit 4 handed to witness.)

A. This shows it, to the depth as shown on this plan, (indicating Exhibit 4).

Q. Have a look at Exhibit H (handed to witness). When you said
40 “To the depth shown there on Exhibit 4”, you meant that I could scale it off to ascertain the depth, could I? A. I would not be sure, quite, of that.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant’s
Evidence.

No. 9.
E. M.
Nicholls.

Examination.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 9.
E. M.
Nicholls.*

*Cross-
examination.*

Q. Well, that is what I want to know—the depth that you made the calculations on? A. Well, I cannot tell you that because I have not those calculations there.

Q. Can you not tell me on Exhibits 4 or 3 (indicating)? A. No; these are in the nature of diagrams (indicating), and not necessarily exactly to scale.

Q. Have you no material with you on which you can answer my question as to the depth from George Street? A. No; I have not any material at all. I did not know I would be asked that when I was coming to Court. 10

Q. Have you any calculations in respect to these floor areas? A. Yes.

Q. Well, when you come back you can bring them? A. Yes.

HIS HONOR: Q. Have you made a note of what you have been asked to get? A. Yes.

Q. The next time you are to come back, you will be told, and you can bring the information with you? A. Yes.

No. 10

Further Evidence of H. A. Llewellyn

Examination. Mr WALLACE: Q. Do you remember being asked some questions about Column 51 and the specifications for the concrete in connection with the matter, in which you said that you would stake your reputation? A. Yes; 3,000 and 4,000 concrete in Column 51. 20

Q. You said that in order to be positive on a 3,000 basis you would need to examine the matter further, did you not? A. Yes.

Q. Does that, however, entail that you should want to know the type of building to go above it? A. That is so.

Q. You, I think, inserted the 3,000 specification, did you? A. Yes.

Q. Would there be the slightest difficulty if you wished to change the 3,000 to 5,000? (Objected to; pressed; admitted.) 30

Q. You could change it from 3,000 to 5,000? A. Yes; it would involve a cost of about £50 to increase the strength.

Q. From 3,000 to 5,000? A. Yes.

Q. You have searched your office records and you have looked at Mr Stanley's diary, have you? A. Yes.

Q. I won't press this unless my friend makes that admission that I asked him for. You have looked at Mr Stanley's records as to what was the date that the first structural drawing was submitted to the Railways? (Objected to; pressed.)

Q. Have you the diary here? A. Yes (indicating). 40

Q. Can you show Sir Garfield the page of the diary—(objected to; pressed; admitted). A. This diary won't show the dates that the drawings were sent to the Railways. The sheets in our job-book would indicate exactly.

Q. And you have those here, have you? A. Yes.

Q. What does the diary show you? A. The diary indicates the knowledge that Mr Stanley had at certain dates.

HIS HONOR: Q. Will you pick up the entries that you looked at and show them to Sir Garfield, and also the worksheets that you looked at? Mr Wallace will give you the worksheets, I am sure. A. I have marked the pages in the diary.

Q. You do not mind leaving that book in Mr Wallace's custody, and he can show it? A. No.

10 Q. Is it necessary to look at the worksheets in addition to that? A. Yes; that is our office record of prints that were delivered to everybody.

Mr WALLACE: Q. Can you tell, from looking at the working sheets or the job sheets and the diary, what was the date when the structural alterations went to the Commissioner for Railways? (Objected to.)

Q. Can you say whether you can tell us? (Objected to; rejected.)

Q. Can you fix the date from your office records and diary? (Objected to; pressed.)

20 Q. What are these documents (handed to witness)? A. These are list sheets taken from our job record book.

Q. How were they prepared? (Objected to; pressed.)

HIS HONOR: Q. Did you do it yourself? A. No; they were prepared by the staff.

Mr WALLACE: Q. Were they prepared under your supervision? A. General supervision, yes.

(Question pressed; further objected to; argument ensued; rejected.)

30 Q. What is the practice in your office? A. These followed the usual practice (indicating). When the job first starts the sheet is filled in with the title of the job, its address, the architect, and it is given a number called a general number. That master number is entered on the left of each drawing as it is prepared. This (indicating) is described as reinforced concrete details, and in an abbreviated way it says "Three prints, A." The A is in brackets, meaning "architect", and then the date, and then the next one is "three blueprints", again to the architect, and then the date they were sent.

Q. And each of those documents had that information on them? (Objected to.)

40 Q. Is there anything else that you need to know? A. No; that is the complete record. There is information on the back relating to accounts.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10.
H. A.
Llewellyn.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10.
H. A.
Llewellyn

Examination.

HIS HONOR: Q. The information on the front can now be understood with the explanation you have given us? A. Yes.

(Document m.f.i. "23".)

HIS HONOR: I would suggest that you show Sir Garfield the documents during the short adjournment, as part of the material on which he is to make the admissions.

(At this stage the diary in the possession of the witness was handed to Mr Wallace.)

Mr WALLACE: Q. What are these plans (indicating)? A. They are copies of prints that were sent to the Commissioner of Railways. 10

Q. Do not answer this question until my friend has had an opportunity of objecting. Are you able to say whether the dates shown on these copies of the prints are the dates when the structural drawings, of which they are copies, were sent or were drawn? (Objected to; rejected.)

HIS HONOR: The witness has already given evidence that the date put on was the date that the plan was prepared.

WITNESS: The date on the drawing is the date that is entered on the job sheet—the first date—but subsequently prints may be sent on subsequent dates, and those dates are on the right-hand side of the 20 sheet. On the job sheet there is a date on the left-hand side when the drawing is first completed, but that drawing may not be printed until some time afterwards, but when it is printed and all the subsequent printings are indicated on the right-hand side. That print (indicating) is made from a tracing, and the tracing has the original date.

HIS HONOUR: Q. There is a time delay between the date of the tracing and the date of the actual printing? A. Yes, and then the tracing is put away on the file, and then somebody might call for a print later on, and the right-hand side would indicate the date of that.

Q. The right-hand side date is the date that prints were made of 30 the original drawings? A. Yes.

Q. What about amendments? A. The amendments are indicated by the same numbers, 1, 2 and 3, and having a letter after them.

MR WALLACE: I call upon my learned friend to produce structural drawings sent to the plaintiff by Stanley & Llewellyn and described as P1, P2, P3, 1452-4B, 1452-8A, 1452-9, 1452-10.

SIR GARFIELD: I will look for those over the short adjournment.

MR WALLACE: Q. They would be the drawings of which these are prints, are they not? (Objected to).

(Structural plan of 1954 m.f.i. "24".)

CROSS-EXAMINED

SIR GARFIELD: Q. You could identify for me, could you not, which of the columns in the substructure plans are steel and which are reinforced concrete? A. The substructure? At the level of Wynyard Lane I could. I might follow that down further. I am fairly certain, but I could not be completely definite.

Q. You, of course, yourself have looked at Mr. Stanley's calculations of the loads permissible on these columns in the substructure?

A. The table of permissible loads, yes, unfortunately, there were no 10 calculations.

Q. But you have seen the final figures? A. Yes; they are in Court.

Q. And you have not seen his calculations, you have not been through them? A. No.

Q. May I ask you have you accepted them for the purpose of your own computations? A. Yes; it was agreed with the Railway Department that they were the loadings.

Q. So that you had in your mind certain permissible loadings of those columns on which you were prepared to act? A. Yes.

20 Q. Will you just open up Exhibit H, and you will see all the columns (Ex. H handed to witness). A. This is the one (indicating).

Q. Are they numbered on that one? A. Yes, but this is only a part plan.

Q. I show you document m.f.i. "13" (handed to witness). You will see that that shows on the sheet 10. Cl. 72, the column in the substructure with numbers on them? A. Yes, that is right.

Q. Can you tell me which of those columns are structural steel? A. The ones that I know definitely to be structural steel?

30 Q. Yes? A. 26, 28, 30, 32, 57, 81, 101, 119, 140, 138, 136, 134, 112, 96, 76 and 51.

Q. Are those all of equal load-bearing capacity?— A. No.

Q. Which group of them would bear the greatest load? A. 51 to 112.

Q. The line 51 to 112? A. Yes; and 57 to 119.

Q. You looked at the schedule on loadings for all the columns, I take it? A. Yes.

Q. And you have in mind figures in the load limits of columns you have just named, 51 to 112 and 57 to 119, on which you are prepared to act? A. Yes.

40 Q. Would I be right to say that the lines of columns 51 to 112 and 57 to 119, are so constructed to carry approximately 7,000,000 lbs.? A. 51 is the heaviest, and it is 6,500,000. I can remember that one. I cannot remember the others.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10.
H. A.
Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10.
H. A.
Llewellyn.

Cross-
examination.

Q. Would a figure of 3,000 tons be the order of the load-bearing capacity? A. Yes.

Q. About 3,000 tons? A. Yes.

Q. Is that on 51 or the whole line of them? A. 51 is the only one that I remember from that list.

Q. You have not got the list to refresh your memory? A. It is in Court.

Q. Can you remember what it is on? A. It was on two sheets of that size (indicating).

Q. A series of blueprints, I think? A. Yes. 2,850 tons on that. 10

Q. Of the order of 2,850 tons? A. Yes.

Q. Would you agree with me that there is no column in the City of Sydney, to your knowledge, even approximating that bearing capacity? A. That is right.

Q. Would you agree with me that the largest column, to your knowledge, in the City of Sydney would have a bearing capacity of 1,250 tons? A. Caltex is heavier than that.

Q. Heavier than 1,250? Do you know of a steel column? A. Speaking from memory, no.

Q. Speaking from memory? A. Yes. 20

Q. You have given 51. Take 76 and 112? A. I am sorry. The figures I have given you are not at the foundation level. These start up at the Wynyard Lane level.

Q. Take the third floor level? A. What we have here is the second floor level—that is the Carrington Street level. That (indicating) is the third floor level, and that is the level at which 51 would bear 6,484,000.

Q. It is of greater capacity as you go down? A. Yes.

Q. Now take the other columns at the third floor level? A. 76—5,157,000. 30

Q. And can you make the conversions to tons as we go? A. There may be errors.

Q. Yes. Take those two groups of columns and give me their bearing loads at the third floor level in pounds and in tons—could you do that? A. Yes.

Q. You would have made calculations of the loads that you contemplated could be placed on such of the columns as the 1956 scheme used if carried to completion? A. Yes.

Q. Have you those with you, by any chance? A. They are in those calculations that we submitted. 40

Q. Before we go to the detail of that—you have told us that there is a beam between 55 and the column behind it, which is in the 20's—between 53 and 28 and between 55 and 30? A. Yes.

Q. At which level is the beam? A. At the Wynyard Lane level.

Q. And then 53A and 55A go up above on the beam? A. Yes, that is right.

Q. And you have told us that by the time the contemplated development according to the 1956 plans had reached the eighth floor, the building would need to be set back because, in your calculations, the load on 53 had then reached a point where it was necessary to set the building back? A. That is right.

Q. So that your contemplated scheme with the set-back would fully load 53 and 55? A. That is so.

(Short adjournment).

SIR GARFIELD: Q. Have you worked out those loads? A. Yes.

Q. Just read the numbers off and the loads? A. Column 51—2,870 tons; column 57—2,160 tons; column 76—2,300 tons; column 81—2,380 tons; column 96—2,440 tons; column 101—2,410 tons and column 112—2,600 tons.

20 Q. Could you tell me, from the calculation books which you had here and which you produced the last time, what was the load you anticipated putting on column 51 for a start in this 1956 scheme if you carried it to the height of 150 ft.? A. I could not tell you offhand.

Q. But could you tell me from the book? A. Yes. I am sorry, no. What we did was that we worked out the weight per floor which was to be on column 51 by the new scheme, and then used this scheme to calculate how many floors we could put on that column to see if we could get to the 150 ft. level. It was the reverse way of doing it.

30 Q. So that you did not calculate the load you were putting on it? A. No. It would be easy to calculate the number of floors to 150 ft., and then multiply by the load per floor.

Q. It was just to see whether you had a safety margin on those columns? A. Yes.

Q. What was the position in regard to column 51? A. Column 51 was well on the safe side; there was no question about it.

Q. Would you have put 2,000,000 lbs. on it altogether on your scheme? A. I cannot remember offhand—I am sorry.

40 Q. Would this book of calculations help you, that you produced the last time? A. Yes.

Q. While the book is being obtained, column 76 and its counterpart column, what is that? The counterpart column is 81 is it? A. No; 78 and 81.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 10.
H. A.
Llewellyn.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10.
H. A.
Llewellyn.

Cross-
examination.

Q. 78 and 81? A. In a north-south direction.

Q. Yes; I was thinking of north-south. 76 and 81 are the counter-
parts, are they not? A. Yes; I am sorry.

Q. They are both structural steel columns? A. Yes.

Q. 78 and 75 are the reinforced concrete columns? A. Yes.

Q. You have given me the loads that these were designed to bear
at the third floor level? A. Yes.

Q. And they would be greater below. All that those columns are
to bear in this 1956 scheme is the floor slab at the Carrington Street
level and the slab which roofs it? A. Yes, that is right, and the part 10
over Wynyard Lane.

Q. And the bit over Wynyard Lane? A. Yes.

Q. Which is an almost negligible fraction of the 6,000,000 or
7,000,000 lb. load? A. Yes, of the total load.

Q. Have a look at this calculation book (handed to witness). What
was the load that you calculated would be put on 51 if the 1956 scheme
went to the full building height—the total load? Have you the loads
column by column? A. Yes. It is 130,100 lbs. per floor. (Indicating).
That is the load per floor. The engineer in his office has taken an
estimate and made it conservative knowing that that was well within. 20

Q. Being 27 is this beam which was inserted between 53 and 28, and
55 the counterpart one behind it—is that right? A. I would not
know that.

Q. Well, check that? A. I would need scheme 56.

Q. That is Exhibit 10 (handed to witness). A. These numbers
would refer back to the sketch plans which would be transferred by the
draughtsman on to these working drawings (indicating).

Q. Whatever it be, you finally got a per floor loading in a beam
structure as distinct from a flat structure? A. Yes.

Q. You were going to have 130,100 lbs. per floor? A. I think 30
that is the flat-plate structure. I think at that stage it was a flat-plate
structure. 23.10.56—that is the flat-plate structure.

Q. Had you no comparable calculations at a time when you were
going to build it according to the initial structural steel drawings,
Exhibit 10? A. Yes, but 51 was not affected then, because the
original 1956 scheme did not include that short projection. The original
1956 scheme came across that, and it was on our suggestion to Mr.
Nicholls that he enlarged it to take in 51. That column (indicating)
was not capable of carrying to 150 ft., and we went out to that heavier
column. We suggested coming across here and he suggested coming 40
across there (indicating).

Q. What were the calculations as to the load to be placed on 51
if it was to be built to the structural design of 1956? A. There
were not any because—

Q. There are none—that is the answer? A. Yes.

Q. On the assumption that you convert this to a thin plate building, am I right to say that there would be 130,100 lbs. per floor on 51— That is on this 1956 scheme.

Q. Turned into a flat-plate structure? A. Yes.

Q. A thin plate? A. Yes.

Q. And what floor does that 130,100 refer to? A. That is a typical bedroom floor.

Q. Would there be any larger load than the load on the bedroom 10 floors? A. The 1951 column is already taking the cold room roof.

Q. Is that any different to the 130,100 lbs. per bedroom floor? A. Practically the same.

Q. Which is your third floor, Wynyard level, in relation to the 1956 plans? A. That is one floor above Carrington Street.

Q. I should have said “third floor, George Street”? A. Yes.

Q. And that corresponds to the second floor, Carrington Street? A. Yes. No; I am sorry, Carrington Street is the second floor—it would be one floor above Carrington Street.

Q. That would be your first floor of bedrooms? A. Yes.

20 Q. How many floors of bedrooms were you going to have in this 150 ft. scheme? A. I could not tell you offhand.

Q. Could you tell me from Exhibit 4 (handed to witness)? A. Yes. It would be of the order of 12 or 13. Thirteen floors and a roof.

Q. At 130,100 lbs. a floor, and allowing for this step back, which I suppose reduces the load? A. No, I do not think so—not on 51.

Q. Well, assume that it does not, for the moment. I think that the step-back is within 51? A. It would affect 51, but not that much.

Q. The step-back does make a difference to the load on 51? A. Yes.

30 Q. Have you any figures in this calculation which would show what would be the per floor load on 51 from the step-back to the limit?

A. No. 51 was never worried about because it was so big.

Q. The actual load I am after? A. No.

Q. Assuming that there was no step-back, you would have 13 floors at 130,000 lbs.?

Mr WALLACE: 1,690,000.

SIR GARFIELD: Q. As I put it to you, within 2,000,000 lbs.? A. Yes.

Q. And assuming the step-back, it is even less than that when 40 working it out? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10.

H. A.
Llewellyn.

Cross-
examination

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Defendant's
Evidence.
No. 10.
H. A.
Llewellyn.
Cross-
examination.

HIS HONOR: The calculations and the plans that came out of the safe had better go back into the safe unless the witness wants them.

(Documents returned to Associate).

SIR GARFIELD: Q. It follows, does it not, from what you have told us, that the contemplated development of Carrington Street, on which the calculations were based, was a thin slab development—is that right?

A. Yes.

Q. A thin slab structure? A. Yes.

Q. With a set-back as indicated on that diagramatic representation, Exhibit 4? A. Yes.

10

Q. The structure for use as a hotel? A. Yes.

Q. Have you, in that set of calculations, the calculation of the bearing capacity of the two beams that were inserted between 53 and 28, and 55 and the corresponding column to the west? A. I could not say that offhand.

Q. Would you just look to see if it is there? A. There again the beams were made floor to floor.

Q. Look at the calculation book (handed to witness). (Witness produces sketch plans). Are they marked for identification No. 21?

A. Yes, I do not think that they would have been worked out because the original had not got to that stage. That would be the last thing coming down. I assume that they would not be in those calculations.

Mr WALLACE: Q. Coming down it would be the last thing to do?

A. Yes.

SIR GARFIELD: Q. Up to this point of time now there has been no calculation of the load-bearing capacity of those two beams? A. I am sorry—we were referring to the final calculations on what we call working joints or probably the preliminary calculations of those beams.

Q. Have a look (witness refers to documents)? A. Yes; there were calculations for it.

30

Q. I suppose they are just preliminary, are they? A. Yes.

Q. What is the load that it would have to bear? A. The column that was set on those beams was to carry 1,105,000 lbs.

Q. And that means that the beam must be able to carry that load or greater? A. Yes.

Q. Well, what load was it able to carry? A. It was not a straight load. There was that central column load, there was its own dead-weight from the floor level to Carrington Street, and there was the need to carry the roof over Carrington Street. It was not a straight-out load.

40

Q. And you have not calculated, even now, the precise dimensions have you? A. Yes, it is noted here—126" x 27" with an area of reinforcing steel.

Q. That was to be worked out? A. Yes. These calculations were to determine the size of the concrete and the weight of reinforcement necessary in the beam.

Q. And the actual design of the beam would be done later on? A. Yes; at a later stage.

Q. Just give me the weight of steel and the concrete dimension? A. The concrete dimension is 126" x 27", and the reinforcing steel 3 cwt. per foot.

Q. And the concrete 3,000 lbs. as specified? A. Yes.

10 Q. Was there anything peculiar about the manner of construction of it? A. It had not been gone into then, but I doubt if there would be.

Q. And was the manner of its being attached to the columns—had that been gone into? A. No. It is the last thing to do.

Q. There were quite a lot of problems attached to that? A. Not problems—detail.

Q. Have you in mind the manner in which it would be attached to the columns? A. It would be poured straight over the top of the existing columns.

20 Q. Was anything to be done to the existing columns before you poured them? A. They had been there for some time. They would have to be cleaned down.

Q. But apart from that? A. No.

Q. Do you remember my asking you about the insertion of a truss into this building if you wished to develop the centre of the site . . . A. Yes.

Q. Eastwards towards George Street? A. Yes.

30 Q. I think you told me or my friend that it would be most inconvenient to put it in between the 5th and 6th floors? A. It was originally designed to go between the 5th and 6th floors, yes.

Q. And assuming that you developed this 1956 project in Carrington Street and desired to either, at the time of further developing Carrington Street or later, develop eastwards over the centre of the site—we have agreed that you would need to have a truss to do it if you were going up to the permissible height? A. Yes.

Q. And in that event do you agree that it would be at least convenient to put it in between the 5th and 6th floors? A. Yes.

40 Q. And indeed, once you had built what was proposed in the 1956 plans of Mr Nicholls, it would have to be put in between the 5th and 6th floors? A. Yes. I am sorry—may I correct that? That is not correct, is it? It could be put in at any level above the roof over Wynyard Lane—it could be put in at any level above Carrington Street.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10.
H. A.
Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

—
Defendant's
Evidence.

—
No. 10.
H. A.
Llewellyn.

—
Cross-
examination.

Q. Is that right? A. Yes.

Q. Have you gone into the question of the dimensions of the two chords of this truss? A. No.

Q. Until you did that you would not be able to tell, would you, whether you would fit it so that you would have an opening for communication, bearing in mind the possible depth of the chords and their relation to floor levels? A. That would be part of the design.

Q. From what you know of what the truss had to do, would you agree with me that the upper and lower chords may well have to be of such a dimension to span this 80 ft. odd that it would not be until you got to the 5th floor that you could suitably match them to the floor levels so as to provide entrances through the truss to Carrington Street? A. I cannot see why not. If there was no reason for not putting it at a lower level I think that that could quite easily be done. For instance, there was no reason why it should not be put between the 3rd and 4th floor levels. It was originally designed to go between the 4th and 5th, but there was some external requirement . . . 10

Q. Have you in mind at all the possible dimensions of this truss? A. Only that it would be approximately 10 ft. deep.

Q. I mean its top and bottom chords? A. No. 20

Q. So that we will be able to follow it, perhaps I should give you a sheet of paper. (Handed to witness). This truss would not necessarily have a top and bottom chord, would it? I will draw it. (Sir Garfield writes on paper). You have a number of columns, do you not? A. Yes.

Q. And then you have what we call in timber work, "braces"? A. Yes.

Q. And they would go like that (indicating)? A. Yes.

Q. Or that way (indicating), if you prefer it? A. Yes; that is one way of doing it, but that is not necessarily the only way of doing it. The truss, because it is in the building, would be designed by the architect. 30

Q. But the engineer still has to have his dimension? A. Yes.

Q. And doorways, have to be fitted in between the column and one of these diagonals (indicating)? A. Yes.

Q. You have to fit your doorways in there (indicating)? A. Yes; it might come to the stage where we could not have diagonals.

Q. These chords would probably be of the order of 4 ft. deep? A. No.

Q. Well, what are you thinking of? A. 2 ft. It is the area of steel, not depth in the chord, that matters. 40

Q. You were thinking of putting in a greater dimension the other way? A. Not necessarily. It is not a question of depth but of getting

the greater amount of steel into it. I think it could be got into 2 ft. deep. It does not mean anything by making the dimension of it greater.

Q. Even if it was 2ft., the top chord would be the same? A. Approximately.

Q. So that if you have to put in a door to communicate with the floor, then you must find a place in the building where the floor level permits you to come in——? A. Yes, that is right.

Q. And where you can fit it in in some way to the ceiling level above? A. Yes; that would be floor level, and that would be floor level (indicating).

Q. And you cannot have it deeper than the door head? A. That is so.

Q. Have you gone into the question of whether, bearing in mind Mr Nicholls' design and the dimensional requirements of this truss, it could, without very great ingenuity, be placed anywhere between the 5th and the 6th? A. I have not gone into it, but I see no reason why it could not go between the 3rd and the 4th.

Q. Supposing it is inserted between the 5th and the 6th? A. Yes.

Q. That is the position you were willing to accept before? A. Yes.

Q. The building above the truss of course is carried on the truss? A. It is carried on columns in turn supported on the truss.

Q. The building below the truss has got to be borne, most economically, of course, on the columns which lie beneath the position of the truss? A. Largely, but not altogether, because remember at this stage we have used up columns 53 and 55.

Q. I will come to that again in a moment. If you were extending the Carrington Street building eastwards over the centre of the site, whilst the building above the truss would be carried on columns themselves carried on the truss, the building from the Wynyard Street level up to the underside of the truss would have to be carried on the columns which lie beneath the area spanned by the truss? A. Well, if those columns were available below.

Q. Yes? A. Well, some of those might not be available.

Q. We will come to that in a moment. It would be necessary, if you inserted the truss between the 5th and 6th floors for the purpose of going eastwards over the centre area, to build on to, inter alia, column 55 and column 53 to carry the floors which would be below the truss?

A. No; you would not be able to use those columns.

Q. That means that you could not build it? A. You could not use the columns. You have 51 and 57 which are quite strong.

Q. 51 and 57? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10.
H. A.
Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 10.
H. A.
Llewellyn.*

*Cross-
examination.*

Q. Have a look at L2 (handed to witness). The line of the eastern face of the Carrington Street building runs along 53A and 55A? A. Yes. That may well be one of the reasons for putting this truss in at a lower level.

Q. I am taking the 5th and 6th floors? A. Yes.

Q. This would be true, that the higher up you insert the truss, the lighter the truss can be, and therefore the cheaper? A. Yes.

Q. It carries less above? A. Yes.

Q. I want you to assume that you put it in at 5 to 6? A. Yes.

Q. And assume that this building is carried out solid below it and 10 solid eastwards? A. Yes.

Q. And the building below the line of trusses has got to be borne on these existing columns? A. Yes.

Q. You have already, for the purposes of your building, taken part of the bearing load of 53 and 55? A. Yes.

Q. Because you have spanned those with that beam, and the building is brought on to them with the line of columns that come down to 55A and 53A? A. Yes.

Q. And you felt that you had to step back the building? A. Yes.

Q. Because the load carried at that level would put a greater load 20 on 53 and 55? A. Yes.

Q. Is it right to say that in those circumstances you could not carry your building up underneath the trusses on 53 and 55? A. No.

Q. You do not agree with that? A. No.

Q. Have you ever worked it out at all? A. No, but you pose the problem then. Assume that the 1956 scheme is complete. Then it is put to the engineer, "I want to fill in that area"—the centre area.

HIS HONOR: Q. And put a truss between the 5th and 6th floor? A. Yes, that is the assumption. Assuming that for some other reason the truss had to go between the 5th and 6th floor, the engineer could ignore 30 those column calculations which were taken out several years ago and which were very, very conservative. He would check to see whether he could get one or two more floors on 53 and 55, and he has only got to get two more and he is put to this (indicating). Obviously the cheapest way out would be to press by going back through the whole building that 53 and 55 were capable of carrying more load in fact than those schedules show.

SIR GARFIELD: Q. I will come to that in a moment, but let us take all the data you have got? A. Yes.

Q. On the data you have got, what is the position? A. Failing 40 that, he would then look round for other columns and see what he

could do with those, and he has placed that cantilever with these columns (indicating). 78 and 79 would be available, and he might have some reserve strength to get across from those.

Q. Let me go back over that. If we take the existing computed strength of these beams and your computation of the load you are taking on them in the 1956 scheme, would you agree that there would be no margin sufficient to carry the building up under the truss? A. That is so.

10 Q. So that the only way of doing it would be to find that the calculations were unduly conservative? A. Yes.

Q. Although you yourself have not so far thought that, insofar as you have stepped the building back yourself at the 8th floor? A. Well

SIR GARFIELD: Q. So that you have yourself not thought that the present calculations of bearing capacity for 53 and 55 are so conservative that you could take the building up for its full height along the eastern wall, at the same plane as the eastern wall just below part of C.53A and C.55A? A. We were only going to the third floor but we were asked in a short time what could be done and the obvious thing
20 was to accept those and say "If you must do this then it probably will be necessary to set back".

Q. So that the only other alternatives of these at the moment, and these are speculative that you made on recollection,—sufficient reserve bearing capacity for 53 and 55? A. They are not speculative in the sense that we know that the allowable loads of the columns have been increased and have been modified.

Q. But you still have to compute it? A. Yes.

Q. And the other alternative as you have given is a complicated engineering device which has not been done so far, you say? A. Yes.

30 Mr WALLACE: Or the third one— the cantilever.

SIR GARFIELD: That is what we are talking about.

Q. You might tell us when the change took place in the load to be placed on this concrete? A. Somewhere in the 40's, I couldn't answer that accurately, I am not certain of that by any means.

Q. You see, these schedules of loads bear a notation of an agreement with the Railway officers and is that not applicable to 54—(No answer).

Q. Mr Stanley has gone through those in connection with the 1954 scheme at some stage? A. That is so.

40 Q. And the loads that were agreed upon were in 54? A. Yes, but they differ altogether from that, I think. I can't answer that exactly. I remember one of the officers of the Railway Dept. coming in

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 10.
H. A.
Llewellyn.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 10.
H. A.
Llewellyn.*

*Cross-
examination.*

and suggesting to Mr Stanley that he was in difficulties and that he may take advantage of that fact and revise those loadings.

Q. Those loadings seem to have been revised? A. I don't think so. One of those notations I think was 1938.

Q. At some stage you were going to bring up Mr Stanley's records under subpoena, I will call for them later on unless we can get rid of it some other way.—

Q. I put those series of questions to you on the assumption that the truss was inserted between the 5th and the 6th, the place which I think you said before would be the original place? A. That was the original intention. 10

Q. In the 1956 plan no provision is made for inserting the truss at any earlier floor? A. No.

Q. Have your plans, the structural plans, got to the stage of your being able to tell me the manner in which you were going to connect your concrete, reinforced concrete extensions to the structural steel column—example 51? A. I think there is a small indication of it on one of those sheets but it has not been finally detailed, that was put on to indicate to the builder that something a little other than the normal would be required. 20

Q. Exhibit 10 you mean? A. Yes. That is the existing stanchion. It was indicated he had to allow for welding those rods on, welded across the top of the existing.

Q. That was preliminary, you say done in haste, would that have been your final design? A. Not necessarily.

Q. Have you yet determined what the final form of that bonding would be? A. No, that is the last part of our column.

Q. The beam that goes from 53 to 28 and 55 to 30, these 55 and 53 are reinforced concrete beams and the structural steel beams are reinforced concrete. All of them? A. Yes. 30

Q. You said you would pour that beam over the existing columns, just draw that for me, just show us? A. These columns exist in the form of splice rods projecting above the concrete and there is a steel column over here (indicating). This would be quite simple. The concrete is just poured over the top of it. This would be the difficult connection on that side (indicating).

Q. 28 is the steel one? A. Yes.

Q. I asked you what was the method of attachment? A. I am sorry. I thought you meant concrete columns.

Q. I want to know what is the method of attachment? A. I haven't gone into that. It would be necessary to shelve angles welded to get the shear of that beam on to the steel column.

Q. That is a fairly complicated matter? A. Well detailed Nothing difficult about design.

Q. Could that be marked—(witness complies).

Q. Where have you written—(witness indicates).

HIS HONOR: Q. You are standing at Wynyard Lane looking in?

A. I am sorry Wynyard Lane . . .

SIR GARFIELD: Q. It is a way back? A. Yes, looking towards the north.

Mr WALLACE: What is this diagram.

SIR GARFIELD: Q. It is his explanation of putting the beam between column 53 and 28 or 55 and 30? A. You are standing here (indicating). There is another column goes back there. A small column goes back there.

Mr. WALLACE: Would it be permissible to put "53" there and "28" there.

WITNESS: I have it there.

(Sketch tendered and marked Exhibit T).

SIR GARFIELD: Q. I just want to ask you to assume that you had the 1956 building in Carrington Street completed? A. Yes.

Q. And you then desired to put the truss in at a floor level lower than the fifth? A. Yes.

20 Q. Would that not raise a difficult procedure? A. No, there would be no difficulty between the third and the fourth because that would be free.

Q. What do you mean by "free"? A. There is nothing in the way, no concrete between the third and fourth, of course the 1956 plan doesn't get to the fourth.

30 Q. Assume you had finished it? A. That is so, but then coming to putting this truss in there will be nothing in the way between the third and fourth level so the truss could go in between the second and the third, either you would have to restrict the access on the third floor, which is the roof, in other words they wouldn't have free access through the truss, or else you would have to connect that concrete slab so that the bottom chord went below slab level.

Q. In addition by that time you would have to open up some of the columns to get your truss in? A. Yes, it is quite a simple matter to take the concrete casing off the steel column.

Q. I think you told me before you would have to make some form of bracket? A. Yes, it cleats on to it.

Q. Would you not have to do some tomming up? A. There are no floors existing—we are talking about the truss?

40 Q. It could be put either second, third or third floor? A. Second to third you would have to hold the roof up, I am a bit lost with my

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 10.
H. A.
Llewellyn.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10.
H. A.
Llewellyn.

Cross-
examination.

floor levels, yes. Second to third would necessitate holding up the floor but there would be no tomming up between the third and the fourth.

Mr WALLACE: Q. What is "tomming up"? A. Temporary vertical members usually in timber.

SIR GARFIELD: Q. Do you disagree with me that the truss would need to be from 2 to 4 feet, each chord of the truss from 2 to 4 feet high and from 2 to 4 feet 6 inches wide? A. I would need to check up but I would disagree I think, it may be done within 2 feet.

HIS HONOR: Q. 2 x 2? A. No, I am sorry, 2 ft. deep and the original, I think we estimated at 3 ft. wide. 10

SIR GARFIELD: Q. Do you think it could be in 2 x 3? A. Yes.

Q. But you would need to check that? A. I don't think so. That is 6 square feet of solid steel.

Q. 80 odd feet? A. Yes.

Q. To bear up about 8 floors? A. I could do a quick calculation which could tell you.

Q. Do it in the lunch hour. If you would like to do it now, do so, because you may be finished before lunch—

HIS HONOR: Q. I think some one said, I think you yourself said that the weight of the truss would be about 800 tons; you were a bit light? 20
A. Yes.

Q. I am just reminding you to be careful in your drawing? A. 20 x 10 square inches of steel on the bottom chord, the top chord may have to be bigger, either would need checking. 200 square inches.

SIR GARFIELD: Q. 20 x 10? A. It probably wouldn't be in that form.

Q. It is that amount of solid steel? A. Yes, 200 square inches of steel.

Q. In practice that would be encased in concrete? A. Yes.

Q. And you may disperse it so that you could have a much greater 30 dimension around the concrete casing? A. Yes.

Q. I was thinking myself more of the final amount of space that these things would take up? A. That would depend on the architectural requirements.

Q. That is why I gave you the original limiting figures, I suggested to you that it may be 2 x 4' 6", 2 to 4 ft. high and 2 to 4' 6" wide? A. I don't think it would get that big. The idea would be to use as solid a section as you could get within reasonable economy and that encased in concrete.

Q. The minimum? A. About 3 x 2 feet. 3 ft. wide and 2 ft. 40 deep depending upon the critical.

Q. I just want to ask you whether there would be any structural difficulties in the way of doing these things so far as you can tell me now. You have in mind the picture of the 1954 plan have you? A. Yes.

Q. Is the 1954 plan susceptible of development, amongst other things, having a central building, a central connecting block about 46 feet wide by 80 ft. long and 150 high above George Street? A. The 54 plan had two connecting links.

Q. Was it not susceptible? A. Filling in the central light area?

10 Q. Yes? A. Trussing up the fourth floor.

Q. 46 x 80 x 150 feet high? A. I think it could be.

Q. These are alternatives? A. Yes.

Q. Development by two central blocks, connecting blocks, I don't mean connecting each other but connecting east west, 22 ft. 6 inches apart each block being about 34 x 80? A. That is how it was.

Q. And you run that to about 67 feet? A. Yes.

Q. Is there a further alternative, can you see any other structural impediment to this development of having two central blocks 22 ft. apart each block about 34 feet by 80 to a total height of 150 feet above George Street? A. Scheme "B" ran to 150 feet.

Q. Yes, except the light area is 6 inches narrower? A. No structural reason.

Q. Could you do this; take the two central blocks--any structural difficulty in the way of this--taking two central blocks, carry them up to 150 feet. I think I expressed that for you badly, to have a development which would have two central blocks separated by a light area which would run from 67 feet above George Street to 150 and below it to be a solid construction all over that--no light area--

HIS HONOR: Wouldn't it be better to start from the bottom?

30 SIR GARFIELD: Q. What I was putting to you as another possible alternative development in the centre which had two blocks each 34 x 80 (approaching witness) the light area coming down 67 ft. from the top, being then stopped and below that area being solid? Do you follow that? A. Quite. No structural difficulties.

Mr WALLACE: It would be 90 feet in width from the 7th or 8th floor downwards.

SIR GARFIELD: He didn't calculate that.

HIS HONOR: The two buildings plus the light well at the back.

40 SIR GARFIELD: Q. Do you see any structural difficulty or impediment to constructing a building, a connecting building which was one large central block up to the truss level, that is to say the width my friend

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10.
H. A.
Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10.
H. A.
Llewellyn.

Cross-
examination.

gives you—twice 34 plus 22, then above the truss carried up to 150 feet level over the whole width with no light area? A. Does this question presuppose the 34 scheme as built and modified?

Q. Yes—

Mr WALLACE: The 54 scheme has been fully built and these are all alternative extensions of it.

WITNESS: There would be difficulties but not impossibilities.

Mr WALLACE: Could I express it another way—one large central block, 90 feet wide, 80 feet long and 150 feet high.

SIR GARFIELD: That is right.

10

Q. Of course none of those developments would be possible unless column 51 was carried up to the point where you were going to put the truss? A. That would apply to all those columns.

Q. And that would necessitate of course using 3,000 sq. inch concrete? A. Let us go back to the presupposing of these developments, they would all have to be allowed for in the original building, you just couldn't start filling in pieces unless the columns had been designed to carry the load.

Q. Do you recall the position of the cluster of columns which was provided for a lift well in the original sub-structure design? A. 20 There were two lift wells, the major one in which three lifts were contemplated.

Q. Do you remember where that was? A. Yes.

Q. Do you remember whether there was provision for a single lift towards George St.? A. Yes, that is correct.

Q. And no provision of a cluster of columns for a group of lifts in the George Street front? A. That is right, I don't remember the front.

Q. You don't remember they were not there? A. I would have to check on the plan.

30

Q. What would you like to look at to tell me? A. The 54 plans.

Q. I show you exhibit H? A. No, no such columns.

Q. Are you able to answer this question; from your engineering knowledge can you tell us, looking at the original sub-structure plan and noting those features I have just called your attention to, the original sub-structure was designed for some building in which the lifting of persons would be done on the Carrington Street side and their access to the George St. side be by some communicating building? A. I am afraid that is an architectural question, all I can say structurally is there is no lift wells been provided for on the George St. 40 side other than the small one.

Q. One other matter: Could you give me with some precision the size of 53 and 55 to scale on L.2 and 53A and 55A as they would appear in the lounge? I show you L.2 Could you scale exactly on to this which is part of H, sheet 2 of H the size and position of 55 and 53 and 55A and 53A? A. To start with you can't scale exactly, it is only my eyesight reading of the scale. 55 and 53 weren't shown on those plans; I put those on.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

Q. Could you do it for me now exactly or in the luncheon break. Perhaps you had better do it now because it is the last question I want to ask you. I should have said sheet 2 of L.2? A. 52 and 53 were put on those sheets freehand and I couldn't scale it freehand.

No. 10.
H. A.
Llewellyn.

Cross-
examination.

Q. Have you any other plans here to give me the precise position and scale the dimensions of those four columns in that lounge to the scale of that architectural drawing? A. I sketched 53 and 55 off this drawing (indicating).

Q. I don't want you to tell me how big they are, I want you to tell me how big your structural plans would require them to be? A. Those sizes are given on our structural drawing.

Q. I was trying to get you to draw them for us, so we can see exactly; look them up; or to scale. Put them on to there to scale and the position——

Q. Would you take column 30 and 28 and position them exactly and with their dimensions on the bedroom floor above 40? A. I don't think I can position them exactly; I can give you the size off the drawing.

Q. Assume where they are shown—— A. I can't accurately locate them.

Q. I realise that. Just get them up to size assuming the architect has them in the right position. 30 and 28 on the bedroom floor. Perhaps you could do that during the luncheon adjournment.

30 SIR GARFIELD: We are trying to get some of these facts straight.

Q. Did you mark those on the plan for me? A. Yes.

Q. (Approaching witness) Could I just see what you have done. A. (Indicating). That is the bedroom.

Q. Sheet No. 3? A. Sheet 4 of L.2, they go right through to the bedrooms, those are those two columns. (indicating).

Q. The pencil? A. Yes.

Q. These are the other two that weren't shown? A. Yes, put in freehand on sheet 2.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10:
H. A.
Llewellyn.

Cross-
examination.

Q. Are you familiar with what exists at Wynyard today? A.
Fairly familiar.

Q. Can you tell me from the basement there, I'll just show you a
document which I will have marked for identification—

(Abovementioned document m.f.i. 25.)

Q. I show you a sheet which is marked "page 2". Can you just
quickly tell me whether that is what accords with what is in the base-
ment? A. No, I just couldn't in those lower floors.

Q. What about the Hunter St. level on page 3? A. No.

Q. The mezzanine, is that as is? A. No. 10

Q. It is not like that? A. No saloon bar.

Q. Is there a saloon bar there? A. No, that is the dining room
I think.

Q. That is page 4? A. Yes.

Q. I show you page 5? A. Yes, that is substantially the same—
two ramps and shops either side.

Q. The bar? A. Yes.

Q. So five is substantially as is? A. Yes.

Q. I show you 6, George St. level? A. No, it is not like that.

Q. With Wynyard Lane like that? A. No. 20

Q. Is there any development at that point? A. Minor. The
cold room is built on the southern side.

Q. Where it is shown "cool rooms" they were built much larger?
A. Much larger. This is one floor above George St., that is the existing
bedrooms facing George Street.

Q. I pass by sheet 7 and sheet 8 and sheet 9 and I show you sheet
10, are you familiar with the 1954 bedroom plan? A. Yes.

Q. Does that bear any resemblance to that representation there?
A. Yes, it largely resembles that, I don't think that was built up so
much. 30

Q. What is "that"? A. The north eastern corner. The rest I
think is substantially the same.

Mr. WALLACE: Q. A different number of bedrooms? A. That is
the subdivision, I was only referring to the overall plan. The internal
subdivision would be quite different I imagine.

SIR GARFIELD: Q. That is a matter of internal walls? A. Yes.

Q. 10A is an alternate way of looking at the same, you agree with
me about that? A. The perimeter shop?

Q. Yes? A. Yes.

Q. I am asked to ask you one technical matter; you were telling me with respect to the beams and how they would be fixed, put in between the steel columns and the reinforced concrete column? A. Yes.

Q. The end connection to the steel, is it a fixed end connection to the steel or a free end connection to the steel column? A. That would want to be determined in the design.

Q. That hadn't been determined? A. No, it could have a free end form or hinge, it would need a lot of thought to say which would be the better way to do it.

Q. That hadn't been determined? A. No.

HIS HONOR: Q. Have you completed all the calculations you need to do now? A. Yes.

Q. You have done everything you were asked to do? A. Yes.

SIR GARFIELD: I have discussed the question of an admission with my friend, Your Honor; I have suggested to him I would not be able to give an unqualified admission and I have suggested some sort of a qualification which might be accepted but we will need to talk about it.

20 HIS HONOR: Very well.

RE-EXAMINED.

MR. WALLACE: Q. You said you only have the "budget", so to speak, for one more floor for the 1956 plans? A. Yes.

Q. The central pillars you have there are used in the 1956 plan? A. That is so.

Q. Just explain that; elaborate on that please? A. These so-called weak columns in the 1956 scheme were taken up to the roof over Carrington St., that is the third floor, so that they only need to go to the 4th floor in any future development, the 5th floor being carried on the bottom chord of the truss between the 5th and 6th floor.

Q. Are you expressing a firm opinion as to whether there would be competence to go to the 4th floor? A. On previous experience with such places in this State and the difference between the then regulations and the present regulations I have no doubt we would get another floor on the column.

Q. I just want you to elaborate for a moment what you meant by saying that you envisaged trusses being 3 ft. x 2 ft. and at the same time you said, after working out something in the witness box, that you would require 200 square inches of steel? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10.
H. A.
Llewellyn.

Cross-
examination.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 10.
H. A.
Llewellyn.
—
Re-
examination.

Q. Just draw a little diagram on this piece of paper showing the outside of the concrete and the steel pieces inside all being the truss— (witness complies).

HIS HONOR: Q. With transparent concrete? A. Yes, it is always drawn that way. There are two possible ways.

Mr. WALLACE: Q. (Approaching witness) Yes? A. It is necessary to have 200 square inches of steel.

Q. In the bottom one you have "3 R.S.J."? A. Rolled steel joists, which are the cheapest way of buying any section of steel. The top one indicates two rolled steel channels joined together by welded or bolted plates with the idea of keeping the 200 section of cross-sectional area of steel. 10

Q. The outside is . . . A. Merely concrete casing for fire-proofing.

(Sketch tendered and marked Exhibit 13).

HIS HONOR: Q. We have heard here of the dimensions of these trusses of 10 feet? A. That is the overall depth. That sketch has indicated only the bottom chord of the truss.

Q. I realise that that would be the bottom chord and there would be a top chord? A. Yes, and various members in between. 20

Q. And overall it would be 10 ft.? A. 10 ft.

Mr WALLACE: Q. Would it have two of those joined by a steel bracket? A. That is right.

Q. You were asked, as I understand it, about five suggested methods of filling in the 1954 plans in the centre part of the site, do you remember? A. Yes.

Q. One being, for example, to go right up 150 feet in a slab block? A. Yes.

Q. I only want to ask you when you said they were structurally possible did you have any views as to whether they would be easy or difficult. I want you to imagine—I am not sure you understood Sir Garfield's assumption about the 1954 building being erected and completed according to those 1954 plans, do you follow? A. Yes. 30

Q. Remembering those five ways of dealing with the extension of the central area which Sir Garfield gave you would you have any views as to whether any of them involved structural difficulties although you said they were structurally possible? A. I mentioned that with the 54 scheme in existence that they would be structurally possible though difficult.

Q. I think you have indicated already that almost anything is structurally possible if you have enough money? A. On this site, within the capacities, the ultimately determined carrying capacities of the columns.

Q. Sir Garfield asked you this morning didn't the big column under the 1956 plan merely bear the concrete slabs of one other floor, I think? A. Yes, those columns would support the roof garden on the third floor as well.

Q. I want to ask it clearly; are they in your opinion fully capable of being extended to carry a 150 ft. building? A. Within the provisos that were discussed, yes.

Q. That is to say by pre-planning? A. Yes.

Q. And having ledges or whatever they call them for the various floors? A. That is right.

Q. Do you remember that you have seen during this case some plans of the Kerr building back in 1934? A. Yes.

Q. Is there any detailed work of any sort beyond the third floor in any of those plans you have seen? A. Not to my knowledge, all are complete reinforced beams finished on what was called then the third floor level.

Q. And the roof was shown as serving a utilitarian purpose on the 3rd floor? A. That is right. Our structural drawings just show a roof, many of the architectural drawings I have seen show a building detailed to that level.

Q. But no higher? A. No higher. There are sketches in existence of some future buildings but not detailed.

FURTHER CROSS-EXAMINED

SIR GARFIELD: Q. Did you tell my friend that there was no difficulty about it, that you were only putting one further floor on these so-called weak columns? A. Yes.

Q. I just ask you, if you suppose the 1956 development complete and then you were proceeding to put a building from east to west across the centre of the land part of it was to be carried on trusses you would be putting, would you not, not merely one floor more on top of 53 and 55 but you would be putting part of the load of the building, that two or three floors that were also borne on 78 and 79? A. Oh yes, that is right.

Q. It is not really a question of one floor, it is one floor vertically? A. Remember earlier you asked me or somebody asked me was it possible to fill in that section?

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 10.
H. A.
Llewellyn.
—
Re-
examination.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 10.
H. A.
Llewellyn.

Cross-
examination.

Q. Yes? A. It would be possible to carry those two up and cantilever towards the George St. front towards the back.

Q. Suppose you were going to bear these additional floors under the truss of the beams of the so-called weak columns some part of that load would go on to 53 and 55? A. If it was so designed but the point would be to design it without putting the load on.

Q. My question was would they carry those loads and your answer is you would avoid that by cantilevering 78 and 79? A. Yes.

SIR GARFIELD: Of course the witness still has this subpoena.

No. 11.
W R.
Bunning.

Examination.

No. 11

10

Further evidence of W. R. Bunning

HIS HONOR: This witness was asked to get a series of photographs, to number them and make a list describing them so that you could look at the list and the photographs and see which is which.

WITNESS: I have those.

Mr WALLACE: Q. Just tell me what you have done? A. These slides have been numbered and they represent a number of different buildings, five in all and then against them, against each number you will find a comment.

Q. I go to slide No. 13 and I see that it illustrates something that you have described in the ledger book? A. Yes.
(Slides in company with two pages of typescript, together with a teleview tendered and marked Exhibit 14.)

Cross-
examination.

CROSS-EXAMINED.

SIR GARFIELD: Q. I asked you whether the development of this site by what you and I call an "H" shape building would accord with your various previous ideas which you had been expressing earlier in your evidence? A. Yes, that is correct.

Q. What is the answer? A. It depends on the width of the section of the H that joins the two things together.

Q. I gather that. 45 to 48? A. There is one matter which is concerned in this sort of thing and that is that the light areas on each side may only be one third of the narrowest width, I doubt, I would have to check, but I would doubt whether the central portion could go the full height. If for example one took plan "H". (Interrupted.)

30

Q. I was not asking about "H" I was asking about my own building I put to you, namely a building 45 to 48 feet wide and the bar of the "H"? A. Could I see plan 2 to see illustrated what Sir Garfield has in mind?

Q. No. Could I have a sheet of paper that hasn't got lines on it. (Foolscap sheet of plain paper handed to Sir Garfield.) A. There are two points which don't become obvious.

Q. Don't trouble about that; just let me see if I can draw this well enough for you. I suggest to you a building 150—60—172—this may be proportionally wrong, 60—the piece across the middle, 45 x 80, there it is? A. Actually my impression is that you would destroy four bedrooms on each side.

Q. Don't worry about anything else but what I asked you about, would that design accord with what you have been talking about. With the building over part of the site and having light and air. That is all I asked. You can tell me about the bedrooms and forfeiting the ones on the south that aren't worth letting later; does that accord with your views about light and air? A. It would allow a central lift to go up the full height, it would make, I should imagine, a reasonable economic proposition but I wouldn't favour it on the grounds that these interior angles are useless.

Q. Answer my question, does it accord with your expressed ideas of utilising portion of the site and getting light and air? A. It does allow air to a certain amount of the face of the building but I wouldn't favour it as a plan.

Q. Do I understand that because of the angle rooms, there being perhaps less light than the others, for that reason alone you would prefer the building to have nothing in the middle? A. Well as I see it that he is gaining very little—(interrupted).

Q. I don't want your reasons for it, I just want you to tell His Honor do you say that you advise a building never to have anything in the middle for the reason you gave—

HIS HONOR: That is a new question.

WITNESS: I would have to go into it, it is the sort of thing one can't answer straight off.

SIR GARFIELD: Q. You told us something here the other day about flat plate constructions, I suppose you will agree that it would be possible to fill a general idea of the 1954 plan which is Exhibit H in flat plate if you so desired making adjustments that had to be done? A. Flat plate meaning the engineering construction?

Q. Yes? A. No, I didn't mention that, that must have been some other witness, I was talking of flat slab meaning the fact of the building going vertically.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 11.
W. R.
Bunning.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 11.
W. R.
Bunning.*

*Cross-
examination.*

Q. You wouldn't know about this idea of structure without beams?
A. No.

Q. At any rate do you know of any reason why you couldn't if you made a suitable modification go on with the 1954 development in this slab or whatever you call it form of construction rather than a beam and column with it? A. It is an engineering question and I would rely on my engineer's advice.

Q. I want to ask you this; something has been said here about the distance that people would walk from a lift in a building which was constructed, for example, "H"-wise or something of that sort if the main lifts were in the Carrington Place as now situated in the structure? A. Yes. 10

Q. You will agree will you not that the impression one gets in even the most modern American hotel is the distance you have to walk from the lift to the bedrooms, the length of the corridors and that sort of thing? A. No, I was impressed with the short distance.

Q. What hotel impressed you as having a short distance from the lift? A. The Carlyne (?).

Q. That of course is an extremely narrow building built for seaside purposes to try and give the bedrooms a view over the beach? A. 20
The same thing applies to the Beverly Hilton, it is not seaside, it is the same principle.

Q. Do you say that the Beverly Hilton hotel impressed you with the short distance? A. It is not as short as the other one but that just happened to be one that occurred to me.

Q. Tell me about New York, not a holiday resort hotel where you are impressed by the brevity of the walk? A. Frankly I didn't see any modern New York hotels, I think they were all pre-War.

Q. What about Californian hotels? A. In California?

Q. Yes? A. The Statler Hotel in Los Angeles for example. 30

Q. There is a walk to the lift in that? A. I wouldn't have thought so, I didn't have a very long walk to mine, I didn't particularly trek round but I didn't notice it particularly.

Q. You will agree that in most of the City hotels of America, leave out the others, there is usually a great deal of corridor length to get to some of the bedrooms? A. In the pre-War hotels?

Q. Yes? A. Yes.

Q. As you say most of them are pre-War? A. The great number of them are, yes.

Q. How many of these Statler Hotels have you been to, I put it to you that in all the Statler system of hotels the length of corridor from lift lobby to the bedrooms would be as great if not greater than the one from the lift in the Carrington St. building through to the bedrooms in George Street? A. I would not be able to answer that, I have the plans, I can check them.

Q. You wouldn't be able to answer it? A. No I can check on that.

Q. Were you advocating a parking area to be put over the top of the existing George St. building? A. I was suggesting it would be possible to get cars up there and get them out from the one-way street, but whether it is an engineering possibility I mean would need further consideration. I think it would be.

Q. By "possibility" have you considered what kind of space the authorities would require—(No answer).

Q. For allowing you to get ramping and that sort of thing? A. No, I have not been into that side at all. Purely consideration in principle.

Q. On the idea that it would have been a jolly good idea if it could be done? A. That part of the site would not be impossible I shouldn't think.

Q. When you were talking about getting part of the site were you advocating that it was a good thing simply to develop the Carrington St. frontage of this site and to do nothing else? A. No, my proposition was that the Carrington St. front was best suited to a hotel and the George St. to some other commercial purpose.

SIR GARFIELD: Q. So I suppose you would agree with this, that if you attempted to put hotel facilities on the George Street frontage, and hotel facilities on the Carrington Street frontage, with no connecting building above ground, you would have a fairly difficult, if not impossible administrative problem? A. With no connecting link.

Q. Yes? A. I think that it would be better to have a connecting link.

Q. And would you favour a series of "cat-walks" or covered ways between the two buildings to make that connection? A. I personally would, yes.

Q. A series of "cat-walks"? A. I would not refer to them as "cat-walks". It sounds rather derogatory. I would refer to them as a series of glass-walled bridges.

Q. Well, it shows what a name can do. How wide would these glass-walled bridges be? A. They could be up to 12 feet.

Q. On every floor? A. No; I think at every third floor.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 11.
W. R.
Bunning.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 11.
W. R.
Bunning.*

*Cross-
examination.*

Q. And you think that that would be a good idea? A. I think that they would be quite a workable idea. I personally would not favour having the hotel on the George Street front myself, but if it was required to be there, that would be workable idea.

Q. A workable idea? A. Yes.

Q. But not a good idea? A. Well, I would not favour having the other building as a hotel. I would prefer to have it as an office building.

Q. I will take your expression, "glass-walled bridges". Is it permissible to have glass-walled bridges between two buildings? A. I 10 would say so from the point of view of light and air.

Q. And if you had glass all round, you would have plenty of light on the "cat-walk"—you don't think that it would interfere with the light in the bedrooms? A. A great deal less.

Q. You said before that you agreed with a sheet of comments and calculations that was put in by Mr Nicholls as part of his evidence. Have a look at these documents (Exhs. 2, 3, 4 and 5 handed to witness). They contain some computations of floor areas and some comparative floor areas, and you told us that you agreed with them? A. Yes.

Q. Did you work any of them out? A. I checked the number of 20 bedrooms and the number of bedrooms with baths, etc.

Q. Take the floor areas—that is what I am asking about? A. Individual floor areas?

Q. No; the total? A. Yes, I did; I checked those.

Q. You calculated those, did you? A. Yes.

Q. What was the width of the building on the George Street frontage that you took? A. I just measured it off the plan.

Q. Show me the plan you measured it off? (Witness indicated.) You have Exhibit 4 there, have you? A. It is marked on the back— 30 "exhibit "4"."

Q. What measurement did you get on that plan for the depth of George Street? A. I would have to scale it off now. I do not have the figures with me.

Q. Yes, do that. (Witness scales plan.) A. 64 ft.

Q. You got 64 ft., did you? A. Yes.

Q. Is that plan to scale? Has it any stated scale? A. I was checking against the heights. There are some figure dimensions which give the scale.

Q. It has no scale on it? A. It has no stated scale, no.

Q. You worked out a scale by working from the height and getting 40 your unit? A. Yes.

Q. And you get 64 ft.? A. Yes.

Q. Not 63 ft.? A. Well, it could be—the 32nd scale is very small. Yes; it could be 63. The width of a line would make a difference.

Q. What figure did you take? A. I do not know. I do not even know that I kept the paper on which I did my calculations.

Q. The Carrington Street areas are nominated there, are they not, somewhere? A. Not on this plan, I do not think. No; they are only planned on the same scale. There is no figure dimension except heights.

Q. Can you tell me how much of the total area shown on Exhibit 10 is assigned to the George Street building? A. Of this position?

Q. Yes? A. No; I could not answer that.

Q. Why could you not answer that? You have said that you were able to scale off the depth of the building. We know the frontage assigned. Why cannot you tell me how much of the total area was assigned to George Street? A. This just gives a total figure.

Q. But that includes Carrington Street and George Street? A. Yes.

Q. How much of that total is assigned to George Street? A. I have not the figures here to do it with.

20 Q. Cannot you work out what George Street represents, according to that exhibit? A. Yes, I see.

Q. Just quickly. (Objected to.)

Q. Well, do not do it quickly—just do it as you will (witness writes on paper). A. Might I ask what the frontage to George Street is?

Q. Is it not shown on that plan? A. It is to scale.

Q. It is 149 ft. or almost 150 ft.—147 ft.? A. I make it 111,132 sq. feet.

Q. And the balance would have to be assigned to Carrington St.? A. Yes, that is right.

30 Q. How many floors in George Street did you take? A. Twelve.

Q. Twelve floors? A. Yes; I was taking it from the present building up.

Q. You were taking it from the present building up? A. Yes.

Q. That depth of 63 ft.—it is not your ideal hotel depth, is it? I think you said 44 ft. 6 in.? A. Yes.

Q. It is 63 ft. Would you be able to build this with this flat plate building construction? A. From an engineering point of view—vertical slabs?

40 Q. Yes? A. I would not be able to say that, but from an office building point of view it would be quite reasonable because you could have clerical space on the George Street frontage and private offices on the other.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 11.
W. R.
Bunning.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 11.
W. R.
Bunning.

Cross-
examination.

Q. So that there is not much disability in a commercial building in having it thicker through than 44 ft. 6 in.? A. No; that is true.

Q. How many feet, then, of space does that leave on the Carrington Street frontage according to your computation—the Carrington Street development of this 1956 suggestion? (Witness writes on paper.)

A. I make it 123,068.

Q. That you got by subtraction? A. Yes; I have taken that from the overall 234,200.

Q. Would you just work out for me, above the existing levels, whatever they are in Carrington Street, what space, by computation, you get for Carrington Street? A. In the type L2—for this new one.

Q. Yes? (witness write on paper). A. My calculation is 117,168 in the Carrington Street front.

Q. And by subtraction you got how much? A. Well, there is a difference to the figure by subtraction and the figure by calculation of about 6,000, which I now assume has been made up by including this floor—the one that is already built. It is quite clear now that he has included it.

Q. Where did you calculate in respect of Carrington Street? A. From here up (indicating). 20

Q. Does "here up" include the first floor? A. Yes. I took 13 floors over the whole of this area (indicating). I would emphasise that these figures need checking.

(Calculations of floor area m.f.i. "26").

Q. Would you agree with this, that in the building of city buildings that design is usually chosen which is likely to give, in all, the greatest return to the owner of the land? A. Where the building is commercial, that would be the case, yes.

Q. And in the case of a hotel building the same is true, is it not? A. Yes, that would be so. 30

Q. And where you find, here or abroad, any particular use of the land, whether it be by using only part or the whole whatever it may be, that is the dominant factor? A. That would be true, but of course in calculating that, the quality of the accommodation would naturally be reflected in the rental return whether it is offices or a hotel.

Q. There is no rule about how much of the land you use? A. No.

Q. You must take the individual site—do you agree? A. Yes.

Q. Including its situation? A. Yes.

Q. And endeavour to decide what is the greatest return you can get for the development that you plan—is that right? A. Yes. 40

Q. And plan accordingly? A. Yes.

Q. And when it all comes down to tin-tacks, what somebody else does with his site in his particular circumstances will not control what you do with yours in your particular circumstances? A. I would not agree with that because after all someone sets a standard which you have to follow very often. If someone builds a hotel of the flat type and gives 100 per cent. good accommodation, then the next person who is building a hotel is not going to do something that will give him less than that high standard.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 11.
W. R.
Bunning.

Cross-
examination.

Q. Do you think that that is true of Australian hotels at any stage of their development? A. I cannot say that for the past. I would hope that in the future that would be the case.

Q. Well, it does come down to that, that there is to be some regeneration in the community? A. Yes.

RE-EXAMINED

Re-
examination.

Mr WALLACE: Q. I take it that you indicate to His Honour that in computing so that you get the greatest return for a builder, the factors are such that they do not result in using the whole area? A. No.

Q. Of necessity, at all events? A. Quite so, I would like to tender, if I may, these plans of Anzac House, which is primarily an office building and only 50 per cent. of the site area is occupied. (Documents produced).

Q. You say that it is primarily an office building? A. Yes.

Q. Who designed it? A. My own firm.

Q. Do you recollect approximately the area or the size of the site? A. Yes, I have those figures. (Documents produced). (Objected to: pressed.)

HIS HONOR: Yes, Mr. Wallace, you are getting too far afield altogether. I reject it.

Q. You said that 50 per cent. of the site was used? A. Yes; 50 per cent. of the site was occupied.

Mr WALLACE: Q. Would you be good enough to direct your mind to the 1954 plans Exhibit H. (handed to witness). A. Yes.

Q. This morning Sir Garfield was asking a witness about the possibilities of developing the actual area of the subject site in relation to the development from the 1954 plans? A. Yes.

HIS HONOR: Mr. Bunning was in Court, I think, listening.

WITNESS: No. I did not hear that.

HIS HONOR: Well, it must have been when he had gone.

Mr WALLACE: Q. So that you construct a solid building in the centre at the site which would be 150 ft. in height and twice times 38 plus 22 ft. 6 in. in width—that is 90 ft.—and in the result the building

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 11.
W. R.
Bunning.*

*Re-
examination.*

joining the George Street component and the Carrington Street component would be a solid or massive building 40 ft. long, 90 ft. in width, and 150 ft. in height—do you follow that? A. Yes. I can see the idea.

Q. From an architectural point of view do you consider that that would be a wise thing to do on that site? (Objected to; admitted).

A. Well, to start with it would not comply with the City of Sydney By-Laws because the light areas on each side are only 28 ft. 6 in., and they would limit the height to three times that width. Under the By-Laws, you can go up three times the width of the narrowest light 10 area.

SIR GARFIELD: Q. A hotel? A. Yes; the restrictions on other buildings are less rigid.

Mr WALLACE: Q. You are only talking about hotels? A. Yes. From the point of view of actual planning it means that the building would be 48 ft. plus . . .

Q. 90 ft.? A. 90 ft. wide, which again is not very good from the point of view of subdivision if it were offices, and from the point of view of a hotel I think that it would be impossible.

Q. The next plan was to have a solid building 90 ft. in width, 80 ft. 20 in length up to the 7th or 8th floor, and then, beyond that, there would be the two wings so to speak going each up to 150 ft. in height with that light area 22ft. 6 ins. in width between the centre of those two wings—what do you say as to that, architecturally speaking? A. Well, again I say, subject to the same planning difficulties on the lower floors—they are not easy to subdivide because of the extreme depth.

Q. How does it appeal to you from a light and air point of view? A. Well, from a light and air point of view I doubt if it would comply with the City of Sydney's By-Laws, even from an office building point of view, I would have to check on that, I did not check on this particular 30 proposition.

*No. 12.
W. R. Laurie.
Examination.*

No. 12

Evidence of W. R. Laurie

Mr WALLACE: Q. Are you a registered architect? A. Yes.

Q. Will you just tell us your qualifications? You are a Fellow of the Royal Australian Institute? A. Yes.

Q. And what about the British Institute? A. I am a Fellow of the Royal Institute.

Q. What other qualifications have you? A. I have a University Degree in Architecture with Honours, and a University Medal. I am 40 a Member of the Country and Town Planning Association and I hold a number of official professional appointments of various kinds.

Q. And you have been practising your profession for many years?
A. Yes.

Q. Are you a member of a professional firm? A. Yes; I am a member at Laurie & Heath, practising in Barrack Street.

Q. Will you give His Honor three or four references to the buildings you have designed and planned? A. Well, very varied—a large number of banks, a considerable amount of industrial work, very large laboratories, very large administrative buildings, and hotels.

10 Q. You have seen these plans, have you not, of the years 1954 and 1956 respectively, in connection with the Plaza Hotel? A. The 1954 plans being those prepared by Mr. Ham?

Q. Yes; and the others by Mr. Nicholls? A. Yes.

Q. Which, in your opinion, represents the more efficient and satisfactory design? A. In my opinion there is no doubt about it that the 1956 plans are infinitely superior.

20 Q. Would you be good enough to elaborate why you say that?
A. Well, in general, from the customer's point of view—the person who is getting the building—the efficiency of the bedroom accommodation is very much higher because the bedrooms are standard, the amount of corridor that has to be looked after and traversed for each bedroom is less, and one would think that the letability of the bedrooms would be very much better because they are all open with reasonably good aspect and prospect in comparison with the other plan, of course. The details of the remainder of the schemes I think are in favour of Mr. Nicholls' plan as regards not only the quality of the accommodation being slightly better, but it has also a slight advantage in quantum for a given area.

30 Q. We know that from earlier evidence in this suit, in the 1956 plans each bedroom has its own bathroom or shower room? A. I understand so.

Q. Whereas in the 1954 plans I think 23 of the bedrooms do not have a bathroom. Do you regard that as a feature? A. I should say that as a member of the travelling public it would be desirable for every bedroom to have its bathroom. That is largely one of economies.

Q. Have a look at Exhibit H and Exhibit L2. (handed to witness).

HIS HONOR: Exhibit H is the 1954 one and Exhibit L2 is the 1956 one.

Q. The first one you are being shown now is the 1954 plan? A. Yes; this is the 1954 plan.

40 Mr WALLACE: Q. In the 1954 plans there is a lightwell 22 ft 6 in. across between the two connecting buildings running east and west connecting the George Street component with the Carrington Street component—do you follow? A. Yes,

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 12.
W. R. Laurie.
—
Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. Do you make any comment on the presence of a lightwell of that width in a modern hotel design? Is it good or bad? A. Well, it is not by any means the best modern practice. I should think that modern practice would endeavour, as far as possible, to avoid internal courts of that nature.

*Defendant's
Evidence.*

Q. In that plan, of course, if guests wish to traverse from one side of the building to the other they would have to go round the lightwell, and there are considerable corridors to be encountered, are there not? A. Yes.

*No. 12.
W. R. Laurie.
Examination.*

Q. Would you say that the rooms looking into the lightwell on each side of it would have good air and light, or do you know, or how would you contrast it with, say, the Carrington Street component of Mr Nicholls' plan? A. Well, they would not be nearly so good. They do of course comply with the requirements of the Act as regards area, but the intangibles of freedom and lack of noise from one room to the other, and privacy, are just not there. 10

Q. Would you regard the George Street frontage as suitable or the Carrington Street frontage from a residential hotel point of view? A. No. The Carrington Street frontage has less noise and, for what it is worth, some reasonable access when you look down this the park 20 from the buildings on the other side. The main difficulty I would say, about this, is that I have always wondered how the actual traffic would be handled into this hotel from George Street in connection with the 1954 scheme.

Q. You picture that as a serious difficulty, do you? A. Well, it is obviously a very difficult place for cross traffic at the Wynyard ramp

Q. Do you know what I mean when I refer to the thin slab type of building? A. Well, it is a multi-storey building with no great thickness of structure?

Q. Yes? A. Yes. 30

Q. That is to say, with bedrooms on each side of a corridor. (Objected to).

Q. Would you regard that as a good method—a well designed method—for a modern hotel building? A. Well, it has become more and more generally accepted, and there are some very good reasons for it too. With the increasing ease with which tall buildings can be built is some of the more modern forms of construction, together with the improvement in vertical transportation and the demand for air conditioning and other services, that type of building is becoming almost 40 standardised. They would have done it 30 or 40 years ago if they had been able to build tall as relatively cheaply as they can today. You can see the germs of that sort of idea in these first class American

hotels that were emerging in the middle 1920s except that they did not have the technical advantages to put them along the whole road the way we can do now.

Q. I suppose, compared with 20 years ago, it is much cheaper to build tall thin buildings . . . A. It is not much cheaper. It is relatively cheaper.

Q. Costs have all gone up? A. Yes.

Q. In connection with the thin slab type of building, does it follow in your opinion that you do not use the whole site for the construction of such a building?

10

HIS HONOR: It all depends on the width of the site, I should imagine.

Mr WALLACE: Q. I am speaking of an ordinary city site? A. I should think that to get a given accommodation you can use less of the site and thereby obtain the natural advantages of light and air, and to a certain extent sound insulation, whereas if you wanted to provide that on the thick low building you could not do it. There has been a certain elaboration of plan because of this thin high construction.

Q. You saw the building Bill going through Parliament, I suppose? A. On the height of buildings?

20 Q. Yes? A. No; I am sorry, I did not.

Q. Will you give me one or two reasons why it is comparatively simpler to build the thin slab type of building than to go over the whole site and try and get the same accommodation with lightwells, and so on? A. Well, in hotels one of the biggest reasons, of course, is that you are concentrating your planning in tiers—where you are having so many bathroom stacks. You are also able to keep your ventilation in stacks as well. And you will get much better value out of your lifts.

30 Q. If you go through the 1956 plans you can see in those the gesture of the means whereby the public can walk from George Street to Carrington Street. Do you remember that aspect, where there is a concourse, and the crossing over of Wynyard Lane?

HIS HONOR: All up and down stairs.

WITNESS: Yes—passing through this shopping section.

Mr. WALLACE: Q. In both plans, of course, the public can pass from George into Carrington Street—is that so? A. Yes.

40 Q. But in the 1956 plans, however, do you find that Wynyard Lane is widened on both sides—widened by a semi-circle of shops on each side, and it is covered over in the position where members of the public passing through to Carrington Street from George Street would be

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 12.
W. R. Laurie.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Defendant's
Evidence.
No. 12.
W. R. Laurie.
Examination.

crossing over Wynyard Lane? A. Yes; I recollect that. The germ of the idea is to get some sort of "crush hall" and shelter as they cross the street.

Q. Would you regard that as an advantage in the 1956 plans to have these wide areas and shops circled around them with protective covering over them? A. Yes. There is an extremely narrow footpath there, and it would certainly tidy up any crossing of the lane at that point.

Q. In the 1954 plans there is no covering over the lane? A. Well, that coverage and the giving of that "crush space" would be a better idea, and there would be the advantage of these shops. 10

Q. Going back to these bedrooms, do you find, in the actual design of the 1956 bedrooms, any advantage over the 1954 design? A. Well, there was a high degree of standardisation.

Q. I think it was said that the bedrooms are irregular in various ways in the 1954 plans—some of them were irregular in size and shape? A. Yes.

Q. Do you regard regularity of the bedrooms in the 1956 plans an architectural advantage? A. I do not know whether it would be an architectural advantage, but it would certainly be a managerial advantage. These bedrooms are very close to good class commercial hotel planning in Europe rather than in America. It is quite the accepted type of plan for a bedroom. 20

Q. In regard to future possible development of the two plans, can you say whether or not, in your opinion, one set of plans lends itself better to future development than the other—in your opinion? A. Well, I have no knowledge of the structural problems involved, but assuming that it were possible—and I understand that it has been analysed—to take up this bedroom accommodation which as at present proposed in the present scheme. 30

HIS HONOR: Q. That is the 1956 scheme? A. Yes, the 1956 scheme—it should be possible to increase the bedroom accommodation from the owner's point of view very, very much more cheaply and efficiently than the 1954 scheme could possibly do it.

Mr. WALLACE: Q. Would you say that a person who owned the building and wanted to develop it later, or if it were developed by anybody, that the owner would have a better building when fully developed under the 1956 plans than under the 1954 plans? A. Well . . .

HIS HONOR: It all depends on what you mean by a better building. 40

Mr. WALLACE: Q. You have just told His Honor that the 1956 plan can be developed more efficiently and more cheaply . . . (objected to).

HIS HONOR: More cheaply, and you would keep on getting more and more better bedrooms at less cost than you would get bedrooms under the other scheme. That is what I understood the witness to say.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Mr. WALLACE: Q. Assuming that the two plans were developed to the maximum degree of development, can you express an opinion as to whether the result of one development would be better than the other? (Objected to; admitted). A. Am I allowed to refer to the diagrams that Mr. Nicholls developed?

Defendant's
Evidence.

No. 12.
W. R. Laurie.
Examination.

10 Q. The isometric diagrams? A. Yes; showing the development on the George Street and Carrington Street frontages.

Q. That would be Exhibit 2 (handed to witness). Is that what you had in mind? A. Yes.

Q. Assuming that development respectively along those lines took place which, in your opinion, would yield a better building from the owner's point of view? A. Well, I understand, from analysing these, that the actual area which can be developed under the various Acts is slightly greater in the 1956 scheme.

20 SIR GARFIELD: Q. Is this from something you have been told? A. No. The two schemes in the diagrams were provided to me for some little time in my office some months ago, and I analysed them at the time to check a report that was made by Mr. Nicholls, and I checked it at that time to see whether or not the facts and figures were correct.

Mr. WALLACE: Q. Is that the report in Exhibit 5? Just have a look at Exhibit 5 (handed to witness)? A. Yes, that is the one. I checked the total areas at the bottom of that report and found them to be substantially as indicated.

30 Q. I think that what I was endeavouring to elicit from you was that assuming you had a building—assuming that somebody developed along those two lines on this site, a building fronting Carrington Street, going to the maximum height, and on George Street going to the maximum height, and I want you to assume that the one on George Street is a building for commercial purposes, as compared with the development of the 1954 plans along those lines, are you prepared to express a view as to which would be the better building for an owner? A. Well, assuming that there is no extra expense in putting those structures over the top—assuming that expense to be common—I would say that the economics of the thing would undoubtedly favour the 1956 one, so that if there is any question as to whether one half is going to be a hotel and the other half is going to be commercial, then the separation of the two blocks seems to me to be eminently desirable, but according to the analysis here the actual areas available are very similar, but rather the 1956 scheme.

40

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Defendant's
Evidence.
No. 12.
W. R. Laurie.
Examination.

Q. There is one other subject I want to ask you about at this stage. Would you please imagine that in respect of the development shown in Exhibit 2 of the 1954 plans, the following were to be envisaged, namely, that these two separate wings were to become one solid building and to be continued up to the maximum height, thus producing a building the dimensions of which would be—I am speaking only of the central portion—80 ft. in length, 150 ft. in height and twice that area plus the lightwell in width, which comes to 90 ft.—a solid building coming up to the maximum 150 ft. do you think that that would be good architectural planning? A. I am sorry: I did not quite follow that. 10

HIS HONOR: You put the position that you continued with the 1954 plans.

MR WALLACE: Yes.

HIS HONOR: But in one sense that is not solid because it has a hole in the middle.

MR WALLACE: I am only putting something that was in fact put by Sir Garfield. I think that was the way Sir Garfield put it.

HIS HONOR: Very well.

Mr WALLACE: Q. I want you to envisage that the 1954 plans were implemented just as far as Mr. Ham had them, and then somebody in the future, for good or indifferent reasons, saw fit to do the following, to develop the outside buildings in George Street and Carrington Street as in Exhibit 2, but in the centre, instead of developing as shown in Exhibit 2 with the lightwell 22 ft. 6 ins. in width as shown there, he came right up to the 150 ft. level with the central building and it had no lightwell at all; so that the solid centre piece came up to 150 ft. with the dimensions of 150 ft. in height, 80 ft. in length, and 90 ft. in width? I arrive at the 90 ft. by this 38 ft. and this 38 ft.—twice 38 ft. is 76 ft. 20

HIS HONOR.: It is four o'clock and I will be adjourning now. You will get a better answer if you explain precisely to the witness before he gets into the box exactly what you want to ask him. 30

MR WALLACE: The witness came straight from the University.

WITNESS: I am supposed to be arbitrating tomorrow, Your Honor.

HIS HONOR: Well, you are faced with the lesser of two evils, we do our best to help people, but the way this case is going makes it difficult to fit you in at any other time. I think that you had better communicate with your people and put the arbitration matter off until 11 o'clock.

WITNESS: Yes; I will do that.

Mr WALLACE: Q. Comparing the 1956 plans with the 1954 plans, and having in mind the factors to which you have alluded, such as the design of the bedrooms, light and air and so on, would there be, in your opinion, any economic advantage in the future that one would have over the other? A. Well, I think that at the present stage and in the last 15 years hotelkeepers have been able to let practically every room that they have had, but if you go back to the depression I am sure you would find that bedrooms that did not have good light and air and good prospect, would be very much more difficult to let than those that

10 had.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 12.
W. R. Laurie.

Examination.

HIS HONOR: That was the obvious answer to me yesterday, that where the demand is greater than the supply you just have to take it, but where it is the other way round, there is more competition.

SIR GARFIELD: But there is no depression here.

Mr WALLACE: Q. Over a period of say, 40 years, would you regard that as a factor of any importance? A. I would say "considerable". Sir Garfield says "no depression", but when it becomes evenly balanced I would say that the well designed bedroom would have an advantage over the bad one.

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CROSS-EXAMINED

Cross-
examination.

SIR GARFIELD: Q. As with housing so with hotelkeeping—when you get well in arrears it takes a long time to get up to balance? A. Yes.

Q. And this city is so far in arrears with hotel accommodation that it will take a long time to get anywhere near balance—allowing for growth? A. One would have to theorise about that, but I would not agree that that is the present position so far as office accommodation is concerned.

Q. But we are talking about hotels? A. Yes.

30 Q. So far as hotels are concerned, allowing for growth, it is so far behind that you cannot give any foreseeable date when they will be in balance? A. No, but that does not say that it is difficult.

Q. And so far as hotel sites are concerned, in this City there are very few places in which you could put hotels—particularly in the centre? A. I do not know.

Q. You spoke about George Street being a difficult street to front a hotel to? A. Yes.

Q. Is not the most modern hotel in Melbourne in the middle of a block in Swanson Street? A. The Plaza?

Q. No; the Graham? A. No; I do not know it.

40 Q. From the point of view of noise, George Street is almost a silent tomb compared with Swanson Street, is it not? (Objected to.)

Q. Well, that is an exaggeration. Swanson Street is much noisier than George Street, is it not? A. Swanson Street is a nice wide street and that makes it quieter.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 12.
W. R. Laurie.*

*Cross-
examination.*

Q. Do you say that Swanson Street is quieter than George Street?
A. Yes, I think it is.

Q. Have you ever stayed there—in that street? A. No, but my
impression is that George Street would be noisier than Swanson Street.

Q. And in Sydney so far with our hotels we have the Australia
and Ushers in Castlereagh Street? A. Yes.

Q. And the Metropole on a corner surrounded by trams, I suppose
you could say? A. Yes.

Q. And I suppose the Wentworth is in one of the quietest spots
in Sydney? A. Yes. 10

Q. And Petty's, if it were still a hotel? A. Yes.

Q. And Petty's went out of business, did it not, in the quietest
spot in Sydney? It is now a red cross centre? A. Yes.

HIS HONOR: The witness may have agreed that that is the quietest
spot in Sydney, but, passing by every day I would disagree with that.

SIR GARFIELD: Q. And the Wentworth until Qantas took it over was
not exactly a developing business, was it, as far as you know? A. It
was a very good hotel, and I think that it paid handsome dividends.

Q. There has been no actual development of that area for many
years, by way of accommodation, has there? A. Yes, there has. 20
Qantas spent quite a lot when they took it over.

Q. What—in the last 15 years? A. I would say just before the
war, and of course the licensing authorities stopped any development
then.

Q. You were talking about a comparison between the Carrington
Street and George Street frontages of the subject land? A. Yes.

Q. Of course Carrington Street has the bus centre? A. Yes.

Q. I suppose the noise comes up much easier when it is across the
road, does it not? A. No; it is a question of reflection off the narrow
road. 30

Q. And I suppose trams will decline but buses will increase—that is
the tendency, is it not? A. Yes.

Q. And the tendency of buses is to go in for more powerful diesel
engines? A. Yes, apparently.

Q. So that noise and fumes—particularly fumes—are likely to
increase on the Carrington Street frontage and the tram noise to decline
on the George Street frontage? A. Assuming always that they do
not run any buses in George Street—

Q. But it would be hardly likely that George Street will ever become
a bus terminal the same as Carrington Street? A. I suppose more 40
buses would pass.

Q. But buses would make much more noise and fumes in starting up and moving away two or three in quick order, than they do in running by a spot between stops? A. Yes, but if they are in an open space like Wynyard, there is not so much noise as in a confined spot.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. But allowing for all that, there are added effects of stopping and starting and turning around the Park, and that is likely to create more noise in the long run—and fumes—than the noise of the trams in George Street and the buses passing by? A. I really would not think
10 so. I really would not.

*Defendant's
Evidence.*

*No. 12.
W. R. Laurie.*

*Cross-
examination.*

Q. What do you mean? Have you no opinion about it? A. It is purely hypothetical as to what is going to happen in the future, but I would always think that you could very very considerably increase the bus traffic in Carrington Street assuming that you have a reasonable replacement of trams by buses in George Street, and assuming some growth in the ordinary traffic in George Street, and at the end of that, because of the advantage of the open space in Carrington Street I would still say that the Carrington Street frontage would be likely to be the far more desirable frontage.

20 Q. You would prefer to be discharging your hotel customers out on to a bus terminal point because it is a bus terminal point? A. On the other side of the road.

Q. Yes, but Carrington Street is not a very wide Street? A. It seems to me that one of the troubles in using the George Street frontage as a hotel entrance is that you are crossing the most intensive pedestrian traffic in Sydney. At present I think it is a no-parking area under any circumstances from at least Peapes back to the other side of the bus stop. I think that it is almost impossible to reckon that you can get a car in to discharge there. I cannot see that happening in Carrington
30 Street, because as long as Wynyard Park is used as a loop the buses are on the other side of the road.

Q. But you have been in Carrington Street when more than two buses begin to leave at a time? A. Yes.

Q. Then they run parallel with each other in the one-way street? A. Yes, but—

Q. And then they come right over practically to the kerb on what would be the hotel site? A. I have never seen that.

Q. But you have seen the buses pulling out, and several have departure times practically the same? A. Yes; lots of them.

40 Q. Do I gather that you have confined your attention entirely to comparing the 1956 architectural plans with the 1954 architectural plans from the point of view of design—layout and design? A. That is a fair statement, I think, yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 12.
W. R. Laurie.

Cross-
examination.

Q. And then, so far as any projected development is concerned, I take it that you have considered that principally from the point of view of resultant total area? A. Yes.

Q. You have not come to this problem with a view to considering various possible developments of the total area at Wynyard? A. No; I have been purely comparing the two schemes.

Q. There is one thing that I want to ask you about the 1956 scheme. You observed that the ceiling of the first floor of bedrooms was 9 ft. 6 ins.? A. I do not remember.

Q. Have a look at Exhibit L2 (handed to witness). The first floor 10 of bedrooms has ceilings 9 ft. 6 ins? (indicating). A. Yes; 9 ft. 5 ins., to be exact.

Q. Yes. When you were comparing the total floor areas of these two buildings—and you say that you looked at Mr Nicholl's dissertation——? A. Yes.

Q. Did you count that first floor in as bedrooms in the full development? A. I do not recollect.

Q. Of course if you were to run this block in the 1956 plans up to 300 bedrooms—to the permissible 150 ft. limit—those public rooms would be wholly inadequate, would they not? A. Some adjustment 20 would have to be made.

Q. And upstairs there is a writing room of about 17 ft. by 19 ft.—they are the only public rooms that are in this hotel now? A. Yes.

Q. Bearing in mind that it is a terminal hotel with enormous pedestrian traffic adjacent to it——? A. Yes.

Q. You would have to readjust those public rooms? A. Yes; I suppose the public rooms would need some readjustment.

Q. And the only place you could put them in this 1956 development would be to take them up a floor? A. Yes; unless you would be prepared to sacrifice the bar, apparently. 30

Q. That is a very "touchy" point to my friend. A. The bar could be sacrificed, the shops could be cut down; presumably the logical place would be to go on the first floor.

Q. And would you agree with me that you could not put public rooms in with a 9 ft. 6 in. ceiling? A. I do not think that there is anything in the Act to stop you.

Q. But could put public rooms in with a 9 ft. 6 in. ceiling? A. I do not know. I can think of no impediment.

Q. But would you do it? A. It depends on the size of the rooms.

Q. A hotel with 300 bedrooms on the Carrington Street site? 40
A. If the ceiling were low you could subdivide them and you could have smaller rooms similar to the Hotel Australia. Those are above 9 ft. 6 ins. of course.

Q. Do you mean those little rooms where you go into for a cocktail party? A. The ones at the front.

Q. But I am thinking of dining rooms and sitting rooms and writing rooms? A. I was assuming that the dining room was irrelevant on this one (indicating).

Q. I thought you had been informed of this—(Objected to).

Q. This is a dining room for 100 people. It is branded "Coffee Lounge" to be American, but it is actually a dining room for 100 people. A. I understood, from the discussions on that, that the dining room downstairs was for heavy meals and that this coffee lounge would be for the purpose of serving light meals for the people in the bedrooms and breakfasts, and would also be the backbone of the room service. When I was told that I agreed that that was very like the general tendency in the modern terminal hotels in Sweden where there was a tendency to take the catering right away from the actual bedroom management, and that the general association of the bedroom accommodation was becoming more and more confined to the room service and the light snack meal.

Q. But in Sweden do you have to go through alleyways of the terminal station to get to the hotel? A. There is one in Sweden where you do just that—the Hotel Malmo.

Q. Is it the modern tendency—? A. I would say that that is one of the most modern commercial hotels that I have ever stayed at.

Q. But is it the modern tendency to divorce the catering from the actual bedroom management? A. No; that is fairly abnormal.

Q. Now supposing there were 300 bedrooms put here? A. Yes.

Q. Have you seen the Wynyard dining room downstairs? A. Yes.

Q. Would you think that the dining room downstairs at Wynyard would be adequate for the heavy meals for 300 bedrooms on this site, bearing in mind its other public demands? A. I have not worked it out, but assuming that the other public demands were limited, my impression would be that it was an adequate room.

Q. For 300 people? A. For 300 people. They do not all eat at once.

Q. But you cannot prevent them eating at once unless you underprovide, can you? A. I should say that there are very few hotels that provide dining accommodation on the expectation that all the inhabitants of the rooms are going to be in at any one time.

Q. Have you any formula in your mind as to what percentage you should provide for? A. No.

Q. You must provide for the guests as well as others? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 12.
W. R. Laurie.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 12.
W. R. Laurie.*

*Cross-
examination.*

Q. And at Wynyard there is the prevalent public to be thought of?

A. Yes.

Q. Bearing all that in mind, do you think that the public dining-room at Wynyard would be adequate for the heavy meals of the public and the 300 bedroom hotel and the guests of the people who are in it?

A. Well, I have not worked it out. I can do no more than say that I think that my impression is that it would be.

Q. Do you know how many it seats? A. No.

Q. What seating accommodation do you think you would need to adequately cater for the travelling public at Wynyard and 300 bedrooms, their occupants, and of course their guests? A. I have no idea, because the travelling public at Wynyard—one just could not calculate that. I have no figure.

Q. Well, you have no idea? A. No.

Q. So far as that coffee lounge is concerned, even for light meals do you think that it would do a 300 bedroom hotel? A. No.

Q. There could be no question that you would have to find some other space? A. Yes.

Q. And you say that you think that you could (a) be allowed, and (b) that you would use a 9 ft. 6 in. ceiling for public space in a hotel such as this, including dining space? It is up to you. (Objected to.) A. I would say that if one were faced with the problem that the only space for development as public space was a room with a 9ft. 6 in. ceiling, one would just have to do the best one one could, and I can say—I have not really thought about this particular problem before—that I do not think that it would be at all impossible to get coffee lounges put up on the top of the building. The big formal dining-room with that ceiling height would be somewhat unusual, but you have a very interesting parallel in a ship's dining saloon where you actually see very large numbers of people accommodated with a head room of 9ft. 9 in.

Q. But there is no comparison there with the case of a man developing a piece of land, is there? A. I suppose not, but a head room in a ship of 9ft. 9 in. is not unpleasant.

Q. Very much depends on how good the air conditioning is through it? A. Yes.

Q. Will you just look at that section (indicating) and see where beams come through that 9ft. 6 in. ceiling? A. Yes.

Q. So that that 9ft. 5 in. is to the underside of a slab through which beams protrude? A. Yes.

Q. The beams protrude as much as 18 in. on that scale, do they not? A. It looks like it.

Q. Yes, about 18 in.? A. Yes.

Q. That would further reduce your ceiling? A. Yes, at certain points.

Q. Would you advise an owner, who did not have to, to put himself in a situation where he only had 9 ft. 6 in. headroom in which to put his public rooms? A. I would point it out to him, quite certainly, that his public rooms would be 9 ft. 6 in. in height and that there would be these disabilities that you have been foreshadowing. On the other hand, all plans are the result of the operation of various factors.

10 Q. Would you advise an owner who did not have to to put himself in a situation where he only had 9 ft. 6 in. ceilings for his public rooms? A. No; I think one would try to avoid it.

Q. You told us that one of the advantages of this plan is that the plumbing would be concentrated? A. Yes.

Q. That, of course, is not a feature that is only going to be obtained in this thin slab construction or even slab sided building construction, is it? You can achieve that in planning in other forms of structure? A. Yes; one always tries to concentrate the plumbing, but I think that it is a fair thing to say that if you do have that number of bathrooms on any one floor and you have to multiply it by 20 by going right up in the air, the total amount of drainage and other installations in that layout would be cheaper than if they were spread out over two or three blocks.

Q. There is no argument about that. My only point is that you can achieve this sort of plumbing, one above the other, in other forms of structure, in either thin slab or slab sided buildings? A. Yes.

Q. You said that internal light courts were undesirable? A. Yes.

Q. But not infrequently, in order to obtain maximum commercial development—that is the economic development of a site—you do revert to them? A. Yes.

30 Q. It all depends on what balance of factors there are in the development of the site? A. Yes.

RE-EXAMINED

Mr WALLACE: Q. If, in connection with the 1956 plans, you desired an alternative when you came to extend these plans up to the maximum height limit so as to obtain 300 bedrooms—if you desired an alternative from the dining-room on the ground floor——?

HIS HONOR: The George Street basement?

Mr. WALLACE: No.

40 Q. The alternative to the specification that Sir Garfield has been putting to you of a dining-room, as I understood him to put it, on the ground floor or the first floor of Carrington Street?

HIS HONOR: Yes; the coffee lounge situation.

Mr WALLACE: Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 12.
W. R. Laurie.

—
Cross-
examination.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 12.
W. R. Laurie.

Re-
examination.

Q. Do you follow? A. Yes.

Q. Could an owner place a dining-room, when he was extending to the 300 bedrooms, on some floor other than the ground floor so as to get sufficient headroom? A. There are some places where they are actually on the top of the building.

Q. The dining-room? A. Yes.

Q. Is there any architectural reason, in your opinion, if they intended to extend to 300 bedrooms, why they should not go on to the second, third, fourth or fifth floor for the dining-room? A. No architectural reason. Economics always comes in to it, of course. 10

Q. You say that in some cases the dining-room is on the top floor? A. Yes.

Q. Would that be a big hotel? A. I would not like to say—a moderate sized hotel of 200 or 300 bedrooms.

Q. At all events, do you know that there are dining-rooms on both the first and second floors of the Hotel Australia? A. Yes.

Q. And do you say, therefore, that there is no architectural reason known to you why, in extending the 1956 plans, the dining-room should not be placed higher up? A. No.

Q. And given such headroom as required? A. Yes. 20

Q. If you would turn now to the 1954 plans (handed to witness)—you are acquainted with those, of course? A. Yes.

Q. Just be good enough to remind yourself of a few of the sheets, will you? (Witness peruses documents). I want to ask you whether there is any provision for a dining-room in those plans should the owner wish, at some future date, to extend them to the maximum height? A. No; there is no provision in the upper part of the structure at all.

Q. Can you envisage any greater difficulty in providing a dining-room in any extension of the 1956 plans to the maximum height than in the 1954 plans? A. No; there is no difference in the problem at 30 all, as a matter of fact.

Q. Can you answer this question? It is apropos of some question that Sir Garfield asked you earlier this morning in regard to hotel buildings in the city and sites for hotels,—do you remember? A. Yes.

Q. Have you observed any, and if so what, trend in regard to the construction of hotels in areas outside the city area but serving travelling and city populaces in this city.

HIS HONOR: There is one on the station at Werris Creek that I can remember. 40

WITNESS: Well, the general tendency is noticeable, although I am not an authority on this—there is a tendency for more accommodation to be provided in the suburbs than heretofore, which is actually used by

the travelling public. There are a number of them which are largely used by interstate people who stay in the suburbs, whereas years ago they did not use them at all.

HIS HONOR: You are released from attendance but if by chance you are wanted again you will receive a message.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 12.
W. R. Laurie.

Re-
examination.

No. 13

Evidence of J. R. Harrowell

No. 13.
J. R.
Harrowell.
Examination.

Mr WALLACE: Q. You are a chartered accountant? A. Yes.

10 Q. And you are a member of the firm of Broinowski Storey & Co.?
A. Yes.

Q. And have you been in the accountancy profession since 1934, and have you been a chartered accountant since 1937? A. Yes.

Q. You are a Fellow of the Australian Society of Accountants?
A. Yes.

Q. And an associate of the Secretaries Chartered Institute? A.
Yes.

Q. Since joining your firm in 1947 you have been attending personally to the audit of Avrom Investments Pty. Ltd., the defendant company? A. The New South Wales branch of that company.

20 Q. It is a Melbourne company? A. Yes.

Q. And its New South Wales accounts are kept separately as though they were a separate entity in most respects, and then they are "married" into the Melbourne accounts? A. Yes.

Q. I think you have spent more time on this particular company than would be the case ordinarily with the usual audit? A. Yes.

Q. For example, in connection with the drawing of cheques against the company, is it necessary that they should be countersigned by yourself or one of your clients? A. Yes.

30 Q. And when they are presented for signature, must they be accompanied by vouchers or invoices? A. Yes; when the cheques are produced to our office for signature, they must be accompanied by vouchers.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 13.
J. R.
Harrowell.
Examination.*

Q. And there is an exception in regard to that—namely, the manager's small expense account? A. Yes.

Q. Balance sheets have been drawn up annually, of course, in respect of the Sydney component of this company's affairs? A. Yes.

Q. And are you conversant with the accounts of this Sydney component? A. Yes.

Q. And are they constantly under your supervision? A. They are.

Q. The secretary of the company is a Melbourne man? A. Yes.

Q. And you signing cheques in that sort of way, and having the constant supervision to which you have referred, as well as the auditing which you carry on, those factors result in your being able to speak to His Honor about the figures of expenditure and income of this Sydney component? A. Yes. 10

Q. Have you yourself drawn up a document, with some schedules attached thereto, which present, in tabular form, the evidence which, at my request, you prepared yourself to give? A. Yes.

Q. Is that the document (handed to witness)? I have handed a copy to my learned friend? A. Yes, with the exception, in this case, of the furnishing schedule which was not prepared by me. Up to schedule "E" was what I prepared. I have a spare furnishing schedule here (produced). 20

(Document tendered; objected to on the ground of relevance and competency; pressed, argument ensued).

HIS HONOR: I will admit it at this stage, but with regard to the matter of competency, I will hear further evidence on qualifications and give my decision later. I think first of all that you had better get this witness' qualifications for making these estimates.

Mr WALLACE: Q. As a result of your experience as auditor of the Plaza Hotel businesses in the Wynyard area over the years, have you acquired a knowledge to some extent of the hotel business and the type of income and expenditure items that they have. (Objected to as to form; pressed; argument ensued). 30

Q. May I preface that question by asking you another one? Before joining your present firm, had you had any experience in other hotel auditing? A. Yes.

Q. Which hotels? A. I carried out the audit of the Hotel Canberra, the Hotel Kingston and the Hotel Civic, all at Canberra.

Q. And in connection with the Plaza, do your duties entail, first of all, a knowledge and the supervision of the various headings of expenditure? A. Yes. 40

Q. First of all, what types of business are carried on in what are from now on referred to as the subject lands—that is fronting George Street and going back to Wynyard Lane? A. The Hotel Plaza and the Wynyard shop section of the business.

Q. We know that there is a dining-room there? A. Yes.

Q. And of course the sale of tobacco would be a small section of the source of income? A. Yes.

Q. Do the accounts sectionalise the income and expenditure from those departments? A. They do.

10 Q. So that under your direct supervision the items of income and expenditure in respect of each section of the business carried on on that subject land are set forth? A. Yes.

Q. And the expenditure items, I presume, would include the usual items appearing in the trading account of this type of business? A. Yes.

Q. Such as wages and materials and all the dozen and one other things?

HIS HONOR: Breakages.

WITNESS: Yes.

20 Mr WALLACE: Q. With regard to the balance sheets, do you have the balance sheets here? A. Yes, I do. I have all the New South Wales balance sheets here. (Documents produced).

Q. And do you have here with you in Court the balance sheets for the years 1946 to 1956, both inclusive? A. Yes.

Q. Your financial period ends with the 30th June, of course? A. Yes.

HIS HONOR: Do they include profit and loss accounts?

Mr WALLACE: Q. And they include trading and profit and loss accounts for each year? A. Yes.

30 Q. And do these accounts show in the balance sheets and the trading and profit and loss accounts to which you have referred, also show by departments, the profit and loss accounts for each year? A. Yes.

Q. And do they also show, by departments, the trading accounts for each year? A. Yes.

Q. Then there is a consolidated profit and loss account for each year? A. Yes.

Q. These annual accounts, with the exception of the first year—that is to say the year ending 30th June, 1946—have all been prepared by you in your firm? A. Except for the year ended 30th June, 1947.

40 I joined my firm in July, 1947, and portion of that year would be carried out by another member of the firm.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 13.
J. R.
Harrowell.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 13.
J. R.
Harrowell.
Examination.

Q. And do they accurately represent the financial position? A. To the best of our knowledge as auditors.

Q. Then, for the sake of convenience, has there been a summary of those years extracted showing annually the net profits and losses of the various departments of the business at that site and the aggregate net profit in each case? A. Yes; that has been prepared.

Q. And do you say that those accounts accurately show the net profits and losses of the business for that period? A. I have not checked that with Mr. Connolly who prepared it. I have tested it, but not checked it. 10

Q. That is only a question of summarising from these balance sheets? A. Yes.

(Profit and loss accounts and summary tendered; objected to; pressed).

SIR GARFIELD: If my friend will defer the tender and give me the lot of the documents and the summary, I could check the summary, and subject to the general objection the summary could go in.

HIS HONOR: That would get over the difficulty as to the balance sheets and the summary—they would be in subject to their relevance. This document then goes further. 20

Mr WALLACE: I withdraw the tender for the moment of the summary and the balance sheets, although it would be convenient for the purpose of this evidence, to have the summary before Your Honor at this stage.

SIR GARFIELD: I have no objection to His Honor seeing the summary, but I do not wish to be tendered at this stage.

Mr WALLACE: Q. You have a copy of it with you? A. Yes.

Q. The figures on the left that you are looking at are my own figures being the result of adding together the two right hand columns. In connection with your estimate, about which I am going to ask you in a moment you have taken as a basis the 1956 figures, have you not? 30
A. Yes.

Mr WALLACE: I will read the figures out. 1956, the first column, "liquor", in red, is £39,529. The next column, "Restaurant", still in red, £10,780. "Accommodation", still in red, £3,263. "Tobacco", in black, £4,829. "Sundries", in black, £2,035. The total in black is £32,350. The next one "Administrative expenses," is £14,270 and the next one is £18,080, and the final one on the right in red is £3,334. Over on the left I have put down the result of "marrying" the second last and the last columns together.

SIR GARFIELD: I make them £14,746. 40

Mr WALLACE: Yes; we are ad idem on that.

Q. It is to be observed, that the profits have receded very largely indeed in recent years? A. Yes.

Q. Can you give us the reason or the reasons for that—had it anything to do with wages or materials or that sort of thing? A. Well, I can give you the main reason. Take the restaurant first. Sales had fallen off considerably since that particular section was opened, from 1946 to 56, and the wages had gone up approximately 100 per cent for relatively the same number of people employed.

10 Yes. Q. Do you mean that the number of meals had fallen off? A.

Q. You have the figures? A. Yes, but I have not got them here. I am only referring to the revenue for the restaurant. The hotel has got figures for meals served, and they indicate a falling off, but I haven't got the figures here.

Q. And accommodation—that has shown a loss throughout? A. Yes.

Q. And what is this item of “sundries” which has gone up? A. I would like to have a look at the accounts before I say anything about that. I would like to have a look at the 1956 accounts.

20 HIS HONOR: He might have a look at the 1952 ones as well.

MR WALLACE: Q. There are the figures for those 2 years. (Handed to witness). A. In regard to 1952 there was an amount in the general profit and loss account for revaluation of liquor stocks £8,374. That is arrived at as follows. During that particular year there was an increase in liquor prices that came out, and the prices were increased throughout the liquor trade. To enable the figures in the trading account to be kept in line with the known return, those stocks which the hotel had in the beginning at the lower prices, details of those were kept and the extra profit resulting from those was put
30 into that account. That could have been left in the trading account, and instead of getting the normal 40 per cent odd for that trade it would have gone up corresponding with that figure. When the prices went up the hotel adopted the practice of immediately increasing its liquor prices as soon as the prices were increased. If the liquor prices go down they cannot sell at the original cost prices; they have to sell it at the reduced prices.

HIS HONOR: The other one is the 1956 one.

MR WALLACE: Q. The same reason there, I suppose? A. Yes, the amount there was £1,961. The balance of that sundry income
40 is a small revenue of £100 approximately from weighing machine service.

Q. Looking at 1956—what were the total wages paid by the enterprise in that year? A. The wages had been split up in these

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 13.
J. R.

Harrowell.
Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

No. 13.

*J. R.
Harrowell.*

Examination.

accounts. Cleaning wages were nine and a half thousand pounds, general maintenance £4,000, general salaries and wages £72,000 and bonus £866.

Q. You have just told us the wages paid in 1956. Could you tell us the wages paid in 1952—just for the sake of illustration? A. Wages, cleaning, £7,700; general maintenance wages, £4,000; general wages and salaries, £55,400, and bonus £737.

Q. So that the general wages went, in those years, from £55,000 to £72,000? A. Yes.

Q. If you go to the shops, you find that 10 years or so ago there was a small profit, whereas, reaching its peak in 1952, there have been substantial losses, is that so, last year's loss being £3,334? A. Yes.

Q. Could you tell me, please, what factors converted the small profit into substantial losses? A. The rent paid under the lease,—I think it is clause 6 of the lease—is rent in a sliding scale. For the first 3 years it starts off at a certain figure and then it increases after that, and in 1948, 1949, it went from £15,000 per year to something like £19,000. The increase was £4,000 in one year. The hotel accounts have applied a large portion of the rent against the shops.

Q. What about rates? A. Rates are also applied there, in 20 proportion, between the hotel and the shops.

Q. Could you just show from there roughly in what way the rates have increased? A. The rates have increased as rates have increased generally. I cannot tell you the amounts except by referring to the accounts.

Q. I will give you an earlier one—I will give you 1948 (Handed to witness). Compare 1948 with 1956, if you would? A. The rent as charged in the revenue account for 1948 was £10,200. In 1956 it was £12,900.

SIR GARFIELD: Q. That is the debit? A. Yes; the debit against 30 rent.

Q. That is an arbitrary figure? A. Yes.

MR WALLACE: Q. What about the rates? A. The rates in 1948 were £5,000 and in 1956, £11,000.

SIR GARFIELD: Q. Is that the whole rate you cannot charge against the shops? A. No; that is only against the shops. I can give the total rate charged for the hotel—the total rate for that year on the same basis. It is an arbitrary apportionment.

MR WALLACE: Q. Could you give me the total rates payable in 1948 and 1956—could you do that now? A. Yes. The 1948 rates for the 40 shops were £4,937 and for the hotel section the rates were £2,469. That

would total £7,400. They are the total rates irrespective of how they are apportioned. For 1956 the rates were £11,000 against the shops and £5,500 against the hotel—£16,500 for 1956; £7,400 for 48.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 13
J. R.
Harrowell.

Examination.

Q. In connection with this document which I adverted to earlier, containing statements and schedules of estimates, the scheme of the first page has been, has it not, to compare, under the respective headings, "1954 plans" and "1956 plans", estimated income and expenditure as at 30th June, 1960. Would you tell His Honor why you selected that point of time? A. Well, I considered that was the first year, if the building took place, they would be in one complete year of operation and all the facilities would be used. If the building was completed in 1958, it would then form part of the year 1959, and that would only be about 10 months or so; so that I took it in arbitrary fashion as 1960.

Q. The first unbroken year that you could envisage with certainty? A. Yes.

Q. And then you have, with the aid of schedules, set forth the estimated income, firstly on the gross profits based on the 1956 figures—? (Objected to).

20 Q. Would you stop there and tell His Honor why you took the 1956 figures for gross profit comparisons—which, of course, would be a common factor for both years, 1954 and 1956? A. Yes; I selected the 1956 figures because they were the latest figures available and I was endeavouring to get some idea of what would happen in 1960. They are not only based on the 1956 figures, they are the 1956 figures because I did not have any way of estimating what would be the position in 1960; so I selected the 1956 figures.

Q. The figure you selected for 1956 is common to both sets of figures that you have been given? A. Yes.

30 Q. And it is a jumping off point in order to reckon with regard to the remaining subject matter? A. Yes.

Q. And you have given the gross profits which are factual figures from this year's profit and loss account for liquor, restaurant and tobacco? A. Yes, for 1956.

Q. And for Wynyard shops? A. Yes.

Q. And then there is an adjustment for revaluation of liquor stocks and an amount for discounts? A. Yes.

Q. They would be trade discounts in the trade? A. Yes; and revaluation of liquor stocks is a sales figure.

40 Q. And the next item of estimated income is, in fact, the real variable that we are concerned with?

HIS HONOR: No. And the shops—the next two.

Mr WALLACE: Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 13.
J. R.

Harrowell.
Examination.

Q. They are the variables both as regards income and expenditure, are they not? A. Yes.

Q. So that if I go to those schedules, the first one being schedule A, in that you have set forth certain estimated accommodation revenue? A. Yes.

Q. Could you tell His Honor how you went about the task of setting down the figures for the rooms and the different types of rooms which are shown there? A. Firstly, with regard to the classification of the rooms, I relied on the advice of the architect; that is when he described first class, second class and third class accommodation. 10

SIR GARFIELD: Q. You mean Mr. Nicholls? A. Yes.

Mr WALLACE: Q. You got that from Mr. Nicholls, and what did you do then? A. Well, some rooms have bathrooms and some have wash basins only.

Q. Some are double and some are single? A. Yes. In regard to the rates chosen, I had before me a pamphlet prepared by the N.R.M.A. and I was advised also by the hotel staff management on what rate to choose, but whatever rate I chose I applied it to both plans where it was comparable accommodation.

Q. Did you make other enquiries? A. I made enquiries only 20 through the hotel management.

SIR GARFIELD: Q. You mean the Plaza Management? A. Yes, but whatever value I chose I applied to both.

Mr WALLACE: Q. What is the N.R.M.A. pamphlet you referred to? A. That is a pamphlet which shows hotels in Sydney and sets out single rooms bed and breakfast tariff.

Q. Under different gradings of hotels? A. Yes, with various facilities provided in the bedroom—bathroom or wash basin.

Q. What estimate did you give for a single room with a bathroom for bed and breakfast? A. The Hotel Wentworth is £3 per day with 30 meals a la carte, single room.

Q. Does that include breakfast a la carte? A. With meals a la carte. Ushers 55/- a day, meals a la carte. St. James, 36/- a day; Carlton, 43/- a day, meals a la carte; Hotel Australia, from 45/- a day, meals a la carte.

Q. The highest you read out I think was 60/- A. Yes, 60/—that is for a single room.

Q. When you say with meals a la carte, what is the position? A. That would be bed and breakfast.

Q. What figure did you give in the estimate? A. I gave in the 40 estimate 55/- for a single room with a bathroom—in both.

Q. When it came to double rooms with bathrooms, what information did you have from the N.R.M.A. source? A. I had no information from that source at all. They did not provide me with a double room tariff.

Q. You yourself did give an estimate for the purpose of schedule "A"? A. Yes.

Q. Where did you get that information from to arrive at that estimate? A. There again I made enquiries for that from the Plaza Hotel executives.

10 Q. Did you have any knowledge yourself, from your own experience in hotels, to fortify you? A. Yes, I did, and I applied that knowledge to the values, but I do not claim to have special knowledge of accommodation.

Q. Then you have drawn a distinction between rooms that have wash basins and rooms that have bathrooms? A. Yes. (Objected to; pressed).

Q. You have given an estimate in this sort of way in respect of categories falling under the first, second and third classes of bedrooms, have you not? A. Yes.

20 Q. I think you have already indicated that it was inspired, in the first instance, from what Mr. Nicholls had advised you? A. Yes.

Q. Is that so? A. Yes.

Q. And, armed with that advice, in what way did you apply it for grading the estimates that you then set forth in the schedule? A. Well, it was largely estimation. The enquiries made, for instance, at the Hotel Australia, showed that their tariff there was from 45/-. I did not personally make the enquiries, but sufficient was given to indicate to me that there was sufficient in the various classes, and the hotel management again assisted me in grading down the rooms. I did make
30 an estimate, though, as if I had not graded down the rooms, but that is not here. I was assisted by the hotel staff.

Q. Which of the hotel staff assisted you? A. Miss Randall.

Q. The lowest estimate that you arrived at would be in respect of a single room falling under the third class—? A. Yes.

Q. Without a bathroom? A. Yes.

Q. Did you have any assistance from the N.R.M.A. information when coming to that estimate, or was that based on what Miss Randall told you? A. That was based on discussions with Miss Randall and Mr Connolly of the company.

40 Q. Mr Connolly is the secretary of the company? A. Yes.

SIR GARFIELD: I object to the whole of the estimate, based on what he has told us. (Pressed).

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 13.
J. R.
Harrowell.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 13
J. R.
Harrowell.*

Examination.

Mr WALLACE: Q. The next schedule deals with amortisation of estimated capital expenditure. The first item on that schedule—does that represent an actual existing account in the books of the company as at the 30th June, 1956? A. Yes.

Q. And would that be, if I may loosely put it, representing the aggregate of the amortised property, amortised items. (Objected to in that form).

SIR GARFIELD: I ask my friend to give more details of that so that I might make some admissions.

HIS HONOR: You might ask the witness how he arrived at the figure? 10

Mr WALLACE: Q. How did you arrive at the £191,000 odd? A. Well, under the system of bookkeeping, the New South Wales company is a branch, and following on the usual practice some of the capital expenditure, in this case the leasehold, is contained in the books. We say that no part of the cost of the leasehold appears in the balance sheet; that is the balance sheet of the New South Wales company—

Q. Of the New South Wales Company? A. Of the New South Wales branch. So I received a certificate from the auditor of Avrom Investments, to the effect that £191,030 is in the financial books of Avrom Investments Pty. Ltd. 20

Q. And you have that certificate? A. I have that certificate here.

Q. Who are the auditors? A. Hughes, Fincham and Rodda, chartered accountants of Melbourne.

Q. And you received their certificate to the effect that that figure shown in schedule "B" in the first line was the Wynyard leasehold property improvement accounts as at the 30th June, 1956, in the books of account of the company at its Melbourne headquarters? A. Yes.

Q. Then, other items on schedule "B" consist of certain building contracts, the first being one we have heard of in earlier evidence—the No. 2 contract let out to Mr. Whittle, is that so? A. Yes. 30

Q. And the figure shown is apparently the amount of progress payment made since the 30th June, 1956? A. Yes; that is the amount actually paid—£7,585.

Q. Paid to your knowledge? A. Yes.

Q. Then you have set forth, what you have been told no doubt, the lowest tender under the 1954 plans and the 1956 plans, respectively—is that so? A. Yes.

HIS HONOR: Are those tenders both in evidence?

Mr WALLACE: All I can say is that the figures have been given in 40 evidence, although I must confess that my recollection is that it was £420,000 that has been spoken of and not £433,000.

HIS HONOR: The figure is £433,800—clause 5 of exhibit Q.

Mr WALLACE: Q. In regard to 1954, the figure that you have put there was given to you as the lowest tender? A. It was given to me as the lowest tender and it is a figure that has been mentioned in the Licensing Court.

HIS HONOR: Has your side, Sir Garfield, seen that at any time?

SIR GARFIELD: I do not remember that we have, but it has been mentioned in correspondence.

HIS HONOR: What about the architect's fees?

10 Mr WALLACE: Q. Where did you get the architect's figures from shown in exhibit B? A. That is just a percentage of the contract price.

Q. What percentage? A. It was 7 per cent in regard to the 1956 plans and something else—6½ per cent, I think, in regard to the 1954 plans, the reason being that in the 1956 plans the architect has undertaken to pay all experts' fees, that is, civil and constructional engineers. In the 1954 plans they were architect's fees only and the engineer's fees, £3,400, have been paid and the ventilation engineer's fees have been paid.

20 Q. When you say "have been paid", do you mean to your own knowledge? A. Yes.

Q. By the signing of cheques and that sort of thing? A. Not in connection with portion of the architect's fees, and I am not sure in connection with the engineer's fees. Some of the building costs have been signed down in Melbourne. The managers can sign their company's cheques, and in relation to the building only—not in connection with the general running of the hotel—some of the cheques have been signed in Melbourne because they are payable to Melbourne people.

30 Q. I think you said that the cheques for £3,400 had been signed to your knowledge? A. I saw it going through the books, but I did not necessarily sign the cheques.

HIS HONOR: Q. They would be shown in those accounts? A. A portion might be, but some would be after 1956.

Mr WALLACE: Q. There is a small item of extra breakfast costs resulting from additional accommodation. You have used 3/- in regard to the 1954 and 1956 plans, and what you have done is to take more breakfasts for the 1956 plans, because you have more bedrooms? A. Yes, I have done that.

40 HIS HONOR: Q. The £3,641 and £4,561 are discounted figures, the discount representing 30 per cent? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 13.
J. R.
Harrowell.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 13.
J. R.
Harrowell.

Examination.

Mr WALLACE: Q. Do you apply the 30 per cent vacancy factor to both the 1954 and 1956 plans—that is in schedule “A”? A. Yes.

Q. Where did you get the 30 per cent from? A. I enquired of hotelbrokers. They are specialists in putting values on hotels, and the figure that was given to me was that they take 8 months at the present time as a general vacancy factor—that is 66 and two thirds.

Q. In the buying and selling of hotels? A. Yes; I brought this up to 70 per cent instead of 66 and two thirds, but I applied it to both plans.

HIS HONOR: Q. Has your experience shown that it is always a 10 vacancy factor? A. Not with some hotels.

Q. What about the Plaza? A. In the case of the Plaza there are only 9 lettable rooms, and I did not consider that a basis for these figures.

HIS HONOR: Of course you could not.

Mr WALLACE: Q. Now we come to schedule D—estimates regarding wages. There you have set down in the left-hand column for trades or occupations, certain numbers of employees? A. Yes.

Q. Would you tell His Honor first of all how you would arrive—?

SIR GARFIELD: You need not trouble about this, because he has 20 added one maid, that is all. The rest is all the same.

Mr WALLACE: The only difference is between £21,800 and £22,400.

SIR GARFIELD: One maid.

HIS HONOR: It is one maid—he has said that it would take one maid to do the extra rooms, whatever they are.

Mr WALLACE: The extra 12 rooms.

Q. You can tell His Honor, if required, how you came to the wages estimate and picked on the numbers set forth? A. Yes.

Q. You could give your reasons if asked, could you? A. Well, I can give my reasons for the start there. 30

Q. Would you turn to schedule “E”. Now we come to estimated capital invested.

HIS HONOR: Q. This is simply the same sort of figure as before, except that the overdraft is subtracted? A. Yes.

Q. All the figures are the same except this one? A. Yes.

HIS HONOR: In order to find out what amount of money the company would be putting in, apart from the overdraft—the company's own money—the only two figures additional are the £78,181 and the furnishings?

Mr WALLACE: Yes.

HIS HONOR: So that you might ask the witness what is this £79,374. Is that a credit balance or a debit balance?

Mr WALLACE: Q. What is that £79,374 for? A. That represents the assets of the company?—I am sorry, the assets of the New South Wales branch as at 30th June, 1956, less liabilities at that date. In other words, it throws out the balance then which coincides with the Head Office accounts and which represents the capital invested at that time, and as the agency part of the business is conducted in a separate part of Sydney I have taken off the assets relating to the agency.

Q. That is just an adjustment sheet in that regard? A. Yes.

Q. When you come back to the first sheet you find a comparison—?

HIS HONOR: These are the capital expenditures.

SIR GARFIELD: They are not shown on the front sheet at all.

HIS HONOR: The front sheet is only income.

Mr WALLACE: Income and expenditure. The way that capital comes into this particular document is in connection with the amortisation and depreciation and—

HIS HONOR: The witness has no bearing on the first sheet.

SIR GARFIELD: No bearing except in connection with the overdraft.

WITNESS: "Return on capital" was the item.

Mr WALLACE: Q. At all events you finally arrived, on the front page—?

HIS HONOR: You still have one to go and that is how he arrived at this furnishing figure.

Mr WALLACE: Q. Yes, what about the furnishing? A. Those figures are prepared by the hotel, and they prepared the schedule on the present day prices.

Q. I think that there was a special schedule prepared for furnishings? A. Yes.

Q. You have that, have you? A. I have a copy—I have two. (Documents produced).

Q. There is a furnishing schedule in existence—not prepared by you, is that so? A. Yes.

Q. And the results of that furnishing schedule are taken in on that page—that last schedule "E"? A. Yes.

Q. And this schedule of furnishings was given to you by whom?—Miss Randall? A. Yes, by Miss Randall.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 13.
J. R.
Harrowell.
—
Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 13.

J. R.
Harrowell.

Examination.

Mr WALLACE: If anything turns on that I will undertake to call Miss Randall, but I do not know whether that will be considered necessary.

Q. Go back to the front page once more.

HIS HONOR: Before you do that, you have not said yet where the £750 was taken from for the shops? The witness has taken the shops at £750 each.

Mr WALLACE: Q. Yes; the shop revenue—where have you shown the shop revenue? A. On the front page.

HIS HONOR: He has not said where he got the £750.

10

Mr WALLACE: Q. You have nine shops in the 1954 plans and 15 in the 1956 plans, and you have assigned the same rental for each shop and for each plan? A. Yes.

Q. How did you get £750? A. That has been based on the experience that I and the management have had in regard to the shops at present on the site, and £750 is a reasonable figure to expect.

Q. And you say that from your experience with the existing shops? A. Yes.

Q. In the result you have shown the estimated difference between income and expenditure under the 1954 and 1956 plans for the year 20 ending 30th June, 1960? A. Subject—

Q. Subject to the two notes—"general administrative expenses relating to new building, such as electricity, telephone, office expenses, postages, etc."—not stated. Then, "Income relating to bars, plan in new building (1954 and 1956 plans) and sundry other evidence of income, for example, coffee lounge in 1956 plans"—not set forth? A. Yes.

HIS HONOR: He has taken the same figures in regard to the bar and saloon. I think that those figures speak for themselves.

Mr WALLACE: Q. In the light of the way I have taken the witness 30 through the document, I would respectfully submit that the witness is competent to compile that document and that it is admissible in evidence. (Objected to; argument ensued).

Q. Did you compile the figures that have been typed out on the document which I show you? A. With Mr Connolly the secretary of the company.

Q. When you say "with the secretary of the company", does that mean with figures coming partly from Melbourne and partly from Sydney? A. Yes.

Q. And of course Mr Connolly is the secretary and he works at 40 the company's headquarters in Melbourne? A. Yes.

Q. So far as the Sydney figures are concerned, which are incorporated into these details of expenditure can you vouch for them from your own knowledge? A. They are included in those figures, and a great deal of them were taken from cheques which I signed and sighted the vouchers.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. And do these details include plant—expenditure on plant?
A. Yes.

Defendant's
Evidence.

Q. And is the amount of that shown in a footnote? A. Yes.

No. 13.
J. R.
Harrowell.

Examination.

No. 14

10

Further Evidence of H. A. Llewellyn

No. 14.
H. A.
Llewellyn.

Mr WALLACE: Will you allow me to examine this witness on his office copy of them, which he has in his possession?

Examination.

SIR GARFIELD: I cannot say whether they are a copy or whether they are not.

Mr WALLACE: Q. What are these documents that you just handed to me? A. As far as I know the original calculations for the Plaza Hotel as constructed.

20 Q. They are in Mr. Stanley's writing, are they? A. No, I do not think so. His original calculations were so many that these are abstracts which were made to submit to the Railways Department so that they could be interpreted.

Q. The most you can say, I presume, at the moment is you believe them to be a copy of what was sent to the Commissioner? A. That is right.

Q. Back in the 1930's? A. That is right.

30 Q. Could you by examining them show me the computations up to and including the third floor of the Kerr-Gardiner plan? A. Yes. Each of the calculations between the horizontal lines indicates the load of a particular floor level, indicated in the left hand column. The right hand vertical column shows the total load on the column at that floor, and the right hand horizontal space shows the size of the column, the mix of the concrete and the amount and spacing of the reinforcing steel.

Q. How far do the plans go; to what floor do the computations go?
A. Up to and including the third floor. The third floor is the top line on the sheet.

Q. Does it show on the third floor workings the legend "Future load", coming down on to the third floor? A. Yes, an arrow indicating that a further load not shown—

40 Q. "Further load", is it? A. A future load, not calculated on the sheets, was allowed for in the design of the concrete.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 14.
H. A.
Llewellyn.

Examination.

Q. Those calculations show in detail the loadings and sizes and details of reinforcing and mix in respect of all columns? A. This particular sheet does not cover all columns, but there are similar columns for all columns.

Q. Do you mean they are in that bundle? A. No, this is one quarter. There are four such bundles.

SIR GARFIELD: I object to that, because I am going to ask for the documents to be handed over, if he has them.

Mr WALLACE: Q. At all events, you have produced in Court here two sections of such computations? A. They are the sections for some 10 of the columns, and they are the calculations for the slabs—all the slabs—at the third floor.

Q. At the third floor level? A. Yes.

Q. So there are two separate sets of computations that you have before you at the moment? A. Yes.

Q. So far as you know, are there any computations above the third floor? A. No. There must be calculations assessing the loads to go on the columns, but we have never been able to find any detailed calculations giving the size of the columns, the mix or the amount of reinforcing steel.

20

Q. Such as do exist in respect of the third and the lower floors? A. That is right.

Q. Do the Kerr plans disclose a roof over the third floor (m.f.i.'s 3, 4, 5 and 20 shown)?—

Mr WALLACE: Whilst the witness is looking at those, I call for plans or copy plans in the possession of the Commissioner which he sent out to us with his letter of the 5th October, 1954. That letter is part of Exh. E. and refers to "plans herewith", in respect of the 1954 plans, giving a requisition so to speak of what was required. They were referred to as "plans herewith", but whether Mr. Stanley lost them 30 when he was killed suddenly or what has happened with them, the fact is we cannot find them, and we should like to have those plans.

SIR GARFIELD: I shall look for them. I have not got them here.

Mr WALLACE: Your Honor realises that when I speak of the third floor I mean the historical third floor that is mentioned in the Kerr plan measured from George Street.

Q. Do the plans you have in front of you indicate a roof or temporary roof at the third floor ceiling? A. No (upon the rest of the answer being given and upon Sir Garfield objecting thereto, by direction of His Honor this was struck out.)

40

WITNESS: The engineering details here as part of this set do not show any details at all above the third floor, except the necessary

information to give the splice of the columns, projecting a few feet above the third floor. There are no engineering details above the third floor.

(At this stage, during the course of discussion, Mr. Wallace called for all plans and all drawings submitted to the Commissioner at any time relating to the Kerr-Gardiner scheme. Sir Garfield stated that these would be obtained.)

HIS HONOR: The witness has stated during the argument that he has copies.

10 Q. Where did the copies come from? A. Out of our files.

Q. Have they got dates on them? A. This one is drawn April 1934 and checked May, 1934.

Q. All you know is that that document shows that? A. Yes.

HIS HONOR: All the witness knows that in the files of Mr. Stanley those plans were in existence. He does not know, for example, how they came into existence, for what purpose, or what happened.

Mr WALLACE: I particularly call for these plans—

20 Q. What do you call these here (shown)? A. Hotel Plaza, George Street, Sydney, Section On Line FF, Section on Line GG, Shown on Working Drawing No. 9; Dated April and May, 1934.

Q. What is this one? A. Third Floor Plan, Roof Level, Working Drawing No. 7, of the same date.

Q. And this one? A. I think that is a preliminary print of drawings of the same set. It is No. 8, but it is undated. These are photostats of what I believe to be other copies of the same set. They have been reproduced, by printing process, on a smaller sized sheet.

SIR GARFIELD: I have asked this witness, on a subpoena which has not yet been enforced, to bring all that he has got. I would have to enforce the subpoena against him to get them all.

30 Mr WALLACE: Q. My call relates in particular to these (showing)? A. Sheets 1, 3, 4, 5, 6, 7 and 8.

Q. Of what? A. Of Marked working drawings. No. 1, Basement Floor Plan. No. 3, Mezzanine Floor Plan. No. 4, Ground Floor Plan, George Street level. No. 5, First Floor Plan, Wynyard Lane level. No. 6, Second Floor Plan, Carrington Street level. No. 7, Third Floor Plan, Roof level, and No. 8, Section on Line AA, Section on Line DD; all dated 1934.

40 Mr WALLACE: The matter could be filled up so to speak at this stage by my asking my friend to produce all or any working drawings or details at any time supplied to him of the Kerr-Gardiner plans above the third floor.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 14.
H. A.
Llewellyn.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 14.

H. A.
Llewellyn.

Examination.

(At this stage further discussion ensued, during which Sir Garfield called for copies of all files of the Railways Department in the possession of the defendant.)

HIS HONOR: So far as this witness is concerned he has gone as far as he can go. The position is this: He has plans in his possession and documents which he got from Mr Stanley.

Q. Is that right? A. Yes.

HIS HONOR: Amongst those files are the copy plans dated 1934, going to the third floor. It is a matter of finding out what the facts are relating to those plans. 10

(Discussion ensued regarding admissions.)

HIS HONOR: Q. Is that the whole of the bundle of plans you produce? A. Yes.

(Bundle of plans as produced by Mr Llewellyn m.f.i.27.)

Mr WALLACE: Q. I would like you to draw diagrammatically columns 53 and 28, showing how the floor level at the Carrington St. level—that is, on which the lounge is built in the 1956 plans—is supported, and then showing how column 53A goes up from the beam or truss that you have, and then from that I want you to show or tell the Court the result of your computations or your researches and inquiries about 20 the extent to which column 53 can be carried under the 1956 plans, and whether it can carry a future fourth floor, filling in the central area should it be so desired? A. (Witness draws sketch).

Q. You have indicated where what we have called the large truss goes? A. Yes.

Q. Do you say that under the 1956 plans the column 53 is capable of being used so that full development can take place by anyone who is so minded, above it, and by using a truss between the 5th and 6th floors, as we have heard about previously? A. Yes.

Q. What is this place here? A. That is the Wynyard Lane level, 30 and that is the new beam proposed between columns 53 and 58.

Q. Would you indicate that by means of a cross? A. Yes.

Q. That is looking from the point to the south? A. South of the beam, looking in a northerly direction.

Q. You would be standing on the level which would be one floor below Carrington Street level? A. That is right; Wynyard Lane level.

Q. You would be on the Wynyard Lane level. All that you do under such a plan is to project column 53 one floor? A. That is so, 40 between the 3rd and 4th floors.

Q. Then, thereafter, at the 5th floor, the big truss takes over? A. That is right, the big truss would support the 5th floor.

Q. There all you have to do is to ask, so to speak, 53 and 55 to carry one more floor than the original calculation? A. That is so.

Q. Are you satisfied beyond any doubt that they can do so? A. Yes.

Q. Have you gone into the matter quite fully? A. Fully enough to be able to say "Yes."

Q. Is there also what is known as a live load reduction? A. Yes. It is contained in the interim loading code which we use to design loads of buildings.

10 Q. How does that operate? A. It allows you, in designing members carrying more than 150 sq. feet in area to reduce the live loading by a percentage, depending on the area involved and the relationship of the live to the dead loading.

Q. Is there a scale laid down in the Australian code? A. Formulas are laid down for determining the percentage of live load reduction.

Q. Does that element come into your answer when you say you are satisfied beyond doubt that 53 and 55 can carry a floor more than the original computations? A. Yes.

20 (Rough sketch of witness tendered and marked Exh. 15.)

MR WALLACE: The diagram actually shows 53 and 58, but the purpose of the diagram is to indicate the extension of 53, and, of course, 55 would be the same?

WITNESS: Exactly.

MR WALLACE: 55 is not shown in that diagram; the extension of 53 in any projected future development of the central area under the 1956 plans.

HIS HONOR: To take one extra floor?

MR WALLACE: Yes.

30 Q. Would you indicate just how you came to the conclusion you have just given? A. By taking the area of floors supported by columns 53 and 55 and applying the live load reduction formula, see what live load could be taken off a column which was allowed for in the original scheme, then comparing that total figure with the possible loading that the 4th floor would put on the column.

Q. You have also explained to the Court that the end of a heavy truss that we have spoken about could be attached to the projection of column 51. That is one of the heavy columns? A. Yes.

Q. Which said column is used in the 1956 plans? A. Yes.

40 Q. That is to say, you told the Court that the central area could be fully developed as originally planned, using the 1956 plans, they, as they do, using columns 51 and so on? A. That is right.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 14.
H. A.
Llewellyn.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 14.
H. A.
Llewellyn.

Examination.

Q. Would you show on a diagram how you would do that, how you would insert the truss into the projection of column 51? A. (Witness draws sketch).

Q. You show there a diagram of either column 51 or 57 as used in the 1956 plans but designed so as to allow for the bearing of one of the big trusses in order to permit full development of the central area as may have been originally planned? A. That is so.

Q. Some suggestion was made by Sir Garfield that by placing the truss load or the end of the truss on to an extension there would be— if I understood him correctly—some sort of turning or bending moment or some sort of prejudice to the load carrying capacity of columns 51 or 57? A. Yes, that would be offset by so arranging the centre of the reaction of the truss and the centre of gravity of the upper column in relation to the centre of gravity of the lower column so that the moments balance. 10

Q. On this diagram, you show as it were a right angled niche cut into column 51 and the truss resting on the ledge so created? A. That is so.

Q. By so designing the size of the ledge, you overcome any possibility of the weight of the truss prejudicing the load carrying capacity of column 51? A. That is so. 20

Q. From where the truss rests on 51 upwards, that column 51 is just bearing the lighter loads that any other column would bear? A. That is so.

(Above mentioned diagram of witness tendered and marked Exh. 16).

Q. Exh. 16 indicates what you would do. Would it be simple pre-planning if you were told you had to arrange for the construction of the truss in the development of a central area, before you actually commenced the work on the Carrington St. building? A. That is so. 30

Q. If you did not do that beforehand and did not pre-plan, I understood you to indicate you could still do it, but it would be more difficult? A. That is so. It would mean cutting into the then existing column.

Cross-
examination.

CROSS-EXAMINED

SIR GARFIELD: Q. When did you make the calculations which led you to these conclusions? A. Yesterday.

Q. Did you reduce the calculations to writing? A. Yes. I do not know whether they are in a legible form, but they are in writing. I could easily reproduce them if necessary. 40

Q. You have the actual ones you made? A. Yes.

Q. For clarity, you would be prepared to put in a copy? A. Yes. I may have taken short cuts.

Q. Would you get those and give them to my friend for production to me? A. Yes.

Q. In relation to columns 51 and 53 and 55 and 57, what basic figure did you work on as an accepted load bearing figure for each of those columns? A. The live load.

Q. What figure did you use that you could put on the existing columns before you begin to extend them? A. The accepted loadings in those schedules that we had previously.

Q. So you have assumed that those columns were constructed according to the detail on the blueprint which I think is m.f.i.20? A. Yes.

Q. You accepted the schedule of loadings that is on those blueprints? A. I am sorry, I do not think the schedule of loadings is on those. The schedule of loadings is on those smaller sheets.

Q. We will take it in stages. You assumed that the columns were built according to the blueprints m.f.i.20? A. No, there was no necessity for checking columns. It was a question of checking loadings against loadings.

Q. But the column, as a physical thing, is there? A. That is so.

Q. It must have been built according to something? A. I have accepted the fact that the columns were built to carry the accepted loadings.

Q. Those accepted loadings are derived from m.f.i.20? A. I am accepting that fact, that they were.

Q. I put it to you that you are accepting the fact that they were built according to m.f.i.20, and therefore, they had the loading according to the schedule of loadings? A. No, I took the loadings from the schedule of loadings, irrespective of what column at the Plaza Hotel. It is an agreed schedule of loadings, irrespective of the particular interpretation of those loadings, into a column size and reinforcement.

Q. In other words, you took a theoretic agreed loading for some columns? A. Had I checked those particular columns, had I taken the size of the column and the reinforcement of that column from m.f.i.20 and used the modern regulations, controlling that design, I would have got a greater live load than is shown on the schedule of accepted loadings.

Q. On the schedule of accepted loadings, is a conversion of what is specified in m.f.i.20 according to the then permissible loadings? A. I assume that.

Q. You did not check that? A. No.

Q. That is what I asked you, to begin with. You made that assumption? A. Yes.

Q. So the basic figure which is used is in the schedule of loadings? A. That is right.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 14.
H. A.

Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 14.

H. A.
Llewellyn.

Cross-
examination.

Q. Then, what did you do? Did you vary that schedule by any factors? A. No. The live loads then designed for these particular existing floors were allowed for in the original calculations. I did not check to see whether those live loads are in fact being used—I suspect that much lighter live loads are being used—but in using that advantage, I took the loadings as specified in the original calculations and then applied the modern live load reduction formula to these loading rates.

Q. What, a reduction formula to a hotel or a commercial building? A. It is the same; no difference. The live load is different but the 10 percentage reduction does not vary.

Q. I take it you were asked to make these calculations after you were cross-examined yesterday? A. I was not asked. I did it out of interest after making a statement that I thought it could be done. I checked it.

Q. You yourself went into it of your own desire? A. Yes.

Q. (Exh. 15 shown) This new reinforced concrete beam is the one proposed in the plans, is it? A. In the 1956 plans.

Q. This here is column 53, is it? A. 53, yes.

Q. You carry it up two floors? A. No, one floor. That is all 20 ready in the 1956 scheme, and it supports the 3rd floor. It has to be extended one floor to support the future 4th floor.

Q. And nothing to support the roof of the 5th. You say that is supported by the underneath of the truss? A. That is so.

Q. These calculations you have produced to me will allow for these floors to be put at the right hand side of the drawing? A. They are all ready allowed for in the 1956 calculations.

Q. The one on the 4th floor is not? A. No.

Q. And will allow for the load of this? A. Yes.

Q. Is it assumed that the building has gone to a height of 150 ft.? 30
A. The set-back as originally, yes.

Q. Have you got your calculations to show what would be the load of the building when up to the 150 ft. limit, and its set-back on column 53? A. I cannot answer whether these final calculations have been done. You will remember we were discussing whether those loadings on those columns would be the last ones taken out. I cannot answer that.

Q. But didn't you have to start with this computation by knowing what the total load already on it is, before you put on the 4th floor? A. I am sorry. The original calculations for the 1956 scheme do show 40 that; to the set-back of the 8th floor.

Q. But there is still some set-back coming on to the column 53? A. Not after.

Q. Where are the calculations for that? Could you give them to my friend? A. I can. I think they are in Court.

Q. Would you turn them up so that we will be able to identify them?

HIS HONOR: Q. Are they the ones Mr McMillan was looking at the other day? A. That is right.

SIR GARFIELD: Q. Is 51, in those extensions you contemplate there, in concrete or steel? A. 51 was contemplated in concrete.

Q. And 57 in concrete? A. Yes.

10 Q. What, as specified, 3,000 lbs to the square inch, cement? A. It was contemplated then. It had not been finally checked for its loading.

Q. What did you contemplate when you made these calculations? A. These calculations did not involve 51 and 57. They only involved the low load bearing columns, 53 and 55.

HIS HONOR: It would not make any difference apparently.

WITNESS: It would not make any difference.

SIR GARFIELD: Q. But you are assuming the trusses go up, in what you are saying there? A. Yes, but these later calculations do not
20 affect the loading that was always on the truss.

Q. Just tell me where that calculation is, the calculation of the original load of 1956 on column 53? A. There it is (showing).

Q. Can you tell me then what was the load you assumed would be on 53 before these extensions were made, so that you carry floors up to underneath the truss? A. It was done in a different way. The load of the 3rd floor was taken, and that figure was divided into the available load on column 53, and the notation at the bottom says the number of floors that can be built.

30 Q. But you must have started in these calculations of yesterday onwards with some basic figure? A. Yes.

Q. You say you took the schedule of loadings? A. Yes.

Q. Then you have to find out what actual load is on it? A. I am sorry, it is not done that way. We start with an available loading of 710,000 lbs as a matter of fact. That is available on 53 and 55. Then we have a load coming down on the 1956 plan, and we find that we can go up 8 floors of bedrooms and still not exceed 710,000 lbs. They were the original calculations in the 1956 scheme.

40 Q. I do not follow how you can do it if you do not have some basic figure to begin with. A. Having determined that 8 floors can be put on that 710,000 lbs., then it is a question of how much was there

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 14.
H. A.
Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 14.
H. A.
Llewellyn.

Cross-
examination.

to spare in the 710,000 that is listed on that schedule—to spare, in the light of modern live load reductions. The amount that is to spare exceeds the load that one floor puts on the column.

Q. That is the way you did it? A. Yes.

Q. If you did not utilise this so-called modern live load reduction, you could not——? A. You could not build the Plaza to 150 ft.

Q. You could not build which Plaza? A. The Carrington St. to 150 ft. It was never designed for that. It was only designed for 120 ft. We have to use the same devices we are using right throughout the columns to get the height. 10

Q. The reason why you say that is that the columns, which would bear a building on the Carrington St. frontage, were built originally only to carry a building 120 ft. high? A. Yes.

Q. So, because what has been called the Joe Gardiner plan—the building proposed—was not stepped as from George St. to Carrington St., the roof was a level roof? A. Yes. I have not actually checked this particular column to see that the design at that stage was correct, that there were not any mistakes in it; in other words, from the details from which the design was prepared, to show the building level at 150 ft. above George St. 20

Q. There was nothing to prevent you in 1930-odd, when ever it was, from going up to 150 ft. on the Carrington St. frontage? A. Well, from my engineering reading of building ordinances there was.

Q. You thought there was? A. Yes.

HIS HONOR: Q. There was some curious feature about the Caltex building that enabled that to be got around, wasn't there? A. Yes.

Q. That was only a fluke, was it? A. The back of the Caltex building does not front a public road. It fronts a leased area.

SIR GARFIELD: Q. At any rate, you say these columns were only designed to carry 120 ft. on the Carrington St. frontage? A. Well, 30 to a height indicated on the drawings.

Q. To a height indicated on the drawings in the group of documents m.f.i's 3, 4, 5 and 20? A. Yes.

Q. You told me that structural details sort of phased progressively—as you go along with the building? A. In most jobs.

Q. If there is any likelihood of there being repetitive floors, even architectural drawings very often are content simply to go to the first floor which is likely to be repeated? A. Yes.

Q. And then, later, you get structural drawings and details following the builder up, as he goes through? A. That is right. 40

RE-EXAMINED

MR WALLACE: Q. In particular, the line of columns numbered 51, 76, 96 and 112—you know those, of course? A. Yes.

Q. And the line of columns 57, 87, 101 and 119? A. Yes.

Q. They were constructed of a size and strength sufficient to permit the development above the 4th floor from the George St. level of the demised area lying between the lines of columns 51, 53, 55 and 57? A. Yes.

Q. And the line of columns 112, 114, 117 and 119? A. Yes.

10 Q. Do you follow that? A. Yes, it is quite clear.

Q. “at least to the full city building limits, but as qualified by the ordinances relating to light and air.” I suppose if the words “computed from George St.” were inserted you would agree with that? A. Yes.

Q. “As a result of such design and of the plaintiff building inter alia columns numbered 53, 55, 78, 79, 98, 99, 114 and 117”—you are well acquainted with those? A. Yes.

20 Q. “according to such design, such columns are unable to carry any greater load than they were designed to carry in the said design, except to the extent that greater loads are now permissible under altered and liberalised building ordinances and regulations”. A. Yes.

Q. And these are words I particularly invite your attention to: “but are in any event insufficient to carry a building beyond four or five floors from the George St. level”. A. I could not agree with that. Up to that last statement, yes.

Q. Up to the last two lines, beginning “but are in any event insufficient”, you agree? A. Yes.

30 Q. You do not agree with the words “but are in any event insufficient to carry a building beyond four or five floors from the George St. level.” A. No. I am of opinion that a thorough investigation of those columns under present day regulations would permit of more than one storey—maybe three storeys—additional load being placed on the columns.

Q. (Exh. 15 shown). Do you say not only could the column carry that fourth floor—is that what you are saying? A. That is right.

40 Q. But in your opinion you could also get two or three more floors on it? A. Yes. That is subject to checking, of course. I am satisfied from what I have seen of the design that we could put a lot more load on that column.

Q. That is, additional to the 4th floor? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No 14.
H. A.
Llewellyn.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 14.
H. A.
Llewellyn.*

*Re-
examination.*

SIR GARFIELD: (By permission) Q. You have made no actual calculation yourself as to whether what you say might be possible is possible. You have made no calculation? A. I have checked existing calculations.

Q. But you have made no other calculations? A. No.

Q. At any rate, this is right: They would not bear a building up to the permissible building limits? A. I should not think so.

Q. Nor anything like it? A. Well, I would have to be more precise about that. We are up to the 4th floor, and it may be that we could put, say, another three floors; that is, 5th, 6th and 7th. That 10 would be up to a 7th floor.

Q. That is the highest you think it might possibly go? A. Without really accurate checking.

Q. Well, without some checking, which you have not made at all? A. Yes, I have checked the loadings which have been allocated to the columns at low level.

Q. That is to say, you have taken the schedule of loadings? A. Yes.

Q. What sort of floors do you suppose you could put on these? A. Office or hotel loadings. 20

Q. What about public rooms of a hotel? A. No, public rooms would be heavier, but it is not usual to have public rooms . . .

Q. I did not ask you that . . . A. It is a question of total load. The columns in my opinion will carry an additional load equal to approximately three floors of hotel-bedroom, or office loading.

Q. That is an opinion of yours without any calculated check? A. Without any accurate check.

Q. And if there was any proposal to put public loads as distinct from mere bedroom loads there, your statement would have to be modified? A. May have to be modified, yes. 30

Mr WALLACE: Q. The columns in question are 53, 55 etc. A. Yes.

Q. We need only deal with 53 and 55 for the purpose of illustration. If you go to the Kerr plans, how far does it appear from them that they intended to go? A. They stop at the underside of the 4th floor.

Q. Do I take it from what you are now saying that in your opinion they could under modern ordinances and regulations be carried up to, say, the 7th floor? A. Yes.

Q. Would you check that between now and Monday? A. Yes.

HIS HONOR: Q. You know precisely what you have promised to do? 40
A. Yes. There is the calculation about the reduction of the live load.

SIR GARFIELD: And the calculation that permitted you to say what you said as to Exh. 15; and your original calculations if you have not given us those.

WITNESS: Yes, they are in those documents.

SIR GARFIELD: I take it he is still putting himself into a position of being able to answer the subpoena.

No. 15

Further Evidence of J. R. Harrowell

10 Mr WALLACE: Q. Over the adjournment, I think with regard to the document you had in front of you, that is to say the Schedule A to that document, the schedule of estimated accommodation revenue, have you prepared an alternate estimate of accommodation revenue for the year ending 30th June, 1960, on the basis that you abandon the three classes of bedrooms and in lieu thereof, you give the same rates under both schemes to double beds with bathrooms, single beds with and without bathrooms, and so on?—

HIS HONOR: There is one difference that you will not get common. In the 1954 scheme there are some bedrooms without any bathroom; you have to walk to the bathroom.

20 Mr WALLACE: Q. In the case of a bedroom without a bathroom, the only difference you have made is to lower the rate by 5/- per week?
A. 5/- bed and breakfast rate.

Q. Is this a copy of such document? A. Yes, that is the document.

Mr WALLACE: Q. On the assumption that you substitute for Schedule A the estimates which you prepared overnight and to which you referred before lunch, what would be the net result to the main page, at the foot thereof, under the title "Deficit or Surplus"? A. It would convert the deficit of £3,600 to a surplus—an estimated surplus—
30 of £2,008, subject again to those provisos mentioned on that first statement.

Q. What about the 1956 plans? A. The 1956 plans would be unaltered, because the same values were taken as the comparable bedrooms of the 1954 plan.

HIS HONOR: I see what the witness means. It is quite clear to me. He only had two categories in the 1956 plan, and those categories have been continued. All that he has done is to convert the 1954 plans into two categories as well.

Q. Isn't that right? A. That is correct.

40 (All calculations made by Harrowell m.f.i. 28).

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 14.
H. A.
Llewellyn.

Re-
examination.

No. 15.
J. R.
Harrowell.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 15.
J. R.
Harrowell.*

Examination.

*Re-
examination.*

Mr WALLACE: Q. There would be a change also, would not there, on the item £258,316; in other words, you would have to add £5,608 on to £258,316, wouldn't you? A. Yes. I have just treated it as a net figure.

Q. You see where I mean, here (indicating). I assume obviously that that will have to be increased by £5,608. Would you make the necessary alteration there? A. Yes.

RE-EXAMINED

SIR GARFIELD: Q. Do you remember the first schedule which showed the extract of the balance sheets? A. Yes. 10

HIS HONOR: That is not part of this "marked for identification".

(Summary of Balance Sheets m.f.i. 29).

SIR GARFIELD: Q. I want to ask you about these shops, first of all. The shops that you speak of are shops which are let by your Company? A. Yes.

Q. They are not run by your Company, but let? A. They are let by our Company, yes.

Q. Tell me how they come to be "in the red" all the time. You have told us you assigned a certain portion of rates, and I understand that; why "in the red"? A. Well, the accounts for each year set 20 those out. The main item is the item for rent and rates, apportioned against the shop revenue.

Q. Do you mean just on a balance of rent and rates you make these losses? A. Yes—and there are other expenses relating to the management set out in the accounts.

Q. Relating to the management of the shops? A. Relating to the management of the shops, and expenses directly incurred in relation to the shops.

Q. You will find these in the balance sheet? A. Those are set out in the audited accounts. 30

Q. On these shops at Wynyard, by the mere letting of them and assigning some portion of the total rates to the shops, and management, and portion of rent as well, you show a loss on letting these shops at the figures in the red? A. Yes, it comes to a loss.

Q. In respect of your restaurant, what is the basic figure you accept for the purpose of your audit—when you come to audit your restaurant figures? A. You mean the gross profit percentage?

Q. What are the documents you audit—the basic documents you accept for the purpose of the audit? A. Well, on the revenue side, we would accept the cash register readings, and examine dockets—40 waitresses dockets—test check them. In regard to the stock, we would check and see that stock sheets are prepared under the supervision of

the Company; and the materials used, or the stock—the food—we would compare that with the takings, and the percentage should be between 50 and 60 per cent. It varies, and it varies with restaurants and food. We only have an overall gross profit percentage control of the takings. That is our method of checking.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

10 Q. With respect to the liquor, what do you accept there; your cash register? A. With the liquor it is a more detailed control. The hotel has a staff in the cellar whose sole job is recording the movement of liquor stocks to the bars, and apart from the checking of the cash register rolls, we are also able to prepare from the cellar—independently of the bars—a list of stock sold, and that is priced out at selling price; and that total price is compared with the takings.

Defendant's
Evidence.

No. 15.
J. R.
Harrowell.

Re-
examination.

Q. Is this something your firm does? A. No, it is part of the internal control, I would call it, of the hotel, but we would look at that and see that that is carried on.

Q. Between 1946 and 1956, were the number of bars at Wynyard increased? A. Yes.

20 Q. Can you remember what bars were added at Wynyard between 1946 and 1956? A. No, I could only generalise. There was a considerable amount of work done on what they call the northern bars and the southern bars. They were the bars running each side of the roads. Some bars were extended.

Q. And do you tell us the percentage of the gross sales remains fairly constant between 1946 and 1956? A. This is the liquor?

Q. Yes? A. From memory it would remain within four or five per cent.

Q. Your figures for liquor here, between 1946 and 1956 show a drop from £60,000 to £39,000 in the ten years? A. Yes.

30 Q. Are you telling us that the sales of liquor at Wynyard dropped ratably, to that difference? A. No, rather would I say that the expenses rose. Wages in that time, for instance, rose approximately 100%. The basic wage rose in those two years, 1946 and 1956, from memory, by 100%.

Q. In the balance sheet you are carrying forward your gross sales of liquor? A. We carry forward gross profit, which is the one I was referring to with the percentage remaining reasonably constant. We carry that forward to a departmental trading account.

Q. Can I find in what is produced the total sales in the bars? A. You can, from these accounts.

40 Q. I mean in what is produced? A. They are based on the 1956 accounts, and they are taken out and placed on that sheet. But if you had the 1956 audit against them, then you can, with these statements, find the figures.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 15.
J. R.
Harrowell.

Re-
examination.

Q. The 1956 figures? A. That is right.

Q. Are they the balance sheets that were to be furnished? A. They do not go right back. 1943 and 1944 are to come. That is what the secretary of the company will bring back from Melbourne. I have here 1945 to 1956.

Q. They are the documents in front of you? A. Yes.

Q. From those can I ascertain as to any year what was the gross amount of sales of liquor at Wynyard? A. You can.

Q. Year by year? A. Yes.

SIR GARFIELD: I am not troubling about accommodation, because I take it Your Honor is not accepting it as evidence of the amount of accommodation. 10

HIS HONOR: No. You can carry out the same mathematics by taking any figures. Having regard to the basic figures, the result must approximate that one.

No. 16.
E. D.
Randall.

Examination.

No. 16

Evidence of E. D. Randall

Mr WALLACE: Q. Are you the accountant of the defendant company in respect of the Plaza hotel businesses? A. No, I am the acting New South Wales manager for the company. 20

Q. I think in the past you have been the accountant, have you? A. That is so.

Q. How long have you been in those positions? A. I have been with the company sixteen and a half years, and acting N.S.W. Manager for 15 months.

Q. Are you familiar with the business activities in relation to the Plaza businesses? A. I am.

Q. There are at present quite a few shops there, aren't there, which your company leases or lets out to shopkeepers? A. Yes.

Q. What sort of rentals do you get presently? A. The rentals, 30 of course, vary in accordance with the position of the shop.

Q. Give His Honor the bracket. What is the lowest and what would be the highest? A. The lowest rental would be £185 per year, up to £2,250.

Q. How many shops are there that you let out? A. I could not give the exact figure without looking at the records, but I can count it up pretty well from memory. There would be approximately 27 separate tenancies.

Q. What would be the average sort of rental you get down there?
 A. The average for the lot would be in the vicinity of, I should say, £14 to £15 a week.

Q. I think you carried out a sort of test of the trend of traffic in the side ways some little time ago, didn't you? A. In 1948 I carried out a survey.

Q. Without going into details, is there one ramp more frequented than the others? A. There is; the southern ramp.

Q. Then, if you had shops around Wynyard Lane, with people going through to Carrington St., I suppose you would expect some different set of circumstances to the ramp position today, going down to the railway? A. Yes, there would be, but it would not affect to a great degree the amount of people going down to the ticket barriers, because they are railway travellers in any case, and that serves the northern and the western suburbs, but the people who at the present time take the buses, for example, in Carrington St., and who are forced to go in a sort of fork either up Wynyard Street or Margaret Street and then come around the corners into Carrington Street, they would no doubt make their approach directly through the projected shop area and come out into Carrington Street, and that would tend to add to the foot traffic in the upper part of the ramp but not in the lower.

Q. Because it is the upper part which leads across Wynyard Lane?
 A. Yes. The people going to Carrington Street go up Wynyard Street or Margaret Street at the present time. It would be reasonable to suppose that those people would take a covered way and would now enter the station at the George Street entrance, walk down approximately 25 yards, and then turn up opposite the present milk bar and use the projected arcade, straight through into Carrington Street.

Q. You are quite conversant with rentals that you have been getting and that you are able to get, I mean subject to restrictions?
 A. Yes. Our present rentals, of course, are subject to the basic rents as affected by the Landlord & Tenant Act, and apart from that I am conversant with the rents that are payable.

Q. The figures that have been given in a document prepared by Mr Harrowell and which is m.f.i.28 show the rentals that are expected to be obtained from shops at around about £750 per annum on an average. Would that be constant with your views? A. Yes.

Q. Another matter is in preparing this document to which I have referred, m.f.i.28, Mr Harrowell sought some information from you I understand, regarding estimated charges for accommodation?
 A. He did.

Q. The figures that appear on schedule A of that document we understand are taken from information received by him from you?
 A. That is so.

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*

Defendant's
 Evidence.

No. 16.
 E. D.
 Randall.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 16.

E. D.
Randall.

Examination.

Q. Would you tell His Honor what experience you have had and what inquiries you made in order to assist Mr Harrowell? A. I first of all, of course, obtained the hotel directory at the N.R.M.A. for this year which gives accurate information on Sydney hotels, and then I inquired personally from three hotels in the city, the Hyde Park, the St. James and the Hotel Australia, from whom I obtained information concerning their present rates, and I also supplemented that by my own personal knowledge of hotel rates in hotels that I stay at frequently throughout the country areas of N.S.W., and knowing what I have paid, what I have paid for and what I have been given, on that 10 and bearing in mind that we are not proposing to erect a luxury hotel I came to the conclusion that the first class hotel rates for our projected hotel would reasonably and somewhat conservatively be the figures I gave Mr Harrowell.

Q. You, of course, drew a distinction between what is shown on Schedule A as to the first, second and third class accommodation?

A. Yes.

Q. Do you have a copy of that schedule A with you? A. Yes.

Q. The highest rate you have assigned is in respect of double rooms with bathroom, and the lowest rate is in respect of single rooms 20 under the category "third class, without a bathroom"? A. Yes.

Q. That is to say you range from 80/- to 35/- per day for bed and breakfast? A. That is so.

Q. When it came to second and third class accommodation, what sort of factors and what sort of information did you take into consideration? A. I obtained a classification and measurements from the architect, Mr Nicholls, and expressed my opinion that the first class consisted of rooms with their own bath, toilets, and good natural light and air. Second class rooms, I would say I expressed the opinion that they are rooms which either require artificial light or lacked 30 privacy by reason, for instance, of looking into a light well, or perhaps also had only a shower or hot and cold water. A third class room would require artificial light most of the day and would only have in it a hand wash basin and no other form of bathroom facility.

Q. If you turn to the heading "Third Class" towards the foot of Schedule A, you do find double rooms with bathroom under that category? A. That is true.

Q. Would they be double rooms with artificial lighting or no privacy? A. The classification and the actual counting is not done 40 by me.

Q. You did that in association with information received from Mr Nicholls? A. That is so.

Q. Has it been your experience yourself that rooms looking into narrow light wells or with artificial light are charged less for or are less sought after—either or both of those things—in connection with

hotel accommodation? A. I should say both. It is my own personal experience that I do not seek such rooms, and I find it with others as well, those with whom I go away for golf tournaments, and if I may refer to my notes I can give you some. You see, at the Hyde Park Hotel, for example, bed and breakfast with shower is 33/6, but without shower it is 30s. At the St. James Hotel, on today's quotations—that is built in a sort of internal lightwell area, you see—inside rooms are 40/- bed and breakfast, and outside rooms are 42/- bed and breakfast. The same applies to, and I am quoting in this case, hotels at which I
 10 have stayed quite a lot, such as the Royal at Goulburn. I go there a great deal for golf tournaments, and I find it is an old hotel, and not all of the hotels have hot and cold water or running water of any sort. For those that have nothing, not even a hand wash basin, you pay 23/6 bed and breakfast, and for those that do have running water hot and cold, you pay an extra 5/-, 28/6. Those factors undoubtedly count, unless one claims that the basis on which they are to be judged is that they do not matter, but they are charged for; and there are many other hotels I could quote where the same thing has applied.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 16.
E. D.
Randall.

Examination.

Q. What about the Mt. Victoria? A. That is an example. We
 20 go there to play, as well. The rooms which face south overlook the Great Western Highway and naturally get no sunlight, particularly in winter when our sun is so far north, and that is when you need it. The only sun you can get is in the rooms which face the north, and they are more sought after. If I cannot get one, I fight the desk for a transfer to the northern side as soon as possible. I am very often and have been many times told there are others waiting, but you find that the price charged there is—the last I paid there at all events was—35/- looking south and 37/6 looking north.

Q. Without further detail, was much the same thing your experi-
 30 ence at the Civic Hotel at Canberra? A. I find the same at Canberra—particularly the Hotel Canberra; the Civic; the Knickerbocker, Bathurst; Tattersall's at Armidale; Conobolas and Duntry League at Orange; Commercial at Moss Vale, and a few others I have not quoted.

Q. These are all hotels at which you have stayed and of which you have had personal experience on this aspect? A. Yes.

Q. With regard to the furnishing estimate which is attached to this document, a comparison between the 1954 and 1956 plans, did you have anything to do with the preparation of that? A. I did prepare it myself.

Q. Have you had experience in the requirements of furnishings for
 40 a hotel? A. No, not before this.

Q. Did you make certain inquiries as to prices and that sort of thing? A. I did.

Q. And as to what was required? A. I did.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 16.
E. D.
Randall.
Examination.

Cross-
examination.

Q. Anyhow, this comes from your assertions and inquiries you made? A. Yes.

Q. I suppose the furniture is all one fairly gets for use in a hotel?
A. The furniture, of course, is after my travels, with a few touches of my own which I thought were overlooked in most hotels.

CROSS-EXAMINED

SIR GARFIELD: Q. You are apparently an experienced and knowledgeable traveller? A. Well, I am an experienced but not a very knowledgeable traveller.

Q. A knowledgeable traveller, apparently? A. Yes. 10

Q. And rather not a fastidious one but you like what you want when you go away? A. I like comfort.

Q. This hotel at Wynyard, you say is not to be a luxury hotel. It is a terminal hotel, broadly over a railway station? A. No, I do not envisage it that way.

Q. However, you do expect, of course, that it will get a lot of overnight stoppers; people in and out for the night? A. I think so.

Q. Have you had experience of catering for those in a hotel before? A. No, not at all.

Q. Whereabouts on this 1954 plan do I find a room which will have to have an electric light on for most of the day? A. I think you will find them, in winter, I should say, on the south—those rooms that face south. I should say the southern rooms of the southern cross-arm. It is in the shape of a sort of "H"; the rooms facing south, on the southern side.

Q. You think they will need the electric light on in winter? A. I should think so.

Q. That is the sort of basis on which you assigned these rental figures? A. I do not think that I actually tied them up into first, second and third. I assigned the third class figures, yes. 30

Q. You have described what you thought were the manifestations of first, second and third class? A. That is right.

Q. Did you assign those features, or were you told those features? A. No, I assigned those features.

Q. You have been with this company since 1941, have you? A. The 3rd May, 1941.

Q. You said that you had been with them for 16 and a half years, I thought, and that seems to me a little earlier? A. The 3rd May, 1941. It is nearly 16 years.

Q. So you have been with the company during the whole time it has had any association with the Plaza Hotel? A. I have. 40

- Q. Prior to that, you had had some association with—you were employed in some capacity by—Mr. Gardiner? A. No, never by Mr. Gardiner; only by his executors. *In the Supreme Court of New South Wales in its Equitable Jurisdiction.*
- Q. For how long had you been employed by his executors? A. Since the 3rd May, 1941, I was employed by them. *Defendant's Evidence.*
- Q. Were you employed by Mr. Roberts? A. No, I was not employed by him at all. *No. 16. E. D. Randall.*
- Q. Did you have any association with the Plaza Hotel before you were employed by the executors of Mr. Gardiner? A. No. *Cross-examination.*
- 10 Q. You came—so far as the Plaza Hotel is concerned—from right outside in 1941? A. That is so.
- Q. You never had anything to do with it before that time? A. I was not in Sydney before then.
- Q. So you never had anything to do with it? A. No.
- Q. Have you seen in the possession of the defendant company plans of what we call the Joe Gardiner Hotel? A. No, I cannot recollect ever having seen them.
- Q. Never seen them, yourself? A. Not that I can recollect, no.
- 20 Q. Have you seen in the possession of the defendant company the design of the Gardiner Hotel? A. Well, just what is the Gardiner Hotel? Do you mean the 1954 plans?
- Q. The large hotel, the big facade? A. No, I have never seen any plans referring to that.
- Q. Or a design of it? A. Do you mean a model?
- Q. No, a design—a paper design? A. I have seen something printed on a letterhead.
- Q. I will come to that in a minute. So that we can understand what you are referring to, the defendant company had on its letterhead a representation of this hotel? (Objected to) A. No; it was not.
- 30 Q. Or this one (showing)—(Objected to) A. No, there was no such representation on my company's letterhead. My company's letterhead has always been, since I have been with it, Avrom Investments Pty. Ltd. This was never on our letterhead.
- Q. At no time Avrom Investments ever had on its letterhead a representation of a hotel, with a large elevation, with the caption underneath it "Plaza Hotel, in the course of construction"? A. No, not Avrom Investments.
- Q. You have seen a letterhead like that before, but not of the defendant's? (Objected to).
- 40 Q. Have you seen a letterhead like that? A. I have seen a letterhead with that on.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 16.
E. D.
Randall.*

*Cross-
examination.*

Q. You have seen these plans being used in Court. Have you looked at them at all? A. No, I have not looked at them.

Q. Do you say you have not seen plans of that kind in the possession of the defendant company (showing)? A. I can only say this: This one is a general detail. I could not say whether I have seen this before or not, because I have seen blueprints that have a lot of things on them like this, but whether it is this I could not say. This one (indicating) I can positively say I have never seen before, because it has a shape on it almost like a pentagon.

Q. What was the number of the first sheet at which you looked? 10
A. C660/9.

Q. And the sheet you secondly spoke of? A. I do not think it has a number on it at all. I am sorry, Yes, it has, No. C660/10.

Q. Now, just turn them over and tell me whether you have seen any like any of them. Never mind the ones you have not seen? A. (Witness peruses plans).

Q. You have never seen any of those before, except the first sheet? A. I have never seen those at all before. I can say that positively.

Mr WALLACE: Are they marked at all?

SIR GARFIELD: It is part of m.f.i.20. 20

Q. Now, will you take those, m.f.i.4. I do not mean necessarily that you would have seen a blue one, you may have seen a transparent one or something? A. No, I have never seen those before to the best of my knowledge.

Q. You are used to looking at plans, aren't you? A. Yes.

Q. And you can understand them as well as laymen do? A. As well as lay people do, yes.

(New bundle of plans m.f.i.30).

Q. Have you seen a copy of this bundle of plans? A. No, I have never seen them before. 30

Q. Never seen that bundle in your life? A. No.

Q. Do you remember on an occasion writing to the Commissioner, yourself, for the company and asking that he send you certain plans or copies of them? A. No, I have no recollection of that.

Q. Would you deny that you wrote and asked for a copy of the plans and the details, inter alia, of the sub-structure of Wynyard, of which m.f.i.20 is part? A. I could not deny it, in the sense that I cannot remember everything that has happened in the last 16 years. I am sure I have not recently.

Q. I did not ask you about recently. You are sure you have not 40
seen in the possession of the company any of the plans to which I drew

your attention in the marked for identification documents? A. No, I have not seen those plans; I am sure.

SIR GARFIELD: That is as far as I can go at the moment. I have sent away for something, and I may need the witness to come back.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 17

Further Evidence of H. A. Llewellyn

Mr. WALLACE: Q. You are on your former oath. At p. 360* of the transcript Sir Garfield is reported as saying "I have here some of the plans my friend asked me to produce, and so that my friend can understand the position I do produce the structural drawing of the Joe Gardiner plan, right to the roof." You have those in your possession, and you have looked at them? A. I have looked at them. I have not them here. I think Mr. Wailes has them.

No. 16.
E. D.
Randall.
Cross-
examination.

No. 17.
H. A.
Llewellyn.
Examination.

Q. I hand you m.f.i. "30". Have you endeavoured to reconcile the sheets in m.f.i. "30" with the Kerr plans? A. Yes.

Q. With the columns shown on various exhibits, L2 and H? A. That is so.

Q. First of all what do you say about m.f.i. "30" in regard to the columns shown? A. Well, there are two separate layouts of columns here, two different schemes. There is only one sheet of one scheme and a number of sheets of the other scheme. The scheme of which there are a number of sheets are all upper bedroom floors and have different columns—a different number of columns, and different column numbers—from the column numbers on all the other exhibits I have seen relating to the Plaza Hotel.

Q. More columns or less? A. More columns.

Q. And the columns are differently numbered? A. That is so.

Q. Do you offer any comment about a lightwell shown on one or more of the sheets of m.f.i. "30"? A. Yes. The sheet marked "layout of lower bedroom floor" indicates a lightwell in the centre, approximately on the centre line of the building. Now the Kerr plan of the upper bedrooms—the proposed upper bedrooms—shows two lightwells not centrally placed on the building. There is a plan marked by Mr. Stanley as being the plan on which the column loadings were taken out, which shows those two lightwells as distinct from the central lightwell.

Q. In your opinion, what do the sheets in m.f.i. "30" represent? A. I think they represent a preliminary scheme for upper bedrooms, which was not proceeded with. The outside roll of the drawings was marked "preliminary engineering drawings from ballroom, up", and I think that is just what they are. Somebody has got them together, those preliminary schemes which were being discussed at the time the

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence.

No. 17.
H. A.
Llewellyn.
Examination.

main project was being developed, and the outline profile of the bedrooms is not the same as on what we believe to be the final Kerr bedroom plan.

Q. Also over the weekend have you gone through a number of plans which are in the possession of your firm? A. That is right.

Q. Relating to the Plaza? A. Yes.

Q. Do not answer this for the moment, because it may be inadmissible, subject to my friend's attitude. Did you find plans relating to lightwells through the ballroom? (objected to).

Q. Have you got the plans? A. Yes.

10

Q. What have you got in front of you. Without giving any details, just identify it? A. It is a structural drawing of the Hotel Plaza taken from our files.

Q. Is there any date on it? (objected to) A. Yes, it is dated April 1939.

Q. Is this P4/2 the plan from which you gave me a statement this morning—all these plans (indicating)? A. Yes. There are only two.

Mr WALLACE: I would ask my friend to produce to the Court plans numbered P4/2 and P4/1, dated April, 1939, and 8th August, 1938, 20 respectively, drawn by Malcolm S. Stanley.

SIR GARFIELD: I shall have to look for them.

Mr WALLACE: I also call for drawing No. C638-71A, which is dated 15th August, 1933. It has future column loads on it and is entitled "Hotel Plaza, Sydney, present roof level." I also call for drawing PX.3, entitled "Hotel Plaza, Sydney, 3rd floor level", and drawing No. PX.2, entitled "Hotel Plaza, Sydney, 2nd floor level", those three showing future column loads. I also call for "Foundation Plan" which is undated, and drawing No. PX.4, "Future Column Load, undated, 4th floor level."

30

Q. Over the weekend have you made calculations that Sir Garfield asked you to do in relation to how the live load reduction factor was used by you? A. Yes, on columns 53 and 55.

Q. Have you also gone further into your statement that those weak columns can go at least one floor more? A. Yes.

Q. And secondly that they can go two or three more floors above the 4th floor as designed? A. Yes.

Q. Taking the first matter first, the calculations Sir Garfield asked you to do, the check on columns 55 and 53 to see if the live load reductions would allow for more, what did you do? A. Measured the areas at each floor level—Hunter St., George St., 1st floor, 2nd floor, 3rd floor,

40

future 4th floor—those areas to which the live load reduction would be applicable, found a total area. All the areas per floor are noted, and there is a total area of 3717 sq. ft.—

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. Where did you get the respective areas per floor from? A. Off the relevant plans of the building.

Q. That is 3717 sq. ft.? A. That is right. The allowable live load reduction, applying the formula in the appropriate code, is 60-lbs. per sq. ft., and that gives a total live load reduction of 223,020. A possible future floor load would be 152,000, which indicates it could easily carry another floor. The live load to be taken from the column is more than the dead and live load which another floor would put on the column.

Defendant's
Evidence.

No. 17.
H. A.
Llewellyn.

Examination.

Q. Does that apply both to 55 and 53? A. Yes.

Q. Did you make a further check in regard to how many floors could be put on? A. Yes. The existing column calculations show an allowance for future floors. Now that allowance is much in excess of what would be necessary for one future floor. The calculations show the loadings up to and including the third floor. The future floor envisaged, as indicated by the drawings, was the 4th floor only, a ballroom floor. The allowance on the calculation is much in excess of what the present loading of a ballroom floor would put on the columns. Taking that factor, it would allow for an additional two floors. There was sufficient in the future loading allowed to allow for a future two floors, either of office and partition loading or of public spaces, so that combining that with this live load reduction, it is definitely possible, without checking the column itself, to carry three additional floors.

Q. Have you set down in writing your computations and the steps by which you have come to that conclusion? A. Yes.

Q. Are they in front of you? A. I have the original of it here, and I think it would be clear enough. (produced).

(Sheet showing result of calculations relating to columns 53 and 55 tendered and marked Exhibit "18".)

SIR GARFIELD: No questions. I have sufficiently put our point of view to the witness so that my friend cannot claim later that he is surprised.

No. 18

Evidence of R. S. Connolly

No. 18.
R. S.
Connolly.

Mr WALLACE: Q. You are the Secretary of the defendant Company? A. I am.

Examination.

Q. And have been for some period? A. Since 1934.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 18.
R. S.
Connolly.
Examination.*

Q. We had before us last week the balance sheets from 1946 to 1956. I think over the weekend you have been to Melbourne and have brought back the balance sheets for 1943, 1944 and 1945, have you?
A. I have.

Q. Now, you have all the balance sheets with you? A. Yes.

Q. I think the position is it was not until 1946 that the Plaza Enterprise was kept in a separate balance sheet? A. That is true.

Q. Have you had a summary made out now which incorporates all the nett profits by years from 1943 to 1956, both inclusive? A. Yes, I have.

Q. Just take the earlier balance sheets that have been incorporated into this document you have handed me. If you take the first one, for instance, the year 1943, it shows there the profit from Restaurant, Accommodation, Tobacco and Liquor—those four in that year were included in one figure? A. Yes.

Q. And then from the shops the profit is shown separately. Is that so? A. That is so.

Q. And then you give the nett figure? A. Yes.

Q. Those figures appear from the balance sheet of Avrom Investments Pty. Ltd., which you have in front of you? A. That is so.

Q. Then, the 1944 year is the first year that the Liquor, Restaurant, Accommodation and Tobacco are separately shown? A. Yes.

Q. From then onwards they are always shown separately?
A. That is so.

Q. The final column headed "Nett result" represents the nett profits which Avrom Investments have made from the Plaza business, doesn't it? A. Yes, the Wynyard site.

Q. From 1943 to 1956 inclusive? A. Yes.

(Summary of nett profits of the defendant Company in respect of the Wynyard site, 1943-1956 inclusive, tendered, admitted 30 subject to relevance and checking, marked Exhibit "19").

Q. Over the weekend also—you were in Melbourne? A. Yes.

Q. Did you have extracted under your supervision details of how the £191,000 odd sum of money is made up, which appears, I think, on the last sheet of the documents tendered by Mr Harrowell, being schedule "E" of Exhibit "17"; that figure of £191,030, representing monies spent on the leasehold properties and improvements? A. Yes.

Q. Do these documents which I now show you represent the details to which I have alluded? A. Yes.

Q. There are a number of sheets in this document that I am showing you? A. Yes.

Q. On the front sheet there is a summary showing two items, one . . . (objected to; documents referred to Sir Garfield).

CROSS-EXAMINED

SIR GARFIELD: Q. You have been Secretary of the company, you say, since 1934? A. That is right.

Q. The Company first of all had dealings with Mr. Gardiner during the period, say, from 1934 up to 1941? A. I think there was one, from memory.

Q. One dealing? A. Yes.

Q. Was there a Mr Abrahams who held a controlling interest in your company? (objected to) A. No, he did not.

10 Q. Was there a Mr Abrahams who had an interest in it? (objected to; allowed).

Q. Was there a Mr Abrahams connected with your company. A. Yes.

Q. Were Blake & Ring the solicitors for your company in 1934? (Objected to; allowed) A. I could not answer that.

Q. Were Blake & Ring the solicitors for your company at any time? A. They are now, yes.

Q. Say in 1939? A. Yes, I think they would have been then.

20 Q. And would Mr Birch be the officer or the solicitor in Blake & Ring handling your company's affairs in 1939? A. Probably so.

Q. Did you receive a subpoena to produce the document of purchase of this lease from the Gardiner Estate? A. I have not had it.

(Sir Garfield stated that there was a subpoena out for the production of the document. Mr. Wallace stated that he had the document and if it was not in Court it would be in his Chambers.)

Q. Would you recognise that as a copy of the company's balance sheet as at the 30th June, 1941? A. I would have to compare it.

30 Q. Just look at it for the moment? (objected to; allowed). A. Yes. Subject to checking that appears to be a copy of it.

Q. You see there is an entry there against a name? A. Yes.

Q. And a sum? A. Yes.

Q. Was that in connection with the Wynyard matter at all? A. No.

Q. It was not? A. No.

SIR GARFIELD: Q. You are familiar, are you, with these two accounts. Apparently they are out of the private ledger, are they (showing)? A. They are.

Q. Are you yourself familiar with them? A. I am.

40 Q. In the Leasehold Account there is a reference to "Parl.Marron cont."? A. John Marron contract.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Defendant's
Evidence.
—
No. 18.
R. S.
Connolly.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence.*

*No. 18.
R. S.*

Connolly.

*Cross-
examination.*

Q. It has "Parl.J. Marron cont." What was that work? A. That was the work on the northern bars.

Q. That was work on the bars, was it? A. Bars and cool-rooms, yes.

Q. The rest of the items in that leasehold account explain themselves, I think. In your leasehold improvement account, apparently the greater part of it refers to fees paid to professional men? A. That is true.

Q. Are you able to identify which of the fees were payable in respect of work actually carried out, and what fees were paid in respect of work which was not carried out? A. I think so. 10

Q. Just look at the account for the moment and see if you can distinguish those two classes of payments (showing)? A. No, I cannot from this statement.

Q. Have you some material with you by which you could do that? A. I could find it out for you.

Q. So that we could identify what fees were paid in respect of work actually performed and what fees were paid in respect of work unperformed? A. Yes.

Q. Dillon's, of course, are the tile people? A. Yes. 20

Q. And Australian Tesselated Tiles; they are in respect of work actually done? A. Yes.

SIR GARFIELD: Perhaps Mr. Connolly can ascertain that information and let us know. If he sends a message through my friend, perhaps that may satisfy me, but I have no objection to the document being used.

PLAINTIFF'S EVIDENCE

No. 19

Evidence of T. M. Scott

*No. 19.
T. M. Scott.*

Examination.

SIR GARFIELD: Q. You are a registered and practising architect and have been practising since 1923? A. Yes. 30

Q. You are a member of the firm of E. A. & T. M. Scott, you are a fellow of the Royal Australian Institute of Architects; and Consulting Architect and Supervising Architect in Australia for the United Kingdom Government and the Ministry of Works since 1951? A. Yes.

Q. You have been Senior Vice-President of the Institute, and Acting President of it? A. Yes.

Q. You have been a member of the Advisory Building Committee in Local Government for the drawing up of Building Regulations in 1948? A. Yes. 40

- Q. A member of the Committee called by the Local Government Department to redraft the building regulations covering licensed hotels, in 1948 and 1949? A. Yes.
- Q. You were called upon by the Under Secretary of Local Government to make an advisory report on the size of land for hotels and car parking in 1955? A. Yes.
- Q. Your architectural practice has consisted of the planning and supervision of multi-storey buildings, city office buildings? A. Yes.
- Q. Banks, Insurance Companies and Newspaper buildings? A. Yes.
- 10 Yes.
- Q. Multi-storey flat buildings? A. Yes.
- Q. Industrial, Brewery and factory buildings? A. Yes.
- Q. School buildings and hotel buildings? A. Yes.
- Q. I think you have planned and supervised 10 new hotels that have been built and three that are being built now? A. Yes.
- Q. And you have planned and supervised the large renovations and reconstructions of some eleven hotels? A. Yes.
- Q. You are retained by Toohey's Ltd. for all main architectural work and have been over the past 20 years? A. The last ten to
- 20 fifteen, I think.
- Q. You have seen the 1954 plans that we speak of here, (Exhibit H), for certain work to be done at Wynyard in 1954? A. Yes.
- Q. These we know here as Exhibit H (showing)? A. May I refer to my notes?
- Q. Yes, when the time comes, His Honor will let you. Do you recognise these as the 1954 plans. A. Yes.
- Q. Have you also seen the 1956 plans (Exhibit L2 shown)? A. Yes.
- Q. You are familiar with Exhibit L2, the 1956 plans? A. Yes.
- 30 Q. Have you been in conferences, since you were retained in this matter, with a structural engineer retained by the plaintiff? A. Yes.
- Q. Was that Mr McMillan? A. Yes.
- Q. Have you had any conferences with Mr Britten at all? A. Yes.
- Q. You have had conferences with Mr Britten? A. I have had one.
- Q. Is that recent? A. Recently; after Mr McMillan became ill.
- Q. Are you familiar with this site? A. Yes.
- Q. You know the site at Wynyard? A. Yes.
- 40 Q. Have you been at all levels and looked at what is there? A. Not right down to the very bottom level.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Plaintiff's
Evidence.
No. 19.
T. M. Scott.
Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 19.
T. M. Scott.
Examination.*

Q. How far down? A. I have been down about two floors below George Street.

Q. You have in mind the dimensions of the site of the demised area the subject of this lease? A. Yes. I could not tell you the exact area straight off.

Q. But you have at some stage seen the area, and you know the area physically, by observation? A. Yes.

Q. In your visits, you have seen what sub-structural foundations have already been placed there? A. Yes.

Q. From the point of view of owner of this site, in considering its development—its economic development—have you given consideration to the development of which this site is capable? A. Yes, I have.

Q. Architecturally, that is? A. Yes.

Q. In connection with any possible developments that you wish to speak of here, have you conferred with the Engineers to ascertain whether those developments are structurally possible? A. Yes, I have.

Q. You have received certain advices, with which we can deal with separately? A. Yes.

Q. Could you tell us what in your opinion are the possible developments of this site? (Objected to; pressed; allowed).

Q. To what development is the site in your opinion susceptible, even assuming that the 1954 plan, Exhibit H, was constructed; that you started with the 1954 idea? A. It has tremendous possibilities. I do not know whether another site—

Mr WALLACE: I do urge that Your Honor must take into consideration when dealing with reasonableness, the terms of the covenant which, for relevant purposes, contains a covenant to build a building not less than £150,000, and my submission is that the plaintiff could not compel us to build a building which cost £151,000. Now the witness is apparently embarking, at Sir Garfield's invitation, upon something which I would respectfully submit must be a grossly irrelevant consideration, as to what was the best thing to be done on the site if there were untold money with which to do it.

HIS HONOR: You are proffering to them to spend £400,000, which would take it up to a certain stage only. You had to get their consent to that on any basis, as I see it, because assuming it is not the original building—which it obviously is not—and assuming there is no binding agreement between the parties, and assuming it is just a building which, in order to save the license, you wish to have built, you still have to get their consent under the other clause.

(After further discussion, His Honor allowed the question).

SIR GARFIELD: Q. You were saying it is a site with great possibilities. Are there other possible developments for buildings which will not be exclusively for hotel buildings? A. That is so.

Q. Have you given thought to the question of what buildings could be developed on the site consistently with the 1954, Exhibit H, plans? A. Yes.

Q. Before you describe them, have you reduced those to some diagrammatic or isometric form? A. That is so. I have them here.

Q. In addition, have you reduced into isometric form the proposal of which you have heard, that the Carrington Street frontage should be occupied by a building according to the L2 plans, but carried up to the limit and stepped back at a certain point, and then a block of buildings on George Street? A. Yes, I have studied those and based the "H" against the "L2" regarding maximum development.

Q. You can describe from the sheet perhaps what these developments are. You have in front of you a series of isometric drawings that number from "A" to "F"? A. Yes.

Q. I want to take you first of all to "F" on this sheet. It is the 1956 scheme showing the setbacks in the Carrington Street block as proposed in the maximum development. It shows what this Carrington St. proposal would look like if you were looking into it towards the west? A. Yes, looking into it from George St., over the top—an isometric drawing.

Q. This shows that setback at about the 8th floor? A. That is so.

Q. It leaves a hollow sort of building there? A. Yes, that is so.

Q. I want you to turn to your "A". What does "A" represent as a possible development on the area? A. "A" represents an isometric drawing looking from George St., showing one of the possible maximum developments of the site. In that building, I have suggested to Carrington St. an hotel building, and coming right through to George St. on the upper floor in the centre block. It is making maximum use of that centre block on the whole site, and on the lower floors I go out to the maximum width possible, and use those lower floors for a departmental store, also with the whole of the George St. block. I marry into it this hotel with the upper floors, in the centre block of the Carrington St. block.

HIS HONOR: Q. So, really, it boils down to this: In Carrington St. you have an hotel, with a wedged portion on the top part of the middle, and then the bottom of the middle, and the George St. departmental store. Is that it? A. Yes, and also the first floor from Carrington St. running partway through, towards the George St. block. Portion would be retail, and portion of it would be reception rooms of the hotel. That is in the 94 ft. approximately width block.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.
Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 19.
T. M. Scott.*

Examination.

SIR GARFIELD: Q. The hotel and the rest isolated, of course, from each other? A. Yes.

Q. Have you made any computation as to the bedroom space in the hotel? A. Yes, there would be over 300 bedrooms.

Q. I think Mr Britten has computed precise areas? A. Are you referring to the areas?

Q. No, I was not at the moment, but you said over 300 bedrooms—

MR WALLACE: Q. What is meant by "departmental store"? A. That would be a store similar to Grace Bros. or Nock & Kirbys. You could also have other sub-lettings. You could have escalators running up from George St., up to the first floor, the second and third floor, or lifts. People would be able to shop there without ever coming outside the railway station, this being the hub or a centre for a great travelling public, going to the railway or leaving by railway. I know of no other site which offers such advantages that are available.

SIR GARFIELD: Q. You have discussed with the structural engineer certain questions and I shall leave it to him to speak about them. Would you turn to "B" and describe what "B" represents? A. "B" is another way of making maximum use of the site, to a lesser degree. It proposes an hotel to the whole of Carrington St., taking it up to its maximum height. It also has the upper floors of the George St. block, taking the maximum height, any number of floors used for bedrooms. The lower floor is used for a retail or departmental store, or shops. The centre block is taken through as hotel bedrooms. The lower portion of the centre block is expanded out, and that would be used for a reception room on the first and second floor, according to the number of bedrooms you build and the main hotel Carrington St.

Q. That is the little bit we see that is wider at the bottom? A. 30 Yes.

Q. Would "A" give a greater floor letting area than "F"? A. Well, having examined the maximum 1956 L2 plan, the diagram I have seen of maximum development there, I have not bothered to compare it. If you look at "A", you can see by comparison that my scheme "A" covers a far greater floor area than scheme "F".

Q. Could you turn now to "C". The third one is "C" and "D", and that covers two alternative methods of development. Would you describe each in turn? A. "C" is an hotel block to Carrington St., taking up to the maximum possible development, and it is connected by two blocks to George St., with a 22 ft. wide light area in between, and George St. is also brought up to its maximum. The upper floors of that, because of the regulations, could be used for offices. Certain lower floors could still be used there. It is the same as "A".

Q. You see, in "C" you have a light area? A. Yes.

Q. You say it is 22 ft. wide? A. Yes.

Q. In plan "C", does it go the whole way up? A. It goes the whole way up.

Q. In that event, to what use would you put the rooms? A. You could still use the lower floors in connection with the front. If you have that for a departmental store and that type of thing, you could still run back a certain distance in the centre block, and the upper floors could be used for offices; and similarly, to the top of George St.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Examination.

10 Q. "D" differs from "C" in that with "D" you would step the light area? A. I think it is 67 ft. down—on my notes—from the top, and we would expand out the bottom portion, giving us approximately 90 ft. width in the central area. That could be used for a departmental store, offices.

Q. Then, with the top part, could that be used for bedrooms if you stepped the light area down 67 ft.? A. It could be used for bedrooms.

Q. Or for offices? A. Subject to agreeing with the City Council Regulations.

20 Q. What does "E" represent? A. "E" covers a far greater area than "A", because the block is taken 90 ft. wide in the centre. You go the maximum height in Carrington St. for hotel purposes. You go the maximum height in George St. for an office block, and the upper floors, if necessary, for an office block, the lower blocks of George St. for a large departmental store, and the whole of the centre is brought out the full width of about 90 ft. There is a point there I have not been able to check yet or to obtain from the engineers, the floor loading taking that centre block up to the maximum height, because they would be on 100-lbs. approximately as against the lower loadings for hotels, and on different ones for offices.

30 Q. What do the broken lines indicate? A. That could go to the maximum.

Q. That represents a doubt as to the carrying capacity of the columns? A. Yes. That I would have to leave to two or three floors as I have not got the exact information on them.

Q. As far as you are concerned are any of those uses, "A", "B", "C", "D" and "E" inappropriate to this site or are they appropriate to it? A. All "A", "B", "C", "D" and "E", if it would carry it, all could be carried on top of the existing substructure "H". I am told by my structural engineer . . .

40 Q. You have looked at the 1956 plan and the 1954 plan and made some comparisons of them and some criticisms of them? A. Yes.

Q. You might take them one at a time. Take the 1956 plan (L2). Do you recall that? A. Yes. I have some notes about it.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 19.
T. M. Scott.*

Examination.

Q. His Honor will let you refer to the notes. What criticism have you to make of the 1956 plan bearing in mind your appreciation of the site and its possible development? A. Well, I am told by my engineers that it precludes the use of the centre site.

Q. We can leave that to the engineers? A. I will not speak on that. One of the difficulties as I see it with the L2 plan is that when the maximum development comes of that site, the L2 plan, by going straight up to Carrington St.—because it appears to be that is where the hotel is to be built—there are not sufficient, in the full development there, reception rooms. I feel that when they go the limit with that block to Carrington St., your dining rooms and all your reception rooms, banqueting and restaurant and hotel bars and kitchens and that sort of thing must be on the first floor. For the present scheme there is only a coffee room. It is not, in my opinion, suitable, in my experience of hotel architecture, for a dining room; and the other point is that what is termed as the dining room is way down in the basement in George St., and to get to it you have to pass at one point across the Concourse, past all the incoming traffic. 10

Q. Suppose you were to go to the full limit, are there any other floors as planned in L2 on which you could put public rooms, dining-rooms, kitchens? A. You could move them up on to the 1st floor by scrubbing the bedrooms there. 20

Q. Have you anything to say as to the ceiling height on that? A. Yes, the ceiling height is about 9' 5" on the first floor, and when you are going to cater for a great number of people in the bedrooms, and with expansion in the future, that is far too low. If you have to seat 200 or 300 people in a dining room, you must have at least 10' 6" to 11 ft. clear ceiling height. I also notice that some of the beams on the plans that I had were shown in a section coming down to within about 7' 6" odd from the floor. They are far too low for that type of reception room and dining room. You would not find it in a 1st class hotel. 30

Q. You would not find a 9' 5" ceiling or these beams? A. No, not in a modern hotel.

Q. You made a remark about the coffee lounge. Do you think that is adequate as a dining room at the present moment, as designed? A. No. I think it is too small. We generally always work to about 12 sq. ft. per person for a good class of hotel. With 1st class we go to a higher height than that.

Q. A greater space per person? A. Yes; the coffee rooms—you can come down from those figures. 40

Q. What would you get a coffee room down to in a good class hotel, not a 1st class hotel? A. Coffee rooms—down to seating 8 ft. square.

Q. 8 sq. ft. per person? A. 8 sq. ft. per person.

Q. Did you look at the kitchen. We are told that this kitchen would be adequate to supply meals of the Cahill variety or the Repin variety, with 100 persons in that coffee lounge. What do you say as to that? A. Well, I think, if it is the sort of coffee room type meals you would just about get away with it, but for a proper dining room, no.

(Isometric diagrams prepared by Mr Scott tendered and marked Exhibit "U").

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Examination.

10 Mr WALLACE: I have already taken my objection on this type of evidence.

HIS HONOR: Yes. It can be noted that Mr. Wallace objects to the whole of this type of evidence.

SIR GARFIELD: Q. I want you to look at Sheet 2. of L2, which provides amongst other things the lounge in this projected 1956 hotel. I want to call your attention to some pencilled rectangles in the lounge, which have been placed there as representing in dimension four columns. By "dimension" I mean an untreated dimension. Have you anything to say as to the acceptability in an hotel entrance of that sort of structure? A. Well, in the lounge they are not shown—I do not think they were shown in the plan, these columns—but they are going to be very awkward in that position. They are rather jammed up against what is shown as a service counter. I think it is of some description there. You only have about 6 ft. on one side to pass through.

Q. How much further back against that green one would the pencilled one be? A. It is only 2 ft. from the wall of the coffee lounge.

Q. Would you regard those as satisfactory, the presence of those? A. I should like to see the large ones out of the way. I do not think it is possible to permit it. Something might be done by getting rid of this service counter, to help it.

Q. At any rate, as planned do you find them acceptable or satisfactory? A. What makes it difficult is that staircase butting right into that lounge.

Q. Making the distance over the columns narrow? A. Very narrow.

Q. Do not answer this question for the moment. Assume you were asked as a consulting architect to the Railway Commissioner, with your knowledge of the site and your views as to its possible use, and the information you have from the structural engineers, assuming you were asked whether he should accept such a building on the site, what would you advise him? (objected to; rejected).

CROSS-EXAMINED

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Plaintiff's
Evidence.
—
No. 19.
T. M. Scott.
—
Cross-
examination.

Mr WALLACE: Q. Did you consider the 1954 layout of bedrooms?
A. Yes.

Q. When were you first retained by the Railway Commissioner to have anything whatever to do with the Plaza Hotel site? A. About the end of October.

Q. October, 1956? A. Yes.

Q. When did you first see the 1954 plans, Exhibit "H"? A. About at the same time as I had my first appointment with them. If it was not that day it would be the following day. No, I think it was within 10 2 days of that. That is the 1954 plan?

SIR GARFIELD: Yes.

Mr WALLACE: Q. Were you conversant with the fact that the immediate problem of the site was the erection of bedrooms to satisfy the Licensing Court? A. I understood at the time that there had been difficulty with the Licensing Court.

Q. Let me put the question again. When you came into the picture in October, 1956, were you then or at some time a little later aware of the fact that bedrooms had to be built somewhere on the site area in order to satisfy the requirements of the Licensing Court? A. Oh, I 20 would take that—I understood that.

Q. So apart from developmental possibilities, you knew that the immediate future was very much in question? A. I do not follow that.

Q. You knew that bedrooms had to be built within a fairly short time in order to satisfy the Licensing Court? A. That is my experience on all hotel matters.

Q. The isometric diagrams in Exhibit "U" represent your ideas of how the whole site could ultimately be developed? A. Yes, developed over the existing substructure. 30

Q. Put that to one side if you would just for the moment. It represents your views of how the whole site could be developed?—

HIS HONOR: You cannot put the basis on which it was done out of account. I think you had best clarify it.

Mr WALLACE: Q. Have you considered how you would develop the site if it was vacant land and you were untroubled by either "H" or "L2"? A. There was no substructure?

Q. Yes? A. There is no substructure existing?

Q. What do you mean by "substructure"? A. The existing substructure, carrying the present building that is there. 40

Q. But what do you mean by "substructure"? A. The concrete columns, the beams and the steelwork that is existing on the site.

Q. As it is today. Is that what you mean? A. As it is today.

Q. Look at your diagram "B" in Exhibit "U"? A. Yes.

Q. Supposing the work envisaged by Exhibit "H" had all been completed, do you say that diagram "B" in Exhibit "U" could be erected? A. Over the main frame of such substructure, of such structure that is there—

Q. Do you mean by "substructure" in that context the pillars that exist, what we call the columns? A. The columns and the beams.

Q. I want you to imagine that the exhibit "H" building has been
10 fully erected according to the designs and plans of Exhibit "H"?
A. Yes.

Q. Do you say that the diagram "B" on Exhibit "U" could be erected over such a building? A. Yes.

Q. The two wings, with the lightwell separating them, 22 ft. in width in exhibit "H", have disappeared in plan "B", haven't they?
A. Yes.

Q. What is the width of the centre wing in plan "B" where it is nearest the George St. building, where it is narrowest or appears to be narrowest?
20 A. Across the main centre, about 80 ft. long. Is that it?

Q. What is the width in plan "B" of the connecting building measured north and south, where it appears to be narrow; namely close to the George St. building or close to the Carrington St. building?
A. At the top floor?

Q. Yes? A. May I refer to something?

Q. Yes? A. Somewhere about 28 ft. or 29 ft. approximately.

Q. That would be the same width as at the bottom of that wing, wouldn't it? A. At the bottom of that wing, but there is another floor below it, going right through.

30 Q. Another floor below it, going right through? A. Yes.

Q. And that other floor below . . . A. That would be about 90 ft. high.

Q. Is that other floor below as high as Exhibit "H" in that spot?
A. It would be higher probably; within a couple of feet higher.

FURTHER EXAMINED

SIR GARFIELD: Q. Is there in your profession a recognised division of space in hotels into first, second and third-class spaces? A. With my experience in hotels I have never met it. Of the hotels I know, there is a first-class hotel—the Hotel Canberra—and we have done
40 a lot to that by way of reconstruction. There is the Canobolas at Orange. That was another one that was built. It is looked upon as another high-class hotel.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

Q. But within it, has it grades of accommodation? A. No. The only grade you get in those first-class hotels would be whether you have a bathroom or whether you have a shower and toilet. I have never experienced it, and I do not know. There are others of which I know. In Wollongong there is The Grand Hotel. That has been reconstructed and it is of a very modern, high standard. The only difference there is if you get into the old wing which has no bathrooms, but if you get into the new wing . . .

Q. We understand the difference between a bath and no bath, but the suggestion is there is a well known division in your profession of space into first, second and third-class according to the location in the building in relation to, say, the eastern, northern or southern aspects and the like? A. Do you mean from a paying point of view? 10

Q. No, from an architectural point of view, an expression known in your profession which refers to this first, second and third-class space according to location? A. I would not know that. You get rooms loud and noisy on the street front, or you may get a room next to a boiler stack which becomes hot, and you may get a room next to lavatories, which people try and dodge because of the noise at night owing to people using them. So far as charging for them is concerned, 20 my experience, from the number of hotels I have handled, a number of which are first-class, is there is no difference in the charge.

CROSS-EXAMINED

Mr WALLACE: Q. What is the latest hotel you designed? A. Which, reconstructed, or entirely?

Q. What is the latest hotel you designed? A. The last one big reconstruction was The Grand at Wollongong.

Q. What was the last new hotel building you designed? A. Oh, there would be three or four finishing at about the same time—or two or three of them, around about the same period. There would be the 30 Toongabbie, the Kotara, Jesmond . . .

Q. What were those last two? A. Kotara.

Q. Where is that? A. Near Newcastle—at Newcastle, really, in the suburbs; and there is Toongabbie.

Q. They would be two-storeyed suburban hotels? A. Yes.

Q. Did you do any designing at all for hotels during 1939 and 1950? A. Well, it was near the war period, wasn't it?

Q. 1939 to 1950? A. No.

Q. In fact, there were no hotels, were there? A. There were building permits on. 40

Q. There were no hotels built at any time between 1939 and 1950, were there? A. No.

Q. None was allowed to be built? A. Building permits were on.

Q. None was allowed to be built? A. No.

Q. If you were designing a hotel that Sir Garfield asked you to place yourself in yesterday, advising a building owner from the point of view of considering its economic development and so on, would you think that bedrooms facing each other across an interior lightwell 22 feet across would be the sort of accommodation that you, as an architect, if you could avoid it, would advise an owner to construct? A. Would this be a city hotel or one like the Hotel Canberra?

10 Q. A city hotel? A. It all depends on the size of the land and the economic development of the building.

Q. Take the question divorced from economics. If you were advising such an owner, as an architect, and if you thought by a different design which was practicable you could avoid it, would you advise the building owner to build bedrooms facing each other across an interior lightwell 22 ft. 6 inches across? A. The same question applies, if he comes for my advice from the commercial and development point of view, studying the economy and reconstruction. Most of our instructions, on the economic side, are all based on that.

20 Q. I will try and put the question more simply. If you could avoid doing so, would you advise an owner to build bedrooms facing an interior lightwell 22 ft. in width? A. If I had sufficient land I probably would not do it.

Q. It is not a good feature, is it? A. It all depends what the hotel is, where it is, and the economic side of the question.

Q. But how can it depend on where the hotel is when you are considering the possibility of having bedrooms facing each other across a 22 ft. wide interior lightwell in the city. How can the situation affect it? A. If the land is a small very valuable central site, it may be necessary to make the development that way.

30 Q. But supposing it is not necessary to do it, you would not do it, would you? A. Well, it is more or less a dream, a town planning; the Cumberland County Council Scheme.

Q. You agree, however, it is not a desirable feature to have bedrooms facing each other across a 22 ft. interior lightwell? A. If it were a form of monument to the park and that sort of thing, where you have not got to worry about the economic structure of these buildings—you are controlled in the sizes by the City of Sydney Building Regulations.

40 HIS HONOR: Q. What Mr. Wallace is really saying is this: assuming you had a site and you can get just as many bedrooms facing away from a lightwell as you can facing a lightwell for the same price in the same area, which would you choose? A. I would face them to the street.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

Mr WALLACE: Q. Supposing you were advising a building owner and you had the choice between building 75 bedrooms all with bathrooms, all with exterior lighting, for £400,000 odd on the one hand, and 62 bedrooms, 23 without bathrooms and quite a number of them facing each other across a 22 ft. interior lightwell, which would you advise him to build—the second lot being for over £500,000? A. No other conditions?

Q. Assuming no other conditions? A. I would go for the greater number of bedrooms with bathrooms, in certain classes of hotels.

Q. In certain classes of hotels? A. Yes. 10

Q. But don't you agree it is a desirable thing in modern hotel life for every bedroom to have a bathroom? A. It is.

Q. Don't you agree that in modern hotel life, if you can do it, it is desirable that all bedrooms face to the exterior light? A. Yes, generally.

Q. If you can do it? A. Yes, if you can do it.

Q. Will you agree that the type of design which provides for repetitive type of floors is cheaper to construct than the type which has irregular shaped bedrooms, irregular in size, and with lightwells? A. Do you mean a rising block? 20

Q. Yes? A. Yes, that probably would be cheaper.

Q. Have you studied modern trends abroad and in Australia today? Yes. I have not been overseas for some years.

Q. You have not been overseas? A. No, not for some years. Members of my staff have.

Q. From your information and belief would you agree that the modern trend is to build thin slab-type of buildings which give high-class light and air conditions in preference to the older type of what may be called the box type of buildings, with interior lightwells, occupy in the whole site? A. You are referring to cities? 30

Q. Yes? A. Yes, there is a tendency to go high, but there are also buildings overseas that are high but which have light areas.

Q. I am just asking you a question about the modern trend. Would you consider it important in connection with the design of a hotel that the rooms having bathrooms should be designed along modern lines instead of obsolete lines? A. Yes.

Q. Have you studied the design of bedrooms in the 1956 plans? A. Yes.

Q. Do you agree that they conform with modern planning and modern requirements? A. Yes. 40

Q. Do you agree that by way of comparison the design of the bedrooms in the 1954 plans are of an obsolete and inferior type? A. I would not say they are all obsolete.

Q. Of an inferior type, compared with 1956? A. I would not say they are of an inferior type. There may be a point there, I will give that, that the planning of the bedrooms in the 1956 plans—they are quite good and generally they may be a little better than the 1954 plan on the whole, but I have not approached it by comparing the 1954 plan and the 1956 plan. I have looked at it in another way, the best development of the site.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Plaintiff's
Evidence.

Q. I know you have, but you also have of necessity looked at both plans, haven't you? A. I have looked at both plans.

No. 19.
T. M. Scott.

10 Q. You now say that the 1956 design of bedrooms may be better than the 1954 design? A. They may be a bit better than the 1954 bedrooms.

Cross-
examination.

Q. Would you not admit that they are indubitably superior in design? A. Oh, I would not say that.

Q. Did you notice that in respect of the 1954 bedrooms some were down to 6 ft. 6 inches in width? A. No, I did not notice that. I did not go into the 1956 full width of some of them.

Q. Did you notice that in the 1954 plan nearly every bedroom was in a different shape? A. You mean every one will be different?

20 Q. I put it to you that nearly every bedroom is of a different shape? A. If I had a look at the plan again to refresh my memory I could give you an answer on that.

Q. (Exhibit "H" shown). A. There are a great number the same width, and a fair number repeat themselves in different places.

Q. I will delete the word "nearly". Would it be true to say that there is a great variety of shapes and sizes in the 1954 plan. At what floor are you looking? A. There is only the one floor of bedrooms I understand. No, as hotels go, they seem to be. . . .

30 Q. I am not asking you "as hotels go". I am asking you an objective fact? A. Well, you have your double rooms and you have your singles. Some have shower rooms off them and toilets.

Q. The question I am putting to you is simply, will you admit there is considerable variety in shape and size? A. No, not "considerable".

Q. Would you agree most of the bedrooms in the 1954 design are old-fashioned in that when you walk into the bedroom, somewhere in the bedroom protruding from the wall is a wardrobe? A. Yes, they have wardrobes protruding into the room.

40 Q. And if you go to the 1956 plans (Exhibit "L2" shown) you find, first of all, that the bathrooms are internally arranged? A. Yes.

Q. That is not so in the case of the 1954 plans, is it? A. No, they are on to the courts.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

Q. The bathrooms in the 1956 plans are on the inside corridor walls, and you pass through a narrow entrance, past the bathroom into the bedroom itself? A. Yes.

Q. Is this the position, that the external wall is fully used for the bedrooms in the 1956 plans? A. Yes

Q. Will you agree that with those factors . . . A. I do not think the bedrooms—there is a greater width of external wall to the 1954 plan in a lot of cases; about the same, when you take the front street.

Q. I am putting it to you that the 1956 plans in a broad way are 10 more modern in design and more acceptable to people who live in hotels than the design of the 1954 bedrooms? A. We are referring to bedrooms only I take it?

Q. Yes, bedrooms with baths? A. Yes, it is quite a good plan, as I said before.

Q. That is not the question. Would you agree that the 1956 design of bedroom and bathroom is more modern than the design of the 1954 bedroom? A. Where there are bathrooms you are referring to?

Q. Yes? A. I see in the 1954 plan the bathroom off the bedroom, at the side, with natural air. 20

Q. I only want your answer "Yes" or "No" to my question. I am putting it to you quite bluntly that the 1956 designs are more modern and better designs than the 1954 designs. To that I only want you to say "Yes" or "No"? A. Yes—subject to mechanical ventilation.

Q. You say you have not been to America. I suppose you have not been to Honolulu recently? A. No.

Q. But from your information will you agree that in America and in Honolulu it is accepted modern practice to have the bathrooms on the internal corridors, with mechanical ventilation? A. Yes. 30

Q. Will you agree that the 1956 plans have smaller corridors for guests to negotiate than the 1954 plans? A. Do you mean in length?

Q. I am taking the case of a person who is furthest removed, we will say in the 1954 plans, from the lift, who has to go around two corridors at right angles; and I suggest it is about 240 feet from the furthest bedroom to the lift? A. That is in the 1954 plan, is it?

Q. Yes? A. Yes, the corridors in the 1954 plans are 5 ft. 6 wide. They are 5ft. wide in the 1956 plans, and the corridors in the 1956 plans are shorter than the 1954 plans.

Q. Would you agree that if you have a repetitive type of building, 40 the bathrooms over one another and the bedrooms regular in design, it makes the costs of plumbing lower? A. Yes—that is if you spread out.

Q. The costs are lower than if you have irregularity of design?
 A. Well, I would not call 1954 regularity. It repeats itself in two blocks . . .

Q. I was only asking you a general question firstly. That is true, isn't it? A. Yes.

Q. If you compare in that regard the 1956 and the 1954 plans, do you not find a much better and cheaper layout for plumbing construction in the 1956 than in the 1954? A. It would be more economical to install.

10 Q. Would you agree that hotels charge more for rooms which have a good exterior aspect and lighting than they do for rooms which face interior lightwells and which require artificial lighting. Is that not your experience? A. In a first-class hotel building?

Q. We are speaking of city hotels, Yes. A. I think one of the main things in a hotel is your service, apart from all your bedrooms and layouts.

Q. But what about this point; is there nothing in it. Can you speak on the matter at all? A. Yes. I think you will find—from my experience with hotels, certain ones I have spoken of in Wollongong,
 20 Canberra and Orange, which are all high-class residential hotels—I do not think there is any difference.

Q. Can you speak as to whether the city hotels in Sydney, such as the Australia, charge less for back rooms with artificial lighting than they do for front rooms overlooking the street? A. Well, I know . . .

Q. Are you aware; that is all I am asking you? A. I would say it would be one rate for particular rooms.

Q. Are you going on your experience, or are you just giving your guess or estimate in the matter? A. No, I am going on the fact that
 30 when you write to the Hotel Australia and you book a room you will receive a note back saying "We have booked your room, and the charge for a single room will be so much. We reserve the right, if there are no single rooms available, to put you in a double room and the charge will be so much. If we have a single bedroom with bathroom the rate will be so much"—and the same for suites and double rooms.

Q. Then it is not your experience that hotels charge less for interiorly situated rooms with poor natural light than they do for rooms with a better aspect? A. I have not experienced it.

HIS HONOR: What the witness does say is that guests avoid those
 40 rooms if they can.

Q. Is that right? A. Yes.

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*

Plaintiff's
 Evidence.

No. 19.
 T. M. Scott.

Cross-
 examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

MR WALLACE: Q. Would you agree that in commercial buildings higher rates are charged for rooms with good natural light and air than for rooms which are dark and which require constant artificial light? A. Do you refer to offices?

Q. Yes? A. I think you would, for office use, get better rents on the higher floors back and off the traffic. They can be into a light court. Probably you would get more there than what you would in a front office to the street.

Q. That may be, but I am also asking you, would you not agree that in regard to office space it is usual for offices which require artificial light and which are gloomy without it, to be charged a lower rate than offices which have good natural light and air? A. Well, on the present position you cannot get any office at all. It is very hard to judge that. 10

Q. But go back to when it was not hard. Would you agree with that then? A. Well, generally always as it turns out, it is on the ground and first floors where you get the worst light, and that is generally always recovered, because people like stockbrokers and in that type of business generally want the ground and first floors, and they pay higher rents to be down there, where it is of easier access to the street; and that used to occur before there was this difficulty in obtaining offices. 20

Q. What about a back room which faces a narrow light well. Do you say they do not charge less for those today in the City of Sydney than for rooms which have good aspect in regard to light and air? A. If I can—

Q. That is a simple question, isn't it? A. My experience is that in Pitt Street, with office buildings of that type on the ground floor with poor light, you would pay more rent there than for better light on the upper floors. 30

Q. What about a back room on an upper floor facing a gloomy lightwell? A. Well, on the higher floors you do not as a rule get gloomy rooms.

Q. Are you saying that poor light and poor air do not affect rates that owners get for office space? A. Not at present.

Q. You would expect those things to affect the rates, however, if and when the office position eases? A. To a certain extent.

Q. To some extent? A. Well, our building regulations govern the control—they are very severe on the provision of light areas, and you do not get these dark offices in buildings today. You may have it in some. 40

Q. I want you to assume that you have this contrast: one owner has a building—and I am asking you, of course, in regard to the position when office space has eased. That is my overriding assumption, do you follow? A. Yes.

Q. There is no difficulty about that so far, is there? A. No.

Q. Will you not agree that in such circumstances the owner of a building which has gloomy rooms would not be able to let them so easily as the owner of a building which has good light and air in the rooms? A. Is the building to be built or is it built?

Q. Just suppose there are two buildings, either new or old. The only assumption is that the pressure for office space has eased. I do not care whether we compare new or old buildings? A. In new buildings erected you will always have good light.

10 Q. Will you please listen to the question. The only assumption is that the pressure for office space has eased. Is that clear? A. Yes.

Q. Then, I am comparing two buildings, I do not care whether they are new or old. One has good light and air for its offices, and the other has gloomy light and air. Which owner would more easily let his space in your opinion? A. Oh, if it were a gloomy building you would get less for the gloomy.

Q. On that, would you not agree that the reason why there is a modern trend to build repetitive types of narrow buildings, going upwards as high as possible, in preference to the old box type of buildings with lightwells, is not only cheaper in construction, but also because 20 they can expect greater facilities for renting them and greater rents when they do rent them? A. That to a great extent would depend on the development of a site, wouldn't it? These courts, they are outer courts, and you can get excellent light from outer courts. In this particular case . . .

Q. I am not dealing with this particular case. I only want the generality first. Wouldn't it be a question of good economics that is partly, at least, behind the modern trend to build tall narrow buildings not occupying the whole site in preference to the old box type, with 30 interior lightwells or with space?—

SIR GARFIELD: I do not understand the question.

(Abovementioned question read)

HIS HONOR: I think you had best reframe the question, Mr Wallace.

Mr WALLACE: That is the question I want.

HIS HONOR: Q. Do you understand what the question means? A. It is a bit difficult. It would be a question of calculating out the area of the land and how high you are going with this box type, whether they are external courts or internal courts. It is quite a problem to answer that one.

40 MR WALLACE: Q. I am not asking you to debate the pros and cons of any particular case. I am only asking would the proposition of a tall narrow building, giving good light and air all round, with windows,

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

be a better economic proposition to the owner than a box type of building occupying the whole site? As a general proposition I am putting it to you that it could be a better economic proposition? A. I could not answer from an economic point of view, as you would have to plan . . .

Q. You will admit that there is, so far as your information and belief goes, a modern trend to build tall narrow buildings not occupying a whole site? A. There have been some set back a little. I know one particular building that they have set back. Sometimes you have to set back to get access, to get into the floor line—if you have any 10 cross-floor in your building—to get up the steps.

Q. Do I do you justice when I suggest you have not really studied this modern trend either abroad or in Sydney? A. I have not abroad, but I have followed it fairly closely here.

Q. Have you followed it in connection with Anzac House, for instance? A. Anzac House?

Q. Have you followed it in connection with Anzac House? A. Yes, I can remember Anzac House. That is the new one that has just gone up, you refer to, in College Street?

Q. Have you some doubt about it? A. I know that is Anzac 20 House, if that is the one to which you refer.

Q. That happens to be the one to which I am referring. Did you know that that was a commercial building in its upper floors? A. Yes. Now there is a case . . .

Q. You just listen to me. Do you know that that occupies only about half the site? A. I know it is set back, and why it is set back from the front, I take it, is to get into it.

Q. I suppose you can get into it from the street? A. No, you cannot.

Q. Have you considered any other buildings going up in Melbourne 30 or Sydney? A. I have had a look at the new I.C.I. Building. I was interested in a report in the early days on that.

Q. Have you seen the new I.C.I. building? A. That covers the whole of the site and it goes to a great height. It goes right through to Macquarie Street and to the street below.

Q. You say it covers the whole site? A. Yes. As a matter of fact I made a report on the development of that building for the company.

Q. What about the I.C.I. in Melbourne? A. I cannot say anything about that. 40

Q. Have you yourself ever designed a building which entailed trusses 80 feet long and 12 feet deep to be erected four floors up? A. No. I have used them on roofs.

Q. No; to be used four floors up? A. No, I have not. I have done much bigger spans in roof work and in buildings carrying the frame.

Q. I was rather on the case I put to you, namely, a truss 80 feet wide requiring 10 feet or 12 feet depth, about four of them in a building, on a fifth floor holding up the fourth floor. A. No. If I was I would be referring that to my structural engineer.

Q. Do you know you have drawn here on Exhibit "U" some isometric designs of possible future development? A. Yes.

10 Q. I understand you to say that in connection with designs A, B and C and maybe the others, you envisage departmental stores in the front, part overlooking George Street, and in some at least of the others on the connecting building between the two, George Street and Carrington Street main building? A. On the lower floors, Yes.

Q. If you take the design A, what part of design A do you envisage, apart from the main George Street building, having a departmental store? A. I could take portion or a couple of floors of a portion of that area covering the central block, provided I leave portion of the first floor to Carrington Street coming through for dining rooms for
20 the main hotel at Carrington Street. That would be shut off from the hotel.

Q. What about plan B? A. With plan B we only take the dining room to the first floor to Carrington Street, through, as dining rooms to the main hotel and the front portion of George Street—or you could have a portion of that showing only one floor high in the centre block of the greater width, so you could take all the George Street block if you wanted to.

Q. Do I understand you to say that in design B the whole of the big building facing George Street would be departmental store? A.
30 That could be.

Q. And part of the central connecting unit or building? A. You could take a portion of that.

Q. Which portion? A. You could take the portion nearest to George Street.

Q. What floors? A. You could take the second, third, fourth—or portion of it.

Q. So you have a departmental store on what I will call the connecting building? A. You would not take the whole of it right through; the portion closest to George Street.

40 Q. But some number of floors, which you say would be how many? A. Second, third, or fourth.

Q. Above that you would have bedrooms, would you? A. You could have bedrooms over that, if you wanted to.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 19.
T. M. Scott.*

*Cross-
examination.*

Q. What is the width of that connecting building in diagram B across the centre and the widest part? A. 46 feet approximately. I will have to give approximate measurements, not to scale.

Q. Do you say that that could be built superimposed on the 1954 plans if they were built? A. Yes.

Q. We have been told that the 1954 plans envisage two connecting units, separated by an interior lightwell, that each of the two interior units is 34 feet in width and the interior lightwell separating them is 22 ft. 6 inches, giving a total width of approximately 90 feet? A. Yes, about 90 feet. 10

Q. That, of course, would be down below. Is that what you indicate? A. Yes.

Q. Then you come up the centre with only a 40 foot width building; or how wide did you say, 46 feet? A. Widest part at the highest level is about 46 feet.

Q. If you did that, would you take it up to a maximum height of 150 feet above George Street? A. Yes.

Q. You have not worked out what columns would be utilised for that central portion, have you? A. No, that has not been discussed.

Q. You have not submitted this to any structural engineer? A. We have submitted this to a structural engineer. 20

SIR GARFIELD: Mr Britten will speak about it.

Mr WALLACE: Q. Have you any idea what columns would be utilised in constructing that central portion in diagram B? A. No. I am assured by a structural engineer it can be carried out there.

Q. At all events, you do not envisage the utilisation of four trusses 80 feet long and 12 feet deep across the centre? A. There will be trusses.

Q. 80 feet in length? A. Coming from the strong columns. There is a line of stronger columns I am advised. 30

Q. In order to make the central portion shown in diagram B? A. Yes.

Q. Those columns would be columns 51, 57 and so on? A. Without the plan I cannot remember them, but I know there is a line of stronger columns designed for these trusses originally.

Q. If you go to A, B and C, would you agree that those designs could just as well, if not better, be put up on the 1956 plans, if anyone had so desired? A. No, I was advised by the structural engineers . . .

Q. But from an architectural point of view—I will deal with the structural engineering point of view separately—from an architectural point of view, at least you could concur with this proposition, 40

couldn't you: that the 1956 plans are more flexible than the 1954 plans from the point of view of future development? A. For this development?

Q. Yes, take this development? A. I would say No.

Q. From the point of view of any development was the way I put it to you first? A. No, it would not be suitable to the sub-structure.

Q. Now we are on a constructional point, are we? A. We have to come back to that—what is existing.

10 Q. I understand architects offer a design and then submit it to constructional engineers to see whether it will work. Is that roughly how it goes? A. Yes, that is something like it.

Q. Supposing you were to make the assumption that I now ask you to make, that constructionally, from an engineering point of view, there is no reason why the 1956 plans should not be developed in the centre. I want you to make that assumption? A. Assume it can be done?

Q. Yes. On that assumption would you agree that the 1956 plans lend themselves to development at least as well as the 1954 plans?

A. I do not think you would get the total floor area to the site as what 20 you would on this suggestion.

Q. Have you ever worked it out? A. No, I do not have to. You only have to examine these isometric drawings and you will see what we suggest here gives a far greater area than the 1956 plans.

Q. But on the assumption I have asked you to make, you could put any one of those plans, A, B, C or E on to the 1956 plans—on my assumption? A. No, because the 1956 plans set back—these come much deeper on the Carrington Street frontage.

Q. The building is much deeper? A. As far as the columns are concerned.

30 Q. What is the width that you envisage from west to east of the Carrington Street component on plans A, B and C? A. I would have to give you the figure on that off the drawing, because I have not got anything here to go by. I might be able to give it to you. They are about 59 feet to 60 feet—somewhere about that—from Carrington Street, in depth. With the 1956 plan I cannot tell you what they are.

Q. If you take a building 60 feet in width, facing Carrington Street, and using it for hotel purposes—bedrooms—how would you design a typical floor? You would have a corridor in the centre? A. Corridor in the centre and bedrooms on each side of the corridor, with a 40 central bathroom; similar to the 1956 plans more or less.

Q. Like the 1956 plans? A. Yes.

Q. Excepting that it would be much wider than the 1956 plans? A. Yes, the 1956 plans, it is at one end I think they double. I think in the centre they are only one room wide, from memory.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 19.
T. M. Scott.*

*Cross-
examination.*

Q. But you have merely made it wider—I think roughly 15 feet or 20 feet wider—than the 1956 plans by virtue of a recommendation from your constructional engineer? A. No, from planning and also from the sub-structure that is there; partly consulting engineer.

Q. For instance, are you able to tell me on what columns the western wall of your A, B, C Carrington Street components would rest? A. If I have a column plan I might be able to point them out to you.

Q. Would you look at this plan (showing)? A. Could I have the question again?

Q. What columns support the western wall of the Carrington St. 10 building in plans A, B and C.? A. Is that on to the lane you refer to, Wynyard Lane?

Q. I want you to tell me? A. I am not quite clear what you want there.

Q. You have a western wall shown on plans A, B and C to Carrington Street? A. I take it that is Carrington Street (indicating)?

Q. I am sorry, I meant the eastern wall. What columns would support the eastern wall of the Carrington Street component? A. Are you referring to the plan isometric "U"?

Q. I want to know what columns support the eastern side of the 20 Carrington Street building? A. Do you mean along there (indicating)?

Q. Yes? A. At that point it would be 51. There is another one on the boundary there . . .

Q. Read them all out. They are numbered on the plan I handed to you? A. 170, 51, 53, 55, and then you come to a cluster around the lifts, 57, 59 and 60-something, 72 and 74. You go right through there. I cannot give you the exact line on that lot there.

Q. Then I understand you to say this, that under your isometric plans you have got a building going straight up, 150 feet above Carrington Street—not above George Street, but above Carrington Street? 30 A. Carrington Street coming back three columns deep.

Q. And the eastern face of that building rests on the columns you have just enumerated? A. Yes, that is on the upper floors. That is all bedroom part.

Q. They all rest on those columns that you have just enumerated, down to there (showing)? A. Yes.

Q. If I write "X" on what you are showing me and "Y" up above, from "X" up to "Y" would be resting on the columns you have mentioned. I show you now Exhibit "U". Looking at plan A, on Exhibit 40 "U", you have told me, haven't you, that the eastern wall of the Carrington Street building in A, B and C rests on the columns you have enumerated? A. Yes.

Q. If I were to draw a dotted line continued down the Carrington Street level I would come on to the 170, 51, 53 etc. line. Is that right?

A. Yes, that is it.

Q. The columns such as 53 and 55 in the centre, would they be bearing their share? A. No, they are the weak columns. 53 and 55 are the weak ones which require the truss over them. That centreline as I remember it from my structural engineers—these dark ones here are the weaker columns (indicating).

Q. Do we get to this: in order to build plans A, B, C, D and E, you envisage the big trusses coming through and being supported by columns 51, 57 etc.? A. And 76, 96, 112.

Q. That is quite clear? A. Yes.

Q. Those trusses would go in where, according to you, at what floor? A. In which scheme?

Q. Take "B", to start with? A. One of the trusses would go in there, whenever you build that George Street. Whatever happens there you have to put another truss through that line, there, lower down, and another one there, and in the centre of this extension, through here; you could put them through there (indicating Scheme "A") in that centre block there. In this one (Scheme "B") you would bring them through on the lower floors here, on that floor above Wynyard Lane, to carry this superstructure, and also at the back of George Street they could cut through there, and these could go at the fifth floor, where they are originally designed for on the original buildings—about four or five floors above Carrington Street, in the original Kerr plan.

Q. Could I summarise what you have been saying, and please check me if I am wrong. I understand you to say that in the case of plan "B", for example, you do envisage the four big trusses being constructed, one or two of them at the first or second historical floor, and the others higher up? A. And the first floor.

Q. The first floor? A. Two centre ones, say. There are different levels there, and the other can go in where they are originally designed for.

Q. Between the fifth and sixth historical floors? A. Fourth or fifth; somewhere around there.

Q. The reason why you put the two centre ones down on the first floor is, I suppose, purely aesthetic, is it? A. No, you have to get through, to these columns, but in this scheme (Scheme "E") they could come through at a higher level there, depending on the height.

Q. All of them on diagram "E" of Exhibit "U" could come through at a higher level. But returning to plan "B" where you envisage the four girders at different levels, the two centre ones which you say would be low down at first, would be put low down for what reason? A. Because this section only extends to that far (indicating.)

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Plaintiff's
Evidence.

No. 19.
T. M. Scott.

—
Cross-
examination.

Q. And because the centre section is so narrow? A. There is a narrow width there.

Q. So instead of having the heavy columns coming up with unsightly trusses going across them, and the centre part resting on part only, you would place them down below? A. Well, you could place them on the ground floor on that.

Q. Of the Carrington Street level, do you mean? A. Of the Carrington Street level, and the other ones—you could get them on, I think that would be, the ground floor or the first floor there. I would have to see the sections through there (indicating). 10

Q. You now say you envisage in connection with plan "B" that of the four heavy trusses, two might be at one level and the other two at different levels? A. Yes.

Q. I meant two at one level—and the higher ones—and the other two could be lower and at different levels themselves? A. Yes. In "A" they can be higher up anywhere.

Q. In "A" they can all be higher up? A. Yes, depending on the height of that floor.

Q. Depending on the height of the line "XY"? A. Yes.

HIS HONOR: The lower full width central floor. 20

WITNESS: In "C" they could be above the original old positions.

Mr WALLACE: Q. They could all be sited in the original positions as originally designed? A. Yes.

Q. You have not gone into any detail about these trusses, have you? A. No. I have discussed it with the structural engineers, that is all.

Q. What, over the last week? A. No, before Mr McMillan was ill. I have discussed it this last week also.

Q. With Mr Britten? A. Yes, I have been right through it with him. 30

Q. I suppose you would agree that the accepted loadings for a hotel building are 40 lbs. to the square foot? A. Yes.

Q. Is it within your knowledge that in respect of the 1954 plans they were constructed to bear 40 lbs. per square foot and approved by the Railway Commissioner on that footing? A. The 1954 plan? Is that the first floor that is built you are referring to?

Q. No, I am speaking of the plans for the erection of the 62 bedrooms? A. I understood that that was 100 lbs.

Q. I want you to assume that the design was to carry 40 lbs. and that that was approved by the Railway Commissioner. Would you 40 assume that? A. Yes.

Q. If that were so and if the building were constructed to that 1954 plan, and later at some future period you wanted to develop the 1954 building in accordance with anything like A, B or C in Exhibit "U", you would have to have, so far as the departmental store—the George Street side—is concerned, and the centre—you would have to have 100 lbs. to the square foot? A. Yes, you would have to have 100 lbs.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

Q. And on my assumption then, if ever you wanted to develop the 1954 plans along the lines you have envisaged in Exhibit "U", it would entail the practical demolition of the 1954 building, wouldn't it? A. If you assume it was designed . . .

Q. That is what I am asking you to assume; nothing more?
A. What do you mean by the 1954 building? You would have to demolish the 1954 building—exactly what do you mean?

HIS HONOR: (To Witness). You are asked to assume that what is in Exhibit "H" was actually constructed according to those plans.

Mr WALLACE: Q. I want you to assume that the 1954 plans had been constructed? A. Have we a section here? It is very hard to answer without a section. There should be a section with the plan. These are incomplete; there is no section, and you cannot build buildings without sections.

Q. I thought you told me you had seen the 1954 plans and had examined them. Isn't that so? A. Yes, I have seen the 1954 plans.

HIS HONOR: Q. Have you seen a section? A. I have seen sections.

Mr WALLACE: All I am asking you to assume is that the 1954 building had been constructed in accordance with its terms?
A. Completed like this?

Q. Yes. And I want you to assume that it was designed constructionally as a hotel on a 40 lbs. per square foot basis. Is that clear?
A. On this proposed floor?

Q. Yes? A. Yes.

Q. You have told me that a departmental store requires 100 lbs. to the square foot? A. Yes.

Q. Now I am asking you, if at some future time, the 1954 building having been fully constructed according to its terms, you wanted to erect a departmental store 150 feet high fronting George Street, and some of these central portions also, it would entail the practical demolition of the 1954 building, wouldn't it? A. Are we assuming columns are designed for only . . .?

Q. I do not mean the columns. I mean the floors, the members, the supports—the building itself would have to be practically demolished.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

SIR GARFIELD: But what do you mean by the design with a 40 lbs. loading. Do you mean the columns have been carried up to that or what?

Mr WALLACE: Q. I am speaking of floor slabs, joists, beams and all that goes to make up a building. If it were 40 lbs. per square foot upon which the floor is designed—is that so? A. Yes, I take it the beams are 40 lbs.

Q. I want you to assume the 1954 building is constructed according to those plans on the 40 lbs. per square foot basis? A. Yes.

Q. Then, if you wanted to build your A, B and C plans on Exhibit 10 "U", a departmental store going up George Street and the centre portions as shown, it would entail of practical necessity the practical demolition of the 1954 building? A. It would only relate to the actual floor slab.

Q. But all the 1954 building, apart from the columns, would have to be demolished and re-erected? A. That section we were using for the retail store, you would have to do something to the floor slab.

Q. Would you do anything to it without demolishing it and re-building to 100 lbs.? A. But your columns, I understood, are capable . . .

20

Q. I am not suggesting anything about columns. I am only suggesting about floor slabs, the beams and the members that go to make up that 1954 building? A. In such section that you use for the retail store on the first floor, you would have to do something with the first floor slab of that section.

Q. You would have to demolish it? A. Demolish it.

Q. Do you yourself have occasion to consider what I may call the live load reduction formula? A. No.

Q. That is an engineer's matter? A. Yes.

Q. With regard to the comment you made yesterday on the 1956 30 plan, I suppose you would agree that there are some important hotels with dining rooms not only high up but also even on the roof? A. Yes, there are some of them. The Australia has different level dining rooms on a very large scale—but always in the building.

Q. You have known some particular hotel, such as the Mark Hopkins with the dining room up 800 or 900 feet above foothpath level? A. Yes, that would be so.

Q. Have you heard about the dining room in the Rockefeller Centre in New York? A. Yes.

Q. That is, I think, on the top floor? A. Yes.

40

Q. The second or third highest building in America? A. Yes.

Q. I suppose you would know of other dining rooms that are placed high up in a hotel? A. Yes—but not in the basement of a hotel.

Q. I am not talking about basements, I am talking about having them up 900 feet or 1200 feet above footpath level, so that there would be nothing strange from an architectural point of view in having a dining room, if the hotel were ever extended to the maximum height on either the first, second, third, fourth or top level, would there? A. No. There is a bit of a crowd with the type of lifts.

Q. But that is only a matter of planning architecturally, isn't it? A. Yes.

10 Q. There would be nothing wrong architecturally, or nothing unusual in having a dining room in this case, in connection with the 1956 plans, out over the roof covering Wynyard Lane, and the ceiling of the lounge? A. Well, it would be covered in. It would not be in the open, would it?

Q. You could cover it in, couldn't you? A. I think these ones in America on a higher level are chiefly restaurants rather than dining rooms.

Q. But what is the difference. You have dining rooms in the Hotel Australia at the third or fourth floor, haven't you? A. Yes. Well, there is not much difference.

20 HIS HONOR: Q. There is a trend too in modern hotels to provide bed and breakfast, and everybody then pays a la carte, whether they be guests or strangers? A. There is a trend that way at the Hotel Canberra. There is bed and breakfast plus a la carte.

Mr WALLACE: Q. But in a big city, especially a terminal city, it is very usual for guests to have their meals out? A. Yes, they can have them out.

Q. You said that some of the beams on the plans you had were shown in a section as coming down to within about 7 ft. 6 inches odd from the floor? A. Yes.

30 Q. They were only over the doors of the bathrooms, weren't they? A. Yes, they would be over that type of construction.

Q. Nothing to do with the lounge rooms, just beams coming over the doors? A. I was referring to if you extended the hotel and it would be necessary to have your dining rooms on the first floor, you could not put up with that in a coffee lounge.

Q. I was asking you to direct your mind to what you said yesterday. You did refer to 7 ft. 6 inches odd from the floor, and you indicated that that would be too low for that type of reception room? A. Reception room and dining room.

40 Q. But if any beam is coming down to 7 ft. 6 inches on the 1956 plan, it only shows at present if at all in the case of a beam over a bathroom door or something like that? A. I was referring to the time when you eventually would have that as a dining room floor, as there was no provision for it.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Cross-
examination.

Q. You know the City of Sydney requirements are 9 ft., don't you, for a dining or reception room? A. Is that for a dining room or a reception room?

Q. That is what I am putting to you? A. I do not mix the dining room with the reception room.

HIS HONOR: Q. Do you know one way or the other? A. No. In the Licensing Court—

Mr WALLACE: Never mind the Licensing Court; the City of Sydney is what I was putting to you? A. We have never had any difficulty with them because we have always kept above that. 10

Q. Do you know the Ordinance provides for 9 feet? A. No, I did not know it was 9 feet.

Q. It is quite usual, is it not, in connection with big buildings or substantial work for the minor alterations to be made in design by the architect to meet any minor deficiencies that may be portrayed in the first instance? A. I beg your pardon.

Q. It is quite a usual practice for architects to have to alter their original designs in minor manners? A. That is, if you let a tender, then you have to alter your plan through—

Q. I had in mind, for example, after consulting your constructional 20 engineer? A. Is this before the contract is made or tenders are called?

Q. Yes, I will take it at that stage? A. I think you are in for a lot of trouble as an architect if you have to keep amending your plans once they go out to tender, through any—shall I say—error in the planning. We have a good deal of difficulty—

Q. I was asking you for the position before tender. That is what I thought you yourself asked me. Before tender it is quite usual for an architect to adjust his plan? A. Yes, that occurs.

Q. So as to meet with the views of the constructional engineer? 30 A. We go into that with the structural engineer before we reach a well-advanced stage into the drawings.

Q. Do you not have to alter your original preliminary drawings? A. You mean sketches? There is the sketch preliminary drawings which you go into with the structural engineer and you start preparing your working drawings. We have had cases where we have had to make some amendment at the last minute from the structural engineer—he has come across something that has given difficulty.

Q. You can have different types of tenders, one with a fixed price and others with some adjustable price according to the requirements? 40 A. Yes, you can obtain firm tenders.

Q. Or you have a tender with a ceiling price? A. There is a tender, we have had one ourselves, where it is guaranteed not to exceed a certain amount, all savings to the proprietor.

Q. You get those variations don't you? A. Yes.

HIS HONOR: Q. Where tenders have been called after a plan has been more or less settled and it is found necessary to amend the plan in some manner, the difficulties arise because it is going to cost the building owner more? A. Yes, we endeavour, once we go to tender, to see that there is no alteration to the contract plans and we get into serious
10 trouble in our profession if we do, but we have contingency fund, sometimes in a job of £100,000, say, three or four thousand pounds if certain items cost more but the owners sometimes order after you have started a contract, will order an additional floor or alterations.

Q. What I mean is this, that the real difficulty is a financial one to the owner? A. If he finds that when the tender is let there has to be some additional extra cost? The architect is in trouble there.

Q. It may be but the trouble is one of finance falling on the owner and/or the architect? A. Yes.

Q. There is no other real trouble. What other trouble would you
20 anticipate? A. One of the troubles, if you allow p.c. for steel and you allow £10,000 and the lowest price you get for the steel is £12,000, there is £2,000. You have to go to the Company and tell them that you were too low, or if you find that you have to do a lot of additional work that was not covered in the specifications you are in trouble there.

Q. But the trouble you are in is financial trouble? A. Yes.

Q. No other trouble? A. No.

Q. The building goes up just the same according to varied plans except that the owner or architect has to put up money? A. That is a possibility.

30 Q. It is serious but a financial worry only? A. Yes.

RE-EXAMINED

SIR GARFIELD: Q. You were asked about the practice of your profession. It is suggested to you in practising your profession, first of all, that plans when they are offered for tender are frequently varied not because of the building owner's intervention but because of mistakes on the part of the architect. The first question was, "at the time they are offered for tender, no matter what the basis of the building contract". Is it the practice of your profession to regard them as so tentative that errors are going to be corrected thereafter? A. In
40 my particular firm we go to quantities first and go to the quantity surveyor and before we go to the tender we want to try and get everything correct. Some of the people I work for, if I have to turn around and say "We have to spend a lot of money—"

*In the
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Court of New
South Wales
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Plaintiff's
Evidence.

No. 19.
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Cross-
examination.

Re-
examination.

*In the
Supreme
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South Wales
in its
Equitable
Jurisdiction.*
Plaintiff's
Evidence.
No. 19.
T. M. Scott.
Re-
examination.

HIS HONOR: They get other architects.

SIR GARFIELD: In the course of preparing a set of architectural drawings do you consult your structural engineer at some point? A. We go into it from the sketch plans and layout and we get the structural engineer in straight away. For a number of years I have had my own structural engineer in my own office.

Q. Having conferred with your structural engineer you then set about your architectural plans? A. Yes.

Q. Is it the practice of your profession, the experience of your profession that after you have consulted with your structural engineer and settled the structural design that your architectural plans are amended from time to time after they have been drawn, not in the course of the drawings but after they have been drawn? A. No, as a rule we settle for tender and that is definite.

Q. But prior to tender there comes a time when you have drawn them before you submit them to tender. From the time you have drawn them is it your experience that they then have to be sort of constantly or frequently tidied up for mistakes? A. How we go about the structural plans, they put them through Council and then they submit details from time to time of calculations. 20

Q. That is your structural engineers? A. Yes, but we endeavour that when we complete our plans and working drawings are complete ready for tender that the whole of the structural scheme, allowances for steel, is finished.

Q. And your architectural layout is finished? A. Yes, the whole thing is complete and then if there are any changes by the Company---

Q. Don't worry about that. I am not thinking of client alterations. You remember Exhibit "U", the various schemes that are on it, on your own Exhibit "F" which is the 1956 proposal. I want to ask you whether any of the rooms in any of those schemes would be gloomy? A. No. 30

Q. Is there anything gloomy about the room fronting on the 22 feet light area which allows for some 60 to 70 feet from the top? A. No, it would be almost like looking out on to a street because some of the streets are only 60 feet wide.

Q. 60 feet down and 22 feet across? A. The central court. I thought you meant the outer court.

Q. Would that be a gloomy room? A. No it would not be gloomy.

Q. You have in those schemes centres of light area? A. C is a 40 central light area.

Q. Others are external light areas? A. Yes, what they call outer courts. Underneath that they front on to Wynyard Lane or open on to it.

Q. Can you give us the broad dimensions of those light areas in the different schemes, at a mean level? A. You mean the central court?

Q. Yes? A. That would be the same as the—

Q. I do not mean the central light court. I mean the outer courts. A. I can take it from here approximately; 29 ft. by about 80 ft.

Q. That would be practically the smallest dimension would it not? A. Yes, and then there is that one approximately 30 x 80.

Q. My friend asked you was there a tendency to build narrow
10 glass-sided buildings in modern building and commercial building. These modern glass-sided buildings, would they be suitable for an hotel? (Objected to) A. In the I.C.I., in my opinion, in Macquarie St. they would not be—it is all glass.

HIS HONOR: It was not the glass part that Mr Wallace was asking about because you can put anything in the walls.

SIR GARFIELD: Q. This 1956 plan, the windows planned are only just ordinary windows? A. Yes, the windows are approximately 7ft. wide by 5ft. high.

Q. That is the total window area of the bedroom? A. Of the
20 bedroom.

Q. In the case where these narrow buildings are built over here or abroad, is there any customary treatment of air in them? A. I think a number of them have air-conditioning. They go in more for air-conditioning than we do in this city. I have heard of a building that is being built. It is to be built near Padstow, which is a very large one—I understand at a cost of £700,000 or something—and it is an office building, and a factory building and it has no light at all except artificial light, and it has mechanical ventilation. It is 3 storeys high and from the description I have had of it, the factory is a fairly large
30 one, with no windows whatsoever and no doors. The office, I think, is to be air conditioned and the factory is all mechanically ventilated.

Q. Amongst your literature, are there parts of a New York store that has no windows—that is completely solid. Have you particulars of it? A. I remember reading about one of these. I cannot remember the name of it—Roebuck Sears, one of those.

Q. Is the position, whether you develop over the whole site or whether you develop these buildings over part of the site, is basically a question of economics for the owner? A. Yes, in all our planning, where it is office buildings—I have never had it unless in the form of
40 a church or a memorial of some description where they are always at sea on the costs, costs for the economic development of it being returned and depreciation is always considered.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 19.
T. M. Scott.
Re-
examination.

Q. You were asked about a tendency in Sydney not to build over the whole of the area. I think you told my friend about the I.C.I. Building. You explained about Anzac House. Have you looked at this Caltex Building? A. Yes.

Q. Is that building on part of the area or the whole? A. I have been allowed to go over that building by the architects and it is a very fine building.

Q. Is it on the whole of the site or only part of the site? (Objected to—) From your own observation? A. It is set back at the back and goes about two floors. There are garages on the lower floors and it is set back in the front. I cannot remember the size but it would be about 20 feet or so. 10

Q. Do you know the reason for it at all? (Objected to) A. No. I am not clear. I thought it was—

Q. The Lever Building, the new one, have you seen that yourself? A. I have only seen the outside of it and that seems to be covering the whole site. It is not built yet, only the structural frame.

Q. You were asked to assume a 40 lbs. loading design for the floors of the 1954 building plan. You were asked whether it would be necessary, in order to effect the extensions of which you speak, to reconstruct the floor, demolish it and reconstruct it? A. Yes. 20

Q. You told my friend it would be necessary to demolish it? A. Yes.

Q. Would that be an unusual activity when you are extending a building of this kind? A. To go the limit? It would be fairly small compared with some of the reconstructions we have had to tender on.

Q. You were asked by my friend about having dining rooms at higher levels in hotels. Is there any relationship between the living capacity provided and the place where you can put the dining room? A. Yes, I think if you put a dining room right on the top of this building you are going to have banks of lifts to get people up and down. 30

Q. Do you see what is provided in the 1956 building? Do those lifts adequately cater for a dining room high up, in a 300-bedroom hotel? A. Yes. I think you would be pressed with your lifts to handle it there.

You take the Hotel Australia. That is only on the first floor, the main dining room. You can get up the stairs but the lifts are limited in that building.

Q. These buildings my friend mentioned abroad, the Rainbow Room in the Rockefeller Centre, how many lifts are there? Have you been there? A. No, there is a fair bank in them. Lifts are very costly methods today. 40

HIS HONOR: Q. It is very hard to get people to walk upstairs? A. Well, in the suburban hotels and some of the city hotels, even for drinking lounges, we find it rather difficult to get people to walk to the first floor, from a trade point of view.

SIR GARFIELD: Q. In these various developments on the assumption that the 1954 plan had been built, what did you do about that centre light area in any case? A. In connection with "U"?

Q. Any of those designs on "U"? A. On the lower floors? We would fill the light areas, go right across with concrete there up to 10 within a certain height.

Mr WALLACE: Q. Just solid concrete? A. Form a slab across an opening, make it one floor right through on the lower levels, throw a floor across in concrete.

SIR GARFIELD: Q. When you were talking about reconstructing or demolishing these floors and bedroom floors, you would be at the same time constructing this floor over the light areas? A. Yes, it would be possible. It is a matter of the levels. Instead of demolishing that floor—it is a structural problem of throwing another floor above it, set above it. You would lose certain space between the existing floor slab 20 —come off the caps again on the beams and throw another floor.

Q. There are various devices for getting over it? A. Provided the columns will carry the load.

Mr WALLACE: Q. In your plan "C", on Exhibit "U", how far down will that central light area go? A. Using it as offices, I think it is 67 feet.

No. 20

Evidence of A. T. Britten

No. 20.
A. T. Britten.
—
Examination.

TO SIR GARFIELD: My full name is Alexander Theodore Britten. I am a Bachelor of Science of Sydney, with First Class Honours, Bachelor 30 of Engineering, Sydney, with First Class Honours and University Medal. I was with the Department of Main Roads for some 25 years during which I was engaged in bridge design for ten years and for 15 years on the engineering administration of road construction, engineering and administration. About four years ago I resigned from the Department to enter private practice as a consulting civil engineer. I went into partnership with Mr McMillan and the firm name is McMillan and Britten.

Q. We have heard that Mr McMillan recently took ill? A. Yes.

Q. He had been informing himself of the problems concerning this 40 case? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.
Examination.

Q. Being unable to do so, you have now informed yourself? A. Yes.

Q. Did you discuss with Mr McMillan any of the problems whilst he was looking into the matter? A. Yes.

Q. Was that before he was ill? Did you have some familiarity with the questions involved here before he was ill? A. Particularly the difficult questions.

Q. I want you to tell us what you have looked at to qualify yourself, what plans you have looked at? A. I have seen the architectural plans of Innes-Kerr. 10

SIR GARFIELD: I will show them to the witness so that they may be identified.

Q. I will offer you these plans and you tell us whether you have looked at them for the purpose of qualifying yourself or whether you have not? A. I have seen prints of those plans.

Q. You have seen a print of m.f.i. "5"? A. Yes. I have seen this roll of plans but have not studied them in great detail—or similar prints.

Q. I am told these are marked for identification. You have not studied them particularly? A. No. 20

Q. Just look at these, m.f.i. "30"? A. I have not seen those particular plans. Those are the various floor plans.

Q. Just look at this bundle and tell me if you have seen those? A. I have seen plans similar to those and uncolored and not every floor plan in this set myself. All the plans in this set are colored.

(Above plans m.f.i. "32").

Q. I show you m.f.i. "20". Tell me whether you have seen those? A. I have seen prints resembling portion of this exhibit. I have seen particularly the footing, the first plans, the basic column floor and the load plans and the concrete column schedules. There are many floor 30 details and store details and a steel column schedule which I have not seen previously.

Q. If Mr Wallace wants any more details you can give them to him and mark any particular ones? A. Yes.

Q. That broadly describes which of those you have seen? A. Yes.

Q. Tell me if you have seen that bundle (handed to witness). A. Which series?

Q. The series which you have now? A. They seem to be very similar to many drawings in the last one. There is an important dis- 40 tance in that the footing plan—

Q. First look at them and then I will ask you the question. Have you seen those before? A. Or prints resembling them?

Q. Yes? A. I do not think so. There may be some plans the same as the other set but generally the ones I can identify are different.

Q. I want you to look at them in a little more detail in the break. I want to ask you their relationship to some other plans in the case.

(Further bundle of plans m.f.i. "33").

Q. Did you see this bundle of calculations (handed to witness)?
A. No.

Q. You had not seen that bundle? A. No.

(Bundle of calculations m.f.i. "34").

10 Q. Have you seen these documents which I show you? A. No.

(Above documents m.f.i. "35").

Q. Have you seen these (shown to witness)? A. No.

(Bundle of blue prints m.f.i. "36").

Q. Did you see any calculations of either columns or concrete columns or slabs or steel columns? A. I was given a number of calculations which I was informed were mere sketches, original calculations.

Q. Have you them with you? A. No.

HIS HONOR: They are the ones we have locked up in the safe.

20 WITNESS: It is a bundle like that. It is not the lot that are in the Associate's safe.

SIR GARFIELD: Q. Where did you see these—in your own office?
A. I had them at home for some weeks. I gave them to Mr. Crawford last night.

Q. Would you again look at m.f.i. "34"? A. I am sorry. There is one that I may have seen—No, that is not the one. No.

Q. Have you seen this bundle which I give you, either the whole or part of it?

HIS HONOR: Those are architectural plans, are they?

30 SIR GARFIELD: Some of them are, yes.

WITNESS: I think I have seen all of those plans except two that are marked "BA4" and "BA2" in the title lot. They were not on the set that I had.

Q. The rest you have seen? A. I do not think I have had these particular prints.

Q. You may have had similar ones to those? A. I do not know whether they are the same prints or not. I cannot say in every case that that is now the same print that was exhibited to me.

40 Q. What you have in front of you, have you physically had that bundle? A. I have had this plan which has some of my figures on

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.
Examination.

it—that is mine—those sheets are attached so I presume I would have had those particular copies. Drawings marked “Set 13” I have had before; those particular prints. Those are architectural drawings. Regarding structural drawings I cannot say whether I have had those prints or other prints.

Q. But other prints of the same drawings? A. Yes.

Q. You have seen those very prints or duplicates of them?—A. Yes.

(Further bundle of plans, including some architectural plans, m.f.i. “37”).

Q. You are familiar with the site at Wynyard? A. Yes. 10

Q. Familiar with it by physical observation, of the substructure?

A. I pass through it daily.

Q. Only in that way? A. I saw some of it being done many years ago. My memory of that is very vague. I could not rely on it.

Q. Did you know Mr Stanley? A. A personal friend of mine.

Q. Do you recall the time when Mr Stanley was calculating the loads that might be placed upon a substructure at Wynyard and calculating the size of the substructure? Do you remember the time he was doing it? A. Not the actual calculations. He did discuss with me certain experiments he made of stress measurements of the structure to be placed on the substructure. 20

Q. At that time, you knew something of the problems involved in the substructure? A. Yes.

Q. Have you seen sufficient material in the way of plans, blue prints and calculations to enable you to know the quality and the load-bearing capacity of the substructure which is at Wynyard? A. With reasonable certainty. There is a small margin of error.

Q. Due to what? A. Well, can I say it this way: There are three sources of information that I had available for the actual individual columns. There were these calculations by Mr Stanley which were mostly unmarked. In some cases they were ticked as if checked. In other cases figures were struck out and other figures inserted in red. The differences were in no case large, a few per cent. only in the strength of the column. Those calculations gave the full concrete sizes and reinforcement. They also gave the total load on steel columns. I was also supplied with a column schedule of concrete columns prepared by James Bell and certain structural details bearing the name of the Department of Railways. I compared those two series of drawings. Unfortunately I did not have at that time a steel column schedule prepared by James Bell. 40

Q. You did not see that at that time? A. I did not see that. It is in one of those plans there. I compared those. In regard to the concrete columns, the schedule prepared by James Bell was generally in

accord with the original calculations of Stanley unaltered in red, without the red alterations. There were a couple of departures from that, matters like column sizes not being stepped down in floors and column piers not being reduced but generally speaking they followed the designer's original intention. The concrete columns prepared by the Department of Railways, which appeared to be of later date, were in accordance with the red amendment, not the original calculations in general. The steel columns, unfortunately, I only had one steel column drawing, column 51 Department of Railways; that steel column was
 10 suitable for the loading shown in Mr Stanley's calculation.

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*
 Plaintiff's
 Evidence.
 No. 20.
 A. T. Britten.
 Examination.

Q. Having told us that, can you tell us how this substructure in those columns compare with what is ordinarily used in Sydney? A. This is a good deal heavier than are used in city buildings.

Q. Just a fraction heavier? A. Several times the normal.

Q. Having seen those various documents to which you refer, are you able to tell His Honor what that substructure was evidently designed to carry? (Objected to).

Q. I will reframe my question. Having regard to what you have seen, are you able to tell me what that substructure is capable of bearing?
 20 (Objected to).

SIR GARFIELD: Q. Since you were last in the box, I think you have looked at all the plans and the calculations that have been tendered?

A. Well, I have had a brief inspection of a number of plans. I hope I have looked at them all.

Q. And the calculations too? A. The calculations. I have made sample checks of all calculations to date in fact.

Q. The question I asked you last was this: Having regard to what you have seen in the plans and to such knowledge as you have of the physical considerations at Wynyard—you told us what preliminary
 30 knowledge you have—are you able to tell us what building that substructure would be capable of bearing? A. Yes. It might assist the Court if I had a plan.

Q. Which plan would you like? A. Any plan which shows the block plan of the site. I can answer it, but it would be very confusing to the Court if I just put it into words.

Q. Give us a verbal picture first? A. Well, on the Carrington St. frontage, for the first two bays of columns back from Carrington St., that is approximately 60 ft., the substructure has been designed to carry a building approximately 150 ft. above the Carrington St. level.
 40 For the remainder of the site it has been designed to carry a building to 150 ft. above George St., except that allowance has been made for a light area on both the north and south sides of the site, the light area extending from 60 ft. from George St. to 60 ft. from Carrington St. approximately.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 20.
A. T. Britten.*

Examination.

Mr WALLACE: Q. How wide? A. Well, it could be any width up to about 30 ft., and the depth would vary with the width. If it were the full width the floor of the light area could be extended to approximately 110 ft. above George St. If it were narrower it could not go so high. That is governed by the external columns on the north and south faces.

SIR GARFIELD: Q. Would you look at that plan (showing)? A. Would it assist the record if I marked in pencil on this?

Q. Yes. What you say they would be designed to do? A. (Witness indicates on plan.) The centre group of columns have been drawn for a building here. These columns are weaker (marked in red by a ring). I am unable to check the columns in this area because there is great uncertainty of what the loading would be on various designs. I will put a red cross there, across the area I have not investigated.

Q. Would you now mark it on this larger plan (showing)? A. In the areas facing Carrington St. back to column line 53-55, and approximately 60 ft. from Carrington St., the building is designed to go to 150 ft. above Carrington St. Over the remainder of the site the columns are designed for the building to go 150 ft. above George St., excepting for light areas north and south, which would extend from columns 170—this would be on the south side—approximately 60 ft. from Carrington St., to columns 164, approximately 60 ft. from George St., and may be up to 30 ft. wide, northwards.

MR WALLACE: Q. Taking you up to which column? A. Which would be to column 66. It could be up to that area (indicating).

SIR GARFIELD: Q. That line of columns there? A. 76-96. It could be up to that width. It could be less, but the narrower the light well the deeper it would have to be.

Q. The narrower the light well the deeper it would have to be? A. The narrower the light well, the lower the floor has to be; and similarly here on the other side, commencing at column 171, 60 ft. from George St. and extending towards Carrington St.; but owing to the shortage of time and the complexity of the structure I have not investigated the area bounded by columns 83, 69, 85, and that one there.

Q. The unnumbered one west of 74? A. Yes.

Mr WALLACE: Q. You do say that from 171 you go southwards a distance of 30 ft.? A. 30 ft. or less.

Q. Which would take you up to 119 as a maximum? A. 119-81. The height of those light areas is governed by the weaker columns which I have marked with red circles, 168, 172.

SIR GARFIELD: Q. The assumption is they would certainly bear a solid building across the centre within the limits you have shown by the green lines? A. Yes.

Q. Explain how the strength of 172 and 166 bear on it? A. Well, as I explained to you, I had column calculations made by Mr Stanley via the Railway Department, and I had certain column schedules and column plans prepared by Bell and the Railway Department, which agree to those calculations, with modifications which I need not explain. The set of calculations, either original or amended, commenced at the third floor level, George St., and gave a loading at that floor. I worked out the approximate loading per floor per column for different shapes of buildings, and how many floors over would be equal to the load assumed at that level.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Plaintiff's
Evidence.
No. 20.
A. T. Britten.
Examination.

Q. You mean these external columns 172, 172A, 168 and 169 would bear some load. You could make a building over them? A. Up to an intermediate level.

Q. That is the level you have not determined? A. If there was no wall back for 30 ft. it would be approximately 110 ft. from George St.

Q. Can you draw those sections for us? A. I will draw a section on columns 168-76.

20 (At this stage JAMES LESLIE FITZMAURICE, The Clerk of The Metropolitan Licensing Court, produced documents on subpoena duces tecum.)

WITNESS: There is C.168, C.76, and that is the George St. level. It could either go to 150 ft., step down to 110 ft. at 76, like that, that being the light area, or the light area could be narrower, in which case the floor would have to be lower than 110 ft. Extending over there puts more load per floor on the column. (indicating).

(Plan relating to the evidence given by Mr Britten about the height of the building and the area it covers tendered and marked Exhibit "QQ".)

30 SIR GARFIELD: Q. These lines that you have drawn, they indicate the maximum development that the columns could take in your opinion? A. Yes. I should qualify that. That is the maximum development assuming construction similar to the four floors existing. It is possible to build in lighter construction or to build in heavier construction, which would obviously change the permissible number of floors.

Q. You have assumed the construction is as described? A. As now exists at the lower levels of the building; that is, a concrete floor and beams and brick partitions.

40 Mr WALLACE: Q. You could have glass partitions, of course? A. If you cut out your brick partitions you could put in more floors probably.

Q. That applies to every building probably? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.
Examination.

SIR GARFIELD: Q. Is there one particular feature of that substructure that you observed in the area in the centre of it? A. Yes. Columns 53, 55, 78, 79, 98, 99, 114 and 117—those eight columns which form a closed group in the centre of the building—are designed only to go to about the fourth or fifth floor level. The eight columns flanking them north and south are designed to carry much more load than would come from the area they would support directly.

Q. What feature of a building put on that substructure would those circumstances permit? A. Well, it would be the evident intention to span over between the strong columns at some upper level or levels, 10 so that you would obtain one or more areas free from columns, which would amount to approximately 82 by 145 ft.

Q. You could have a clear sort of unobstructed area as much as that on that substructure? A. Yes.

Q. You could choose a level for it. At what levels could you have it? A. You could have it at any or all levels above the existing structure, subject to certain restrictions. For instance, you must have one at about the fourth floor level, no higher, and if you put the trusses in much lower than the fifth floor, you must reduce the number of floors above. 20

Q. Because of the load? A. You might have to, because of the load on the external columns; but with such large spaces we generally have high ceiling heights and a reduced number of floors, and it is very unlikely you would be troubled by loads on the perimeter columns, and you could virtually say you could have it at any or all levels for all purposes.

Q. The perimeter columns refer to the strong columns on the north and south sides of the weak columns? A. Yes.

SIR GARFIELD: Q. We had reached the point where you had told us the substructure permitted this unobstructed area? A. Yes. 30

Q. Do you remember telling me you had had some discussions with Mr Stanley when he was working on these designs? A. Yes.

Q. Was this question of how you would manage this large unobstructed area discussed? A. He discussed putting a roof over it with me.

Q. In 1930? A. I could not guarantee within a few years. It might even be a little bit later than 1930.

Q. That feature in this substructure—the design of the substructure—does that permit of any greater flexibility in future development of this site than a substructure which was designed with the same 40 strength columns all over the same area? A. Oh, certainly, much greater flexibility in development, and it permits the development of clear areas.

Q. You had a look at the 1956 proposal, Exhibit "L2" (showing)?
 A. Yes, I have studied a set of plans similar to these.

Q. Have you seen the specification that goes with them? A. No.

Q. Have you been told anything as to the strength of concrete to be used in connection with any of the work, or have you seen any plan?

A. I have seen it somewhere. I am not sure if it is on these plans or on something else. It would be on the structural plans.

Q. That is what I am showing you. Have you seen Exhibit "10" or a duplicate of it (showing)? A. I have seen these two sheets.
 10 I do not recognize this small sheet, No. 3.

Q. But you have seen the other two sheets? A. Sheets 1 and 2, yes.

Q. I want you to tell us, what use does the 1956 proposal, "L2" and "10", make of the columns in the substructure? A. Well, as far as the height of the building goes, which is not the full permissible height of the building, it makes use of the first two lines of columns from Carrington St.; that is the line in the street, and the line about 30 ft. back; and the various subsidiaries columns in that area, and partial use of the next line of columns and uses the remaining columns to a very
 20 limited extent, and, of course, the George St. end ones are not utilised at all.

Q. As you say, up to the extent to which the architectural plans go, it only makes partial use of those columns only? A. Yes, and only uses the area on one side of them, on the western side, and they are strong enough to take floors on both the west and the eastern sides.

Q. Do the plans "L2" and Exhibit "10" introduce any features in the use of the columns or their extension which would hamper or interfere with development across the whole area of the site, as you have indicated in your prior exhibit? A. Yes.

30 Q. Give us some particularity of that? A. Well, the first one is column 51. That is shown as reinforced concrete, with 3,000 lbs a square inch on the column schedule sheet. It is shown——

Q. We have had this referred to, but my friend thinks you ought to give it? A. 51 is shown as a 44 x 4 inch column, sitting on top of all the existing structural steel column at Carrington St. level. It is shown bearing on a cap plate approximately the size of the existing structural steel column, with reinforcing bars welded on. The full data of the reinforcement is not given. Concrete is a much cheaper column material than steel per lb. carried, and steel is only used when the size of
 40 concrete becomes excessive or when there is heavy moment, but for straight load carrying capacity concrete is the cheaper material, and I estimated the load on the column and the strength of the column, and in that I was assisted by another plan given to me, showing the development of this scheme projected to 150 ft. above Carrington St.

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*

Plaintiff's
 Evidence.

No. 20.
 A. T. Britten.
 Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.
Examination.

Q. Which one was that document (Exhibits "2", "3" and "4" shown)? A. It is exhibit "4" which shows projected development of that building to 150 ft. I also had the advantage of having made available to me Mr Llewellyn's calculations for the building, which gave—his were not complete, but—a good deal of load coming on to that column, which tallied with the figures I had obtained independently before I had inspected his calculations and studied the plan. Actually I got a little bit smaller load than he did, but not of any significance. He made it 130,000-lbs. per floor, I made it 124,000. That is for the lower floors; and, of course, it is less for the upper floors. On that 10 basis I estimated the total loading on column 51, assuming completed in the form of Exhibit "4", was about 1,500,000-lbs. Mr Llewellyn's figure would have been a little bit more than that, around 1,600,000-lbs.—he did not have the exact figure worked out—but because of the difference in floor loading I would expect that figure. The column as designed as shown on these plans is a very economical and suitable column for that loading.

Mr WALLACE: Q. Designed in which plan? A. As shown in Exhibit "10".

TO SIR GARFIELD: It is a very economical and suitable column for 20 that loading. The strength of the column could be increased to about 2,000,000-lbs. by simply adding in maximum steel. It could be increased to about 2,200,000-lbs. by increasing the size of the bedplate on which it sits, which does not cover the form area of the column, by increasing the strength by about 5,000 lbs. concrete——

Q. Those other figures which you gave were on the assumption of 3,000-lbs. concrete strength? A. Yes. By increasing the concrete to 5,000, the strength of the column could be raised to about 3,000,000—of course, using maximum steel—with the existing bedplate; and about 3,200,000 or 3,300,000 with the bedplate enlarged to its possible maxi- 30 mum size. May I refer to my notes I made for the figures?

HIS HONOR: Yes.

WITNESS: Now if the area was developed to the maximum extent that the existing substructure would permit, the loading which came on that column 51 could be 4,500,000 to 5,000,000-lbs. at that level, depending on the occupancy. Now it could be developed, of course, to a more limited extent, and the loading would be less, but I am talking now in terms of maximum possible development, bearing in mind the existing substructure.

SIR GARFIELD: To sum that up, the capacity of 51 as designed at 40 3000 lbs. concrete and with the dimensions shown in Exhibit "10"——

A. Is less than half——

Q. Less than half what would be required for full development?

A. Yes, and in reinforced concrete it cannot be made to carry what could be required.

Q. That is one feature which you say the 1956 design introduces, which would hamper or impede future development. Is there any other?

A. Yes, there is a much worse feature to my mind. Perhaps I should withdraw that. I do not think I should say that, should I? I should withdraw the words "much worse". That is really a personal opinion rather than a technical opinion.

10 Q. We will keep to the objective fact? A. Well, there is another feature.

Q. What is it? A. That is that two additional columns have been introduced, marked 53A and 55A. By the nature of the construction of the building and what was built before, they must extend from Carrington St. to I think it is the 8th floor, 7th floor ceiling, where it is stepped back a little. I will check on that number.

20 Q. Look at Exhibit "4" again? A. To the 8th floor, which is the 7th floor ceiling, from Carrington St. Now that column is in and cannot be removed when extension is made, and the load on that column cannot be increased.

MR WALLACE: Q. Are you speaking of 53A? A. Once it is in, as shown on the plan.

Q. 53A? A. 53A and 55A; those two columns in future construction must go to the 8th floor, and if the building is constructed according to these plans they can never be removed for the benefit of extension easterly, and they will not carry any appreciable additional load.

30 TO SIR GARFIELD: Column 53, which is the original position of 53A, and column 55, which is the original position of 55A—about 13 ft. or so easterly of those two new columns—do you want the George St. or Carrington St. datum?

SIR GARFIELD: Q. You nominate it each time? A. For this building I will refer to the floors above Carrington St. throughout this section of my evidence.

40 Q. We are dealing with the projection of the 1956 scheme? A. The 1956 scheme only. The 8th floor that I mentioned before refers to that datum. As planned or as shown on that plan, the column schedule finishes above the first floor Carrington St.—53 and 55—and in future extension it can be extended one floor. That will be about the limit of its carrying capacity. Then, above that you have to truss and pick up that column again, but it must still go in to carry the floors above the truss. Above the truss it must be carried on to the truss, so actually 53 and 55 must extend through the building except in the clear areas formed by trussing over on one or more floors as originally planned, but

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Plaintiff's
Evidence.
—
No. 20.
A. T. Britten.
—
Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.

A. T. Britten.

Examination.

having passed that point, it must start again from the truss and continue as a column. That means, except in the areas made into clear floor areas by trussing, you will have all the original columns in the building, including 55 and 53, and two additional columns, 53A and 55A, on every floor up to and including the 7th. They terminate on the 8th, so they do not appear above the 8th floor; that is, on those, nought, one—up to seven—that is eight floors—you have two additional columns introduced over and above what were there already and none removed. That, of course, is an undesirable feature. Great expense is already being put to to maintain a wide column spacing. What is an even worse feature is that those two columns obstruct and reduce the clear area that can be provided by trussing over. They are in the area designed to be prepared as open space, by trussing over, and they cannot be removed. 10

Q. It reduces the utility? A. It reduces the possibility of making a large open space in your building and thereby reduces the flexibility of construction and use.

Q. I want to ask you something about the open areas later on. However, those are features that are derived from the introduction of 53A and 55A? A. They are not the sole objections. Another objection to those columns is this: As I said, columns 53 and 55 can go up to about the second floor level, Carrington St. If you build in the middle the remaining floors—that is, the third to the seventh, and the ceiling of the seventh, which is the eighth floor . . . 20

Q. East of the line of columns 53A and 55A? A. That is about the centre of the site. If you intend to occupy that area and join on to the existing building, the 1956 building, from the third to the eighth floor inclusive, you cannot bear your building on 53A and 55A. It must be carried on cantilevers over columns carried off the trusses.

Mr WALLACE: Q. You said from the third to the eighth floor inclusive—and then what? A. You have to carry your extension on trusses spanning from column 51 to column 57 and cantilever from those trusses over to 53A and 55A. 30

SIR GARFIELD: Q. Over the line of them? A. Over the line of them, on each floor used, without letting the floor or any wall carried from that floor bear on the structure supported by 53A and 55A.

HIS HONOR: Q. In other words, wipe those columns above the second floor as any weight carried? A. That is so. The new structure is to be built quite free of them, and there must be no contact between the two structures in that area. 40

SIR GARFIELD: Q. Which might transmit load? A. Which might transmit load. That is a most objectionable and expensive construction to have, to construct and maintain.

Q. Not only to construct but also there is maintenance on it? A. Yes, maintenance.

Q. If required you could reduce that to schematic form, to diagrammatic form? A. Yes, I could if desired. It would be better if I had a draughtsman do it rather than myself, because as you might see I am not very good at drawing.

Q. But if necessary that could be reduced to schematic representation? A. Yes.

Q. Something has been said here about trusses, trusses of the 10 order necessary to span between the line of steel columns in that sub-structure and to carry the building from the trusses to the permissible building height? A. Yes.

Q. The question of economics protrudes into this, regarding the cost of using these trusses. Would the cost of building with these trusses be of a consequential magnitude. Tell us what would be the cost of putting in these trusses? A. It would not be very important in the cost of the building at all. Can I refer to my notes?

Q. Yes? A. Assuming the worst condition—that is, that you 20 truss over at the lowest possible level immediately and carry the maximum building height full area thereon at heavy loading . . .

Q. As heavy a form of structure as you like? A. Yes. Then the trusses would be about 84 ft. span, and the most economic construction would be to make them about 3 floors deep, 30 ft. to 33 ft. deep.

Q. According to your floors? A. Yes.

Q. How thick, how wide? A. The section off them?

Q. Yes. A. Well, actually the section off them would be governed by the steel columns to which you are attaching. It would be a two-plane truss coming on to the web of the existing steel column. 30 They would be about the width of the existing steel column. They need not necessarily be as wide over all, but there are two webs in that steel column that you have to connect. If I remember, it is of 18 inches centre—it may be a bit more. The truss on the steel would be about 2 ft. to 2' 6" wide. I have worked out the total cost of that, compared with what was in the original building.

Mr WALLACE: Q. What do you mean by “what was in the original building”? A. Compared with what the stereotype building would be; a building with no trusses going straight down.

HIS HONOR: As I understand it, at the moment he is giving the com- 40 parable cost between these trusses and what he says would be the equivalent in normal structure with columns one above the other.

SIR GARFIELD: Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.
Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 20.
A. T. Britten.
Examination.*

WITNESS: I have amended these figures and I am having a little bit of difficulty in following them.

SIR GARFIELD: Q. Your pencilled figures? A. Yes; 46 tons extra steel in one truss, compared with the column construction—which I estimated at 7, and I cannot read the second figure unfortunately, and then I allow for the concrete casing and the forming. I can read the final figure for the truss construction of £8,900 for one truss.

Q. Do you mean that is additional to the cost of the stereotype construction through the same number of floors concerned? A. Yes, 10 through the three floors concerned.

Q. £8,900 per truss? A. Which multiplied by the number of trusses and divided by the area supported and the number of floors supported—that is the extra cost of trussing per sq. ft. of floor over—which comes to approximately 6/-d. per sq. ft.

Q. On the floors concerned? A. On the floors concerned, as compared with the cost of the building, which would be about £6 to £10 per sq. ft.

Q. Does that mean that if you put the trusses in, in respect of 3 floors you would have an added cost of 6/- per sq. ft.? A. In 20 respect of all the floors carried, which would be about 8 or 10, but on the other hand if you reduce the number of floors carried—

Q. Firstly, this is on the maximum basis, the worst view. The worst view is that the floors above the trusses and through which the trusses pass—those three floors as well— A. May I offer something? That is the maximum loading, but it is not the worst view.

Q. All right, the maximum loading. On the basis of the maximum loading, by the use of trusses at the low level—the lowest place you can put them—and using the biggest truss, you would increase your cost per sq. ft. over all the floors in the central area above the truss and 30 the floors through which the truss passes— A. The whole floors carried by the truss.

Q. You would increase your costs by 6/- per sq. ft.? A. Yes.

Q. The order of cost for the construction—the normal construction—being £6 to £10 per sq. ft. per floor space? A. Yes.

Q. You said a while ago that the ability to have the open space was a desirable feature? A. Yes.

Q. When you are able to truss over and you have a no columned space? A. Yes.

Mr WALLACE: He says that is desirable? 40

SIR GARFIELD: Yes, he does.

Q. At p. 122 of the transcript, Mr. Llewellyn was asked this—it is at p. 122:

“Q. Generally, from a structural engineer’s viewpoint what do you say of the 1956 plan, from a constructional viewpoint? By that I mean how would you comment on them from the point of view as to whether they are clean or clear, straightforward or difficult or offer structural difficulties?”

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Mr Llewellyn’s answer was:

Plaintiff’s
Evidence.

10 “A. The whole problem of the Plaza Hotel was the central core of weak columns so any plan which avoided that central core must of necessity from the structural engineer’s point of view be a better one than the one over it, and therefore we think that any scheme which builds over the perimeter columns—and the 1956 one used that perimeter facing Carrington St.—as being a much cleaner, better scheme involving many less problems than any scheme that went over the centre core of the building.”

No. 20.
A. T. Britten.
Examination.

Do you agree with that statement? A. I agree with that statement insofar as accommodation envisaged in the 1956 building was concerned, solely from the point of view of hotel bedrooms or similar small rooms—not for other possible uses.

20 Q. Is there any structural problem that is derived from the fact that this central area of column is weaker than the other columns?
A. Not in my understanding of the word “problems”. “Problem” means something to me that the answer is not obvious, it has to be thought out and it is difficult. Structurally it is clear what has to be done, and two days work would do it.

Q. The answer is if it is a problem—— A. It is not a problem if the answer is obvious. There may be hard work and there may be financial problems, but not a structural problem.

Q. Then, Mr Llewellyn goes on to say “The 1956 plan develops the perimeter columns.” Is that right? A. Well, part of them.

30 Q. Not the whole of them? A. Not the whole. The extension develops two ends and half the perimeter.

Q. What he does is he steps in then, and you get these 53A and 55A columns? A. Yes.

Q. Is there any structural difficulty about carrying the eastern wall of a building that faces Carrington St. on the line of columns that 53 and 55 form part? A. Carrying it on those columns instead of on 55A and 53A?

Q. Yes? A. Oh, no. It would need some extra construction and finance; but not a structural problem.

40 Q. You have seen that exhibit on which there are certain floor areas—exhibits “3” and “4”. Have you seen the series of isometric drawings produced by Mr Scott? A. Yes, I have seen those. I have seen Exhibit “4”, but where is exhibit “3”?

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 20.
A. T. Britten.
Examination.*

Q. I show you Exhibit "3"? A. No, I have not seen that one.

Q. But you have seen Exhibit "U", the isometric drawings of Mr Scott? A. I have seen isometric drawings by Mr. Scott. They are probably the same. Can I look at it to be certain?

Q. (Exhibit "U" shown). On exhibit "4" there are certain calculations of floor areas, do you remember? A. A summary of them, not calculations of them.

Q. A summary of them. Did you then look into the question of the accuracy of these summaries . . . A. Can I have Exhibit "4"?

Q. You went into the question of the accuracy of those summaries, and did you also go into the question of the floor areas of the different types of development suggested? A. Yes. 10

Q. Did you have prepared a representation of these things, along with some figures as to the floor areas? A. Yes.

Q. I do not think it will be necessary to go into the details of this, because most of it speaks for itself, doesn't it? A. I have prepared it in this form because it was easier to do it and to present it in this way than to traverse it.

Q. Tell us about the sheet No. 1259-1. What does that represent? A. That is simply our office number. 1259 represents the job or work, 20 and the sheets are prepared for the job in succession.

Q. What is sheet 1? A. Sheet 1 shows possible development off the floor from the 1954 plan.

Q. That is on the assumption that the 1954 plan was executed, then these things could be done in extension? A. Yes. We start off with drawing No. 1 in the top left hand corner, which indicates the maximum development of the site for non-residential purposes, for which natural ventilation and natural lighting are unnecessary.

Q. There are such purposes . . . A. That shows how the individual floor areas can be laid out . . . 30

Q. We come down to two . . . A. with various amounts off lighting, for one, two and three; and four is simply the projection—the maximum projection—allowable on the Carrington St. end. We have the different level of George and Carrington Streets.

Mr WALLACE: Q. I do not follow that? A. 62 ft. to the Carrington St. end can be built to a greater height on the existing sub-structure.

SIR GARFIELD: Q. Because of the difference in the level in the streets? A. Because of the difference in the level in the streets.

SIR GARFIELD: Q. What is No. 5? A. 5 is a probable, not necessarily the most, but a probable development. 40

Q. Of these within structural limits? A. What I did in each case was to start off with the maximum the sub-structure would allow and consider reasonable alterations within that limit.

Q. Always on the assumption that the 1954 plan had been executed?
A. Yes.

Q. No. 6 is an alternative to No. 5? A. You will notice the difference between 2 and 5, and 3 and 6. 2 and 5 differ only in the southern wing of the Carrington St. frontage; 3 and 6 differ similarly.

Q. That has to do with the requisite light area, having regard to the use? A. No, it has to do with whether or not the floor area of the 1954 plan is extended, which is not impossible. The projecting wing on 5 is the only plan of that area occupied by the 1954 plan. It
10 can be extended as shown in 2.

Q. That is to say, brought to the east? A. Yes, the east. In the same way, 5 and 6 differ in the north wing of the same area. It is narrower in 5 than in 6.

Q. What does 7 mean—intermediate floors with bedrooms? A. 7 and 8 differ from 5 and 6 only in that they have a central lightwell inserted to permit of bedroom development on the lines of the 1954 plan. No. 9 is the development that was shown by Mr Nicholls as the future development of the 1954 plan. That is, of course, incorrect in several respects. I will come to that in a moment. I put it in
20 there for the purpose of comparison. 10 or 11 are what could happen to the extension of the 1954 plan above the levels of the centre block. 10 and 11 are developments off the 1954 plan above the level to which the centre of the block was taken, that was projected. I am setting out the various alternatives; I do not necessarily recommend any particular one of them. 12 and 13 give two alternative versions, that is to say substituting four for three bedrooms floors.

Q. Those are the top floors in Carrington St.? A. Yes. That gives the possible floor lay-outs I have considered in Sheet 2.

Q. Would all of Mr Scott's proposals in Exh. U be capable of
30 being carried out on the sub-structure? A. Yes, but they are not included here.

Q. Separately you have considered whether they could be carried by the sub-structure? A. Yes, I was asked that; I said they could be. They all fall within my block limit of the building. That shows how those various floors can be arranged in various types of development of the site. This was done specifically to rebut certain evidence given by Mr Nicholls as to the limits of the 1954 plan. I have not considered in these any alternative to shallow floor development, which he was considering. Some of these things that I have shown here would
40 be silly in practice because there are better ways of using it with greater ceiling height, using the available area; but it is to put this comparison on the same footing as Mr Nicholl's evidence as to the floor areas and to rebut it—as shown on Exh. 4.

Q. He has 9 ft. 6 ceilings, or something of that sort? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.
Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.
No. 20.
A. T. Britten.
Examination.*

Q. You have just followed that plan, although you say in successfully planning you would use higher ceilings? A. Yes, I just combat one aspect of his evidence, in order to make an adequate comparison on the same footing. On Sheet 2 I have shown elevations of buildings.

Q. What part of Exh. 4 is this directed towards refuting? A. Floor areas.

Q. You were going on to say that you got some sections here? A. I have block elevations of the building. On each one I have numbered the floors on the left from Carrington St. and stated just to the right of that to what plan on Sheet 1 each floor relates. 10

Q. The internal numbers represent the floor plan on Sheet 1, that it would be appropriate to? A. Yes.

Q. That enabled you to convert this block elevation into the plans? A. Yes, and work out, as I have done below, the various alternative areas, depending on which development is used.

Q. When you say type 5 and type 7, that is a reference to the numbers on Sheet 1? A. Yes.

Q. Mr Nicholls only had his figures on the floors shown on Exh. 4. The extension of the two wings is shown on 1954 plan. You have not merely set out to show that Mr Nicholls is wrong with his floor areas but you have also, at the same time, in these exercises shown what floor areas could be obtained by the various forms of development? A. Mr Nicholls— 20

MR WALLACE: It seems to me that the only diagram on the first sheet which is referable to what Mr Nicholls has done would be No. 9.

Q. Your No. 9 on Sheet 1 represents the only plan that Mr Nicholls has dealt with in his floor areas? A. He says it is the only possible plan.

Q. It is the only one in fact which he has dealt with. I only want to see if I am following your evidence. If you look at your first sheet and look at plan No. 9, that is the only type of plan with which Mr Nicholls dealt on Exh. 4? A. Yes. 30

Q. That is so? A. Yes. I am saying the plan is incorrect. I am suggesting alternatives that should be considered.

SIR GARFIELD: Q. On what you have done on Sheet 2, having those block plans and those varying principles, you then compute and show the areas? A. They could be dealt with on the 1954 plan in varying ways.

MR WALLACE: Q. Which could be done from a structural viewpoint? A. Yes. 40

Q. Not a technical viewpoint? You have dealt with it from a structural viewpoint or an architectural viewpoint—you are not an architect? A. No.

SIR GARFIELD: These figures will speak for themselves.

HIS HONOR: But let the witness direct our attention to such of the figures here on Sheet 2 as prove that the floor areas taken by Mr Nicholls in his plan are wrong.

SIR GARFIELD: Q. If you take the third sheet, it is the easiest. On the front sheet you have the various alternatives and you have totals under A1, A6, B, D, E, for 1956? A. Yes.

Q. You get ultimately two figures that disagree. Would you show us those, comparing them with Exh. 4.

10 MR WALLACE: Q. Then if you go back to your second sheet, would I be correct in assuming that the plan and figures marked "E" constitute the only direct reference to Mr Nicholls' exhibit 4? A. No I would not agree with that. I do not think that.

HIS HONOR: Q. I think that must be so. Start off with Sheet 1 and look at No. 9. That one is the only one that you have shown as similar, as a diagram, to what Mr Nicholls took? A. Yes.

SIR GARFIELD: Q. Take Exh. 4. If you take that and then take Mr Nicholls' righthand side drawing, will you tell us on your Sheet 1 which representation of yours is identical with that? A. None.

20 Q. The lefthand one on Exh. 4? A. The lefthand one is No. 1.

Q. Which one on Sheet 2 is Mr Nicholls' lefthand side one on Exh. 4? A. "E".

Q. It is the same? A. Yes.

MR WALLACE: Q. The only difference in the figures is two hundred and eleven thousand versus two hundred and five thousand? A. No, you are misinterpreting the figures there, that is not the complete figure; that is only the figure above XX.

HIS HONOR: Q. XX is the first floor on Carrington St.? A. Yes.

30 Q. So above the first floor in Carrington St. you say the difference between what Mr Nicholls says is the available floor area and what you say it really is, contrary to Mr Nicholls, is the difference between 234,200 and 205,800. Is that right? A. No. I have no knowledge of what level these figures are taken from, what floors they include, whether they include Carrington St. or not?

MR WALLACE: Q. If you look at Exhibit 4 you will get your immediate answer. There is a note in the centre underneath the total area. "Note ground floor Carrington St. in both schemes". It is obvious it is excluded? A. It is not obvious if it is excluded or included. I do not know whether the 205—

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.
Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 20.
A. T. Britten.*

Examination.

HIS HONOR: Q. Assuming that Mr Nicholls omitted what was below, which figures do I look at on Sheet 2 to compare the Nicholls' figures with the true figures? A. For that, you can only look at the left hand figure, 205,800.

Mr WALLACE: Q. Which on Sheet 2? I suggest 211,660. That is right? A. That is right.

Q. The only difference between you and Nicholls is that you say he has left out a lift tower and available space and so on? A. Yes.

HIS HONOR: The rest is simply other schemes with other floor areas.

SIR GARFIELD: That is so.

10

HIS HONOR: In that respect, it speaks for itself.

WITNESS: In 1259/3 on a strictly comparable basis I took out the extensions of the 1956 scheme on exactly the same basis as I took out the extensions to the 1954 scheme. The figure that compares on that with Mr Nicholls' 1956 scheme is, omitting his "below XX"—that is to say the total above XX, 199,811.

SIR GARFIELD: Q. What is Mr Nicholls' figure? A. 234,000.

Q. On your computations, Mr Nicholls' figure of 234,200 on Exh. 4, on the same basis as he has taken, ought to be 199,810? A. Yes. I might say I misread his figure. I assumed from his figures that he had taken the total area down to Carrington St. That is what that mark is to be compared with; but I am now informed that it is not those figures that should be compared. I marked on Sheet 3 the figures I thought should be compared with Mr Nicholls' scheme. That asterisk and theta sign—in fact I am now informed I have misread Mr Nicholls' scheme in that it did not include work below Carrington Street,—in which case the difference is greater.

Q. It is against Mr Nicholls? A. The present position is this. The figures to be compared with Mr Nicholls' 205,800 are 211,660. The figures to be compared with 234,200 are 199,810. So as is obvious on inspection of the drawings, the 1954 scheme on this Sheet 4 has considerably more floor area than the 1956 sheet. As is obvious on the drawings, there is considerably more area above the first floor, Carrington Street. Perhaps, as I have misread Mr Nicholls' indication on 4, this asterisk and theta sign should be deleted on the evidence because it might mislead somebody reading it.

Q. You could endorse on that what are the comparable figures to Mr Nicholls' work, or as my friend suggests—

HIS HONOR: You had better put some note on, if you want to indicate anything.

40

SIR GARFIELD: Q. If, contrary to your assumption, Mr Nicholls' figure did not include anything below the first floor, Carrington St.,

then the comparison as between Mr Nicholls'—? A. The figures above "XX", first column, and under the second two columns—

Q. Then the comparison should be between Mr Nicholls' 234,200 and what figure? Instead of 199,810, some lesser figure? A. Between 234,200 and 199,810.

Q. That is correct? A. That is correct, that is above "XX".

SIR GARFIELD: I tender the plan.

HIS HONOR: The three sheets of the plan prepared by Mr Britton to put his point of view in relation to the Plaza Hotel development, 10 being three sheets, will be Exhibit "RR".

SIR GARFIELD: Q. Is there any structural difficulty in putting one of these trusses on to a reinforced concrete column, making it bear on a reinforced concrete extension of the steel column? A. If the column is properly prepared in advance and the truss is not carrying the building towards maximum limit. It can be done—provided the total carrying capacity of the column is not exceeded.

Q. It would involve certain work being done to it, but it can be done? A. Yes.

HIS HONOR: Q. But you say the work has to be done in advance? 20 A. Yes.

SIR GARFIELD: Q. You gave me a comparison of costs, using the truss and using orthodox column structure. On the assumption that the truss was put in below the floor and was carrying the maximum height of heavy construction, can you give us a general comparative figure of what reduction of costs you would get if you put it in at the fifth floor and had had no heavy structure from there up? A. In that case, if you put it in at the fifth floor—if you reduced the number of floors—the weight on the truss is removed almost in proportion to the number of floors carried and then cost reduces almost but not quite 30 as much; so that the fewer floors you carry of the same weight, there are slightly higher costs per floor, per square foot per floor. On the other hand, if you had lighter occupancy the cost of the floor would be reduced to perhaps 5/- instead of 6/- per floor carried.

Q. You take your 6/- at maximum occupancy or maximum weight? A. Maximum weight, maximum height; it is about the average cost but it could be more or it could be less.

Q. If you take it up to the fifth floor, that 6/- would reduce? A. It would increase slightly because you have certain fixed costs that you cannot overcome. The total cost would reduce but the cost per 40 square foot would increase with a less number of floors carried.

Q. Its cost would be spread out over fewer floors but the total cost would be less? A. Yes; the cost per square foot would be slightly more.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.
Examination

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Examination.

Q. We heard something here about flat plate construction. What do you understand by flat plate construction? A. I understand the construction of a flat concrete slab floor is brought onto columns without capitals or beams; you just have columns and the plane flush soffit of the floor.

Q. Is that a novel form of construction? A. No.

Q. When did you first hear of that? A. In my course at the Sydney University in 1926 or 1927.

Q. What was it called then? A. It was referred to in various ways, the most common description was a flat slab without capitals or drops. It is so referred to in the codes. 10

Q. Have you looked to see the earliest building code in which it has been referred to? A. The earliest I could find is Chicago in 1918.

Q. You have a reprint of it here? A. I have it in a text-book.

Q. Structurally is there any difference in cost in putting in a flat slab compared to beams on mushroom capitals, as we have in this sub-structure? A. In general terms it is very hard to answer because certain conditions, loading span and so on affect cost. It is a question of which is most economical. They could all be used for any load on columns, in theory; but when you get very bad conditions for one it becomes financially impossible. In the sort of building you have at Wynyard, if you have many bays together in each direction, probably the most economical would be flat slab with capitals, considering only structural cost. In a single bay of similar span, beam and slab would probably be the most economical, as single bays favour this type of construction. On the other hand, where partitions, etc., have to be built there are savings in erected cost with flat plate. These, under present conditions, would outweigh the saving in structural cost as compared with flat slab. 30

Q. You say that is a method of construction you knew of years ago. Is there any reason why there should be a resurgence of it now? A. Yes.

Q. What has caused the resurgence?

HIS HONOR: He did not say there was a resurgence.

SIR GARFIELD: Q. What is it that favours use of the method? A. What favours the use of flat slab is scarcity of labor and high cost of labor for building construction—flat plate, I mean.

Q. To your knowledge was this flat plate used earlier, was it used as a method of building in other times? A. I have seen reference to it in text-books; I cannot produce them though. 40

Q. When labour is plentiful and cheap, would there be a tendency to this type of structure? A. That would favour flat slab; saving materials at the expense of labour.

Q. With respect to any of these developments that you have, either on your sheets or on Mr Scott's Exh. U, could the advantages, if there be any, of flat plate construction be retained? Could you use flat plate construction in those developments? A. Which one do you mean?

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. Any of them, or all of them? A. You could use flat plate in all of them if you wanted to, and it paid to.

*Plaintiff's
Evidence.*

Q. That would depend entirely upon the conditions when you were building? A. Not entirely; for instance, there are parts of the structure where flat plate could not possibly be used, special cases around liftwells and stairs and single bay construction.

*No. 20.
A. T. Britten.
Examination.*

Q. Subject to those special points which would in any event call for beam and slab construction, you could utilize this other technique if you wished to? A. Yes.

Q. With respect to the lift accommodation in these plans, did you look at the lift accommodation as provided for in the original drawings? A. I have done that.

Q. What did you observe? A. There was a bank of lifts at Carrington Street, a small service lift went part of the way up, I believe, and a single lift on the York Street end.

Q. Was there provision for a bank of lifts anywhere in the column structure? A. At the Carrington St. end.

Q. There was provision amongst the group of columns? A. Yes.

Q. In the 1954 scheme you noticed the lift accommodation? A. There was no lift accommodation, only provision for future lifts.

HIS HONOR: Q. There was one on George St.? A. There was one provided on the George St. side.

Mr WALLACE: Q. You had to walk 240 ft. from the furthest bedroom to it? A. Yes.

30

CROSS-EXAMINED

*Cross-
examination.*

Mr WALLACE: Q. You were with the Department and the Main Roads Board for 25 years? A. Yes.

Q. For the first 10 years of that period you were doing bridge work? A. Yes.

Q. What sort of bridge work—making culverts and things like that in the country? A. No.

Q. What sort of bridge work did you deal with? A. Steel, concrete and timber.

Q. What was your official position during those ten years? A. I started off as Assistant Engineer, graduated to the higher grade of engineers and when I left the Section I was second in charge of the Concrete Bridge Design Section.

40

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 20.
A. T. Britten.*

*Cross-
examination.*

Q. In the latter 15 years you were on engineering administration?

A. Yes.

Q. By administration, does that mean you were supervising staff and organising their activities at some headquarters or some office?

A. Yes.

Q. Mainly looking after—— A. Departmental files, yes.

HIS HONOR: It was seeing that the machinery of the Department in your sphere went smoothly? A. Yes.

Mr WALLACE: Q. It is only during the last four years that you have been engaged in practice on your own account? A. Yes. 10

Q. Mr McMillan is the gentleman who has had much more to do with these matters that you have spoken of, much more than yourself?

A. Straightout building work you mean, city building? Yes, certainly.

Q. He has had much more experience than you in connection with structural work in city buildings? A. Certainly, yes.

Q. He also has had a good deal more time on these particular plans and figures upon which you have given evidence this afternoon? A. No.

Q. He has been engaged to look into these matters months before you were engaged? A. I do not know how much time he was able to give to it. 20

Q. He had been doing work on it for weeks longer than you have been doing it, for weeks longer than any degree of labour that you have been able to put into it? A. Do you mean weeks—in what sense do you mean weeks?

Q. The first time you were asked to do anything about evidence in this case was little more than a week ago? A. No, the first time I was asked to give evidence, but I have been assisting Mr McMillan for quite a period before that.

Q. The first time you were asked to give evidence was a week ago? A. It was Saturday week. 30

Q. You say you had been assisting Mr McMillan on certain aspects for some time before that? A. At intervals, yes.

Q. Mr McMillan had been working on these plans and matters relating to the Plaza Hotel for some time before ever you were asked to give evidence? A. Yes.

Q. Mr McMillan has been back at work for some time? A. No.

Q. Is he still away from work? A. No, he paid his first visit to the office yesterday but had to go home after an hour or two; he was far from well. 40

Q. Would it be correct to say that Mr McMillan was Chairman of

the Committee which fixed the code relating to live load reduction?

A. He may have been; I think he was a member of it, I could not say.

Q. You cannot say whether he was Chairman? A. I could not say.

Q. You know he was a member of the Committee? A. I do not know, I think he would be but I cannot say if he was. I was not in partnership with Mr McMillan then.

Q. You have heard of such a thing, the live load reduction formula? A. Yes.

10 Q. Have you had enough experience with building constructional engineering in relation to city buildings to know that over the last 20 or 30 years there has been a very substantial liberalisation on the part of governmental authorities in connection with loads which given sized columns are permitted to bear? A. There has been considerable liberalisation in the last few years.

Q. In other words, if a column were designed to bear 1,000,000 lbs. thirty years ago, it could be much smaller to bear 1,000,000 lbs. today?

A. Somewhat smaller, I would not say "much".

20 Q. Appreciably? A. That is a bad word, how much is "appreciably"?

Q. You do not know what "appreciable" means? A. Not in that sense, no.

Q. Have you any idea of the alterations which have been made?

A. Yes, in the case of steel the basic stress has been raised from 18 to 20.2 for columns.

Q. That is an increase of 10%? A. Yes.

30 Q. Was there a prior liberalisation to that one, or is that the only one you know of? A. For steel? The other liberalisation I think would be from 16 to 18, that would be before the days when these plans were commenced, before any plan there. That is unfair on its own—

Q. Do you or do you not know whether it was 16 some 25 years ago? A. For what purpose?

Q. For columns, steel carrying loads? A. In which code, for which purpose?

Q. The code you were talking about when you said it had gone from 16 to 20.2? A. I do not know what was in that code 25 years ago; we were using other codes.

40 Q. But you do know it used to be 16? A. It used to be 16, I know, in the days before I went to the University; it is a long while ago.

Q. What was it when you were at the University? A. It was in the process of being changed to 18 in most codes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 20.
A. T. Britten.*

*Cross-
examination.*

Q. Do you remember telling us this morning that the weaker ones were designed to carry somewhere about 1½ million lbs. Did you say that? A. The weaker ones?

Q. You know there were weaker columns and stronger columns on the plan? A. Yes.

Q. Can you remember what figure you gave as to the loads they were designed to carry? I am speaking of the weaker ones. Just to identify them, take three columns which you encircled, 168, 166 and 172? A. I would have to refer to my notes, my calculations. I did not say.

10

SIR GARFIELD: He did not give a figure.

Mr WALLACE: Q. Let me come to 53 and 55. Did you give us figures in regard to those? A. No, the only column about which I discussed figures and elevation was column 51.

Q. What did you give us with regard to 51? A. I pointed out that a reinforced concrete column could carry there 1,600,000 to 3,000,000 lbs. at second floor Carrington St. level and that loads coming on to it for future extension of the building would be about 5,000,000.

Q. Are you giving us figures that they were computed to originally, in respect of which they were designed originally 25 years ago? A. 20 No, they were not designed originally.

Q. What were the first computations you saw and what date are they? A. They were about June 1956.

Q. When were they compiled, do you know? A. About 1956.

Q. By Mr Llewellyn? A. I did not actually check them very closely, I saw them to verify his total loading compared with mine.

Q. You were talking about column 51? A. Yes.

Q. You gave a view about the effective load in the 1956 plans and whether they were capable of development up to the projected limits. Do you remember? A. Yes.

30

Q. One of your attacks on the 1956 plan? A. Yes.

Q. Do I understand you to base your attack on the fact that column 51 is a steel structure down to Carrington St.? A. No, I base my attack on the fact that the 1956 extension was not in steel.

Q. Where do you say the 1956 extension commences from? A. From the first floor Carrington St., the extension as envisaged in the 1956 plans that were shown to me at the time I was answering that question.

Q. I would like you to be quite precise, if you can, and tell me where do you say column 51 goes in steel, under the 1956 plan? A. 40 Do you mean the plan submitted by—

Q. 1956? A. The 1956 plans for the extension?

Q. To what height do you say column 51 goes in steel under the 1956 drawings? A. Do you mean in the structure shown on the 1956 drawings? Your question could have two meanings to me, I just want to make sure which question you really asked.

Q. Did you not say 51 is not steel on Carrington St.? A. To the first floor above Carrington St. it is in steel.

Q. You did not say it was steel only to the Carrington St. level?
A. No. I did not say either, as a matter of fact, but it is in steel to the first floor.

10 Q. I suppose if the steel goes up to the second floor above Carrington St., that would have an important bearing on your comment that you made on it for the development of 51? A. Yes.

Q. Future extension? A. It would reduce the loading on the overall development by something of the order of 200,000.

Q. You said that it was reinforced concrete. Do you remember you began your first attack on the 1956 plans by directing your attention to column 51, and you said it was in reinforced concrete? A. From the first floor of Carrington St., upwards.

20 Q. You did not say it was from any floor upwards? A. Yes, I referred to the schedule and I said "from this level". I should have referred to the second floor.

Q. You estimated the load on the column, did you not? A. I estimated the load on the column.

Q. For that purpose did you assume that the column was in steel up to only the first floor? A. I did not assume anything about the column to estimate the load on it.

30 Q. But when you applied the load, you assumed that the column was in steel only up to the first floor? A. What I actually did, I estimated the load on the column and I compared it with what a reinforced concrete column of that section would carry. That is all I did.

Q. But when all is said and done, what do you say is the weakness in the 1956 plan in regard to column 51? A. That it shows it in reinforced concrete.

Q. You mentioned that it was only 3,000 lbs. per square inch in the engineering specification? A. Yes.

Q. Would you agree that 3000 lbs. could be strengthened to 5000 lbs. at the direction of the engineer and would amount to practically no increase in cost? A. Certainly.

Q. You agree with that? A. I stated that.

40 Q. The figure of about £50 has been mentioned here. Do you agree with that? If the engineer said to pour more concrete so as to make it 5000 lbs. instead of 3000 lbs. per square inch, there would be about £50 involved? A. Who gave you that figure?

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 20.
A. T. Britten.*

*Cross-
examination.*

Q. Mr Llewellyn has said that? A. I accept that.

Q. Whilst I am dealing with 51, you said a few moments ago that provided you pre-plan you could put the truss on to the reinforced concrete extension of 51A? A. Under certain conditions.

Q. I thought you just said it could be done. Did you mean by that there would be the slightest difficulty in doing it? As an engineer do you say there would be the slightest difficulty in resting one end of the truss on the extension of 51, if you knew you wanted to do it beforehand and it was in reinforced concrete? A. If the truss load is not excessive, it could be done without difficulty. 10

Q. All you have to do, mechanically, is to put a step in it at the required level? A. Yes, obviously.

Q. So that when extending 51 all the planner has to do is to make sure that some simple little step is put in of the right dimensions, which would be mere routine for an engineer to work out? A. That is not all.

Q. What else is there? A. He would have to verify what load was coming on that truss.

Q. Of course he would, but that is only routine for an engineer, verifying what loads come on to the truss? A. It is only routine 20 for the purpose of giving balance.

Q. I suppose he would want to know if he was doing any pre-planning, what was envisaged by the total building going upwards? A. He would need to know that.

Q. Once the truss is rested on column 51, above the truss it need only be a comparatively weak column carrying the upper floors? A. Not comparatively.

Q. It is the lighter job? A. Yes, the load is about halved at that point.

Q. When you said it can be done, if you knew you wanted to do it 30 I suggest the correct answer would be that it could easily be done? A. No.

Q. If you knew what sort of building you were planning for? A. No, because if you knew what sort of building you were planning for you might find you could not do it in reinforced concrete.

Q. But I understand the suggestion here is that the truss was to go on to the roof of the fourth floor ceiling, between the fifth and sixth floors? A. It may be. You have not told me what level yet.

Q. Do you tell me now that looking at all the plans you have seen you are unable to say at what floor it was originally intended to place 40 the big truss? A. No, I do not say that.

Q. What floor was it? A. I could tell you if I referred to the plans.

Q. But you cannot tell me offhand? A. No, I was not interested at that stage.

Q. The lower the truss were placed, I suppose the more costly the building above it. Is that what you indicate to His Honor? If you put the truss down on the first floor, I understood you to say that it would be more costly to construct the upper floors? A. I do not follow that question.

Q. Did you not indicate, according to your view, if anyone wanted to develop the centre of this site on the existing columns, they could put the large span trusses at any floor level—first, second, third, fourth or even higher? A. Not at the first.

Q. At the second? A. At the second, they could; because the columns now go up to the first floor.

Q. They could put the truss at the second floor upwards; is that what you say? A. Yes.

Q. I suppose you will agree they could put the trusses at different floors, one on the fifth floor, one on the third floor, if they wanted so to design the interior of the building? A. They could put them at different floors?

20 Q. I am suggesting something a certain gentleman said in the witness box yesterday, a gentleman called by Sir Garfield. There are four trusses envisaged? A. At least four, there may be eight.

Q. I do not care whether there are eight or four, but there are at least four? A. Yes, you can truss over to your different levels if you decide—

Q. Could you put those four trusses on different floor levels, each one? A. You could.

HIS HONOR: Q. If you have a set of four, each one of the set could be at a different level? A. If you wanted to, yes.

30 Mr WALLACE: Q. Do you prefer to say that the lower you place the truss, the more costly it is to erect the building above it? A. No.

Q. You were telling us something about lightwells that could be placed on this site. Do you remember drawing on an exhibit this morning the lightwells at the centre of the side? You said they could be 60 ft. back from Carrington St. and George St.? A. Yes, on one corner I said I had not investigated.

Q. What made you say there were lightwells contemplated in relation to those areas? A. The column calculation.

Q. Did you do those yourself? (No answer).

40 Q. You took those from the data given to you? A. Yes.

Q. Did you notice whether there were lightwells also envisaged anywhere else? A. Not by the column calculations, you could not tell.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. Did you notice whether lightwells were envisaged in the original plans made by Kerr in 1934? A. You mean the architect's plans?

Q. Some architect's plans and some prints of structural drawings in or about that year? A. I studied those plans very briefly this morning for the first time. I would like an opportunity to study them further.

Q. Have you seen anything that would indicate that originally there were intended to be lightwells on the four corners of the building on the site of Carrington St. and George St.—lightwells and squares at each corner? A. I could not commit myself without studying the architect's plans. 10

Q. You cannot remember having seen anything to indicate that? A. I have a memory, in my quick look through this morning, of seeing lightwells in the plan somewhere, small lightwells, but I am not sure of the details.

Q. Have you studied the Regulations relating to light, Regulations governing lightwells and what natural light must be given in city buildings? A. Yes.

Q. Do you know the formula that is prescribed in that regard? A. I do not know it. I look it up every time. I know where to find it. 20

Q. You do not know it offhand? A. I have it here in my bag.

Q. You do not know it out of your head? A. No, I think I do, but I might mislead the court.

Mr WALLACE: Q. Were you in charge of the laboratory for many years in the Main Roads Department? A. I beg your pardon?

Q. Were you a laboratory man in the Department? A. The laboratory was under my control but I was not in the laboratory.

Q. Have you had any personal experience in the construction of city buildings? A. Yes.

Q. Which ones? A. No large city buildings. We have had large 30 buildings outside the city.

Q. What, factories? A. And offices.

Q. Factories going to two-storeys? A. Factories rarely go to two storeys these days, but of the office buildings the biggest one we had in hand would be six.

Q. Did you personally have anything to do with that? A. Yes.

Q. Would I be correct in suggesting that your firm has not had any constructional work relating to big city buildings in the last four years? A. That would be correct. Our work has been outside the city, commercially. 40

Q. You are one, are you not, who prides yourself on your academic qualities? A. No.

Q. Don't you put on your letterhead that you are a First-class Honours and University Medallist? A. I suppose it is an advertisement.

Q. Do you or do you not? A. Put it on the letterhead, Yes.

Q. You put on your letterhead that you are a First-class Honours and University Medallist? A. Yes.

Q. You have criticised somewhat extensively the evidence given by Mr Llewellyn, haven't you? A. No.

Q. I understood you to criticise—

10 HIS HONOR: The phrase you used, Mr Wallace, was "somewhat extensively".

Mr WALLACE: Q. You have criticised Mr Llewellyn's evidence? A. I criticised his use of the word "problem". That is all, to my knowledge.

Q. Do you remember, going to the question of flexibility (page 334 of the transcript) which you allege is given by the large open area envisaged in the Innes-Kerr plan, fourth floor? A. Yes.

20 Q. Supposing you have that large open area 82 x 145, as you said, suspended, so far as the ceiling is concerned, by the truss between the 5th and 6th floors? A. Not necessarily the 5th and 6th floors, but some upper level I said.

Q. Don't you agree that the Innes-Kerr plans envisaged a ballroom at the fourth floor? A. It could be, Yes. I was not thinking only of the Innes-Kerr plans.

Q. I am asking you to direct your mind to the Innes-Kerr plans? A. I am sorry. Before that you were directing my mind to the adverse.

Q. On the Innes Kerr plans there seems to be envisaged a ballroom at the fourth floor, doesn't there? A. Which stratum, George or Carrington Street?

30 Q. George Street? A. It probably would be the fourth floor. There are so many plans that I am a bit lost. It could be the 4th floor.

Q. It could be the 4th floor. That is what you are prepared to say? A. It could be the 4th floor, George Street stratum.

Q. If you had first of all a truss only one floor deep, not 30 to 33 ft. as you suggested on Thursday, but just one floor deep, based between the 5th and the 6th floors—— A. It would not match that plan, because that plan had a mezzanine to the ballroom, which would put it between the 6th and the 7th.

40 Q. Is it your recollection that the Innes-Kerr plan envisages the truss between the 6th and the 7th? A. No. It envisages a truss two storeys above the ballroom floor. That is my recollection, but I may be in error.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 20.
A. T. Britten.*

*Cross-
examination.*

Q. Who may be in error? A. I may be in error in my recollection.

Q. I want you to assume it is between the 5th and 6th floors?

A. A truss between the 5th and 6th floor? All trusses?

Q. That is right? A. George Street stratum? Third and 4th, Carrington, Yes.

Q. When you got up to the 5th floor in such a construction, you would have four trusses about 30 feet apart going the whole height of the storey in question between the 5th and 6th floors? A. Yes.

Q. Occupying, in that sort of way, their positions on the 5th floor? 10
A. They would foul the 5th floor, Yes. They would have three members fouling the 5th floor in each wing.

Q. What do you mean by "each wing"? A. Each of the two wings you are envisaging.

Q. Quite frankly I am not envisaging any wing, I am envisaging the situation from the point of view of flexibility of the building itself; on the floor above the open area. A. Yes.

Q. Would you agree that the position above the open area could diagrammatically be represented by what I have just drawn (showing)?

A. Well, that is in error, in two respects. First of all, the height scale is quite wrong. It is about half that height; and secondly, you have not shown the truss web members. Would you like me to sketch for you what I think it should be? 20

Q. No. It is purely diagrammatical and not by scale. Do you follow? A. Yes.

Q. Down below, I indicate the open area which I shall call a ball-room for the sake of identification? A. Yes.

Q. Up above, there would be four trusses? A. I am sorry; it is the section?

Q. Of course it is a section? A. I thought you said it was a 30
truss with four columns sitting on it.

Q. Diagrammatically and roughly that indicates the position up above; the section? A. I am sorry. In that case—

Q. It is fairly correct? A. If it is fore-shortened vertically, it is.

Q. But I am not on that— A. It is rather important I think.

Q. How is that; would that suit you now? (indicating) A. That is all right.

Q. I can assure you that on my questioning nothing turns on that? A. Very well.

(Abovementioned rough sketch m.f.i. "44").

40

Q. Of course if you looked at that upper floor in plan, again purely diagrammatically you would see that, wouldn't you? (showing) A. What is that, the positions of the trusses?

Q. The upper floor in plan, looking downwards on to the upper floor partitioned by these large trusses, from roof to ceiling? A. With the trusses in one floor level that would be practically the case, yes.

Q. So, so far as that went——? A. There would be very limited access.

Q. And far from having flexibility you have the floor cluttered up with these wall to ceiling partitions, the partitions being the trusses?

A. Your planning on that floor is restricted, yes.

10 Q. In order to lay that floor out, you would have to have doors through the trusses, and you would have to so partition it off that your design of partitioning would be moulded by the trusses. Is that so?

A. Well, it is so general it means nothing to me. Would you give the sense of it again please?

Q. In order to design the layout of that floor, you would have to have openings through the trusses for doors. Is that correct? A. Yes.

Q. And secondly, whatever design for the rooms you envisage would be governed by those trusses? A. Oh, that would be right. That phrasing would be correct. I object to the word “moulded”.

20 Q. If you carried out your concept of having the trusses 30 ft. to 33 ft. in height, the situation which you have just agreed is shown in m.f.i. “45” would also pertain to the next two floors up above it? A. It would not apply to either of the three floors to any or the same extent.

Q. It would not apply to any of them? A. No.

30 Q. I thought you said that you would have trusses 30 feet to 33 ft. in height? A. Yes, but each floor would only be constructed to a width of about 8 ft. or 10 ft. on each side. You would have three big areas in the wall. If you had one truss you would have three members on one floor in each 30 feet. If you have a truss three floors deep, you have a member one floor deep on each floor. The total obstruction is the same as divided between the three floors.

Q. Would you have the trusses 30 feet deep? A. Well, approximately that, depending on the exact storey height.

Q. If they were 30 feet or 33 feet deep, would they extend through three floors? A. Yes.

Q. If they extended through three floors, would they not interfere with the layout of the floor on each of the three floors? A. They would interfere to some extent with the layout of each floor.

40 Q. You said—I do not know whether you meant it, but you certainly said it—at page 334 this: You were being asked about whether you could have a clear sort of unobstructed area as much as that on that substructure. You were being asked about the pillars and the open one or more areas free from columns. Do you remember? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. And you said, in answer to the next question, which was this:

“Q. You could choose a level for it. At what levels could you have it? A. You could have it at any or all levels above the existing structure, subject to certain restrictions. For instance, you must have one at about the 4th floor level, no higher, and if you put the trusses in much lower than the 5th floor, you must reduce the number of floors above.”

A. Yes.

Q. Did you mean by that that you could have one or more than one open area? A. Certainly—at different levels. 10

Q. Do you mean by that that you could have open areas at all levels? A. Yes, but with an area of that size you would have to have a considerable ceiling height in an open area. You see, you could not have them every 10 feet.

Q. But you are insisting on your ability to have open areas on all levels, are you? A. You could have open areas right to the top of the building if you wanted to.

Q. So you could have a space 82 feet by 145 feet, an open space of that size, at every storey? A. At every second or third storey.

Q. But you said all storeys? A. I might have misled you, but 20 that is not what I intended to convey.

HIS HONOUR: Q. When you said “at any or all levels”, what did you mean by that? A. What I meant was that you could have it at a number of different levels suitably spaced.

Q. But what did you mean by “all”? A. You can have the whole space right up to the top of the building, if you wished, with open areas at suitable storey intervals.

HIS HONOUR: He means the open areas could go up to the top but there would not be one at every floor.

WITNESS: There could not possibly be one at every floor. 30

Mr WALLACE: Q. Do you say you could have an open area every second floor? A. Well, that is governed by architectural considerations, not engineering considerations.

Q. But on your evidence, do you say you could have an open area 82 feet by 145 feet at every second storey? A. Yes.

Q. So that at every second storey you would have what I have suggested, this interference or cluttering up of the floor by the partitions, caused by the single-storey trusses? A. No.

Q. If you had an open area on every second floor, that would mean that your trusses were one floor in depth? A. No. 40

Q. How much in depth? A. I would not have trusses at all for a single floor.

Q. What do you mean by that? Do you mean by that, that in connection with the construction of, say, a ballroom on the James Kerr plans about or on the fourth floor from George Street, you would not have trusses at all? A. No, that is a different question. What I was saying was if you have two open spaces one on top of the other, the floor of the upper open space which is carrying no walls above, could be carried on beams.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Plaintiff's
Evidence.

10 Q. I am asking you in connection with your answer given a moment or two ago—and let me preface my question by asking another one, to make it clear that I understand your evidence. Do you say you could have going up to the top open space, no open space, open space, no open space—alternatively going up to the top? A. Yes, you could.

No. 20.
A. T. Britten.
Cross-
examination.

Q. If you had that alternate arrangement, it would involve, wouldn't it, having trusses one floor deep every alternate floor? A. Yes, that would.

Q. That is what I am asking you? A. But that is not what you were asking me before.

20 Q. Do you say that your evidence at page 334 means that you could have open spaces at every alternate floor, the open spaces being 82 feet by 145 feet in size? A. Every alternate floor built you mean?

Q. Let me ask you again: do you say you could build a building in which every alternate floor was an open space 82 by 145? A. Yes, but there would be no intervening floors then.

Q. Wait a moment, first of all the answer is "Yes, every alternate floor"? A. Do you mean every alternate floor level of the building, every 20 feet?

30 Q. The second floor, the 4th, the 6th, the 8th and the 10th would be all open areas, 82 x 145 feet? A. Yes.

Q. That can be done? A. Yes, and there would be no intervening floors if you did that.

Q. What is in between them? A. Nothing.

Q. If there is nothing in between them, does that mean that the height of the so-called alternate floors is the height of two storeys? A. At least two storeys.

Q. If you had nothing in between them and all you had were open areas, two storeys in height, they would not be alternate but they would be floors in succession?—

40 HIS HONOR: The witness envisaged that you might have these tall areas taking up two floor levels.

Mr WALLACE: That is what I was putting.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. Then, if you had a series of open areas two storeys in height, you would have them one on top of each other? A. Yes.

Q. So you would not have open areas physically on alternate storeys but on each successive storey, and they would be two storeys in height? A. I am sorry. That is what I intended.

Q. Then, the height of those storeys would be what? A. 20 feet, or even more they would be required.

Q. Would you just explain how the trusses would go when you have two storeys, one on top of each other, each 20 feet high and each an open area 82 x 145? A. You would have no trusses. You would have 10 floor beams for a single floor loading.

Q. You would have columns coming up? A. No, floor beams, spreading 80 feet in floor depth.

Q. Floor beams, 82 feet long? A. And about 4 feet to 5 feet deep.

Q. How would you support the 145 feet length? A. They span 30 feet from beam to beam.

Q. I follow that. This 80 feet in width floor beam—— A. It should be 85, I think it is.

Q. That would be on the bottom of each of these two storeys? 20
A. In each floor-ceiling, construction. You take about five feet for your floor and ceiling construction.

Q. But how would you pass through a beam 5 ft. in depth. Would not that impede progress through the beams? A. In between the floor and ceiling you would lose 5 feet in every floor for your floor and ceiling construction.

HIS HONOR: Q. Virtually you lose a floor in three, don't you? A. Yes, something like that.

Mr WALLACE: Q. You would lose a floor in three? A. Yes. It is expensive construction. 30

Q. It is not only expensive construction, but also no practical man would envisage it, would he? A. I would not agree with that.

Q. At all events, the flexibility you speak about is flexibility in connection with the open area, not with the floor above it, if it is done the way I was putting to you first of all? A. No.

Q. That is so, isn't it? A. I quite agree.

Q. I suppose you would agree that the taller the ceilings the fewer the floors? A. Certainly.

Q. The fewer the floors the less the load on the columns? A. Certainly. 40

Q. Would you agree with this: you would not at all build several open areas with only single-storeyed depth trusses. You would not do that? A. Could I have that question again?

Q. You would not build them alternately. You would not build open areas every alternate floor by means of the use of single-storeyed trusses, trusses of single-storeyed depth? A. If I was asked to, by the architect and owner, Yes.

Q. I suppose a structural engineer can do almost anything? A. Well, we flatter ourselves that we can.

Q. If the architect and owner wanted, and if the money is available? A. Yes.

Q. But just to make quite clear what is involved, I suppose you would agree that if you used the high ceiling heights to which you referred on page 334 of your evidence, the maximum number of floors that you could put in would be 12? A. High ceiling height? Which high ceiling heights? We were talking about 20 feet ceilings before.

Q. You mentioned about the high ceiling heights (Page 422 of transcript); “. . . but with such large spaces we generally have high ceiling heights in a continuous number of floors” . . .? A. In a continuous number of floors?

Q. I am only quoting what you said? A. Did I say “continuous” in that sense? (Evidence shown to witness). I think the sense is here even if it does not make good English.

Mr WALLACE: Q. Do you see the question “Q. You could choose a level for it. At what levels could you have it?” Do you see that? A. Yes.

Q. You were speaking of this so-called open area, weren't you? A. Yes.

Q. You said you could have it at any or all levels above the existing structure. Stopping there, the only way you could not have it at all levels would be by having these open areas two floors in depth, one above each other. Is that so? A. Yes.

30 Q. In that way you could only get six floors? A. I think you would get less than that—probably only five.

Q. “. . . subject to certain restrictions. For instance, you must have one at about the fourth floor level, no higher, and if you put the trusses in much lower than the 5th floor, you must reduce the number of floors above.” Did you mean that, or is there some error there? A. No, that is quite correct.

Q. That you must have one at about the 4th floor level? A. You cannot go higher than the 4th floor.

Q. You can go lower, didn't you say? A. You can go lower, Yes.

40 Q. You did not mean that you must have it at about the 4th floor level. What you meant was you must have it no higher than the 4th floor level? A. You must have the open space commencing no higher than the 4th floor level and the trusses must not be much lower than the 5th.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. You now say it must not be any higher than the 4th floor level?
A. No. The floor of the open space must not be higher than the 4th, and the trusses over them must not be lower than the 5th, unless you reduce the height of the building.

Q. I thought you told the Court on Wednesday that you could have these trusses at the second or third floor? A. But you would have to reduce the height of the building over.

Q. But you are saying you must have the open area at or about the fourth floor? A. At or below.

Q. No higher? A. No higher. 10

Q. “. . . and if you put the trusses in much lower than the 5th floor, you must reduce the number of floors above” (page 422). A. You cannot take the building so high.

Q. You adhere to that? A. Yes.

Q. Quite sure of that? A. Yes.

Q. No doubt whatever? A. Well, you might gain one floor. I would not guarantee to one floor, but you cannot have maximum development and bring your trusses down, right down, to the George Street level.

Q. Do you say if you put the trusses at the second or third floor 20
above the George Street level you would have to reduce the height of the building in the centre? A. For full development.

Q. Is that what you say? A. Yes.

Q. Do you draw any distinction between what is involved in developing a centre for hotel purposes on the one hand, and developing it for some suggested departmental store on the other? A. In what sense do I draw the distinction?

Q. Would you agree the departmental store would have a very heavy load? A. In the floor area developed?

Q. The floor area? A. Yes. 30

Q. What, about 100 lbs.? A. 100 lbs.; that would be right.

Q. Whereas hotel and office are 40 lbs. and 50 lbs. respectively, aren't they? A. Plus partitions.

Q. I am leaving them out? A. They are important. You cannot leave them out.

Q. I am not leaving them out in the ultimate; but 40 or 50 lbs. with a comparison of 100 lbs. in a departmental store? A. It is not a comparison with a departmental store. That is my point.

Q. You are envisaging an open area for a departmental store?
A. Yes. 40

HIS HONOR: Q. What do you add on for partitions? A. Generally
40 or 50 lbs.

Q. Another 40 or 50 lbs.? A. Yes.

Q. So there is no difference, really? A. About 20 per cent.

Mr WALLACE: Q. What sort of partitions are you envisaging? A. An hotel would have brick walls; 4½-inch brick walls.

Q. Are you serious when you say that? A. I am talking about the construction as shown on the plans.

Q. Are you serious when you suggest that modern designing and structure provides for 4½-inch brick walls as partitions in this sort of building? A. In this sort of building?

10 Q. For hotels and offices? A. Yes.

Q. Is it within your knowledge, or is it not, that terra cotta, which is much lighter than brick, is extensively used in modern buildings? A. Oh, yes.

Q. That is much lighter than brick, isn't it? A. Yes.

Q. Have you heard of vermiculite? A. Oh, yes, we use it.

Q. That is much lighter than brick, isn't it? A. Yes.

Q. What I am suggesting to you is that in modern construction, especially hotel construction and office construction brick partitions are simply not used? A. They are used when the substructure is
20 there to carry them.

Q. They are not used in practice, whatever the substructure is? A. They are.

Q. Do you know what is used in the M.L.C.? A. Yes.

Q. What is it—at North Sydney? A. It is that lightweight construction you are talking about.

Q. What? A. I am not sure of the exact form of it.

Q. But you said you know it? A. I know the general type of construction. I do not know the general trade name they are using.

Q. What is the "general type"? A. Lightweight construction

30 Q. Is that the nearest you can go? A. The nearest I can go with exactitude.

Q. You said you knew what it was?

HIS HONOR: He said he knew it was not brick. I think that is what he means.

Mr WALLACE: Q. If you use vermiculite or terra cotta, you get a much bigger difference than 20 per cent., don't you, between departmental stores and hotels? A. You get about 30 per cent. with terra cotta, and you would come down to about 40 per cent. with the other.

40 Q. Going back to your evidence at page 422, I understand you to say now that what you meant in that sentence beginning "For

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

instance, you must have one at about the 4th floor level" is that the open area must be in this case no lower than the 4th floor level?

A. No, no higher.

Q. No higher than the 4th floor level, and the trusses ought not to be put in lower than the 5th floor? A. . . . much lower than the 5th.

Q. You would say the 4th is the furthest you are prepared to go?

A. Yes—Subject to check, of course.

Q. Then, do you remember you went on to say this: Having said you must reduce the number of floors above, you added, after Sir 10
Garfield asked you "Q. Because of the load?", "Or might have to, because of the load on the external columns; but with such large spaces we generally have high ceiling heights in a continuous number of floors, and it is very unlikely you would be troubled by loads on the perimeter columns, and you could virtually say you could have it at any or all levels for all purposes". What do you mean by saying "You could have it at any or all levels for all purposes"? What is "it"? A. "it" is open space.

Q. So you finally deposed it to be your opinion that you could have open spaces at any or all levels for all purposes? A. Well, virtually 20
that.

Q. What do you mean by "virtually"? A. You could meet practically any requirement. You could design a requirement you could not meet but you could meet any requirement that could reasonably be required.

Q. When you say "for all purposes and at all levels", you now say provided they are two-storeys in height. Is that what you mean? A. No.

Q. Did you say you could have an open area 82 x 145 one storey in height at all levels? A. No. 30

Q. When you said "you could virtually say you could have open areas at all levels for all purposes", what did you mean? A. I meant you could meet any reasonable requirement for open spaces.

Q. You have said you could have it virtually at all levels for all purposes? A. If you desired open space in that building, as far as the building is concerned, you could for all practical purposes have it where and when you wanted it.

Q. If I am the owner and I wanted an area 82 x 145 feet—an open area at every floor level, one storey high—you could do it? A. No one could do it because you have not got the head room. 40

Q. Then, if you could not do it, it is not correct to say you could virtually have it at all levels for all purposes? A. I said you could meet any reasonable normal requirement. That is not a sensible requirement at all.

HIS HONOR: I think what he means is you could have it at any level you should like, but you would lose one floor in every three.

WITNESS: No, you would lose more than that, because no sensible person would want a room of that size, only 10 ft. ceiling height.

HIS HONOR: But if you had this large open area—you keep on saying high ceiling height? A. Yes.

Q. The ceiling height would have to be so high according to the scheme you have in mind, that when you put them one on top of the other you would lose some of your floors? A. Yes.

10 Q. You said more than one in three? A. Yes, I would say you would lose one floor for every open space you would put in, to have a reasonably proportioned room.

SIR GARFIELD: It is all in the use of the word "levels".

HIS HONOR: I think it is clear now what the witness is saying.

Mr WALLACE: Q. Then you would agree, wouldn't you, that the 1956 plan does not interfere structurally with facilities to put trusses in under any of the conditions you have been talking about? A. It does.

20 Q. In what way? A. The truss to column 51 cannot be lifted so high.

Q. Are you suggesting you could not put a truss in, to rest on column 51 in accordance with the 1956 building? A. No, what I am saying in effect is—I should have said "floor". The floor on columns 53-54—that line of columns, 51 etc.—cannot be raised so high before you come to the first—

Q. Why not? A. Because of the extra load you put on those columns.

Q. Have you worked it out? A. Yes.

Q. You have? A. No. I have worked it out approximately.

30 Q. Have you got the figures there? A. No, I have not got the figures there; but it would be somewhere around that.

Q. All I asked you is have you got the figures? A. Not on those columns, no.

Q. Before I go to column 51, would you concede this, that if open areas were used over the 1954 building, assuming it had been constructed, the bedrooms down below and part of the 1954 plan would lose all light and air? A. They would have to be removed as bedrooms.

40 Q. They would have to be demolished. You would have, in effect, to start all over again? A. No.

Q. You would have to demolish all the bedrooms? A. You would have to demolish some of the partitions and re-model for alternative use.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.

A. T. Britten.

Cross-
examination.

Q. You have drawn a lot of designs here for future development, haven't you? A. Yes.

Q. You have had no architectural experience, have you? A. No.

Q. I will go to column 51. I show you a couple of diagrams, and I have had typed out some material which you might follow with me and see whether you agree or disagree with it. First of all, if you look at diagram A on the left—do you see that diagram? A. Yes.

Q. Those shaded areas are around pillars. Do you follow? A. Yes.

Q. And the pillars I have shown are 51, 53 and 55? A. Yes. 10

Q. They are representative of the floors and upper floors supported by those three pillars? A. The whole floor built on?

Q. Yes? A. The whole floor built on; that is correct.

Q. You can follow it from here. Diagram B shows how these loads are carried down to the 5th floor, where the loads from 53 and 55 are carried by a truss and transferred to columns 51 and 57. Is that clear? A. Yes.

Q. An engineer, in computing the amount of load at this point would work out the loads coming vertically down on column 51, wouldn't he? A. Yes. 20

Q. And also the proportion of load transferred to column 51 at that point? A. Yes.

HIS HONOR: "that point" is marked with the letter "X".

Mr WALLACE: Q. We are finding out the load at the point "Y", which is where the steel meets the concrete? A. Yes.

Q. In computing the load coming in at that point from the truss, you would take half the weight of the truss, wouldn't you? A. Half the weight of the truss to there (indicating), Yes.

Q. No; to there, up to here (showing)? A. Yes.

Q. And we will say the weight coming down 53, because 55 goes over there to column 57. Is that right? Coming to the load on 51 first, working out the load on 51, the maximum total load on the reinforced concrete section of 51—that is where it rests on the steel, at point "Y"—is then the load supported directly by it, plus the load of 53, coming down on to the truss, plus half the weight of the truss, plus the load supported directly off that floor, down to that point. Is that right? A. I would agree with you on these figures; if you like you can take it all as checked. I agree with you. 30

Q. Do you agree with these figures here showing the dimensions (showing)? A. I would agree with this figure here for that form of construction and loading. 40

HIS HONOR: The figure is 3,227,000.

WITNESS: For that live loading and partition loading.

Mr WALLACE: Q. So that is the approximate figure which you give as the maximum load 51 would carry? A. No, it is a little more than that. I said it could nearly be brought up to that figure by certain modifications of design.

Q. The only modification is £50 extra of concrete? A. And a steel capping on the concrete. I agree they are only minor corrections.

10 Q. Do you agree with these figures and method of computation?
A. For that live loading and partition loading.

(At this stage at the direction of His Honor the document that was shown to the witness was incorporated into the transcript, as follows:

“Strength of column 51

From diagram. “A” shows areas of upper floors supported by columns (51) (53) (56) respectively.

“B” shows how these loads are carried down to the fifth floor, where the loads from (53) and (55) are carried by a truss and transferred to Cols. (51) and (57).

20 *Load on (51)*

The Maximum total load on the reinforced concrete section of (51)—i.e. where it rests on the existing steel stanchion just above the third floor, is then—

the load supported directly by it
plus the load of (53) from the truss
plus half the weight of the truss
plus the load supported directly on it at the 4th floor.

Dimensions

30 The dimensions showing the column centres may be checked by plans in evidence (The Kerr plans are probably the easiest). These dimensions give the following floor areas supported on each column.

(51) 29' 6" x 30' 0" equals 885 square feet.

(53) 28' 0" x 30' 0" equals 840 square feet.

(55) 28' 0" x 30' 0" equals 840 square feet.

Loadings

Assuming the whole building was developed as a departmental store.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.

A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.
No. 20.
A. T. Britten.

Cross-
examination.

The live load for this occupancy is 100 pounds per sq. ft. The dead load of a flat-plate floor would be 125 pounds per sq. ft. and 10 pounds per square ft. is allowed for floor finishes giving a total load of 235 pounds per sq. ft.

Live Load Reductions

$$= \begin{array}{l} \text{(i) } .08\% \text{ per sq. ft. supported by member} \\ \text{(ii) } 100 \times \frac{\text{Dead load plus live load}}{4.33 \times \text{live load}} \\ \text{(iii) } 60\% \end{array} \left. \vphantom{\begin{array}{l} \text{(i)} \\ \text{(ii)} \\ \text{(iii)} \end{array}} \right\} \begin{array}{l} \text{whichever} \\ \text{is the less.} \end{array}$$

$$\begin{array}{l} \text{(i) } = .08 \times 840 = 67.2\% \\ \text{(ii) } = \frac{1.00 \times 235}{4.33 \times 100} = 54\% \end{array} \quad 10$$

$$\text{(iii) } 60\%$$

Therefore live load reduction is 54% of 100 pounds—54 pounds.
Therefore load to be taken is total dead & live load

$$\begin{array}{r} 235 \text{ lbs. per sq. ft.} \\ \text{less live load reduction} \quad \text{—} \quad 54 \\ \hline \text{equals} \quad \quad \quad 181 \text{ lbs. per sq. ft.} \end{array}$$

Loads on columns. 20

The load on the columns per floor is 181 pounds per sq. ft. multiplied by the area supported. To this has to be added the weight of the column itself from floor to floor.

Thus for each column—

(51)	885 x 181	160,185		
	Average wt. of column	7,215		
	Total	167,400		
(53) & (55)	840 x 181	152,040	30	
	Average wt. of column	6,960		
		159,000		

Number of floors.

A department store would require at least a 12' 6" ceiling height This allows of eleven stories above Carrington St. as shown.

Total load on (51) (For simplicity the roof load is taken to be the same as a floor load).

Load supported directly by (51)—					
9 floors of 167,000 lbs.	1,503,000	<i>In the Supreme Court of New South Wales in its Equitable Jurisdiction.</i> Plaintiff's Evidence. No. 20. A. T. Britten. Cross- examination.
Load of (53) from truss—					
9 floors of 159,000 lbs. . . . .	..	..	..	1,431,000
Half weight of truss . . . . .	..	..	..	126,000
Load supported directly at 4th floor . . . . .	..	..	..	167,000
				3,227,000	

10 SIR GARFIELD: The witness said he agreed to what is set out there, subject to that form of loading and that form of partitioning.

(Document called "Sketch to show loading on 51 and 57" tendered and marked Exhibit "26").

MR WALLACE: Those computations with which you have just agreed are made, aren't they, on the assumption that the whole building was developed as a departmental store? A. The whole building was developed as a departmental store? I would have to check on the loading for that. I am prepared to accept your assurance that they were as a matter of fact.

20 Q. Look, here it is, "Assuming the whole building was developed as a departmental store, the live load for this occupancy is 100 lbs. per square foot. The dead load of a flat plate floor would be 125 lbs. etc.?" A. That would be right. I am not sure the live load reduction is applicable to departmental stores. It could apply. I am quite prepared to accept your assurance that it does, but I have not checked the loading.

HIS HONOR: What the witness says is he does not know at the moment that those are loadings for a departmental store.

MR WALLACE: Q. Would you agree that the live load for a departmental store occupancy is 100 lbs. per square foot? A. Yes.

30 Q. And there would be 10 lbs. per square foot allowed for floor finishing? A. That is reasonable, Yes.

Q. And 125 lbs. per square foot as being the dead load of a flat plate floor? A. That might be a little bit low, but not enough to worry about.

Q. Giving a total of 235 lbs. per square foot? A. Yes.

Q. That is 10 lbs. for the floor finishing? A. Yes.

Q. On that basis, and the areas which we have taken as being the areas—the load areas for the columns in question—it follows, doesn't it, that these computations are on the basis that the building was developed as a departmental store? A. There is another factor coming in. The live load reductions at the last point on that page, which I have not checked

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 20.
A. T. Britten.*

*Cross-
examination.*

Q. I thought you said you had been through it. Look, there are three methods of computing a live load reduction, aren't there? A. There are two methods I know of.

Q. Two methods, with a 60 per cent. maximum? A. Yes, but I want to check the loading which applies to a departmental store. That is what I am not sure about. I can refer to a publication in my bag.

Q. As I understand it, if you look at pages 14 and 15 of that booklet A. I wanted to make sure what the wording was there. I just could not certify this figure for you. Yes, that is all right.

Q. Will you agree now with these figures? A. Yes, I agree with 10 those figures.

Q. And will you therefore agree that those figures have been computed on the assumption that the building was developed as a departmental store? A. Yes.

Q. And therefore, if the 1956 plan is 5,000 instead of 3,000 for the reinforced concrete, as stress, and if the plates which you have said is a minor matter is enlarged A. And provision made for seating the truss.

Q. Yes, then you would now agree that even though you wanted to build a departmental store on that site, the 1956 plans permit it to be 20 done? A. They permit it to be done, with proper precautions in construction, to keep your weight down to those figures.

Q. But I have given those figures. Assuming those figures are departmental store figures, which you admit are considerably heavier than an office or an hotel figure A. No.

Q. Well, they are heavier? A. For one floor; not for that column.

Q. I understand that what we have been doing is finding the total weight at the point marked "Y" if trusses were used and the building went up to the maximum height and was used and constructed for a 30 departmental store? A. I agree with that.

Q. Very well. Then I am putting it to you that on that basis the 1956 plans, with those minor alterations I have suggested, permit the construction of such a building? A. Oh, Yes.

Q. The next matter is this. You have offered comments—apparently it is not criticism, but I thought you had criticised—about the introduction of two additional columns, 53A and 55A? A. Yes.

Q. I want you to assume that the 1956 scheme has been constructed? A. Yes.

Q. There is one other thing I want to go back to before I come to 40 columns 53A and 55A. At page 334 of the transcript, do you remember you said "For instance, you must have one at about the 4th floor level". That is the open area? A. Yes.

Q. "no higher"? A. Yes

Q. What fourth floor do you mean? A. Of Carrington Street. I think I said it was from Carrington Street stratum.

Q. It is quite clear you mean from Carrington Street? A. Yes.

Q. As you say, it is the fourth floor from Carrington Street, you must agree, must you not, that the central so-called weak columns will go to the 6th floor; that is to say, the 4th floor above Carrington Street?
A. Yes.

Q. Before I come to columns 53A and 55A, I think you have agreed
10 with me or you yourself have said that if you used brick partitions the load on a hotel building per square foot area is less than on a departmental store?
A. For one floor.

Q. If you used terra cotta or vermiculite the load would be considerably less?
Lighter again, yes.

Q. And when you say "for one floor", I presume what you have in mind is you would get more floors in hotel bedrooms than a departmental store?
A. You would have reduction in more floors for the live load but not for the dead load.

Q. Going back to this document that I showed you, the contents
20 of which are on the notes, do you remember you agreed with me that 235 lbs. is near enough to being accurate as the total number of pounds pr. square foot in connection with a departmental store?
A. I think that is right, Yes.

Q. 100 lbs. plus 125 lbs. plus 10 lbs. for the floor finishing; that is near enough?
A. I will agree with that—subject to special construction.

Q. Subject to what? A. Special construction, to get that.

Q. But I am only on those weights? A. That is not normal weight. I say special construction would get you to that.

Q. Let us take that answer. Firstly, is 100 lbs. correct?
30 Yes. A.

Q. As the live load that the code envisages? A. Yes.

Q. So there cannot be any special construction about that, can there?
A. No.

Q. And 125 lbs. as being the dead load of a flat plate floor; correct?
A. On a 30 x 30 foot panel that would involve high quality construction.

Q. What do you mean by that? A. Higher than standard.

Q. You have looked at the Stanley and Llewellyn calculations, haven't you?
40 A. Yes I looked at the calculations. I did not actually look through their floor design in any detail. I said I had looked at them mainly to check certain column loadings.

Q. Is it within your knowledge that they envisaged a 10½-inch slab?
A. No.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*
—
*No. 20.
A. T. Britten.*

*Cross-
examination.*

Q. It is not within your knowledge. Could you check that up, to make sure they do? A. I did not even look at such a figure.

Q. It is in their calculations, isn't it. I thought you had seen the calculations? A. I had a look at the calculations, but mainly to compare certain column calculations—and with which I have agreed.

Q. Assuming that they provide for a 10½-inch slab, would you agree that the normal and accepted dead load would be 12 lbs. for every square foot which is 1-inch deep? A. Yes.

Q. So that if it is a 10½-inch slab the dead load is 125 lbs. per square foot? A. Well, 126 to be exact, but we will not argue about 10 a pound.

Q. That is near enough, isn't it. There is no special construction wanted for that, is there? A. To get down to that thickness there is.

Q. What special construction is required to make a 10½-inch slab of concrete? A. To carry that loading.

Q. What loading? A. 100 lbs. a foot live loading.

Q. Do you say there is some special construction required? A. Yes.

Q. Or do you mean you are drawing a distinction between an ordinary beam and slab construction? A. I am dealing with the quality of concrete.

Q. Are you suggesting that 10½-inches is unduly thin? A. It requires a concrete strength higher than normal.

Q. What is normal? A. Normal would be 2,000 to 3,000 lbs. concrete.

Q. Have you some table to show that? A. I think there is some reference to it here (indicating book).

Q. Will you show it to me? A. Yes. (produced).

Q. What is this, "2,000 lbs. minimum compressive strength, water-cement ratio", and this gives minimum volumes if poured in cement, nominal mix and so on? A. Yes.

Q. This is 3,000 lbs. concrete we are dealing with, isn't it? A. Yes—but not for that loading.

Q. Have you seen these computations of Mr Llewellyn's. To help you, you will find the object of the exercise is to show that a 10-inch slab is satisfactory. Do you follow that? (showing) A. What is that, the gross or the nett depth of the steel?

Q. I point out to you this figure of 8½ on that page as being the effective depth taken. Is that clear? A. That is clear, yes. That means it is 10 inches for hotel loading.

Q. You would not want to doubt the accuracy of those computations, would you? A. No, I am not questioning that.

Q. If 10 inches is satisfactory, and I have taken 10½ inches, then we know that the weight is 12 lbs. for every square foot one inch deep?

A. Wait a minute, I am trying to think how the depth would change with the increased loading in this design here.

Q. Do not forget there are two pillars, 53A and 55A, which shorten the span. You have not overlooked that, have you? A. It is not on the drawing you have shown me here.

Q. I am dealing with the loads? A. But not what you were discussing with me before.

10 SIR GARFIELD: Exhibit "26".

WITNESS: Just make it clear what we are discussing.

Mr WALLACE: Q. I want to make sure that these figures with which you have agreed and which I thought you knew and were intimate with, represented the figures that relate to a building developed as a departmental store? A. Yes.

Q. That is the object of my exercise at the moment, and I thought you more or less agreed with it? A. But are columns 53A and 55A in or not?

20 Q. I may be wrong, because I am dealing with the load on 51 at the point marked "Y"? A. Yes.

Q. All that we were stumbling about was this 125 lbs. being the dead load of a flat plate floor? A. Yes.

Q. Then, I thought you first of all hesitated as to whether 10½ inches was satisfactory? A. I am still hesitating. I am trying to evaluate the difference in loading conditions between the two. This is calculated for 10 inches on one loading. I am trying to estimate what the figure should be for a heavier loading on this calculation.

Q. What heavier loading? A. A departmental store loading. This is done for the 1956 plan, isn't it, which is a hotel loading?

30 Q. I think you will find that the loadings are over 100 lbs. Just read it through? A. I find it very hard to follow other people's calculations. Would it suit the Court for me to examine them myself and to be questioned later?

HIS HONOR: Yes, it might be convenient if that were done.

Mr WALLACE: Q. You would at least agree with this, wouldn't you, that the dead load that I have given, 125 lbs. is heavier than the ordinary beam and slab construction? A. No, would it be on that standard? 30 x 30?

40 Q. I am suggesting a 6 inch slab is 75 lbs. and the main beam and secondary beams 25 lbs., a total of 100 lbs.? A. On a 30 x 30 panel?

Q. Yes? A. No, it would be more than that for the main and secondary beams, unless you used high strength concrete, when you might get it down to 105 or 110—with high strength concrete.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. At all events, you will agree the figure we have given, 125 lbs., for that component of the 235 lbs. is heavier than would be given in a beam and slab construction? A. A normal beam and slab construction using normal concrete would be about that figure. You would have to use high strength concrete to reduce it.

Q. Subject to that one residual doubt you would have about 125 lbs., you do agree that the figures with which you have agreed are computed on the assumption that the building is developed as a departmental store? A. That is a reasonable figure for that, I quite agree with that. It might be a little bit more, but nothing worth arguing about. 10

Q. Would you agree with this: that if instead of a departmental store and if instead of the figure 235 lbs. you were to consider hotel loadings, you would get the following result: firstly, the live load would be 40 lbs., the dead load we will keep at 125 lbs., the finish is 10 lbs. and then the partitioning, if you use modern methods, would be 30 lbs., a total of 205 lbs. instead of 235 lbs. A. That would be about right for one floor, not for the column.

Q. I do not know why you add "one floor". We are engaged on one floor in order to find the total weight at the point "Y" on Exhibit "26"? A. Yes. 20

Q. Now, going to 53A and 55A, would you regard it as an even worse feature than what you described as the overloading of column 51. Do you remember that? A. 53A and 55A; a worse feature?

Q. Yes; at pages 425 and 426 of the transcript? A. Yes. They are worse features.

Q. That is what you said? A. Yes.

Q. You said it was a much worse feature in your mind, and then you said that perhaps you should withdraw it as it was a matter of opinion. Have you looked at either Exhibit "H" or Exhibit "L2" recently. Those are the plans of the 1954 and the 1956 designs? A. I 30 have looked at them, Yes.

Q. I show you sheet 3 of "L2" and Sheet 6A of Exhibit "H". If you look at either of those plans, you find that the columns—not 53A or 55A—come up through various bedrooms, don't they? A. Yes.

Q. That is so with regard to Exhibit "H" and with regard to Exhibit "L2"?—A. Yes.

Q. All that 53A and 55A do is come up against the wall. That is so, isn't it? A. In which design, in that design?

Q. Yes? A. Yes.

Q. As a matter of fact, they come up somewhere here, don't they? 40
A. There they are (indicating).

Q. They are actually not as big as some of the other pillars that come up through the bedrooms? A. Much smaller.

Q. And so far as the bedrooms are concerned, all that happens is you have on three floors of bedrooms and in two bedrooms on each floor a pillar in that sort of position? A. In the 1956 design it goes up three floors, Yes.

Q. That is, so far as bedroom accommodation goes, no different? A. You can forget it, Yes.

Q. At page 337 you said this: "By the nature of the construction of the building and what was built before, they"—that is 53A and 55A—"must extend from Carrington Street to I think it is the 8th floor, 7th floor ceiling, where it is stepped back a little. I will check on that number". Do you remember that? A. Yes.

Q. Of course, that would not apply if you were building a departmental store over 1956. That is obvious, isn't it; over it and to the east of it? A. If you are building it over the 1956, without carrying the full extension?

Q. Building it to a departmental store over a full extension? A. Assuming the 1956 plans are just constructed in the objective sense?

Q. Yes? A. It would not apply, Yes—except to the third floor, fourth floor ceiling.

20 Q. What I am putting to you is this: that the only possible interference with open areas that could conceivably take place in connection with the 1956 plans, and assuming you did not take any avoiding action at all, would be a narrow strip about 15 feet wide would be eliminated from the length of 145 feet on two floors? A. No

Q. Pardon me, three floors? A. That is assuming the 1956 plan is just carried to the full extent?

Q. Yes? A. It may be 16 feet or 17 feet. It is 17 feet column to column centre, so it would be about 16 feet: 16 feet, 3 floors, that is correct.

30 Q. That is if the designer or the developer took no avoiding action whatever, such as removing the bedroom walls and extending in to the full 15 feet or 16 feet by other methods? A. No, it would still foul the space where you removed the bedrooms. That is the point.

Q. The first step, I think you agree with me, is, taking no avoiding action, the worst that can be said in regard to the development, if you want a large open area space, is that you could not have it the full 145 feet length. There would be 15 feet or 16 feet of it at the Carrington Street end unable to be extended; so there would be 130 feet instead of 145 feet? A. Yes.

40 Q. And if you only wanted it on the one floor, well, that would be the only thing that would happen. It would be 130 feet long instead of 145 feet? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. While I am on that, at page 427, when we were dealing with the cantilevering over the step, under the 1956 plan . . . A. Cantilevering over 53 and 55 to 53A and 55A? Yes?

Q. The first thing I want to put to you about that is, first of all floors are built in that cantilever fashion all over the place, and it is one of the most common method of construction? A. Oh, Yes, there is no doubt about that.

Q. Secondly, the joint you were speaking about, the no-contact, in order to ensure that no load was transmitted—do you remember that? A. Yes. 10

Q. That joint also is of a mere commonplace in construction? A. It frequently has to be used, Yes.

Q. Not only has it frequently to be used but also it is prescribed by Council by-law that it must be used in cases of buildings that are 150 feet long? A. Because it has to be used.

Q. Yes; don't you know that? A. Yes, it has to be used there for a very different purpose, though.

Q. Don't you know it is a very common thing to have a cantilever projection of that sort, and one of these joints. The joint simply consists of putting a bit of masonite or cane-ite in. All they do is to put a piece of cane-ite where the beam comes into the wall, between the end of the beam and the wall? A. That is all you do in forming it. 20

Q. Then the bricks are built up on the beam. You have the cantilever beam coming from the column here, coming over here to that wall that has been stepped in. You have a piece of cane-ite or something there, between it and the wall, and then your partition is built up, and you only have cane-ite or malthoid placed in between the bricks? A. It sounds very simple the way you put it, but it is not a fair picture.

Q. I am putting it to you that that is a very frequent occurrence in city buildings? A. Yes, I agree with you. 30

Q. And that it takes no maintenance whatever. What maintenance is required? A. What maintenance?

Q. It is a simple question? A. What maintenance is required is that if it were a building that had no aesthetic quality, no maintenance is required, but if you are going to maintain appearance maintenance is required.

Q. What for? A. To maintain the appearance. If you could leave an open air gap or a gap filled with cane-ite or masonite and no architectural finish over it, what you say would be correct, there would be no maintenance; but you cannot do that in a building like a hotel 40 or whatever it is normally used for.

Q. But if you take the beam, first of all, that is cantilevered in, the problem is to ensure that it does not transmit load? A. Yes.

Q. All you do is put a bit of malthoid or something between it and the wall, and the floor goes over it? A. No, the floor does not go over it. That is the point. The floor has to be broken, to—

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. I meant the floor of the bedroom, or whatever it is? A. The floor has to be broken at the joint.

Q. But it is something which is not even seen? A. I beg your pardon?

Plaintiff's
Evidence.

Q. Have you ever seen one? A. Yes.

No. 20.
A. T. Britten.

Q. Where have you seen this sort of building? A. I have seen
10 a building. I have seen plenty with these straight walls and joins in them.

Cross-
examination.

Q. You will agree with me it is a mere commonplace in construction? A. I object to your form of words. I do not like that form of words. They are not my words at all. I would not agree in those terms. I shall phrase it so that we can agree, but I object to words with that exaggerated meaning being put into my mouth.

HIS HONOR: You tell me? A. It is a common necessity in building construction.

Q. Is there any difficulty in doing it? A. There are a certain
20 number of man hours of work. That is all.

Q. Is it very expensive? A. Not very expensive in construction. Its main trouble is in maintenance, and it is quite a lot in maintaining it, in monetary cost.

Q. What is involved in maintaining it? A. What is involved in maintaining it is actually a little bit beyond my field. Structurally there is no maintenance. It is in the architectural finish and keeping the joint neat.

Mr WALLACE: Q. What you said on Wednesday was "That is a most objectionable and expensive construction to have, to construct and
30 maintain". Do you still adhere to that? A. The most . . .

Q. Do you still adhere to it? A. I should like to amend it.

Q. It is wrong, is it? A. No.

Q. You adhere to it? A. It can be interpreted in two ways.

Q. How can you interpret in two ways the statement "That is a most objectionable construction"? A. The word "an" should be inserted in front of "objectionable".

Q. "That is a most" what? A. "expensive" I mean. (Previous evidence shown).

Q. I put it to you bluntly that that evidence was wrong? A. It
40 requires correction; I shall agree with you on that.

Q. It is wrong? A. As worded here it is wrong, Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. What do you want to correct? A. It should read "This is a most objectionable and an expensive construction". The word "most" should not qualify "expensive".

Q. "This is a most objectionable and an expensive construction to have", and do you leave untouched the words "to construct and maintain"? A. Yes.

Q. Unqualified? A. Yes.

Q. I thought you told His Honor a few moments ago that it is not expensive to construct? A. I am sorry if I conveyed that impression. 10

Q. Do you still say something is expensive? A. I said not very expensive.

Q. Have you ever gone into any figures so as to give me an idea of what you say is involved? A. It is mainly an architectural matter.

Q. You have sworn that it is an expensive construction. What qualified you to swear that on your oath? A. The objections various architects have raised to introducing them into buildings.

Q. Have you yourself had any experience in computing costs of such a construction? A. No, not the architectural part, the main 20 part.

Q. I am talking about pounds shillings and pence, the cost of it? A. Complete costs, No.

Q. What qualified you to say "It is a most objectionable construction to have"? A. The number of

Q. What is most objectionable about it? A. That construction is most objectionable because of the number of jobs we have been called back to because the construction was not done properly. It is a most dangerous construction.

Q. What is dangerous about it? A. That it would not be done 30 properly. If it is not done properly you have a complete break-up of some parts of the work.

Q. Do you say you have seen this, yourself? A. Yes, a number of joints, they have had to cut out.

Q. Not done properly; and you have a complete break-up of the work. Just elaborate how it is not done properly? A. You are supposed to build the brickwork with a joint in it, and keep that joint free. If anything falls into that joint and bridges it—and mortar is a great offender—it is very frequently followed by cracking of brickwork or break-up of finishes. 40

Q. But suppose you put cane-ite in between; that is what the cane-ite is for, isn't it? A. I am talking about the brickwork, not the floor joint.

Q. So am I—

HIS HONOR: Q. I suppose by the same token mortar falls in brick-work and causes dampness too, doesn't it? A. Falls into the joint.

Q. You have to be careful that mortar does not get in? A. Well, it is dangerous, because the care is not always taken.

Mr WALLACE: Q. I have shown you correctly enough, haven't I, in diagrammatical fashion what you yourself have described as a common necessity. That is true, isn't it? A. Yes.

Q. All that is involved in this common necessity is to ensure that no load is transmitted on to the wall Z by the beam Q.? A. Yes.

Q. I have suggested that as a common necessity, as you call it, a piece of malthoid or cane-ite, is inserted between the end of the beam and the wall? A. That is correct.

Q. And when the bricklayer has to build it, he uses that wall. He does not have to build up here does he? (indicating) A. He would have to build a wall running that way.

Q. If he has to build a wall at that end and it has to join up with that end, all the builder does is to put a thin strip of cane-ite in, the width of the brick? A. That has not been usual in the work I have seen.

Q. Can you see any practical reason why he cannot put a strip of cane-ite there and no mortar can fall down at all? A. I do not think that would be good.

Q. What would be wrong with it? A. I think you would get sufficient bearing of mortar wedging between the cane-ite strip and the brickwork, to cause trouble; transmitting sufficient load to cause trouble. I would not like to do it without experiment.

Q. You would not deny that that insertion of the strip of cane-ite or malthoid for such matters is commonly done in Sydney? A. I would not deny or affirm that, under those conditions.

Q. But what about Ordinance 54, which makes it compulsory to have an expansion strip in the brickwork if it is 150 feet long. What about the strip of malthoid and cane-ite then? What is it called for?

Q. I thought you agreed you knew about the ordinances. By-law 54, Clause 33F is "Expansion joints: Approved provision shall be made for expansion and contraction in all buildings over 150 feet in length"? A. Yes.

Q. How do they make the expansion joints when they have two brick walls meeting? A. You have a gap with the usual construction.

Q. Don't you fill the gap in with cane-ite? A. No.

Q. Are you sure? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. How wide is the gap? A. About half an inch, and you cover it; you don't fill it in, you cover it.

Q. What with? A. Some form of moulding; aluminium or timber moulding.

Q. What about the mortar falling in? A. That is the danger.

Q. It is compulsory by law to have an expansion joint? A. Yes.

Q. Do you say that in practice people do not put malthoid or cane-ite in between? A. I have seen cases where it has been put in, and I have seen cases where it has not been done.

Q. The good builders put it in? A. No.

10

Q. The conscientious men? A. No.

HIS HONOR: Q. Why is it less dangerous with the gap left there? A. I would say I would be suspicious that mortar wedging between cane-ite and brickwork would be just as effective in breaking up brickwork as mortar wedging straight brickwork.

Q. One would be as bad as the other? A. Yes, one would be as bad as the other, but you would have small space to absorb small droppings, with the open space.

Mr WALLACE: Q. Will you agree it is practically a universal practice for all practical purposes amongst good builders to put malthoid in such joints, wherever concrete meets concrete, and cane-ite wherever brick meets brick? A. I would agree with the first part.

20

Q. You do? A. With concrete meeting concrete.

Q. What about cane-ite in expansion joints where brick meets brick? A. No.

Q. You have agreed, haven't you, that the so-called weak columns—I think 53 and 55 fall within that description—are capable of being extended three floors beyond what the Innes-Kerr design originally envisaged? A. I would have to check on that. Can I have the Innes-Kerr drawings?

30

Q. Yes. Have you seen Exhibit "18" before, that is, some computations by Mr Llewellyn, in his handwriting? A. I have not seen these before.

Q. Can you quickly pick up what it is intended to be? A. I am afraid I would have to get a better light than this (The witness was given permission to leave the witness box in order to peruse the document).

Q. What I am doing is endeavouring to ascertain whether you will agree with me that these 53 and 55 columns are capable of going up three floors more than the bottom of the fourth floor, the historic floor? A. That is the second floor, Carrington St. fourth floor, George St.?

40

Q. Yes. The bottom of the ballroom was the historic fourth floor from George St., second floor from Carrington St. I want you to agree with me, if you can, that columns 55 and 53 under modern conditions are fully capable of going up to the 7th historic floor or 5th floor from Carrington Street? A. Assuming the 1956 building has been erected and carried to its full height?

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. Yes, precisely that? A. It would go to the fourth floor with some constructions and the fifth floor with other constructions.

Plaintiff's
Evidence.

Q. Measured from Carrington St.? A. Measured from Carrington St. That would be in general agreement with those calculations I should think.

No. 20.
A. T. Britten.

Cross-
examination.

Q. Would you look at Exhibit "18" overnight? A. What do you want me to check on it?

Q. I want you to look through it so that I can ask you some questions about it? A. What, you mean put a fifth floor with a certain loading?

Q. A sixth floor? A. A sixth floor, George St. or Carrington St.?

Q. Seventh floor, George Street? A. I quite agree with that. There is no use my taking it home for that. I said fourth or fifth floor, Carrington St. according to the way of construction of the building.

Q. According to what? A. According to whether you do light or heavy floor construction, and heavy floor loadings.

Q. I want it to the maximum floor loadings? A. For that I would have to check.

Q. 100 lbs. per square foot; and I want your concurrence that those two columns can go fully up to the 7th floor from George St.? A. To

the 7th floor from George Street, assuming what construction; the full 1956 building?

Q. Yes, assuming a departmental store; 100 lbs. per square foot? A. Over what?

Q. Over such part of it as 53 and 55 are relevant too? A. But what is the construction of 53A and 55A?

Q. Departmental store? A. Above the third floor?

Q. That is right? A. I agree with that right away. There is no need to take it home for that. If you have columns 53A and 55A only extending up to the third floor envisaged in the 1956 construction you said a departmental store over the third floor?

Q. I want a departmental store over the whole building. That is clear enough, isn't it? A. The important point is the construction. You want to assume on columns 53A and 55A

Q. Over the whole building? A. But that does not answer it.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. Aren't 53A and 55A in the whole building? A. I do not know. It depends on your calculation in the 1956 scheme. If it is a scheme for a departmental store that you were just discussing with me I can give you "Yes" without any further calculations.

Q. One of these buildings you yourself drew on Exhibit "PP"

A. I did not draw any. I did not draw any extensions to the 1956 scheme.

HIS HONOR: It was the architect I think.

SIR GARFIELD: They were not extensions to the 1956 scheme.

Mr WALLACE: Q. You gave the Court the impression the other day 10 that a flat plate floor design was a long-standing method of construction, didn't you? A. Yes.

Q. Have you yourself ever designed one? A. Yes.

Q. Where? A. I designed some back in the early 20's.

Q. Where? A. In the Department of Main Roads, and one for the Eastwood Hotel, a small one.

Q. One for which hotel? A. The Eastwood Hotel. That is the only one I have done since I left the Department. I did several in the Department back in the 20's.

Q. Back in the 1920's? A. Yes.

20

Q. Do you see what this document is, what it purports to be (showing)? A. Yes.

Q. I want you to assume that that was issued in 1946, in America? A. I will assume that, yes.

Q. It would be obvious, if there is any authenticity in this document, that what I have been describing as flat plate was novel enough in America in 1946, wouldn't it? A. I have read the headlines only.

Q. Just read some of it and see what it features. (The witness was given permission to leave the witness box in order to read the document.) A. I am sorry; I cannot find it. I have not read it all 30 through. Would you like me to read the whole lot? I have looked through what I think would be the relevant parts.

Q. That is all you need do. I do not think it is at all necessary to read it all. The question I ask you is, having looked at that document would you agree that it would appear that flat plate construction in multiple-storeyed buildings was new in America in 1946? A. No.

Q. You had the record altered this morning by Sir Garfield in that the word "code" should be "codes" in connection with flat plate, didn't you? A. Yes.

Q. You had the record altered so as to make the word "code" in 40 reference to flat plate construction read "codes". Would you tell me any code in Australia to which there is any reference to flat plate construction? A. Not in Australia.

- Q. Confining ourselves to Australia, will you agree that the Caltex building is the first building in Sydney, at all events, of a multiple-storeyed nature where the flat plate construction has been used? I should neither agree nor disagree.
- Q. You do not know of any other, do you? A. I know of single storeys. I do not know of multiple-storeys.
- Q. I am not speaking of single storeys? A. You asked me "Any other?"
- Q. You do not know of any multiple-storey building apart from Caltex which is of flat plate construction? A. I know there are buildings.
- Q. You do? A. Not earlier.
- Q. Not earlier than Caltex? A. No.
- Q. There is no reference to it in any of the Australian building codes? A. I could not say.
- Q. You know of none? A. I know of none.
- Q. Is it within your knowledge or have you heard that when the flat plate construction for Caltex was first put to the City Council Authorities they rejected it? A. Not to my knowledge.
- 20 Q. Are you able to agree this morning with what I was asking you last night about Mr Llewellyn's calculations and designs for a 10½ inch reinforced concrete slab? A. I thought we agreed on that last night.
- Q. You agreed on the 10½ inch? A. Yes.
- Q. It therefore follows you agree with Mr Llewellyn's computations, and which we have had transcribed on to the notes? A. I agree with those computations, yes.
- Q. They were on the basis, as we have agreed with each other, of the building being developed as a departmental store? A. Yes.
- 30 Q. I suppose you would agree that if the building were developed as an hotel throughout you would have to have lightwells? A. On a sort of plan covering the whole site?
- Q. Yes? A. Yes, you would have to have lightwells then.
- Q. Now I want to deal with the case of an hotel development, and I want you to assume that there are 4½ inch brick partitions. Do you follow? A. Yes.
- Q. I want to assume, as Mr. Nicholls has put on his 1956 plan, a 4½ inch partition on those three storeys facing Carrington St., and assuming that the whole site is developed as an hotel, and taking the assumption that terracotta or vermiculite were not used but that 4½ inch brick wall partitions were used. Do you follow? A. Yes.
- 40 SIR GARFIELD: That asserts that Mr Nicholls uses brick partitions?

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Mr WALLACE: I have already said so.

SIR GARFIELD: That does not appear to be the fact from the specification.

Mr WALLACE: I want to assume it though.

Plaintiff's
Evidence.

Q. I want to assume as follows: Firstly, that the site as a whole is developed as an hotel? A. Yes.

No. 20.
A. T. Britten.

Q. Secondly, that terracotta or vermiculite are not used as partitions but for some reason $4\frac{1}{2}$ inch brick walls are used for partitions. You have already agreed that we must also assume there would have to be lightwells in areas. You say "Yes" to that? A. Yes. 10

Cross-
examination.

Q. I could say at once correctly enough, could not I, that if you have big uninterrupted areas, you would by the nature of things not have partitions in those big uninterrupted areas; otherwise you would not want them? A. That is correct.

Q. But if you have an hotel over the whole site with lightwells, then, of course, there is less area of floor space to be carried? A. To be carried on the whole of 51 you mean?

Q. Yes, on 51? A. I am trying to remember the plan. You would be correct.

Q. You only have to remind yourself of the plans to accept the 20 proposition, don't you? A. Yes.

Q. That if you have lightwells on an hotel development there would be less floor load to be carried on 51?—

SIR GARFIELD: Less than what?

HIS HONOR: Less than if you developed the whole site as a departmental store.

Mr WALLACE: Less than if you developed the whole site without lightwells.

SIR GARFIELD: Is that the only distinction?

WITNESS: Yes, 51 would be at the re-entrant angle to the light court 30 in all probability.

Mr WALLACE: Q. So at all events I could say there would be less floor area supported by 51. That would be obvious? A. That would be obvious; there would be less floor area.

Q. Would you also agree that if you have an hotel construction with lightwells, you would have to revert to the beam and slab type of construction, and that would not lend itself to flat plate construction? A. Do you mean if you had the system as outlined by Mr Nicholls?

Q. Or as shown on your plans? A. That is your identification. You mean with the three lightwells? 40

Q. Where there are lightwells? A. With three lightwells you would have an even slab on each side.

SIR GARFIELD: What is the answer to the question?

WITNESS: If you had three lightwells you would have beam and slab on each of the bays, wings each side.

Mr WALLACE: Q. In other words, if you continued the 1954 plans upwards to the maximum height permitted by the law, whether it be from the viewpoint of height or light, you would have to use beam and slab method of construction and not the flat plate construction? A. 10 You would have to use beam and slab once you reached the floor of the three light courts. All light courts are involved.

Q. Could you look at those computations and say whether you can agree with them? A. I will have to ask for notice of that question.

Q. You can see what it is? A. They are not actually computations, if I could so criticise them. I could answer you probably after lunch, when I have had time to check them. They look reasonable, but I would have to check them. If they are done by Mr Llewellyn, I would not argue.

Q. I can assure you they are in Mr Llewellyn's writing and are 20 his computation? A. In that case

Q. If those figures are correct, he is assuming the work is done in 2,000 lbs. per square inch concrete. Do you see that? A. Yes.

Q. And then he has worked out the dead load equals 112 lbs. per square foot? A. Yes. That is for 2,000 lbs. concrete.

Q. He has 5 inch slabs, and these sizes are for the main members and the subsidiary members? A. They look reasonable. I would not quarrel there.

Q. And the distances between the pillars are taken straight from the plans? A. Yes.

30 Q. The distances between the columns? A. That is rather a slight variation. That is the general plan. That would appear reasonable.

Q. They look reasonable; and you can retain it and check it if you like? A. I am prepared to accept it. I doubt whether it would warrant delaying the proceedings. Any efforts I made might not be appreciable. I might disagree by an inch with the depth, that is all.

Q. You think, from your knowledge of the plans, that that would be reasonably approximate? A. That is a reasonable design.

(Document as shown to the witness m.f.i. 47.)

40 Q. If that 112 lbs., the dead load, is correct as the m.f.i. attains. A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 20.
A. T. Britten.*

*Cross-
examination.*

Q. Then, for hotel loadings would you agree that you get something like this: I am still on the 4½ inch brick computation. You get the live load of 40? A. I am sorry, is this for columns or beams?

Q. This is for pounds per square foot that would be involved?
A. For columns or for beams?

Q. For the columns? A. 40 would be too high.

Q. That is against me? A. It is for you, I think.

Q. You see what Mr Llewellyn has done here: he has taken off the live load reductions A. At the end; that is all right.

Q. Just take it calmly and listen to me. I want this on the notes, 10 and I want your concurrence with it. The live load is taken at 40 per square foot. We have heard that figure a dozen times, and that is correct, isn't it? A. Yes.

Q. The live load is 40 lbs.? A. Yes.

Q. The dead load which I have just shown you is 112 lbs.? A. Yes, that would be about right; dead load slab.

Q. The finish would be 10 lbs.? A. No, it could be more.

Q. I thought you agreed with 10 lbs. yesterday? A. I said I would accept it for the purposes of that writing; and also you have more area here. 20

Q. More area? A. The beam areas.

Q. I am suggesting to you that 10 lbs. for an hotel erected over the site with light areas would be very reasonable; a figure of 10 lbs. is very reasonable? A. I think it is low.

Q. How low? A. Well, it could vary. You were talking before about a departmental store. Now you are on an hotel?

Q. Yes. A. Well, now, certain areas will have tiling.

Q. What, the bathrooms? A. Bathrooms, yes. That is quite considerable. You also have a beam and slab design. There is more plastering down the sides of the beams that you do not have in the 30 flat plate design. I would say your average finish might be getting up towards 20, possibly more. I would have to check areas and weights.

Q. So you do not agree with 10? A. I do not agree with 10.

Q. The 4½ inch brick partition, what would you put that down to?
A. Can I have a look at the plans you are considering? The partitions in 4½ inch brick constructed according to this plan would be 80 lbs. to 90 lbs. per square foot.

Q. Going back to the finish, where you said it might be 20 or more, if you had the bedrooms—if you consider the bedrooms—I suppose in an hotel like this all you would have would be carpet on the floor? 40

A. Yes.

Q. I suggest that so far as the bedrooms are concerned it would only be about 5 lbs.? A. On the top, yes.

Q. And the bathrooms might get up to 20, and the average might well be only about 10 lbs. What about that? A. No, that is not all. That part, the finish on the top surface of the floors, would probably be about 10 or 12. Then you have the finish underneath and the finish on the bathroom walls, which is extra tiling, which you have not included in the weight of the finish.

10 Q. I am suggesting 20 lbs. would be an overall figure for the bath-rooms? A. No, on the floor

Q. And 5 for the bedrooms? A. Yes.

Q. You would agree with 5 for the bedrooms? A. 5, yes.

Q. There is much more space involved in the bedrooms than the bathrooms? A. About 3 or 4 to 1, so just taking the finish on the horizontal finish of the floor you get about 10 lbs.; but that is not all the finish.

Q. There is nothing more involved so far as the bedrooms are concerned, is there? A. There is the finish on the underside of the slab and the finish on the walls of the bathrooms.

20 Q. The finish on what? A. The underside of the slab or the ceiling over it.

Q. We are not taking that into account when we are speaking of finish. That is already taken into account, isn't it? A. No.

Q. Anyhow, the short position is you will not agree with 10? A. I would say about 20 with the total finish in work.

Q. Although you concede the floors of the bedrooms only involve about 5 lbs.? A. More than that, 5 lbs. and over—about 7½, not counting beams.

30 Q. Are they figures that you have computed on some earlier occasion? A. No. they come from

Q. Never mind looking at that. Are they figures you have computed on some earlier occasion, or are they merely figures you have arrived at while sitting in the witness box? A. You mean in what way? The 5 lbs. for plaster finish is this code load.

Q. I asked you are the figures you have just given covering bathrooms and bedrooms and floors and ceilings—are they figures you have computed on any earlier occasion in relation to this hotel design? A. No.

40 Q. Then, with regard to the brick partitions, you have said something to the tune of 80 lbs. or 90 lbs., have you? A. Yes.

Q. Didn't you say yesterday that brick partitions would only involve 40 lbs. or 50 lbs.? A. I was thinking in terms of an office building at that time, but this building here as drawn

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. You were thinking in terms of office buildings? A. Yes. I was thinking of the 1954 plan, but I was not anticipating as close a spacing of partitions as is shown here.

Q. I am now asking you to look at the 1954 plans, which you were thinking of yesterday? A. I might have been thinking of them. I was thinking of this plan (indicating).

Q. That is the 1954 plan that you are looking at? A. I am sorry. These are unusually closely spaced partitions.

Q. If you were thinking yesterday, when you volunteered, as I think you did, 40 or 50 lbs. for brick partitions, you were in error if you were thinking of the 1954 plans. Is that the position? A. I was not thinking of the 1954 plan as it is here.

Q. The weight of the partition, if it is brick, depends on what, the size of the rooms and the number of partitions? A. It depends on the length of the partition in the area on which you are taking out the load.

Q. I am suggesting to you it would be a fair figure to say 40 lbs. or 50 lbs. for 4½ inch brick partitions in an hotel design? A. In this design it is half the correct figure approximately.

Q. Can you show me how you work that out? A. Yes; I added 20 up the length of these partitions per square foot.

Q. What area are you taking there in working out this figure? A. That is column 51 (showing).

Q. Where were you measuring when you said that my suggestion was half the figure? A. I was measuring the area around column 51.

Q. Around some bathrooms? A. I was measuring around 51.

Q. Were you measuring around two bathrooms? A. I was measuring two bathrooms and two bedrooms which are carried by 51.

Q. Supposing you measured a room 15 x 10, and supposing you had a number of rooms 15 x 10, what result would you get? A. I presume 30 you would have about a 6 ft. passageway between them. Would that be right?

Q. I want to take the situation of, say, three bedrooms each 15 x 10, lying side by side. Just do that first of all, never mind anything else? A. I cannot do it from that. The information is insufficient.

Q. Why is it insufficient? A. Because what are the end walls of the bedroom. I can work out what the side walls are, but what happens at the end.

Q. Imagine four bedrooms each 15 x 10 ft. side by side; give me the two centre ones? A. The weight per square foot of 15 x 10 bedrooms 40 side by side would be 15 x 9½ x 55—I am sorry, it would be 9½ x 55 over 15 for the two end walls only. That would be somewhere around 35.

Q. When you said 80 or 90, you were taking a small area, weren't you, where there was a concentration of bathrooms? A. I was taking the average loading in the panel section, column 51. That is the next column in each direction; the average loading on those two panels.

Q. The average loading, you say, on what columns? A. Of the area bounded by—

Q. That is 51 there (showing)? A. Yes, the areas bounded by

Q. 26? A. 26, 28, 53.

10 Q. And 78 and 76? A. And 78 and 76, that is right. That is not including the external walls; the internal partitions in that area. There are 11 in about 60 ft.

Q. If you take Exhibit L2, and if you go across A. There are 10 the other side of them. That is equivalent to two, that one (indicating); 10. That is not complete. There are other cross partitions.

Q. Where are the other cross partitions? A. In either case, those (indicating).

20 Q. 60 ft. you had then, did you. You were dealing with how many bedrooms? A. I was dealing with the numbers inside the centre lines of those columns.

Q. You were dealing with, on one side of the corridor, the situation which had four bedrooms? A. And four bathrooms. On the other side you have six bedrooms and two bathrooms.

SIR GARFIELD: Can we identify this area?

Mr WALLACE: I have done so by columns.

Q. Now, take sheet 3 of Exhibit L2. Could you work out the partition weights per foot. Say there are six bedrooms? A. Six bedrooms. Do we take the number between those columns?

30 Q. Between columns A. What about the dimensions? Can I get a scale out so that I can do some measuring here?

Q. Yes

SIR GARFIELD: He has assumed brick columns.

Mr WALLACE: That is right; 4½ inches.

WITNESS: And exclude the external walls.

Mr WALLACE: Q. Yes. All I want you to work out is the weight per foot.

HIS HONOR: How can that area be described on the notes?

40 WITNESS: Bedroom No. 5 to bedroom No. 10 inclusive; excluding the wall between bedroom 5 and bedroom 4 but including the wall between bedroom 10 and bedroom 11.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Plaintiff's
Evidence.
—
No. 20.
A. T. Britten.
—
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Plaintiff's
Evidence.
—
No. 20.
A. T. Britten.
—
Cross-
examination.

SIR GARFIELD: What about the marginal walls?

WITNESS: Excluding one end wall and including the other; not counting the external walls. Nearly 80 lbs.

Mr WALLACE: Q. Now I want to ask you this: If you go back to Exhibit H, I want you to assume that instead of the partitions—you see, you have counted up as though there were two 4½ inches? A. That is debatable, I quite agree.

Q. Not only is it debatable A. It is shown here, that is all.

Q. But in practice you would not have two 4½ inch brick partitions separating two bathrooms just to get a duct for pipes in between, would you? A. Not for that purpose.

Q. The most you would have would be bricks on edge 3 inches or something less. You would not have 4½ inch brick partitions separating two contiguous bathrooms, would you? A. Oh no, you would not.

Q. So that if you made an assumption that all these partitions which you have been computing between the bathrooms were of much lighter material, then it would reduce you down very materially, wouldn't it? A. In the bathrooms? 20

Q. Yes. That is where the partitions mount up? A. No, not very much. That is only

Q. Look, if you take this one line on Exhibit H, between column 51 and column 76, you have got A. There are 11 walls of which four could be reduced to about two-thirds of their present size, or the size that you asked me to assume.

Q. I wish you would not anticipate my question. I was not going to say that? A. I am sorry. I am trying to expedite the proceedings, that is all.

Q. You would say that four out of 11 would be reduced by how much? A. Four out of 11 would be reduced by one-third. 30

Q. Depending entirely on what material was used? A. If you had three inch brick on edge.

Q. One other way is this: you have said that so far as bedrooms are concerned you used the figure of 35 lbs., didn't you? A. For one set of walls only.

Q. And any additional weight involved is concerned with bathrooms. Is that so? A. No, concerning the other walls of the bedroom.

Q. I want you to assume that the problem is to find the dead weight of the partitions using 4½ inch brick? A. Yes. 40

Q. Excepting in the bathroom. I think you agree that if you had 4½ inch walls in an hotel you would not have them duplicated, so to speak,

between bathrooms, would you? A. No, you would probably have the construction shown here; two 3 inch brick, on edge.

Q. In the result, what I am putting to you is this: whether you develop the centre of that site as a departmental store or whether you develop it with lightwells as an hotel development, you would get much the same result after allowing for live load reduction so far as the loadings are concerned. I am assuming a 4½ inch brick partition and not terracotta or vermiculite? A. Assuming 4½ inch brick partitions throughout?

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

10 Q. Excepting in the bathrooms? A. Except in the bathrooms, yes.

Q. Do not forget the lightwell? A. I have the figure already calculated, by the way. I make it a shade less than the departmental store. I just remembered that figure; I have it here. That is an hotel development.

Q. If you use terracotta or vermiculite the hotel loadings would be much less than for a departmental store? A. Yes.

Q. Now I want to go to the matter you raised in your evidence about the cost of the trusses. Do you remember? A. Yes.

20 Q. You put it one way, that the additional cost of having trusses over ordinary columnar construction would be £8,000 per truss? A. On a certain assumption as to loading on the truss.

Q. Let me remind you what you said. At the foot of p. 339 you were asked this question:

“Q. The question of economics protrudes into this, regarding the cost of using these trusses. Would the cost of building with these trusses be of a consequential magnitude. Tell us what would be the cost of putting in these trusses? A. It would not be very important in the cost of the building at all.”

30 Do you remember that?—A. Yes.

Q. Then, over on p. 339, you said “Assuming the worst condition—that is, that you truss over at the lowest possible level immediately and carry the maximum building height full area thereon at heavy loading”? A. Yes.

Q. Then, lower down on the same page you said there would be “46 tons extra steel in one truss, compared with the column construction—which I estimated at 7, and I cannot read the second figure unfortunately, and then I allow for the concrete casing and the forming. I can read the final figure for the truss construction of £8,900 for one truss.” I think the assumption you make is that you use the most economic construction; that is the truss three floors deep? A. Yes.

40 Q. That concludes your evidence on that, but I want to ask you this: How did you make up that £8,900? A. From the truss I have made

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.
No. 20.
A. T. Britten.

Cross-
examination.

£7,700; the concrete casing and forming £1,200. Those are both excesses over the construction that would be there down to the same level if you did not have trusses.

Q. By the truss £7,700 you mean the cost of the steel, do you?
A. The cost of the steel.

Q. The 46 tons extra steel? A. Yes.

Q. Those are the two items which go to make up the £8,900 and no other items. Of course, they make up £8,900? A. Yes.

Q. But, in order to erect the trusses, it is essential, isn't it, that the stanchions should be strengthened? A. Which ones? 10

Q. The columns? A. Which columns?

Q. Let me invite your attention to the following columns. Columns 51 and 76 would be involved in the truss, wouldn't they? A. Yes.

Q. Column 57 would be involved? A. Yes.

Q. And 81? A. Yes.

Q. And 32? A. I do not think it would be 32. It would be these two here (indicating). There would be four more; eight altogether would carry the trusses.

Q. I think you agreed with me that the steel—that is, column 51—has been extended up to the position of the letter "Y" (Exhibit 26 20 shown)? A. Yes, to there (indicating).

Q. That involved extending it. You know that was done a year or so ago by the defendant company through one floor? A. Yes.

Q. 76, which is also involved, was also extended to the same height through one floor? A. Yes.

Q. And columns 57 and 81, which are involved? A. Yes.

Q. They were extended through two floors, weren't they, in steel?
A. I could not say.

Q. You could not say? A. No, I could not.

Q. I want you to assume that they were extended through two 30 floors. All that sort of work would be a necessary preliminary to the construction of trusses? A. Yes.

Q. And all that sort of work was only necessary if you wanted to build trusses and not if you wanted to have ordinary columnar construction throughout? A. No.

Q. I put it to you that those particular extensions are absolutely necessary in order to allow for the future construction of a truss?
A. As constructed you mean?

Q. As they are now? A. Yes.

Q. If, however, you were only going to construct without trusses 40 and without a large open area on the fourth floor and had columns going up merely to serve the floors to be erected on them—normal

floors to be erected on them—there would not be the necessity to extend those steel columns to which I have referred up in the way I have suggested they have been extended? A. No, instead of the eight large columns you would have 16 smaller columns?

Q. No. I am suggesting that the cost which has been involved in extending those large columns is a material component in estimating the cost of the trusses and must be added to the £8,900? A. I cannot agree.

HIS HONOR: Estimating the cost of truss construction?

10 MR WALLACE: Yes.

Q. Have you been down to see the way in which those columns have been extended? A. I have seen them going by. I have not been down to look at them particularly.

Q. If they have been extended in steel to a size which would envisage a truss of some kind, that would, of course, mean they would be extended in a stronger, thicker way, than would be necessary if the contemplated development had not envisaged a large open area on the fourth floor? A. Oh, certainly.

20 Q. All I am putting to you then is it follows, doesn't it, that if you extend a number of columns up in steel thicker than you would need for some other purpose, that involves very considerable expense; additional expense? A. No.

Q. Surely it is a very costly business, isn't it, extending steel columns? A. Yes.

Q. And the thicker they are—the stronger you extend them—the more costly it is? A. Yes.

30 Q. Have you any idea—is it within your knowledge—that some nearly £40,000 has been spent on extending columns in the last two years? A. I would not be surprised what the figure was. I have no idea exactly how much work was done.

Q. You have not had occasion in connection with qualifying yourself to give evidence to look at the extent to which a number of columns have been extended? A. No.

Q. Or the thickness by which they have been extended? A. I have only looked at the columns I was concerned with for purposes of my evidence.

Q. When you were purporting to give His Honor the cost of erecting the trusses, which you gave in chief to Sir Garfield—do you remember? A. Yes.

40 Q. Did you not think it would be fair to include all items which were directly or indirectly involved in the erection of the trusses? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 17.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 20.
A. T. Britten.*

*Cross-
examination.*

Q. I put it you have omitted, in arriving at the figure of £8,900, to take into account the extra cost involved in extending certain columns in a thicker and more expensive manner than would have been necessary if no large open area had been envisaged on the fourth floor? A. Can I have the question repeated, please?

Q. You have omitted when arriving at the figure of £8,900 to take into account the extra expense involved in extending certain columns in a thicker and stronger manner than would have been necessary if the building had been developed without an open area and just by columns in the ordinary way? A. No. 10

Q. What I am putting to you is that instead of four trusses each costing, according to your figures, £8,900 extra, it would be more correct to say that each truss would cost somewhere between £12,000 to £14,000 extra? A. No.

Q. And instead of its being worked out on a footage basis, being the figure you have given, it really works out at about £5/10/-? A. I maintain my figure of 6/-.

Q. By the way, the higher you put the truss the further you would have to extend the columns in strength sufficient to carry it? A. Yes.

Q. And the greater the cost of extending those columns? A. Yes. 20

Q. If I can just put this to you at this stage, to clarify what I am trying to obtain from you, you agree that the truss construction involves that the central columns are weaker than the columns which support the truss? A. Weaker and cheaper.

Q. And that the outside columns have to be heavier because after a certain stage they do not get the aid of the weaker columns? A. Yes.

Q. In the centre? A. Yes.

Q. And that is why their extension has to be in a much more thicker and stronger design than if you had columns without trusses going 30 right through the site? A. The stronger columns are stronger, and the weaker columns are weaker. The total cost is the same.

Q. Have you ever worked that out, or is that something you are saying on the spur of the moment? A. I have worked it out approximately.

Q. You are saying the total cost would be the same? A. Yes. It might differ. It could not be exactly the same, but so far as we are concerned it is the same.

HIS HONOR: Q. The stronger columns A. The stronger columns have to be made larger and the weaker columns have to be made 40 smaller than what you would do if they were all carrying equal loads, but the total area carried, the total area of column, the total cost is the same.

Q. According to that, if you had weaker columns, what you are saying is you would have to have more in number? A. No. With the truss construction you have eight heavy columns and eight light columns. The total load carried on the eight columns is still the same.

Q. You mean what you lose on having to have stronger columns on the strong ones is compensated for by not having to have the weaker columns as strong as they otherwise might be? A. Yes.

Mr WALLACE: Q. There is no doubt that the cost of steel fabricated columns is very much more expensive than the cost of reinforced concrete columns? A. For the same loading, you mean?

Q. Yes? A. Oh, certainly.

Q. In fact, steel fabricated columns are really very expensive, aren't they? A. That is a very vague way to put it.

Q. Why is it a vague way of putting it? A. Well, what does it mean?

Q. What does what mean? A. Well, I am used to putting things in terms of numbers, not in vague adverbs of quality.

Q. If you were considering the size of these columns at about the second or third floor level they would be roughly about 3 ft. x 3 ft. in section, wouldn't they? A. Which columns are these?

Q. The ordinary columns—not the columns that carry the trusses—but the ordinary columns which would be designed to go up, say, 150 ft. in this building? A. But in what construction?

Q. I am speaking of the ordinary reinforced concrete column? A. Reinforced concrete column?

Q. Yes. Assuming you were not going in for these heavy trusses and the large space, the average column would be about 3 ft. x 3 ft.? A. In reinforced concrete at the second floor level?

Q. Yes? A. Oh, a lot bigger than that; impracticably big.

30 Q. What is impracticably big?

HIS HONOR: The size of the columns.

WITNESS: It would be getting on for 5 ft.

Mr WALLACE: Q. I am speaking of columns which carry the building without the truss conception? A. Yes.

Q. They would get thinner, of course, as you went upwards? A. Yes.

Q. Instead of 3 ft. square, you claim it would be 5 ft.? A. To carry the possible maximum development. I would say they would be made similar to the existing columns carrying the same loading. That is 28, isn't it?

40 Q. You would say 5 ft. x 5 ft., would you? A. Getting on for that; not quite, nearly 5 ft. x 5 ft.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. That would be about how many yards; say, 20 to 25 square feet?
A. It is about 10 yards per floor. It would be about 8 or 9 yards per floor height.

Q. That is per piece, or per floor as you put it? A. Yes.

Q. They would only cost, even assuming your figure, about £400, wouldn't they? A. It would not be as much as that. You could not use them though.

Q. We will come to that. You would say something less than £400?
A. Yes.

Q. Could you use them if they were 3 ft. x 3 ft.? A. Yes, that 10 would be reasonable.

Q. And instead of costing something under £400, the extension of the steel fabricated columns like 51 and 57 per floor, I suppose you would agree would cost about £4,000? A. It is possibly a bit higher in comparison. That has to be compared with £800. The ratio is a little higher than I would expect, but it would not be very far out.

Q. So you do not agree that were it not for the trusses all the columns could be erected in reinforced concrete? A. If all the columns in any case could be in reinforced concrete, it would be too much obstruction in the Wynyard concourse. 20

Q. Just take one of these plans in front of you. You do know the layout down there and what is on the site, don't you? A. Generally. I would have to check back on the plans to answer any specific question, probably.

Q. You know that there are bedrooms overlooking George St.?
A. Yes.

Q. Would you agree that they are supported on columns covered by the oblong 123, 142, 163 and 152? A. Yes, that is about right.

Q. Then, Wynyard Lane itself is supported by the two lines of central columns, isn't it. I will give you the lines I suggest; by the 30 rectangle of columns comprised within 168, 83, 172 and 166? A. Yes.

Q. They are all supporting Wynyard Lane? A. Yes.

Q. There are two layers of ramps, so to speak, the George St. level and the Hunter St. level respectively? A. Yes.

Q. They lead through, so far as the subject site is concerned, right through from George St. to Carrington St. and then go further on?
A. Yes.

Q. The two floors of ramps are supported respectively, aren't they, by the following rectangles of columns, namely 155, 4, 5 and 156?
A. Yes. 40

Q. Would that be about right? A. That would be about right.

Q. And 6, 159, 160 and 9? A. Yes.

- Q. Furthermore, there is a very large railway goods lift on that corner, isn't there? A. The north west corner.
- Q. And that goods lift is supported by columns 48, 49, 85, 74 and 70? A. Yes.
- Q. Then, there is a large cool room that the defendant has constructed? A. I am not quite sure of the location of that one.
- Q. If you look at columns 4, 26, coming across to 76, 168, and back to one A. Yes. That could be. I do not know.
- Q. You do not know? A. No.
- 10 Q. But it is somewhere in that area? A. It could be.
- Q. The cool room? A. It could be. I will probably accept your assurance. I do not know.
- Q. And it would be supported by columns? A. I presume so, yes.
- Mr WALLACE: Q. In the 1956 plan there would be, as we know, a concrete slab placed over the lounge room and other rooms on the Carrington Street level? A. Yes.
- Q. And they would be supported by these columns in the centre and just to the west of Wynyard Lane? A. Yes.
- 20 Q. On that you agree? A. Yes.
- Q. If you go back to the big columns, we have heard it said that they were capable of carrying somewhere about $6\frac{1}{2}$ million lbs. A. At which level?
- Q. At the Wynyard Lane level, I think it is. Would you agree with that? A. That would be approximately correct, yes.
- Q. And there would be no development, departmental store or otherwise, which could ever utilise such a load-carrying capacity? A. Yes, there could be such a development.
- Q. What sort? A. A number of things.
- 30 Q. Not a departmental store, anyway? A. Yes.
- Q. But the departmental store that I have been through with you shows only 3 million 200,000 lbs.? A. At ground floor level?
- Q. At second floor level? A. Yes.
- Q. You would only add 200,000 or 400,000 lbs. more to that? A. You are assuming that the minimum specified in the code is the maximum.
- Q. Don't you agree that the skill of the engineer lies in constructing framework and columns which are sufficient for the project and for the purpose, but not too big? A. Yes.
- 40 Q. Otherwise unnecessary waste is incurred? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. I then follow with you into the loadings involved at point Y. on Exhibit 26. If the site were developed as a departmental store

A. On one assumption.

Q. And I got the result of 3,200,000 at that point, why? A. Yes, that is assuming the maximum live load to be covered was 100 lbs. a foot.

Q. That is the weight which is provided in the code? A. The minimum weight.

Q. It is provided for in the code? A. It is the minimum weight provided for in the code. 10

Q. And also the code itself contains a design factor of safety in that figure? A. Yes.

Q. Do you seriously say when they provide 100 lbs. and you construct to that code that there is not an inherent or an interior, so to speak, factor of safety? A. Not for all forms of commercial

Q. Leave out the supposition that you are going to give. It would be a store of 12 floors, each of them carrying rolls of linoleum in the centre of the floor, and just take the ordinary departmental store. The code envisaged is that the departmental store involves an averaging load of 100 lbs. a foot? A. The minimum loading of 100 lbs. a square foot. It is quite specific. 20

Q. I am not differing from you on that. I am only asking you. Did I not receive a figure of 3,200,000 from you at point Y. in column 51? A. Assuming 100 lbs., the live load, the full live load.

Q. That would envisage a modern departmental store? A. Some departmental store.

Q. If you carried down to the Wynyard lane level where it is planned for 6½ million pounds loading you would only have to add on to that piece another three or four thousand pounds? A. How many floors? You have to add on to Carrington 30

Q. Just look at this exhibit, (showing witness Exhibit CC) and look at point Y. will you? A. Was it the second floor, Carrington Street?

Q. I show you portion of Exhibit CC. The steel column calculations, and the folio of which deals with column 51. From that it appears that is designed to carry the third floor? A. That is in George Street, the first floor, Carrington Street.

Q. 6½ million lbs.? A. Yes.

Q. What I am really putting to you is that there is no rational practical, development on that area which could ever make use today of 6½ million lbs. at the third floor, George Street level, column 51? A. There is. 40

Q. What? A. One is in building with floors over 100 lbs. live loads, or any special live load reduction, could easily in the third floors available at the Carrington Street impose over 5,000,000 itself. Then you have somewhere in your building to provide a tower with water tanks and special equipment for ventilation or air conditioning. All that could easily be put in that particular area, which is a very favourable place for it. It could lift the load up well over six millions.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

10 Q. Let me test that. A departmental store—a modern departmental store—would only impose a load of 3,200,000 lbs. weight at that point marked Y. on Exhibit 26? A. On certain assumptions. You have to put up some walls, and you have been at me, Mr Wallace, to withdraw that, but I refuse to withdraw it—that it can be difficult.

No. 20.
A. T. Britten.

Cross-
examination.

Q. At that point Y., where is it in relation to a point from George Street? A. My understanding is it is the same point.

Q. That means a departmental store with 100 lbs. weight would only impose that weight? A. A departmental store up to roof level, with 100 lbs. live load, would impose about that weight.

Q. So in order to get up to six and half millions you have to double that weight? A. Yes.

20 Q. I will put this other question to you: that there is no development of a hotel nature which could conceivably come anywhere near that limit of 6½ million lbs. is there? A. I hesitate to say on that. The previous development—I do not know what limitations of a hotel tower development are.

Q. Do you realise I am asking you these questions in the light of modern Codes and live load reduction rates and so on? A. Yes.

30 Q. Do you realise that the plans now in this Court known as the Inness-Kerr and Garden plans drawn up in the early thirties only envisaged a load of about 4½ millions? A. I do not know that. I don't know.

Q. When you are speaking about water tanks and so on, you are aware that there are eight columns in that area which are said to carry over six million lbs. at the third floor, George Street level? A. No, I do not think so.

Q. I can assure you that there are, according to the evidence? A. I don't think so.

Q. Column six says 5,115,000, third floor level, and 6½ millions at the mezzanine level, and it goes up to 6½ millions down below but at the third floor level it is only 5,115,000? A. Yes.

40 Q. 96, which is another one of the columns in question is 5,395,000, third floor level; and 6,718,000 at its base. 112 is 5,819,000 at the third floor level and 7,357,000 at its base. The next one is on the other side, which would be 119, and is 5,140,000 third floor level, and 6,343,000 at its base. 101: 5,466,000, third floor level and 6,811,000 at the base.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Plaintiff's
Evidence.

81 is the next. That is 5,360,000 at the third floor level and it only shows 5,900,000, going down until George Street. 57 is the last one—5,256,000 at the third floor level

No. 20.
A. T. Britten.

SIR GARFIELD: I thought I remembered one going to 4,000,000 because I was curious in my mind as to why there should be such a difference. That is the figure I had in mind.

Mr WALLACE: It is my mistake. This one is 4,933,000 at the third floor level, which is 57.

Cross-
examination.

Q. All I want to put to you is this: That you cannot envisage any hotel development on that site, or office development, which would utilise those load capacities at the third floor level. A. Not for all columns. 10

Q. Having got that answer I will put the other one: Nor can you envisage such types of development using such capacity for any column? A. Yes.

Q. Which column? A. All.

Q. All? A. Yes; in calculating my stress

Q. I thought you said a moment ago not for all?

HIS HONOR: Not all together, but each one. He could envisage development where one or other was 20

Mr WALLACE: Q. What sort of development? A. Any usage; departmental store is one.

Q. I am speaking at the moment of hotel and office? A. Hotel? Hotel—I had only envisaged that loading being approached on 51, 57, if you like.

Q. When you say approach; you can envisage it being reached on 51 or 57? A. For a hotel.

Q. Under what circumstances? A. If you have a tower section for the various purposes which are required over the line of those columns, it must be at the Carrington Street end. That is the high end of the building. 30

Q. What sort of tower? A. A tower like such as will be built on top of any type of modern building.

Q. A tower like a tower that is built on every type of modern building? A. Yes.

Q. But there is no tower built on the top of the modern buildings going up now? A. Yes. There is always a fire tower, at least.

Q. You would say the presence of a tower would make up the difference between 3,300,000 and 6½ million lbs.? Is that what you say?

A. No.

Q. We are only up to 3,300,000 lbs.? A. I am sorry. The presence of the tower?

Q. We are only up to 3,300,000, not hotel development, approximately. We know at that point it is 6½ million lbs. capacity? A. Yes.

Q. In a hotel development what sort of tower could use another 3,200,000 lbs.? A. I could not get it precisely, but I said "approaching" in an hotel.

Q. How near is the approach? A. I would say for hotel development it would be possible to get over 5 millions in these columns.

10 Q. So it would be 1,700,000 lbs. taken up in a tower, on coming on to 51? A. Eh?

Q. There would be 1,700,000 lbs. carried out and translated into 51 as a result of the tower? Is that what you are saying? A. That would be right, yes. I can envisage a loading of that order.

HIS HONOUR: Q. When you say you can envisage it have you in mind any particular kind of hotel or are you just envisaging things that could be put in some particular hotel that could be built, provided you had unlimited money and wanted unlimited equipment—a hotel that could be built there? You follow what I mean? A. Yes.

20 Whether it is an entirely nebulous theory or something that could be translated into practice.

Q. Yes. Something that would be likely to be translated into an hotel? A. If you are allowed storeys in the hotel development, the maximum; you could get over the figures I am quoting.

Q. Do you mean the extent of what you build on it, or the weight or the quality? A. Something on the lines of what I said was unreasonable hotel development, in my outline.

Mr WALLACE: Q. Unreasonable? A. Yes.

30 HIS HONOUR: Q. Possible but unreasonable? A. Yes, possible but unreasonable. I said an unreasonable hotel.

Mr WALLACE: Q. All I am putting to you is that you envisage an ordinary modern hotel such as a practical man with effective means would want to build. You cannot possibly envisage the utilisation to its maximum extent of column 51, can you? A. Not for a hotel solely, no.

Q. So I think it comes to office buildings, what we have called in this City a commercial building? A. Commercial building, yes.

Q. This is a building with offices running through, only 50 lbs. floor loading? A. Not a commercial building, solely offices

40 Q. That is what I am speaking of? A. I am sorry, you said a commercial building. Offices to rent? That would be something like 80 lbs. partition, 50 lbs.—wait till I check on that one.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. They would not be any more than a departmental store, would they? A. Yes, much more. They could have much more.

Q. I am not on "could have" I am on the practicalities? A. On the practicalities. I say they could be. You have 80 lbs. for the partitions. It would be about 135 and 50 and 20, which would be 250 lbs. a square foot.

Q. Can I just stop you in your (Sir Garfield asked that the witness not be interrupted but allowed to complete his answer).

Q. When you said 80 lbs. for the partitions, I do not want you to assume the partitions in the City, not 4½ inch brick, I want you to assume something much lighter, something much lighter to what is in fact built in the City? A. I am assuming what is reasonable. 10

Q. I am not asking you to assume 4½ inch brick. I am asking you A. I am working on what is reasonable. I do not know that. You cannot dictate to me on my own field.

Q. I cannot what? A. You cannot dictate to me in my own field.

Q. I am asking you to work it out on the basis that it has terra cotta partitions and it is not brick? A. That is not the question you asked me before.

Q. That is the one I am asking you? A. On that false question 20 you would get a figure very much lower than the capacity.

Q. Now, if you use brick what would you get? A. If you use brick? That could impose a loading of approximately 5,000,000 lbs. at the third floor level, not counting any possible roof or tower loading.

Q. How did you work that out quickly? Just give me an outline? A. By interpolating between the two figures I have for the floor loadings.

Q. What figure did you use? A. I interpolated between the figure I had for 280

Q. Never mind that? A. That is the figure I used. I used 250, 30 and the total floor loading.

Q. What is the 250 you had? A. 80 lbs. for partitions and 20 lbs. for live load less reduction. That means you have a gross loading

Q. How did you make it up? I do not want you to work it out? A. About 132 for floor slab and about 17 for finishes. That comes to 149—249.

Q. 132 for floor slabs? A. Yes.

Q. Where did you get that figure from? A. My estimate of it.

Q. Just estimated whilst in the box there? Do you mean this: Is it 132 that you use which is higher than any figures I have been dealing 40 with hitherto? Is that so? A. It is half an inch thicker than 10½. That is the way I estimated 10½ for a loading of 100. Then I have 130 and I took another half.

- Q. Then you have got yourself up to what? A. 249 lbs., 250.
- Q. 235, and 2,300,000—odd—how do you get 249 coming to five millions? A. Say that again?
- Q. Using a figure of 235 I got your concurrence on a loading of 3,200,000 lbs. Now, when you are using 249 you have got a loading, as you told His Honor of five millions. How do you reconcile those?
- A. In the first place you have the extra storeys. You take it up . . .
- Q. Have you allowed the extra storey? A. One extra storey. I have 191 at 230. That is 210. To estimate it more accurately it is 4,800,000 lbs. at that floor.
- Q. What type of building is this? A. Office building. It has no heavy occupancy.
- Q. Is that on the basis that the whole site is built over? A. Yes.
- Q. What about the lightwells for an office building? A. Not required.
- Q. Do you seriously say you would build a box-like building on the whole site for office work with no lightwells in the centre? A. No. No lightwells in the centre? You need not have lightwells in the centre. You must have a well on the outside because of the limitation of the external columns. That is the only well you need have.
- Q. You would have no lightwells at all in the centre of the building that would be 90 or 100 feet thick? A. Yes.
- Q. Is that what you say? A. Yes.
- Q. Have you ever looked around and seen what is going on in the City in recent years? What is at present being built in the City? A. Sometimes, yes.
- Q. Can you call your mind to such buildings as Caltex, M.L.C. and Anzac House? A. Yes.
- Q. Would you agree that those buildings are all narrow buildings with light going through them on both sides? A. I do not think you could call Caltex House a narrow building.
- Q. You do not? A. No. That is the trouble about not giving numbers with that type of thing.
- Q. Never mind numbers. You do not call Caltex House a narrow building? A. No.
- Q. You would not call it a thin slab type of building? A. It is?
- Q. Do you know what a thin slab type building is? A. I would say one with thin slab type of floors.
- Q. That is all you envisage? A. That is all that word conveys to me.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Plaintiff's
Evidence.
—
No. 20.
A. T. Britten.
—
Cross-
examination.

In the Supreme Court of New South Wales in its Equitable Jurisdiction. Q. You do not know anything about the idea of having a rectangular shape—a thin building, not occupying the whole of the site, in order to get good light and air all around? A. Yes, I know that.

Q. You do? A. Yes.

Plaintiff's Evidence. Q. That would be the very antithesis, would it not, to what you have in mind when you were speaking a few moments ago? A. Yes.

No. 20. A. T. Britten. Q. I want to come to these designs you did draw that are in Court; that you did draw and hand into the Court? A. Designs?

Cross-examination. HIS HONOR: Diagrams.

WITNESS: Diagrams.

10

Mr WALLACE: Q. You do not hold yourself out to be an architect, do you? A. No.

Q. Do you remember telling His Honor that the liberalisation from 16 to 18 took place while you were going through the University? A. It commenced. It was commenced then.

Q. It was in the process of being changed to 18? A. Yes.

Mr WALLACE: It is at p. 446.

Q. I would just like to show you this folio of the Municipal Council of Sydney. (Shown to witness). See para. 18 deals with reinforcements, tensile or comprehensive stresses in steel not to exceed 20 a certain poundage a square inch? A. We are not talking about reinforcements.

Q. Every stress in steel. That is not what you are talking about? A. We are talking about structural steel.

Q. You see where it says "by gazette in 1934 the figure 16,000 is changed to 18,000"? A. Yes.

Q. Do you say that has nothing to do with what you are talking about? A. That one has nothing to do with what I was talking about. We are talking about structural steel.

SIR GARFIELD: Q. "That one" means para. 81? A. Yes. We 30 were not discussing that at all.

Mr WALLACE: Q. Did you say this proclamation in the Govt. Gazette of 15th June, 1934, whereby 16,000 was changed to 18,000 has nothing to do with what you are talking about at that page of the transcript? A. It was related to it, but not what we were actually talking about.

Q. In what way was it related to it? A. In the same way. It was not actually the matter we were talking about.

Q. You were being asked by me was there a prior liberalisation, and you asked "for steel?" and you said the liberalisation on that

would be from 16 to 18. I said, "for columns of steel carrying loads?" and you asked me which code and I said, "The same code that you were speaking about when you said that had gone to 20.2."

In what way do you say it was related to that—this Govt. Gazette of 1934? A. Actually 20.2 refers only to structural steel, not to reinforced. It is still the 18, but the two follow more or less parallel but are not necessarily the same.

HIS HONOR: There must be some confusion, because the next questions were:

10 "Q. But you know it used to be 16?"

and you said, "It used to be 16, I know, in days before I went to the University. It is a long while ago." Then you were asked "What was it when you were at the University?" and you said, "It was in the process of being changed to 18".

WITNESS: All those figures refer to structural steel, shapes and angles.

Mr WALLACE: Q. That is why you are referring to 20.2? A. Yes.

Q. The change from 16 to 20.2 seems to be a different one from 16 to 18? A. It changed from 16 to 20 in the 20's and then later
20 on all this referred to structural steel.

HIS HONOR: Q. I was actually worried about the 20.2? A. The reinforcing steel has always been a different matter, and it has increased at different times.

Mr WALLACE (Showing witness Exh. RR): This is Exh. RR I am showing you, which you compiled. By the way, were you asked to compile that or did you do that voluntarily? A. I was asked

Q. Were you asked to compile this? A. I was not given any specific request as to how I do it, but

Q. The first diagram has the maximum development, office or store.
30 That is No. 1? A. Could I have my original calculations on this?

Q. I have not got anything of yours. You have got three sheets there? A. I gave you some calculations in regard to this matter.

Q. You gave me some? A. Yes.

SIR GARFIELD: We passed them over to Mr Llewellyn right at the adjournment. They will be here after lunch.

Mr WALLACE: Q. With regard to that diagram, as it contains no lightwells at all, if you erected it over the 54 plan would you have to demolish the 54 building? A. You would have to demolish the partition between the rooms in many cases and remodel it, as I said
40 before.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
Plaintiff's
Evidence.
No. 20.
A. T. Britten.
Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. Would you have to take down the two wings connecting the George Street and the Carrington Street parts of the 54 plan? A. You would have a certain amount of tearing down and remodelling, and you would have new

Q. Just listen to the question A. To suit your new requirements.

Q. Would you have to take down the two wings connecting George Street and Carrington Street in the 54 plan? A. Only partially, very partially.

Q. And do away with the lightwell? A. Yes. 10

Q. And you would build over the whole site? A. Yes.

Q. Could you do that equally well with the 56 plan? A. Which level?

Q. If you wanted to? A. That is the first floor, Carrington Street, you are talking about now?

Q. You told me you could erect design 1. At least, I assume from what you have said that you mean you could erect your design No. 1 on Exh. RR over the area in lieu of the 54 building if it were constructed? A. You mean at that level?

Q. What level? A. The first floor, Carrington Street area; or 20 do you mean the higher level, or what?

Q. Is not this design No. 1 a plan looking downward on some building that you say could be erected on the site? A. On one floor of the building.

Q. Do you envisage it going to the maximum height? A. The arrangement of that in the building is shown by sheet 2.

Q. Show me where? A. In this (indicating).

Q. Which one on sheet 2 deals with design No. 1? A. (Indicating). This one.

Q. Design A.? A. And design B. 30

Q. So you do envisage, going back to design 1—design 1 going up to the maximum building height as one solid building occupying the whole site? A. No. You would have floor 2 or 3, whatever it is (indicating).

Q. If you take this part (indicating); that is the maximum height above George Street, is it not? A. Yes.

Q. That is so, isn't it? A. Yes.

SIR GARFIELD: Can you identify what "this part" is, for the notes?

Mr WALLACE: Q. I am now showing you design A., on the second sheet of Exh. RR. Do you say it represents the elevation of design 1 on the first sheet? A. No. It is a design using the floors

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. You do envisage a building occupying the whole of the area as going to the maximum height, facing George Street? A. Yes.

Q. And going to the maximum height facing Carrington Street? A. Yes. No, I am sorry to disagree.

Plaintiff's
Evidence.

Q. Then, to construct design A., you would have to pull down a considerable proportion of the 54 building if it were constructed?
10 A. No.

No. 20.
A. T. Britten.
Cross-
examination.

Q. What would you do with the 54 building, in order to produce design A.? A. You would have to pull down some of the building and make some alterations and remodel it.

Q. Would you pull down the two wings connecting George Street and Carrington Street? A. No.

Q. You would do away with the lightwell? A. Yes.

Q. What portions of the 54 building would you have to pull down?
A. You would have to pull down? That would depend on how much remodelling you have to do. There would have to be some walls pulled
20 down, some fresh openings in the walls made, and it would be a matter of planning, which is not really my sphere.

Q. Which means you cannot answer the question? A. I cannot answer how much, no.

Q. If the 56 building were constructed could you erect design A on that

SIR GARFIELD: Does that mean according to the plans and specifications, and to what level?

Mr WALLACE: I am asking

WITNESS: Could I build this building on the 56 plan?

30 Mr WALLACE: Q. Yes. If the 56 building were constructed? A. Not if this carried heavy loading.

Q. But you could do it on 54? A. Yes.

Q. Why could you do it on one and not the other? A. Because of column 51.

Q. Why is it because of column 51? A. Because this heavy loading would be too much load on 51.

Q. In what way? What figures are you saying that on? A. It could possibly be five, 5½ millions without any possible extension here.

SIR GARFIELD: Q. You mean in Carrington Street? A. Yes.

40 Mr WALLACE: Q. At what point would it be up to five or 5½ millions? A. The critical level. The top section.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.

A. T. Britten.

Cross-
examination.

Q. Point Y. of Exh. 26? A. Yes.

Q. Why would design A. put more load at point Y. than the construction of a departmental store? A. It could be anything from 3 million to 4½ million, depending on occupancy.

Q. What is design A. supposed to represent? A. It was a building for commercial use.

Q. What sort of building, a departmental store? A. No.

Q. Then what? A. Any building for commercial use. I have notes "for departmental store this should be modified by deleting one storey".

10

Q. Because it would be too heavy? A. Because of ceiling height.

Q. Would this building that you envisage in design A. be more than 3,200,000 lbs. at point A., which you agree would be the load the departmental store would put? A. Because it could be heavier loading.

HIS HONOR: Q. What do you envisage? A. I envisaged several office buildings which would increase it up towards 5 millions, or possibly a departmental store having heavier floor loads than 100 lbs. We have designed them up to 200 lbs. a square foot, on request.

Mr WALLACE: Q. Where? A. The biggest one we have designed was 200 lbs., Greenaways hardware store at Blacktown—150 at Murray Brothers store at Parramatta.

Q. What is the Blacktown building? A. A warehouse.

Q. You envisage that for any form of commercial building? A. Yes.

Q. For a commercial building having greater loads than a departmental store? A. This is the minimum for a departmental store.

SIR GARFIELD: The witness has always insisted that these figures are the minimum for a departmental store. He has always said that.

HIS HONOR: Q. When you say the minimum you mean you envisage a departmental store with less than 100 lbs. a foot? A. You are not allowed to do that by the Code. The Code sets the minimum value, not the maximum.

Mr WALLACE: Q. When you said the minimum or maximum, what did you mean by minimum?

SIR GARFIELD: "Not maximum".

Mr WALLACE: Q. When you say minimum, you mean that is the minimum scale to which you are allowed to build? A. Yes.

Q. Can you give me any modern building in the City which carries a load of 200 lbs. to the foot? Only something that you know—if you

40

do happen to know of it? A. That carries 200 lbs. to the foot? I can answer that one, but it would not be fair to your case because I can quote them.

Q. Do you know yourself? A. Yes; the Mirror building.

Q. The Mirror building? A. Yes.

Q. With heavy machinery on it? A. Yes. It is not a fair comparison. You asked me that one, it is not a fair comparison.

Q. That is a matter for His Honor. We will depart from printing and we will depart from the Mirror building. Can you give me any
10 other building in the city, a modern building in the city? A. As I said before, I have had very little experience with the present city buildings, modern city buildings—but of similar buildings I know in the city

Q. In this design A. have you gone at all into the question of working out what would be the loads at any floor in any detail at all, or is it just something that you think is possible? A. It is the loading estimates that I think are probable.

HIS HONOR: The question arises as to what happened about the notes of Mr Nicholls. Are they required back? If they are someone should
20 tell Mr Nicholls to bring them back. If they are not required that need not be done.

SIR GARFIELD: My friend asked questions involving them. My friend could not undertake not to ask that.

HIS HONOR: It is possible that they might be used again.

Mr WALLACE: I will have inquiries made.

Mr WALLACE: Q. I return to Mr Britton his computations regarding the area. (Document handed to witness.)

Q. Your second diagram on the first sheet of Exh. RR relates to an office or store, apparently? A. Yes.

30 Q. Is that designed to go up to the maximum building height? A. I think you have misunderstood the position there. Those are only pictures of individual floors.

Q. Do you envisage that it could be taken up to maximum building height? A. I never envisaged—I only envisage such special uses as shown in the diagram on sheet 2.

Q. Which diagram on sheet 2 relates to No. 2 on sheet 1? A. It is used only in diagram A.

Q. As I understand diagram A, that goes up to the maximum height above George Street and the maximum height above Carrington
40 Street? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

Q. On the assumption that you can go 150 feet above Carrington Street? A. Yes.

Q. To return to diagram 2; if you wanted to build that upwards to the maximum height it would involve stripping the bedroom building over the lightwells in the 54 plan? A. No. It is not used below the 8th floor, no relation to the bedrooms underneath.

Q. What would be the position up to the 8th floor? A. You would have one underneath two up to the 8th or 9th floor. You would have 1 underneath 2 up to the 7th or 8th floor.

Q. 1 up to 2; that means that the bedrooms and the wings on the 10 54 plan would have to be stripped down? A. No; remodelled.

Q. You would do away with the lightwell, for instance? A. You would do away with the lightwell, yes.

Q. And you would build in the centre of the lightwell? A. You would use the building in the centre of the lightwell.

Q. And you would have to pull down partitions and the wall? A. Some. That would depend on the details. I cannot give you the planning.

Q. I am suggesting to you that you would not have a hotel, according to the design in 1—2 at all. You would not want an hotel like 20 that at all today, would you? A. No. I never suggested it.

Q. If you had a store according to that design—I am sorry to retrace my steps, but I have forgotten; did you say design 1 are the upper floors of a building of which design 2 would be the lower floors? A. No, the other way around.

Q. And the thickness or width of the upper floors in design 2 would be approximately how much across there (indicating)? A. About 89 feet.

Q. If you had that used as offices you would have somehow or other to let out offices covering a width of 89 feet. That is what it amounts 30 to? A. Yes, actually 87 feet—by the time you take the walls off.

Q. Design 3—does that represent A. The alterations to the two others.

Q. Just for the higher floors, or right up? A. As shown by diagram A. You had to read these two plans in conjunction to put yourself in order.

Q. I only want to make clear or quite certain with regard to diagram 3. You would have the whole area below, or up to the 8th floor, and diagram 3 represents the top three or four floors? A. Yes. Those are the arrangements I have shown. 40

Q. Unless you had printing machinery or some exceptionally heavy loads the buildings envisaged by diagram 3 in conjunction with

diagram A. would not cast as heavy loads on point Y. in Exh. 26 as would a departmental store built over the whole area? A. Yes, they could thrust more.

Q. But you have got on the upper three storeys lightwells in the centre and on the sides? A. Only in one alternative design.

Q. Take that alternative design. What I said is correct? A. In that case it would still apply. What I said would still apply in that case, but not to such an extent.

10 Q. If you assume that the lower eight storeys were just a departmental store then you would have less load on point Y. in diagram 3? A. Then what?

Q. Than if you had a departmental store over the whole area? A. I cannot quite follow you. Over the whole floors, you mean? The whole volume?

Q. If you use, as I understand your intention, a departmental store in accordance with design 1 plan up to the 8th floor and then an office building on the top three or four floors in accordance with design 3, you would not cast as much weight at point Y. as you would by having a departmental store right up to the top? A. About 20 the same, possibly; or possibly not as much.

Q. Design 4 only applies on the assumption that you were allowed to build 150 feet above Carrington Street, that is so, isn't it? A. Yes.

Q. With regard to design 5, that goes with the plan of it and the elevation on sheet 2? A. It is used in C. and D.

Q. According to your views—you are only presenting structurally and not architecturally views, I understand—you could have a hotel developed with no interior lightwell in accordance with design 5 and in which the width would be about what; 90 feet across? A. About 90 30 feet, yes. For three to 5 floors, depending on what

Q. What would you do above that or below it? A. Below three to four floors would be the construction at Carrington Street level. That is the bar and lounges and so on. Above that would be the bedrooms.

Q. Three to five floors of bedrooms? A. Three to five floors of public rooms, above those the bedrooms. Below that the construction of the Carrington Street level.

Q. But you could not have bedrooms below three to five floors of public rooms, could you? A. Nobody said that. I said they are 40 above.

HIS HONOR: They are sandwiched in between. You start off with the lounge, and then you have three or four floors—whatever it is—and then above that the bedrooms. That is what he says.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.
No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
Plaintiff's
Evidence.

No. 20.
A. T. Britten.
—
Cross-
examination.

Mr WALLACE: Q. (Indicating). That is another design A.
Not a design. I am sorry, I cannot call these designs. You are flatter-
ing me too much.

Q. That is another scheme which could be constructed in respect
of the 56 plans. If the buildings envisaged by the 56 plan were built?

A. Yes.

Q. This is merely your own version of the development of the 54
plans, is it not? A. It is a probable hotel development that you
would use in upper floors.

Q. But using the 54 plans without alteration in the lower floors? 10
A. No. They have to be altered in the public rooms in some designs,
otherwise they would not be.

Q. And the plan on the second sheet is associated with the second
and the third? A. B., C and D.

Q. And this is only on design 9—you have said that is incorrect,
Mr Nicholls is wrong? A. Yes.

Q. In what respect; would you mind telling me again? A. The
most glaring fact is that he has omitted the liftwell.

Q. By omitting the lifts you mean he has omitted areas shown near
the top left hand corner of design 8 and he has got what appears to be 20
a lift area? A. No. That is projected from the 54 plan. He has
omitted an area in 8 that is not in 9.

HIS HONOR: Q. Just make that clear to me? A. That area there
(indicating) has been omitted in 9 and that is where the lifts are in
the plan.

Mr WALLACE: Q. Do you say that the 54 plans envisage lifts going
up there? A. Yes.

Q. That is what I want to talk to you about straight away (show-
ing witness Exh. 8). You are not seriously suggesting, are you, that
Mr Ham envisaged that area that has got "lifts" written inside it— 30
a white area hatched around or surrounded by red and the word
"lift" written in it in sheet 6A—of Exhibit H., has been a lift well
designed for the development of the 54 plans? A. I beg your pardon?

Q. I wish you would not show so much surprise. You do not state,
do you, that that area which I have just shown you was envisaged by
Mr Ham as an area for lifts going up in the development of his plans?
A. To be strictly accurate, I could not say. I have not discussed it
with Mr Ham.

Q. Does it appear from this? A. Certainly.

Q. First of all, the only access shown on this area, 6A, is to a bed- 40
room, isn't it? A. Could I have the elevation on this?

Q. Yes. I was coming to those? A. I can see immediately it does not reach the roof level. That makes it clear it is intended to be a future lift well for future use of lifts.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. What was it that you were relying on for that statement?
A. This (indicating) does not go up so far as the roof.

Q. What does not go up? A. Is not this George Street?

Plaintiff's
Evidence.

Q. (Indicating). There is Carrington Street. A. I am sorry. I am on the wrong level. I was looking at the roof plan. I am sorry. That is the roof plan (indicating). It does not go up.

No. 20.
A. T. Britten.

10 Q. That is the point I was putting to you? A. What that means, it is a temporary cover.

Cross-
examination.

Q. Have you noticed anything about the elevation? Can you show me? A. The elevation sheet appears to be missing.

SIR GARFIELD: We have never had it. We have never been able to find it.

To Mr WALLACE: So far as I can deduce from the plans there is no obstruction of the lift well on any floor.

Q. It is apparent that he never envisaged that lift well at all, and it is not budgeted for in his plan, but on the contrary— A. Yes, it
20 it on his plan.

Q. If you look at this lift from over in this direction, from any elevation from this direction, you will find that he has built up over it and has not allowed for his extension? A. This plan shows it clear. It shows the clear size.

Q. Do you know what floors these are? A. These are the George Street data. This is the second floor level. That is the Carrington Street level. This is the third floor level, the first floor—Carrington Street—is here (indicates). This is the second floor level, the fourth floor—Carrington Street.

30 Q. What floor level is this? A. That is the alternative version of the second floor. They are different plans of the same thing. They are both the same level. One is more complete than the other but they are both the same plan and one has more work on it than the other.

SIR GARFIELD: It might be Exhibit 22 you are looking for.

Mr WALLACE: Q. That is the first floor level? A. That is the third floor, Carrington Street. This is the George Street data on the plans.

Q. Where is George Street here? A. On your right hand side. Carrington Street—

40 Q. What floor is that? A. That is the Hunter Street level down below.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 20.
A. T. Britten.*

*Cross-
examination.*

Q. Where is George Street? A. George Street is that end, and here is the lift shaft.

Q. Here is the lift shaft starting at that level, showing new work for his plan? A. Yes.

Q. If I go up to the mezzanine, that is still showing part of his developmental work, and the lift is over near the George Street side? A. Yes.

Q. This is the George Street level (indicating). The lift is still shown as going up there? A. And here is the first floor, which is the next level. 10

Q. Yes. I see we have the lift developed again? A. (Indicates). This would be the second floor level.

Q. This is the second floor level? A. It does not matter. One is more complete than the one you have here. That one is more complete than the one you have there.

Q. Then there is the third floor level? A. The third floor level is here. Wait a minute—

Q. That is the whole lift well area, that area reserved for lifts? A. I would think that would be.

Q. I am putting to you that that is an area which he has reserved 20 for one planned lift immediately and reserved for future lifts, in that rectangle shown on the roof? A. Commencing at the fourth floor level?

Q. No. I am not suggesting that it commences there? A. That is what the plan shows. One lift comes down, and the other lift will not serve the floors lower than this. The next floor below is the third floor level, and that only has provision for one lift.

Q. That is so. That is precisely so, because down below— A. That means your lift cannot serve below the fourth floor level.

Q. The third floor? A. The fourth floor. You cannot have 30 them without machinery. It must be the third floor before it would start. I do not think it is reasonable.

Q. That is the area he has reserved for lifts? He has got one there. A. And machinery there, I would say (indicating).

Q. That is the only lift that appears in his 54 plan? A. No.

Q. Because it is shown there. He does not show any development anywhere else? A. Yes. (Indicating). There it is there.

Q. That is so, but this area here—what do you say this is, marked in grey? A. That is the roof over the second floor level.

Q. You are not suggesting he intended access to the lift through 40 a bedroom, are you? A. No. He intended future access through this place here. (Indicating.)

Q. Will you go down another floor to the second floor again?
 A. Yes. That is a more complete one. It is about here. (Indicates).
 Directly on to the Carrington Street entrance.

Q. Does he not show one with an elevation from here or there
 (indicating)? A. What you are looking for is the section, where
 that letter H. is. It is a real architect's letter—you cannot read it.
 Section HH is the section you want which shows the lift well and its
 construction.

10 Q. Have you got section HH? A. Not in this. I have been
 right through these plans looking over sections.

Q. What is this one? A. That is a plan at a low level. A further
 sheet here is a plan. I would like to see JJ, but it is not here.

Q. Perhaps I cannot carry that much further at the moment but
 at all events he does envisage a lift over in that portion I was showing
 you? A. He envisages a lift there and four lifts on the other portion,
 I would say from this plan.

SIR GARFIELD: There is an exhibit and a letter about it as to
 whether there were to be lifts over there or not.

Mr WALLACE: I would like to see it.

20 SIR GARFIELD: The letter of 19/8/54 and Mr Ham's plan showing
 the elevation of the future development. Then you put in Exhibit 22,
 which is to the same effect. It is Exhibit E.

Mr WALLACE: Q. What is this over here that I point to? A. That
 is the lift well that accommodates one lift, and that is the one that
 accommodates four lifts.

Q. Have you not seen a plan where he shows three lifts in its
 bottom right hand corner? A. I have not.

30 Q. What makes you say it accommodates four lifts? You have
 never seen that. That is just a deduction you are making? A. I am
 deducing it from this fact: The bottom floor partition is shown there,
 and you must have an even number of lifts. It is far too wide for two
 lifts only.

SIR GARFIELD: It is about the 12th para. in the letter of the 19th
 August. And then you will find your Exhibit 22, which you put in,
 is—

Mr WALLACE: I cannot carry that any further at the moment. There
 is something which I have seen which does not appear to be with
 Exhibit H. Something I saw with Mr Nicholls recently.

40 Q. I want you to tell us something about these areas that you
 worked out. On the top sheet of Exhibit RR—do you have that?
 A. That is 1259/3?

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*
 Plaintiff's
 Evidence.
 No. 20.
 A. T. Britten.
 Cross-
 examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 20.
A. T. Britten.*

*Cross-
examination.*

Q. Yes. A. Yes.

Q. You have there on your left hand side your computations with regard to Nicholls' development of the 56 plan? A. Yes.

Q. Amongst those computations you have got 11 floors at 8,360, total 91,960? A. Yes.

Q. Can you tell me how you made it 8,360? A. Yes. It will appear that 59.4 multiplied by 140.8—

Q. What does the 59.4 represent? A. The width east to west across the George Street block as noted on Exhibit H; or Exhibit 4, is it? 10

Q. 59 feet? A. 59.4 feet.

Q. What is on the exhibit? I think Mr Bunning did give evidence it was 63 or 64 feet? A. That is not right. I could not agree with that. It is only a diagram and it is very inaccurate in scaling in several respects. You cannot scale it.

Q. How could you be sure you are right and Mr. Bunning is wrong? A. By this definition. A diagram—although you cannot scale you can take lines in projection and if you look at Mr Nicholls' scheme, section ABB, you see George Street in projection in its full height, and he shows here the ground floor, Carrington Street, common to both schemes. So you have got to go back to the 54 dimension plan for that dimension. 20

Q. Say that again? A. It is here "ground floor, Carrington Street, is common to both schemes."

Q. Ground floor Carrington Street, yes? A. Yes, is common to both schemes, and both schemes are in projection from the dimension of this block. The dimension of this block is the dimension of that block on the 54 plan which we have.

Q. What do you do from there? A. Go back to the 54 plan, which is dimensioned to 59.4½. 30

Q. What is the joke? A. Nothing.

Q. Suppose you do it this way, as Mr Bunning did; assume this is 150 feet in height, the maximum height? A. Yes.

Q. Then using that as a scale, scale the width that either these diagrams have given? A. You cannot scale to bring in contradiction to a dimension on those.

Q. Test it this way and see what answer you get, will you? A. I will do it under protest.

Q. Do it under fifty protests.

HIS HONOR: Do it as an exercise in scaling. 40

WITNESS: 150 feet scales 4.2 inches—4.7 inches.

Mr WALLACE: Q. Show me how you get 4.7 inches? A. 150 scaled at 4.7. Then the dimension scale there up to 2, that is 3.25 inch—150—64 feet in area.

Q. If you did use 64 feet you would of course get—I withdraw that. Before I ask you that, you took a frontage of how many feet? A. 140 feet, something.

Q. Can you remember how much? A. 140.8.

Q. 140.8. Is that supposed to be the frontage to George Street? A. Yes.

10 Q. If you were told that the frontage was more than that—was, say, 147 feet; that also would make a further difference to your result? A. Yes. That would increase it.

Q. The difference is between 140.8, multiplied by 59—which is how you get your 8360 on the third sheet on the one hand and what I suggest—147 multiplied by 64. That is the difference, is it not—which is the distinction? A. Between what?

Q. In order to get 8360 you have multiplied 140.8 by 59? A. Yes.

20 Q. And of course you would realise if your figures were wrong it should be 147 multiplied by 64, or eight? A. If my return of figures are wrong?

Q. Would you just listen to my question instead of galloping on. Your 8360 would be substantially altered? A. If the correct figures were?

Q. 147 by 64? A. Yes. There would be a total difference. All the figures on this sheet here would be increased by a little over 10,000, which would be the maximum.

Q. In other words instead of 199,000 it would be somewhere about 210 thousand? A. 210,000 would be right, if both those dimensions were as you state.

30 Q. On that third sheet you show the layout—what you call the layout of E.—as giving 236,000, measured at above the ground floor with no mezzanine? A. Measured above the ground floor with no mezzanine, yes.

Q. Or with the mezzanine, 245,000? A. Yes.

Q. In order to get that figure—I will take 245,000 just as an illustration—you have concluded what we had to allow for the lift well areas shown in the north-western corner of design 8? A. Which one is E.? E? No. I am sorry

40 Q. You have included, in order to arrive at this figure, 245,000 or the 236,000 or the 211,000, you have included the lift well area to which I was referring earlier; namely that rectangular bulge shown in the north-western corner of design 8? A. No.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.

A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*
No. 20.
A. T. Britten.

*Cross-
examination.*

Q. Have you not included that? A. No.

Q. Then I would like you to show me how you got 236,000. We are only dealing with this design? A. Yes. Six floors type 9?

Q. Yes. A. That is 21,450 square feet. That does not include that area.

Q. But that is the incorrect one you are working to? A. It is the incorrect one, I admit for E. E. is the one suggested by Mr. Nicholls—they say it is incorrect. I am sorry. I thought I made that clear.

Q. This third sheet shows under design E. the figure of 211,000 10
236, and 245? A. Yes.

Q. And E., you say, is an elevation of the floor plan shown in 9? Is that what you are saying? A. Not only. It is an elevation following Exhibit 4.

Q. Would you mind telling me what figures you have worked out in respect of design 8? What does design 8 go with in sheet 2? A. 8 goes with B, C or D.

Q. But you get entirely different results as between B. and D.? A. Yes.

Q. What I want to know is whether you have shown this particular 20
design on sheet 2? A. No. 8? On B, C and D. Not C—B and D.

Q. B and D envisages a complete building between the two wings up to a certain height and then a continuation of the wings with a light well between them above that. Is that the position? A. No, not quite. I quite follow you. This is what that actually involved: B. involves three floors developed over the full area.

Q. The whole width? A. The full area. Two floors developed with two side courts but no centre courts. The first, 2nd, 3rd, 4th, 5th and 6th floors developed with three courts, and two floors on the George Street end only. 30

HIS HONOR: Q. The Carrington Street end only? A. Yes, I am sorry. Thank you.

Mr WALLACE: Q. Therefore the reason why B. and D. give such higher results than E. is mainly because E. simply continues up to the 54 plans in the form of two wings with the lightwell between them. That is the main reason? A. No. The D. design have, in full width development.

Q. D.? A. Yes, D.

Q. That is to say, as regard the contrast between B. and E.? A. Between B. and E., yes. 40

Q. D. envisages something different from that which Mr Nicholls suggested, which is continuing up two wings with the light well between them? A. Yes.

Q. That envisages what? A. It envisages three floors 90 feet wide in the middle and a lift tower.

Q. And the lift tower? A. Yes, the lift tower on the north-west end.

Q. Three floors full width? A. No, 90 feet wide.

Q. In accordance with A. Five or six.

Mr WALLACE: Q. At least you can say this, can you not, that as regards the 1954 plans themselves, all Mr Ham did with regard to lifts was to show a shaft with a wall around it, and he actually used and intended for use in connection with his 1954 plans a new lift east of Wynyard Lane, as I have shown you? A. That is what I said in my evidence in chief.

Q. But that is some time ago. That is the position? A. That is the position, yes.

Mr WALLACE: I should like my friend if he has it to produce any section of that Exhibit H which may be missing, or any elevation.

SIR GARFIELD: I shall search for it. Somebody said he thought he had seen a section, but he obviously did not see one of ours. We shall look for it.

20 Mr WALLACE: Q. You would agree, wouldn't you, that where you find a section of a building as some particular characteristic which involves extra cost but which was suitable for a light area, it would be good building construction to use it as a light area if other requirements of the owner were satisfied? (No answer)

Q. Is that the sort of generality you do not like? A. I am trying to follow all the provisos. I am sorry to appear so dumb, but could you repeat it please? I was trying to take it down so that I could work out what it means.

30 Q. If you found some special characteristic which would involve a good deal of extra expense to develop but which was suitable for a light area, it would be good building to develop it as a light area? (No answer).

Q. You really find it necessary to write it down, do you? A. There are so many provisos that I want to find out what it means.

Q. Wouldn't it be good building construction to use it as a light area if the requirements of the building owner are otherwise fulfilled? A. Do you mean "characteristic" in the first line?

Q. Yes? A. You said "some special characteristic which has a good deal of extra expense to develop"

40 Q. I only want your answer. There is no need to read the question out. If you cannot answer it just say so. Do you understand the question? A. No, I cannot understand the question.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Cross-
examination.

HIS HONOR: I understand the question. Surely the answer must be "Yes". (Discussion ensued).

WITNESS: If that is the question I would answer it "Yes", but the subject is "special characteristic" in his question. If he said "special area" I would say yes to it. That is what bamboozled me at the start.

Mr WALLACE: Q. The next question is in regard to what you call the light area at the side. Do you remember? A. I called them courts I think, but we will take light areas.

Q. Very well. Those areas affect the 1954 and the 1956 plans if 10 they affect either, don't they? A. I beg your pardon?

Q. Those light courts have no particular significance with one of the 1956 or the 1954 plans? A. To their present level you mean?

Q. Yes? A. You mean the weak columns around the side have no effect on the present . . . ?

Q. There is nothing special about them in relation to the 1954 plans which does not apply to the 1956 plans, or vice versa? (No answer).

Q. Look, do you understand the question? A. I am afraid I do not understand the subject of it. 20

Q. I will take that answer. Do you remember telling us just before lunch that you would need in reinforced concrete a column nearly 5 ft. x 5 ft. to carry a certain load? A. To carry maximum load.

Q. Is it within your knowledge that the concrete extension at point Y which you know will carry 3,300,000 lbs. is 44 inches by 44 inches? A. What is it?

Q. Do you understand the question? A. The concrete extension at point Y will carry 3,000,000 . . . ?

Q. Is it within your knowledge that the short concrete extension at point Y is 44 inches by 44 inches. Is that within your knowledge? 30 A. Yes.

Q. You concede that that will carry 3,300,000 lbs.? A. In 5,000 lbs. concrete?

Q. Yes. You have conceded that, haven't you? A. Yes.

RE-EXAMINED

Re-
examination

SIR GARFIELD: Q. What does the series of computations put to you by my friend as emanating from Mr Llewellyn in relation to a load at point Y really represent? (Objected to; pressed).

Q. What does it represent to you? A. Do you mean in the last lot of calculations of the load at "Y"? There are two lots. There was 40 one for a departmental store and one for another type.

Q. Let us take them first for a departmental store. What does it represent? A. It represented the maximum load that could occur at point Y, assuming you had the open area developed as a store with 100 lbs. live load on each floor, and 15 lbs. weight of partitions, reduced by the standard live load reduction.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Q. Is it in your opinion reasonable to expect that the development even for a departmental store would in practice be confined to those limits of load both of floor and of partitions? A. I would be uncertain. I would have to seek advice from the owner.

Plaintiff's
Evidence.
No. 20.
A. T. Britten.

10 Q. But have you had experience of loadings put on various types of departmental store and other sort of things in practice? A. Yes.

Re-
examination.

Q. Judging by your experience are you able to say whether it is likely or not? A. It is quite probable.

Q. That they would be confined to those limitations? A. They would be exceeded.

Q. That is what I want to ask you

MR WALLACE: I object to this. He said he has had no experience of city buildings.

HIS HONOR: That is so.

20 SIR GARFIELD: Q. Is there any difference between a tall building and a short one in relation to the live load that is put on per floor (Objected to; allowed).

Q. Assuming I was a departmental store owner and I have one store in Parramatta and another one in Sydney and I carry on the same type of business, would there be any difference in the live load which I will require to be carried in the place, depending solely on the height of the building I am going to have? A. No.

Q. Dealing with these live loadings at per floor? A. Yes.

30 Q. You have had experience of loadings of departmental stores, you say not in the city but out of the city? A. Murray Bros. at Parramatta is one. The other one I quoted is strictly not a departmental store; only half of it is a hardware paint and plumbing place, and tools.

Q. How many storeys have Murray Bros. at Parramatta? A. It is now being constructed with basement, ground, first and part of second. It is designed to go to third.

40 Q. All being used for departmental stores? A. Except the basement, which is only on the extensions, not on the existing building alongside; is being designed as a shipping department too, which may not be used for shopping purposes.

HIS HONOR: Q. What is the ground floor designed for? A. It is an extension to their main shopping floor

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.
Re-
examination.

Q. What is the next one up? A. The next one up is a second shopping floor.

Q. Just ordinary shopping? A. Yes.

Q. And the next one up; that is the one still to go? A. There is half the second floor built, but that has only temporary staff rooms at the moment.

SIR GARFIELD: Q. Has it been designed for a departmental store?

A. It has been designed for a departmental store, four storeys eventually; ground, first, second and third on that area.

HIS HONOR: Q. What do you say was the loading on, we will say, the 10 first floor? A. On all except the basement it was 150 lbs. per square foot. The basement was designed for truck loadings.

SIR GARFIELD: Q. When you speak of this live load, that is in some way endeavouring to rate the loading according to the type of traffic and the use the floor is going to have? A. Yes. (Question objected to as being a leading one.)

Q. Tell me what the idea of a live load is in your own words?

A. It is supposed to be the loading that will come on the building that is not part of its own fixed weight.

Q. That should come upon it by its use? A. Yes. 20

Q. In the case of a departmental store, is it your experience—tell us if it is not—that a departmental store of necessity must have storage space? A. Yes.

Q. Which carries bulk goods and so on? A. Yes.

Q. Would you expect the live load of the storage portion

Mr WALLACE: Does that mean in the departmental store itself or in some remote warehouse?

SIR GARFIELD: In the store itself? A. The only ones I have actually been in and measured to storage spaces are those two I was telling you about. In each of those they were in the store building. 30

Q. Would you expect the live load in areas devoted to storage to come as low as 100 lbs.? A. Oh no.

Q. What would be the order of the load if you were storing—take David Jones—silks or cottons? A. Well, it would depend on the storage height available. With a normal ceiling height and light goods it would be 150, but I have measured weights and computed loadings up to 350. That is in the case of the hardware store. The biggest I observed at Murray Bros. was about 200, 250, but I think that would be up to the upper limit.

Q. For a softgoods store? A. Yes, for a general merchandise 40 place.

Q. The other prerequisites of these computations of Mr Llewellyn was that there was a 15 lbs. partition load? A. Yes.

Q. In the case of a departmental store, are you able to tell us whether or not the use of such light partitioning material would be likely? A. In the case of a departmental store, I think that estimate would be high.

Q. 15 would be high? A. 15 would be high, yes.

Q. That is because of the infrequency of the partitions? A. Yes, very few partitions.

10 Q. That point Y was at the top of the steel column? A. Yes.

Q. If the concrete extension of that steel column were carried up as specified—that is to say, in 3,000 lbs. cement, and with the bedplate as shown on the structural drawings supplied in connection with L2—what load would you be able to place upon the concrete extension? A. About 2,000,000 lbs.

Q. Speaking of codes, these changes that were spoken of in the permissible loading of steel, do they apply to steel fabricated or in place before the date of the change in the code? A. Not necessarily.

20 Q. What do you mean by that? A. Well, it depends on whether the steel had been rolled to a new specification on which the code was based, or to the one on which the preceding code was based.

Q. Is this right, that what has been called the liberalising of the code is associated with improved techniques which result in a different physical property in the steel? (Objected to as being a leading question).

Q. What is it that causes this so-called liberalising? A. Improved physical properties of the steel.

Mr WALLACE: The witness is not qualified to say that.

30 SIR GARFIELD: Q. Have you any other qualifications besides engineering qualifications that I mentioned to you in chief? A. Yes, I was in charge of the department's testing laboratory for a number of years.

Mr WALLACE: Q. What, the Main Roads Board? A. Yes.

SIR GARFIELD: Q. Have you any qualifications as a physicist. You say you have a science degree? A. Yes.

40 Q. You gave us that before. If the steel column had been extended from the point Y as in those computations in the concrete as specified and on the bedplate as specified, could any of the various developments which you have envisaged on your Exhibit RR take place? A. "E" could, I think. I have not checked that in detail, but I would say it could.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Re-
examination.

Q. But not the others? A. Not the others, no.

Q. Assume it was carried up in concrete of 5,000 lbs. to the sq. inch strength, would all the other developments which you have envisaged on RR be possible? A. Most of them. Some of the fuller developments with heavy loading could not, but most of them would be capable.

Q. Is that answered on the footing that the 1956 proposal had not been carried beyond the then architectural plans? A. This does not concern the 1956 plans?

Q. My question was whether these could be built if the 1956 plans A. I am sorry. 10

Q. I want to be sure about this. Could these projected developments on Exhibit RR be built if the 1956 architectural plans were carried out but with concrete of 5,000 lbs. to the square inch in the extension of the column? A. Yes, all but the heaviest.

Q. That is "A"? A. That is "A", and possibly "B"; "A" with light loading, not "A" with heavy loading; and "B", except with extremely heavy loading in some parts.

Q. Assume the 1956 plan to be carried to its full projection as shown on Exhibit 4, would any of these possible developments suggested by you on Exhibit RR be possible? A. If it had been carried to its full development as shown on the plans? 20

Q. That is 1956. Would any of these on Exhibit RR have been possible—and the assumption is that they went up in concrete 5,000 lbs. to the square inch? A. I think you could build "E".

Q. But none of the others? A. None of the others. That is assuming the 1956 plan went up to its full height in accordance with the plan now submitted.

Q. Yes, except that you change the strength of the cement? A. I should qualify that by this: you could build "E", I would say. The others you could build if at the time of the extension suitable provision was made to carry the truss and the truss was not required at a level lower than the fourth floor Carrington St., the roof of the present construction; was not required at or below the fourth floor I should say. 30

Q. My friend asked you whether a loading or rather an occupancy of a building as an hotel commercial building would necessarily place less load on the point Y than the departmental store which he supposed for the purpose of the calculation? A. A hotel would not necessarily

Q. Or commercial building? A. . . . then a commercial building of 100 lbs. live load, the one he was comparing it with. 40

Q. Besides the use of this building for one of these suggestions of yours, for hotel or commercial or departmental store purposes, have you actually given consideration yourself to any other possible use? A. Yes.

Q. What other uses had you actually contemplated yourself? A. Well, use as public entertainment in open space.

Q. For public entertainment? A. Yes.

Q. Is that possibility . . . (Objected to; allowed).

Q. Was that something you gave consideration to merely for the purpose of this case or did you consider it before? A. Well, I had not personally considered it before. I had heard about it.

Q. If any part of this open space were devoted to public entertainment, would that have any effect upon the live loading on these columns?
10 A. It would reduce the total loading, because you cut out floors.

Q. Because of the high ceiling? A. Yes. You have fewer floors and less load.

Q. What are the height limits in relation to the light areas which are permitted by the By-laws of the Sydney Corporation? A. Well, there are 24, I think it is, numerical limits.

Q. They vary with what? A. They vary with occupancy and whether they are side or centre.

Q. If you take a central light court that we have in one of these illustrations of 22 ft., what are the height limits in relation to the
20 building? (Objected to).

Q. Have you got the By-law there? A. Yes.

HIS HONOR: Q. Tell us the name of the By-law? A. It is By-law 52 under the Sydney Corporation Act.

SIR GARFIELD: Q. Just give us the permissible heights, and if my friend wants to see what you read from, you can show it to him. What are the height limits for the various uses, if you have a central light court 22 ft. wide? (Objected to).

SIR GARFIELD: I shall tender the Ordinance later.

Q. You were asked something about partitions. It is suggested
30 to you that light weight partitions are in common use in the construction of buildings. Have you had to deal with the construction of hotels, the structural side of hotels? A. Quite a number.

Q. Not city hotels; but hotels? A. Some city hotels.

Q. Of multiple storeys? A. Most of our city work has been re-modelling but some extension work; and we have had some construction, some re-modelling, of a number of other hotels.

Q. Have you found in your experience that light-weight partitions or brick partitions are in general use? A. For hotel purposes in
40 modern construction—I have done about 12 or 15 of such works personally, and all but one would be brick.

Q. Are they with the one firm of architects, or different firms of architects? A. Four firms of architects.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.

A. T. Britten.
Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Re-
examination.

Mr WALLACE: Q. Are they suburban hotels? A. Suburban and some city and some country.

SIR GARFIELD: Q. Where light partitions are used, has that any relationship to the available strength of the substructures? A. Yes, light partitions are used generally in buildings of considerable height because of the high cost of the lower sections of the columns and the foundation with each increase in load on the floors.

Q. You mean they are used to obviate the need to put in a heavy substructure? A. They do not reduce the size and cost of the substructure and the foundations of the lower columns. 10

HIS HONOR: Q. In other words you are more likely to plan for light partitions in a tall building than in a one-storey building? A. Yes.

SIR GARFIELD: Q. Assume you have already a substructure that would bear the heavy partitions, would there be any factor of serviceability or low cost of maintenance or anything of that sort which would cause one to lean towards light partitions rather than brick partitions? A. No, you would lean towards the brick rather than the light.

Q. My friend asked you something about a straight joint. As far as you are concerned, what is your view as to the serviceability of the devices that he suggested to you? A. Well, the concrete work I 20 was satisfied what

Q. With the malthoid? A. . . . a malthoid or caneite parting strip in the concrete. With the brickwork I would not be happy to build brick against caneite both sides and use that as a parting strip on brick walls under those conditions.

Q. I wanted to ask you about Exhibit 4. Can you really scale off Exhibit 4? A. Do you mean you can practically measure it or you can use the figures when measured?

Q. Can you get a scale to apply to its different features. It has no scale on it? A. It has no scale on it, but you can estimate a 30 scale by measuring other given dimensions, and you could actually measure physical distances on them, but I would not like to use them for any further deduction, for any work.

Q. Have you checked to see whether it is scaled to any common scale? A. No, the thing is a different scale on the two views.

Q. You took a figure of 140.8 as the length of the George St. frontage? A. Yes.

Q. Did you do that with any of the computations you made, whether it was Exhibit H or L2? A. I did it in respect of the computations. 40

Q. So if it be an error it is a common error? A. I should like to check that before I leave the box, to see if I have made an error.

HIS HONOR: Q. Where did you get it from, the 140.8? A. I got it by adding up the dimensions of the 1954 plans, and that is a weakness in my arithmetic, additions.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

SIR GARFIELD: Q. Have a look at the plan and see from where you got the 140.8? A. I got it by adding up this line of dimensions. When I look at it it certainly looks as if I have made a mistake there, either in the additions, or in the transcribing of the 146 to the other . . .

Plaintiffs'
Evidence.

Q. According to the lease it is 147 ft. 9-1/8th inches; but at any rate you used the figure 140.8 in all your calculations so far as it relates to the George St. frontage? A. Yes.

No. 20.
A. T. Britten.

Re-
examination.

Q. The other area you used for the purpose of getting to Mr Nicholls' floor development of "H"—you used the actual figure that you worked off Exhibit H? A. Yes. I made that 59 ft. 4.

Q. Mr Wallace put to you that if you constructed a scale for yourself from the height of the diagram on Exhibit 4, you would get a width of the base line of the George St. building of some 60 ft.? A. Well, it will vary on different plans. On the one he asked me to scale it on it is 64 ft.

Mr WALLACE: Q. Did you take into account the fact that there are 15 shops in one and only nine in the other?—

SIR GARFIELD: Q. I want you to make plain if you will why you used the 59 ft. 4 as being the width of the building to the George St. frontage projected or contemplated by Mr Nicholls in Exhibit 4? A. Because as stated on the drawings the two blocks are comparable, and they are based on the same columns and governed by the same columns. Therefore they should be the same width in all plans. It does not matter much what particular dimension you take. You have a choice, but what he had determined I deduced from the 1954 plan.

Q. You then looked to the 1954 and found what the planned base of the building was to the George St. frontage? A. Yes, you would have got the same basis if you had taken any comparison.

Q. I open the 1954 up A. It was this plan I worked from.

Q. You worked from Sheet 6A, and that shows the westward line of the building as being along the line of columns from 171 to 164. Is that right? A. Yes.

Mr WALLACE: Is that from George St.?

SIR GARFIELD: Yes.

Q. It is the George St. end, and it shows that the western line of the building runs along the line of columns 171 to 164? A. Yes.

Q. If you took Mr Wallace's suggestion that Mr Nicholls was really saying that the base line of the George St. building projected

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*
—
No. 20.
A. T. Britten.

*Re-
examination.*

by him on Exhibit 4 was 64 ft. odd, what line of columns would support the western wall of the building 64 ft. back from George St.? A. I would have to carry a cantilever.

Q. It would be over the line of columns? A. 5 ft. past them.

Q. In addition, would he at some stage on the projected development that he shows on Exhibit 4 have to employ a truss? A. He would have to between these two columns that correspond.

Q. These two end columns of the line of strong columns? A. Yes.

Q. 112 and 119. So, to get the floor areas that Mr Nicholls has in his comparison, you would need to cantilever to some 4 ft. or 5 ft.? 10
A. Oh no, about 20 ft. it would be.

Mr WALLACE: Q. How do you get that? A. Well, the difference between—even correcting for the 146 feet will only make a difference of about 4. Your figure will be 203. Well, 203 from 234 is 31,000 in excess of the correct area in Mr Nicholls' scheme, correcting for the minor error in mine. That leaves about 31,000 to be accounted for. 31,000 over 11 floors by 141 ft. gives you nearly 20 ft.

SIR GARFIELD: Q. That is all that would have to be carried and cantilevered? A. Yes, if that is the way it was to be made up.

Q. You have to start with the assumption Mr Wallace puts to 20 you? A. Yes.

HIS HONOR: The width of the building was 64 ft. He says the result of that is you would have to cantilever, and the result of that is described.

SIR GARFIELD: I show you Exhibit P. That has numbered columns on it (showing). Assuming the full development which you have spoken of—and you have given us the loadings that 51 would carry?—A. Yes.

Q. Assuming a truss? A. Yes.

Q. If there were no truss put in but you were using some other 30 heavy construction, would other columns besides 51 have to carry a lighter loading than 51? A. Well, 51, 53 and 55 would carry about the same loading. It would be a little bit more than half of what 51 now carries.

Q. By "now carries" do you mean now designed to carry? A. Now designed to carry with the truss over.

Q. What about 28 and 30? A. They would carry about the same loading as those columns in position without the truss.

Q. What about columns 76 and 78, if you have not any trusses? A. Well, on 76 and its neighbours in that weak line of columns would 40 be a little more than half of what 76 would carry with the truss on it.

Q. Which of those are steel columns? A. 26 and 38 are steel columns. They would carry loads similar to 51, 53 and 55. 136 and 138 are steel columns, and they carry loads similar to 76 etc., in revised conditions in each case.

Q. Do you remember you calculated to me in chief the cost of these trusses, assuming as you have told us maximum development and with a maximum use loading on it? A. Yes.

Q. You got 6/- per square foot? A. Yes.

10 51 Q. The load of such a development as you there assumed on column I think you told us was of the order of 5,500,000 lbs.? A. I did not tell you, but . . .

Q. I am sorry; would that be in the assumptions you were making for the purpose of computing the cost of the truss? A. I assumed 2,700 lbs. on the truss, which would make a bit over 5½ thousand on column 51.

Q. 5½ thousand or 5½ million on column 51? A. Million, I mean. That would correspond to the load I took in the design of the truss.

20 Q. Do you remember my friend putting to you a suggestion that the load on column 51 could be brought down to 3,200,000 lbs., or something like that? A. Yes.

Q. If you used that loading on column 51 in assessing the cost of the truss to be used as you envisaged it to be used before, would that have any effect upon the cost of the truss? A. Yes, it would reduce it to about two-thirds, to about 4/- instead of 6/- per sq. ft. coverage.

Q. And the other matters you mentioned would remain constant? A. Yes.

30 SIR GARFIELD: Q. Amongst the plans that are now Exhibited before the Court, have you seen a set of preliminary structural drawings for a building to go to the permissible building height based on the Innes-Kerr plans? A. Preliminary only and not complete, but there are floor plans extending up to the roof level. They are only preliminary.

Q. Would you be able to point them out to us? A. Yes.

Q. You have looked at them to see that they do relate to the Innes-Kerr plans? A. Yes.

Mr WALLACE: (By permission). Q. Do you have a scale on you? A. It is in my bag.

40 Q. I show you Exhibit "4". I was suggesting to you yesterday that your computations were based on two inaccuracies as regards the developmental work shown on Exhibit "4"; firstly, that the frontage was 147 feet and not 140? A. I agreed with you on that. That was a mistake on my part.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Re-
examination.

Q. Secondly, that the depth to which the 1956 George Street building is taken is 64 feet and not 59? A. You suggested that.

Q. That is what I suggested. If you look a Exhibit "4", you justified taking 59 because 59 is scaled off from the 1954 plans? A. Dimensioned off.

Q. Dimensioned off from the 1954 drawings? A. Yes.

Q. You did that because of the note appearing on Exhibit "4", which says "Note: Ground floor Carrington Street common to both schemes". A. Yes.

Q. Doesn't it appear to you that that note only relates to the Carrington Street end of these plans up to Wynyard Lane? (Objected to on the ground that it does not arise out of the re-examination; allowed.) 10

Q. Does not that appear to you that the note can only apply to the Carrington Street end on both diagrams up to Wynyard Lane? A. I would say it could be read either way. It could be read the way you say.

Q. If you go through with a ruler from the Carrington Street level, you find, don't you, that you come out half-way up the floor from the George Street side, and that what the 1954 plans envisage is a raising of the roof and a sort of false roof, a false ceiling at the first floor of George Street. That is so, isn't it? A. Would you show me what you mean? You are talking about this floor here (indicating)? 20

Q. I am just asking you now about that (showing)? A. I would not quarrel with you on that.

Q. You see, there is nothing in common between the two developments on the George Street site, is there? A. I am quite prepared to agree with you there. You told me there was, when I first brought this matter up. 30

Q. I do not remember that, but I am asking you now, in the light of your construction of this note it is perfectly obvious that they have not got anything common—they are not common—on the George Street side? A. It is your construction

Q. Never mind "your construction". I am asking you now? A. I am asking you for your construction. I am sorry.

Q. I am asking you a simple question. If you look at the two diagrams it is perfectly patent that they have nothing in common on the George Street first floor, isn't it? A. On the George Street first floor. 40

Q. On the Carrington Street level I mean, at the George Street end? A. Oh, I would agree with you on that. I do not know, but if you tell me that—it is your plan, not mine.

Q. I am asking you about the plans? A. I cannot tell from the plan. I am depending on you for your construction.

Q. If you look at the two plans shown on Exhibit "4", will you not say, looking at them, that it is perfectly and demonstrably clear that they do not have a common floor at the Carrington Street level on the George Street component or the George Street building? A. Neither have a floor at the Carrington Street level. There is nothing in common or uncommon.

10 Q. If you continue, taking the left-hand or the 1954 plan, the Carrington Street level of that plan to George Street, you see, you come out in the middle of the 1954 construction? A. Yes.

Q. If you take the continuation of Carrington Street in the other plan you get a different position with regard to the floor of George Street? A. No. You cannot. They are both fixed already.

Q. Look, if you won't admit it I will leave it, to argue it later
HIS HONOR: The witness says he will not admit it.

Mr WALLACE: Very well. I will leave it.

20 Q. One other thing I want to ask you is this: If you met with a diagram such as this, with two buildings drawn on it on the same plan, you would assume, wouldn't you, that they were drawn to the same scale? A. If they were drawn on the same plan to a scale.

Q. You would assume that, wouldn't you? A. The scale is 32 to the inch by that.

Q. You find, don't you, that in both cases the maximum height of 150 feet is identical? A. Yes.

Q. When scaled, isn't it? A. Yes.

30 Q. Now, if you compare the width of the 1956 building on the George Street side with the width of the 1954 building on the George Street side, you will find that the George Street width is considerably larger than the 1954 plan, isn't it? A. Yes.

Q. If you go to the 1954 plan shown on Exhibit "4", and if you find out what 59 feet represents in units A. Yes.

Q. You have said the 1954 plan is 59 feet? A. On this level (indicating).

Q. Yes. You find, using these units A. It does come to approximately 59; I will agree with that.

Q. Those units give you 18 units, don't they, which equals 59? A. Approximately, yes.

40 Q. If you come over here it is 20 units, and it scales out to 64, doesn't it? A. Yes, between 63 and 64.

Q. Is it within your knowledge that practically all the departmental stores in Sydney have been built to 100 lbs. to the foot? A. I would not say "practically all"; I know some have.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 20.
A. T. Britten.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.
No. 20.
A. T. Britten.
Re-
examination.

Q. Would you say most of them are built to 100 lbs.? A. I could not say.

Q. But you know that some of the largest departmental stores in the City are built to 100 lbs.? A. I know sections of them are. I cannot say the whole store.

SIR GARFIELD: Q. Did you compute what difference there would be in your floor areas if you use 147 feet 6 inches instead of 140.8 feet as the George Street frontage in all of them? A. I have not had time to complete it, but I certainly intend to do so.

Q. Can you work out mentally what it is? A. Well, it would be 10 to the order of 4,000 to the George Street block; to the order of 4,000 square feet. It does not matter whether it is this building, or this building (indicating). They are both the same.

Q. In relation to your larger sheet, having regard to all those possible developments, did you use 140.8 in respect of "L2"? A. I used it for everything.

Q. So, so far as comparisons are concerned it is a common error? A. Yes.

Q. My friend was asking you on the supposition that this diagrammatic representation shows a building 64 feet wide? A. Yes. 20

Q. You told me yesterday that to do that you would have to cantilever out and use a truss? A. Yes.

Q. Where would the truss be. Would it be within the building or out on the external walls? A. It would have to be within the building.

Q. So, to get 64 feet, you not merely have to cantilever, but you have a truss somewhere in the middle of the building? A. Yes.

No. 21

Evidence of D. W. Davies

No. 21.
D. W. Davies.
Examination.

SIR GARFIELD: Q. What is your occupation? A. Assistant Engineer of the New South Wales Railways. 30

Q. As such, do you have drafting work to do from time to time? A. Yes.

Q. Did you draw the original of the print which I now show you? A. I did.

Q. Did you put on the annotations and colour it in? A. I did.

Q. To prepare that plan, what did you have regard to? A. I had regard to the areas reserved out of lease.

Q. That is to say, you had a look at the schedule in the lease? A. The schedule in the lease; and attempted to rectify them and bring them on to this plan. 40

Q. Did you look at any other plans for that purpose? A. No; it was mainly in conjunction with the lease that I drew them.

Q. The lease; did you have a survey? A. Yes, the survey plan in the lease.

Q. Did you have regard to Exhibit "L2"? A. Yes, definitely.

Q. Does that plan accurately represent the impact of "L2" on certain areas reserved in the lease? A. As far as I can maintain, yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 21.
D. W. Davies.

Examination.

Cross-
examination.

CROSS-EXAMINED

10 Mr WALLACE: Q. There are three sheets in these plans, aren't there? A. That is correct.

Q. The first one I show you, No. 2, has coloured in dark red a small square as shown, hasn't it? A. That is right.

Q. That represents a column which would come up into the designed plan where indicated? A. I do not know that I would call it a column.

Q. A duct? A. It is an area reserved out of lease.

Q. The second sheet I show you, No. 3, has coloured in pink a large area at the top representing in its entirety the reserve portion in that locality? A. Yes.

Q. Of that area, all of which total is coloured in pink, the only encroachment is the thin strip shown on the left of the large pink area? A. One foot seven and a quarter inches.

Q. If you had used the same notation as in the earlier sheet to show something reserved, that might have been in dark red. That would give you the same colouring? A. Well, I correct that in this regard. The portion reserved out of lease on that plan shown in dark red is the only portion to my knowledge in that area reserved out of lease. That is the entire area reserved out of lease to my knowledge, in that area.

Q. The third sheet that I show you is the sheet numbered 6. Here you show a section in elevation, don't you? A. I do.

Q. Taken across the line AA, shown on your sheet No. 3? A. I think this was taken or meant to be read about the XX position on sheet number 2.

Q. Don't you know; you are the draftsman, aren't you? A. I would not definitely state it was in that position, as it would be incorrectly shown.

Q. I am suggesting that it is intended to be a section across AA?
40 A. No.

Q. Where do you say it is a section across? A. It is about the position, not specifically in that position; about mark XX referred to on Sheet 2.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Plaintiff's
Evidence.*

*No. 21.
D. W. Davies.*

*Cross-
examination.*

Q. XX, shown on sheet 2, you say? A. That is right.

Q. What level is sheet 2? A. That is the ground floor plan.

HIS HONOR: The ground floor of Carrington Street.

Mr WALLACE: Q. Your sheet number 6 shows three storeys of bedrooms? A. That is correct.

Q. XX would only relate to a ground floor section, wouldn't it?

A. No.

Q. Whereas AA shown on sheet 3 is a plan of bedrooms, isn't it?

A. It is a section through the bedroom section.

Q. Anyhow, coming back to sheet 6, it shows in elevation the area reserved, which is shown in plan on sheet 3? A. That is correct.

Q. That elevation of the reserved area is all coloured in pink on sheet 6? A. That is correct.

Q. If you look at the plan further, you might get the impression, might you not, that that reserved area wherein the encroachment occurs as shown on the earlier sheet abuts on to bedrooms? A. Not if it is read with the note on this plan.

Q. In other words, to read this plan correctly, you have to imagine the bedrooms coming out towards you in stereoscopic fashion, and the pink area is away back or further away from the spectator than the bedrooms? A. If you chose to do so, yes.

Q. That is the only way you can look at it, isn't it? A. Well, I placed this note on it: "The diagram shows the limit of reserved area taken at about XX position on sheet Number 2", and in brackets after, I put "on Shell House side of lift tower". I think if you read that note it is clearly understood where that section is represented to be.

Q. At all events, the reserved area shown in pink at no time gets near bedrooms, does it. It only abuts on to the staircase well? A. At that position, yes.

Q. At any position? A. To the best of my knowledge, no. 30

Q. It only goes up in height as shown in your sheet number 6 to about the middle of the second bedroom floor, doesn't it? A. That is right.

Q. And after that it is not reserved, and the lessee can, if he wishes, build over it? A. That is correct.

Q. Therefore, going back to your sheet number 3, as that stair well is shown as going up the whole three floors shown in the 1956 plan, the only place in the 1956 building where this reserved area touches is the stairway? A. Yes.

Q. And I would suggest, therefore, that when you drew sheet number 6, it might appear from it, unless you were carefully to analyse the situation, that there was some continuity between the reserved

area and the bedrooms, but that was not intended, was it? A. To my knowledge I do not see how it could be read that way with this note.

Q. It was not intended? A. No.

RE-EXAMINED

SIR GARFIELD: Q. You have worked these up off Mr. Nicholl's drawing? A. That is correct.

Q. And endeavoured to make as little interference with it as possible? A. That is correct.

Q. You have taken, I gather, this line XX on the near-side of the lift well in order to be able to get a sectional view? A. That is true.

Q. These reserved areas you marked are not all the reserved areas but only those that seem to concern the plan? A. Only those in relation to the particular matter brought up here.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Plaintiff's
Evidence.

No. 21.
D. W. Davies.

Cross-
examination.

Re-
examination.

DEFENDANT'S EVIDENCE IN REPLY.

No. 22

Further Evidence of H. A. Llewellyn

MR WALLACE: You are on your former oath. Doubts have been expressed by Mr Britton about the use of caneite or malthoid in these end joints and cantilever construction that has been used? A. Yes.

Q: Are they used, and if so to what extent? A. They are used quite extensively. Mr Britton agreed with malthoid, because that is to stop the wet concrete sticking to the already poured concrete. In the case of brickwork, the essential thing is that the mortar does not get between the new and the old, and the caneite is put there to make sure there is no mortar between the new and the old brickwork. It is called a dry point. The caneite is put vertically against the old wall, and the end of the new brick is abutted to it, with no mortar between the brick and the caneite.

Q. The next point is the loading for departmental stores. I think you know of your own knowledge about David Jones? A. Yes. That was designed in the office. It is David Jones', Market and Castlereagh Streets, known as the new store.

Q. What was the loading? A. 100-lb. per sq. foot.

Q. With regard to the departmental stores, where is it usual for heavy goods to be stored? A. In the basement or lower floors, where there is no light. The upper floors are reserved for selling floors usually.

Q. If you wanted to make the floor a concrete slab, heavy enough to take 150-lb., could that alter the loading of 100-lb. that you put on the column? A. Oh no. Quite often to give the building owner facilities to move departments—he may envisage sometimes having a heavier

Defendant's
Evidence
in reply.

No. 22.
H. A.
Llewellyn.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence
in reply.

No. 22.
H. A.
Llewellyn.
Examination.
—
Cross-
examination.

demand—the floor unit itself at his request may be designed for 150-lb. per sq. foot, but when you take the multiple floor loads down the column, then you revert to the minimum loading of 100-lb. per sq. foot, for quite obvious reasons: while you may have one heavy floor you almost certainly have an office floor or a couple of office floors, and, of course, quite often in Sydney stores have a restaurant—which are both 150-lb. per sq. foot.

Q. The truss, we have heard it agreed to, would be just as essential in the 1954 as the 1956 plans on the George Street component? A. That is right. At about the 4th floor on the original design; or we have proved we could extend the columns two or three floors more, but above that height a truss would be required to span over the weak columns. 10

CROSS-EXAMINED

SIR GARFIELD: Q. Of course, you avoid this open joint if you possibly can, don't you, in the structure? A. Not when you are joining new to old.

Q. You cannot help it then? A. In a continuous structure

Q. But you cannot help it? A. Except when you get over 150-ft., or the building is long enough to warrant an expansion joint. You do not put them in for the sake of putting them in. 20

Q. Is the caneite removed? A. It may be, but it is not usually.

Q. It would be more satisfactory if it were removed so that there is no risk of there being particles between the new and the old? A. Oh no.

Q. Don't you know the practice of putting in a batten and taking it out after? A. We have tried it, but the bricklayer cannot get it out. It is impossible to get it out.

Q. Don't you know of the batten method? A. We have never used it. 30

Q. It is a building technique? A. In any method where you prevent the old brickwork adhering to the new

Q. The great problem is to secure that result? A. That is right.

Q. And the fact that you have to tie and secure it does add a building hazard? A. Well, the fact that you build new to old is the hazard.

Q. I want you to look at the lease for the moment and the reservations that are marked. You know the sub-structure plans prepared for the Innes-Kerr building? A. Yes.

Q. Those reservations in fact are made to accommodate themselves to the Innes-Kerr sub-structure? A. I am sorry, I cannot answer that. I have never checked the reservation in the dimension form. 40

That has always been left to the architect, but you say this has been made to suit the sub-structure. I am sorry, I know so little about this. I thought the sub-structure was built to avoid these reservations.

Q. If you look at the sub-structure plan, would you be able to find on it for me those areas all worked into the plan? A. Yes, by checking these against the drawings.

Q. I show you Sheet 0 of Y.3. You find the motor room? A. Yes.

10 Q. That plan there corresponds with that (indicating). I have shown you Sheet 0 of Y.3. Motor lift pit No. 8 corresponds with reserved area lift well on level K. A. Yes.

Mr WALLACE: He has not agreed with that.

WITNESS: I cannot quite identify them, but it seems to be apparent that that runs that way; in other words, this comes through here (indicating). It shows on that section "motor room", and apparently it would be on your left, but it does not say which way the section is taken. Are there dimensions on it?

SIR GARFIELD: The dimension is 29-ft. 6.

HIS HONOR: It is roughly 29-ft. 6.

20 WITNESS: That is only a common centre line. That is obviously a section, and this is the Wynyard Lane level, and presumably the section is taken looking that way. There is nothing to indicate it.

SIR GARFIELD: Q. You just tell me on this plan. (showing)
A. Level K.

Q. That is what I said to you before, that what is shown here as "motor lift pit" on Sheet 0 of Y.3 A. Put it this way; would appear to be reservation marked "Lift Well, Level K".

30 Q. Can you identify any of these others? A. I know that is the Plaza liftwell. There is no reservation on that area. That is the Railway liftwell, and that is the Plaza liftwell (indicating).

Q. That, at all events, is a railway liftwell? (showing) A. Yes.

Q. This lift pit is not reserved? A. No, it is not reserved; that is, lift pits No's 3, 4, 5 and 6.

Mr WALLACE: Q. What was the number of that one? (indicating)
A. Lift pit No. 8.

Mr WALLACE: That is a Railway lift pit. Lift pit No. 1 is not reserved.

SIR GARFIELD: Q. What is this? (showing) A. Vent shaft No. 1 on Sheet 1.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence
in reply.

No. 22.
H. A.
Llewellyn.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence
in reply.*

*No. 22.
H. A.
Llewellyn.*

*Cross-
examination.*

Q. That is it there in section, isn't it? A. I do not think so. That section is through that liftwell. That piece is nearer Wynyard Lane. That is an approach to the lift. That section is taken through there. It would not show that, but it is shown on the plan, level C, is 44.17.

Q. You said 44.17? A. Yes. I cannot find the corresponding level.

Q. 54.42 A. is first floor approximately, Carrington Street.

HIS HONOR: Q. 54.42 is on Sheet 9. A. on the first floor plan, 10 Sheet 5.

SIR GARFIELD: Q. The vent shaft No. 1 shown in that plan corresponds to the reserved air vent shaft area on Level B at 54.42? A. That is apparent.

Q. I have dealt with the lift wells. What is this air vent here? (showing) A. That is the same one.

Q. You are not saying, I gather, are you, that departmental stores may not require more than 100-lb. live load for their purposes? A. As regards column loadings I am. As regards certain individual sections of the store, it may be desirable to allow for some small concentration of heavier loading. 20

HIS HONOR: Q. That new one at David Jones, the departmental store, so far as your experience goes would that be a typical case? A. Oh yes. There are none that I can recall later than that in the City; but as evidence of it, when we check an existing store for alteration the City Council is quite happy to accept 100-lb. per sq. foot as the loading on the floor.

Mr WALLACE: Q. My friend called it a hazard about putting caneite in when new brick is put up against the old. Is that of any practical importance in reality? A. "Hazard" is a coloured term, I think. 30 It is a standard building practice. All building practices are hazards up to some extent I suppose.

No. 23

Further Evidence of E. M. Nicholls

*No. 23.
E.M.Nicholls.
Examination:*

Mr WALLACE: Q. Look at the series of plans, Exhibit W/4. What date are they, July, 1930? A. Yes. There is another set.

Q. You have seen another set besides those before, have you? A. Yes.

Q. Would there be any plan of the first floor in that—(Ex. W/1 shown)? A. No.

Q. You say you have seen plans different from either W/1 or W/4?
A. Yes.

HIS HONOR: Q. Where did you see them? A. In Mr Wallace's chambers.

Mr WALLACE: Q. You have seen what purports to be Kerr plans . . . (Objected to; rejected.) A. This might well do.

Q. What might well do, sheet 11 of W/1? A. Yes.

Q. I am not sure whether it is fair to contrast those because we do not know what level that is. Have you seen anything in W/1 or
10 W/4 which is identical with or similar to . . . A. I do not know which W/1 and W/4 are.

Q. Look, go through W/1, the sheets in W/1, and I will ask you, do you see anything there which is identical with or which is similar to the first floor level from George Street of Exhibit XX? A. No, there is nothing similar in this set.

HIS HONOR: Sir Garfield, it is necessary for me to understand these pleadings, and 5 (b) refers to a building and says "such building being in part in accordance with the plans and designs." What does the "in part" refer to?

20 SIR GARFIELD: I refer to the evidence that the facade was part of the final facade, so said in the specifications and so said in the correspondence.

Mr WALLACE: Q. Now I ask you to look at the facade shown in W/1, and I ask you to compare that with the facade in XX. Is there a facade there; is there any resemblance between the two? A. No, they are quite dissimilar.

Mr WALLACE: The witness is looking at sheet 13 of Exhibit W/1, which purports to be the railway entrance to the Hotel Plaza, George Street, under the Kerr plans.

30 Q. I show you Exhibit YY—(Showing) . . .

HIS HONOR: Q. Does that bear any date on it? A. This seems to be the same as the one we have just looked at.

Mr WALLACE: Q. At any rate, it is Exhibit YY, and that certainly has the writing "Stanley" on it. I again show you the sheet of Exhibit XX, which appears to have a front or facade to the twelve-bedroom plans set forth in XX, being the front to George Street. Is there any resemblance between those two? A. No, it is quite dissimilar.

Q. W/4 seems to be Kerr plans. What date is that—(Showing)? A. 1930.

40 Q. I again show you sheet 8 of W/4, and the facade sheet of XX. What do you say about those two? A. Oh, they are quite dissimilar also.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence
in reply.

No. 23.
E. M.
Nicholls.

Examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence
in reply.*

*No. 23.
E. M.
Nicholls.*

Examination.

Mr WALLACE: Mr Warden's specifications came out of the Licensing Court files

SIR GARFIELD: No, not the one we tendered. The one that was given to us was the one we tendered.

Mr WALLACE: At any rate, there was one in a Licensing Court file. I want that file to go into evidence, or, alternatively, to have an admission, because it shows that the Licensing Court, which made the order for the twelve bedrooms, did so at the instigation of the Licensing Inspector under s. 40(a) back in 1941.

SIR GARFIELD: I think that is apparent from a whole lot of correspondence. Your people were pressed into activity 10

HIS HONOR: As a matter of fact it is called "In the matter of an application under s. 40(2) of the Liquor Act by Jack Samuels, Licensee of the licensed premises."

SIR GARFIELD: I think it appears from the correspondence that they were being pressed to do something, but apparently it was done on an application by the licensee and not by 40(a) procedure.

Mr WALLACE: Will my friend allow that which I show him to go on the notes? There are several documents all pinned together as part of the same file. 20

SIR GARFIELD: I have no objection, of course subject to relevance. It can be noted that the plans and specifications which I tendered, Exhibit XX, were the subject of an application to the Licensing Court dated 3rd June, 1941, on behalf of the then licensee for permission to make material alterations and additions to the premises in accordance therewith under s. 40(2) of the Liquor Act.

HIS HONOR: Those documents can now go back to the Licensing Court.

Mr WALLACE: Before my friend cross-examines I should clarify the positions of Exhibits 12 and H. 30

SIR GARFIELD: I object to this, because I want to ask the witness about it, and I do not want any statements made to him first.

*Cross-
examination.*

CROSS-EXAMINED

SIR GARFIELD: Q. What material did you look at for the purpose of compiling Exhibit 28? A. I had a set of drawings prepared by Ham, as I remember it comprising about 15 sheets, covering most of the sheets that were in the Licensing Court plans and including also quite a few sections.

Q. So you had more than Exhibit H, which we know contains no sections or elevations? A. Exhibit H is the Licensing Court 40 document?

Q. Yes. You had something more than the Licensing Court documents? A. Yes.

Q. (Ex. 12 shown): Did you have anything except Exhibit 12 or a copy of it? A. There could have been one more sheet.

Q. What was the subject matter of that sheet? A. I do not remember. I just remember that I counted 15 sheets.

Q. Aren't there 15 there? A. 14 are here.

Q. And how many are in the one underneath? A. 11.

Q. What do you think is the 15th sheet; what does it refer to?
10 A. I am sorry, I do not recall.

Q. Where is the copy you looked at for the purpose of preparing Exhibit 28? A. I do not know where it is now. I had it loaned to me some while ago and then taken back from me.

Q. You have not got it? A. No.

Q. You cannot help us at all as to what you think, looking at those plans, is the missing sheet?

HIS HONOR: There were 25 altogether; 14 of one set and 11 of the other.

WITNESS: It says on the front "Set of 15 drawings".

20 SIR GARFIELD: Q. By looking at them, can't you tell me what you think is the missing one? A. It could be sections. I am not sure.

Q. You cannot tell me? A. I cannot identify it.

Q. Which of these two sets of plans in Exhibit 12 did you work Exhibit 28 off? A. Off those. To the best of my knowledge this one.

Q. Plus one other sheet that you had? A. Yes.

Q. Did you have before you at all a copy of the survey of the site? A. No.

Q. Of the excavated site? A. I do not recall that. I had the
30 lease.

Q. You know, of course, that Mr Ham had a survey of the excavated site? A. I do not know when he had a survey.

Q. You may take it that in a letter that is in evidence he writes to the Commissioner and says that he had had the excavated site with its columns surveyed, and he makes some commendatory remarks about the nature of the work? A. Yes.

Q. At any rate you say you did not know that Mr Ham had had the excavated site surveyed? A. No.

Q. Or that he had available to him a Government survey? A.
40 Well, the only implication I have is on this set of drawings. There are

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence
in reply.

No. 23.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence
in reply.*

*No. 23.
E. M.
Nicholls.*

*Cross-
examination.*

certain dimensions on the Carrington Street and George Street in little squares, and there is a notation which says "Dimensions shown thus from Railway survey."

Q. So that would tell you that he had had some survey of what I call the excavated site? A. I would not know it applies to the excavated site.

Q. You made no inquiry before you made your criticisms as to whether or not there was actually available for occupation any greater frontage than appeared to be described in the Metes and Bounds of the lease? A. No, I went by the lease. 10

Q. Mr Ham may have drawn his plans, of course, having regard to the actual survey and the available area in the excavated site? A. I would not think so.

Q. By the way, the sheet you looked at just a moment ago was sheet No. 8, wasn't it? A. Yes.

Q. And that does bear an endorsement which indicates that Mr Ham had two surveys, a Railway survey and a private survey, doesn't it? A. Yes, there are two notes here on the plan.

Q. And they do indicate that he had available to him two surveys?—(Objected to; allowed.) 20

Q. Did this note convey to your mind that he had available to him two surveys? A. It implies to me there were two surveys made, one by the Railways, one by Gillham & Aitken.

Q. And that Mr Ham had both available to him when he was drawing these plans? A. I would not say that.

Q. Let me read what it says on the plan: "Dimensions shown thus"—which means in a rectangle? A. Yes.

Q. "from Railway survey. Remainder from Gillham & Aitken survey"? A. Yes.

Q. That does not indicate to you that he had both those surveys 30 available to him? A. Well, he could have. I don't really know.

Q. In your first criticism you say that the 1954 plan shows no over-all dimensions? A. That is quite right.

Q. Is that true of sheet 8? A. Yes.

Q. Doesn't that show an over-all dimension $173\frac{1}{4}$ to Carrington St.? A. No, it simply says that is taken from a Railway survey.

Q. But it is marked off as it were to show which two points the distance is taken between? A. Yes.

Q. Do you notice that in some places he has his figures with plus or minus before them? A. Not on the figures I have gone through. 40

Q. You did not notice any? A. Not any major figures, no.

Q. Of course, if there are any plus or minus signs it indicates that the dimension on the plan may need adjustment to accommodate itself to occupation, doesn't it? A. I would not take it that way at all.

Q. What would you think plus over minus before a dimension on an architectural drawing means? A. I would think, when you have a limit on the lease, you stick to the lease.

Q. My question was, what would you take from the sign plus over minus in an architectural drawing? A. I am sorry, I have never ever seen it on an architectural drawing.

10 Q. So it would not mean anything to you? A. No.

Q. What you did to get your 171.92 was to tally up the individual measurements across the Carrington Street frontage. Is that right? A. That is right.

Q. And ignored the 173½ which is shown on the plan as the over-all available area? A. Yes, I have ignored that, as well as on George Street I have ignored the two conflicting dimensions. I have gone by the lease.

Q. Where are the two conflicting dimensions? A. On George Street you will find one with an over-all dimension, without the square, 20 147—and it looks like 8¾ here—and then, in the little square showing the Railway area, 147 ft. 9¼.

Q. Does not the presence of those two indicate to you that the architectural measurements are intended to be subject to some adjustment, to accord with the available occupation? A. No.

Q. What do you think the two dimensions in the rectangle, 173½ on the Carrington Street frontage and 147 ft. 9¼ on the George Street frontage, are there for? A. It simply is as it says, dimensions shown thus from Railway survey.

Q. It conveys no more to you than that? A. No. I take it all 30 the time that the lease is the limit.

Q. You do not attach, on the various individual measurements on the plan, any bearing upon them of these figures in the rectangle? A. No; not relating to the rectangle.

Q. You just added up the several dimensions across the plan? A. Where there is no through dimension.

Q. By the way, I suppose the whole basis of your criticism in Exhibit 28 is on the assumption that all the details in Exhibit 12 had been unreservedly approved by the Railway Commissioner? A. No, I had no such assumption.

40 Q. Did you assume one way or another whether the Railway Commissioner had approved of the detail in Exhibit 12, which you were criticising? A. No, it was not my function.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence
in reply.

No. 23.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence
in reply.

No. 23.
E. M.
Nicholls.

Cross-
examination.

Q. What was the purpose of your criticism? A. I was asked to find discrepancies in the plan.

Q. I see, you were just a searcher? A. Yes.

Q. I want to take you for the moment to your comment 4? A. Yes.

Q. You have some dimensions in comment 4? A. Yes.

Q. Have you taken those from dimensions on the plan, or from scaling the print? A. The ones on the left-hand side are from the lease. The ones on the right-hand side, with one exception, are dimensions on the plan. 10

Q. What is the exception? A. The exception is 2 feet 4.5.

Q. You had merely a print of these plans, I take it? A. Yes.

Q. I suppose you will agree that you do not get accurate results by scaling off prints, do you? A. In long dimensions, no. In short dimensions the variation is so trifling as to be negligible.

Q. Let me take your list. You have made out the width of the building, you see, as being 5.54 inches in excess of the leased area, haven't you? A. Yes.

Q. I suppose you were very scrupulous in doing that? A. I tried to be careful, yes. 20

Q. Did you do this yourself? A. Yes.

Q. You see the fourth dimension you have got, 10.86? A. Yes.

Q. That is actually 10.66 on the plan, isn't it? A. No, 10.86.

Q. You think it is 10.86? A. If you look at my print it is 10.86.

Q. I suggest it is 10.66, and the point of the 6 has come down to touch the round of the 6

HIS HONOR: On first look I thought it was 10.86. Then, when I thought of it as a 6, I think it is a 6.

SIR GARFIELD: Indeed, when you look closely, you can see it could not be an 8, because an 8 is made by crossing the item, whereby a 6 is straight. 30

Q. Did you scale it off in any way to check it? A. No, I did not scale those.

Q. Can you do it now; is that a sufficiently small dimension for it to be accurate off the print? A. I do not think it would be accurate to a couple of inches—not on this size. It scales about 10.86. It is nearer .86 than it is .66 by scale, so in that instance the dimensions correspond with the figures.

Q. At any rate, you took it as .86 for your purposes? A. Yes.

Q. You say this 2.45 is not a figure that is dimensioned on the 40 plan? A. No.

Q. How did you work that out? A. By scale.

Q. You did not need to scale it to find it out, did you?
I could not find it through dimensions.

Q. The dimension we are talking about is this through dimension,
which on your figures there comes to the external wall? A. Yes.

Q. And the dimension across there goes to the centre of the
column? A. Yes.

Q. To accommodate those two, you had to deduct the distance from
the centre of the columns to the external of that wall? A. That is
10 right.

Q. The centre of the column is dimensioned, isn't it; it is 1 ft. 9
from the wall? A. Not at all.

Q. From the inside of the wall to the centre of the column? A.
It is different, because this column is not this column—(Indicating).

Q. But they are on the same line of centres, aren't they? A. I
do not know whether they are or not.

Q. Didn't you look; they are on the same line of centres, aren't
they? A. I think they are not.

HIS HONOR: Do you mean the centre of the column is the same as the
20 line of the centre of the other column?

SIR GARFIELD: Definitely.

HIS HONOR: I would not be prepared to say so straight away.

WITNESS: Where you take your dimensions is you have a dimension
there, and you have a dimension there, and you have to take from there
to there—(Indicating), and that is the little piece I scaled, and that is
the 2 ft. 6 inches.

Q. I am suggesting that that centre and that centre are the same
in relation to this wall—(Showing)? A. But they are not the same
when drawn up.

30 Q. Turn up the sub-structure plans and see whether these two
columns are not on a column line with common centres. Turn back
to sheet 1? A. There is no indication exactly there.

Q. Anything which suggests to you that this line of columns is not
in a common centre? A. They might not be.

Q. Is there anything on the plan which suggests it to you? A.
Suggests not one way or the other.

Q. Your dimension was worked out for the purpose of this criti-
cism on the assumption that the architect had drawn the column posi-
tion with great precision, even to the matter of fractions of an inch?
40 A. No.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence
in reply.

No. 23.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence
in reply.*

*No. 23.
E. M.
Nicholls.*

*Cross-
examination.*

Q. But it must have been, must not it? A. No. He has drawn this and taken the dimension to it that way—(Indicating). He has taken the over-all dimension there, and the difference between the two is the dimension I have got, which is added to the others.

Q. Didn't you see the 1 ft. 9 for the centre of the column off the external wall to the inside of the brickwork on the return of the external wall? A. No, you are wrong there. It goes from the centre of the column apparently to the middle of the brickwork. It is not to the inside of the brickwork.

Q. To the inside? A. No, it is not to the inside. 10

Q. You say it shows to the centre line of the brickwork? A. Yes.

Q. Did you observe that 1 ft. 9 was shown as a dimension from the centre line of the column to the centre line of the brickwork of the external wall? A. Yes, well, you cannot even tell what the centre line is there, because that brickwork is not built to the centre line. There is a cavity between the two four-and-a-halves.

Q. Hasn't the architect indicated to you by that line that it is a line to the centre line of the wall? A. No.

Q. What do you think the 1 ft. 9 represents? A. I simply do not know because it is so ambiguously drawn. 20

Q. Did you notice it when you were preparing this criticism? A. Yes.

Q. What did you think it meant? A. I did not know, and I still do not know.

Q. If the assumption is that the architect showed from the centre of column 171 to the centre of the brickwork on the external wall as 1 ft. 9, the total distance from the centre of that column to the outside of the wall would be about another 4½ inches added on to 1 ft. 9, wouldn't it? A. Not necessarily.

Q. What would be it? A. There is a 2-inch cavity. 30

Q. What is the maximum you would think it would be, on those drawings? A. It could be an extra 6½.

Q. What did you say it could be? A. It could be 6½ inches.

Q. How thick would the whole wall be then? A. 11 inches.

Q. Your reading of this architectural plan is, you think the architect may have shown what is drawn as a centre line as being a concentric line? A. Yes. I could not make out what it was.

Q. You, of course, had more than this plan to assist you in knowing where the line of columns would be, didn't you? A. I had the other plans here. 40

Q. And you had drawn plans yourself? A. Indeed.

Q. And plans that concerned that very line of columns? A. No.

Q. Didn't you have to consider where that line of columns was for the purpose of your plans? A. No, we did not touch them at all.

Q. And you did not look at any dimension of them, or their location? A. They did not affect any—

Q. My question was, did you look at any dimension of them for the purpose of preparing your own plans? A. No, not in the manner you suggest.

Q. You did not learn, when you were preparing your own plans, that that line of columns beginning at 171 was on a common line of 10 centres? A. No.

Q. You would have had the structural drawings, Exhibit 10, at some stage, wouldn't you? A. I cannot see what you are looking at.

Q. (Ex. 10 shown): You would have had this at some stage, wouldn't you? A. Yes.

Q. Is column 171 on there? A. No. This is all on the Carrington Street side.

Q. What I was showing you was George Street? A. Yes.

Q. They are not on Exhibit 10? A. No.

Q. While I am here, do you see where I point to above the 1 ft. 9, a 20 line which indicates that the measurement here is taken to the inside of that wall; this measurement from that dot, 14 ft. 11½, is actually taken from the inside of that wall? A. All these are part dimensions and not the whole dimension. I took the whole dimension.

Q. I am calling your attention to that dimension. That shows, by the figure 11, that that is an 11-inch wall? A. Not necessarily.

Q. This figure 11 does not indicate that the wall is 11 inches thick? A. That is not where the dimension is.

Q. You do not think that that 11 indicates it is an 11-inch wall? A. It could.

30 Q. That is the best you will go? A. Yes.

Q. At this end it has 11, and here, it has the inch mark there? A. But you see an anomaly there. That is drawn to 11. That is only a 4½ inch wall—(Indicating).

Q. You did not worry about this 1 ft. 9 either? A. No.

Q. You did not think that that centre line was in the centre of the brickwork for dimension purposes? A. No.

Q. Although you see that the dot, if it is opposite anything, is opposite the centre line. Indeed, it is on a continuation of that line, isn't it? A. This line is not drawn properly. In fact, it is not a 40 line. It is a space.

Q. But that is where he is measuring to, isn't it? A. But you cannot measure to nothing. You must measure to something.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence
in reply.

No. 23.
E. M.
Nicholls.

Cross-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence
in reply.*

*No 23.
E M.
Nicholls.*

*Cross-
examination.*

Q. When you show 11 inches to a two 4½-inch brick wall, it is not possible to measure through the centre of that wall, because you say it is a space? A. No, you say "to centre".

Q. You do not think that is what that plan is showing very eloquently? A. No. On the contrary, I think it is most ambiguous.

Q. If others think that 1 ft. 9 is to the centre of an 11 inch wall and that the line of columns are on a common line of centres, then the dimension you have given as 2 ft. 4.5 inches would need to be altered, wouldn't it(Objected to; question withdrawn.)

Q. You see comment 5 here in the Exhibit? A. Yes. 10

Q. Can you show me what you are referring to on Exhibit H?—
HIS HONOR: I thought he said he referred to Exhibit 12.

SIR GARFIELD: I want to ask him can he show them to me on H.

WITNESS: Is H the Licensing Court set?

SIR GARFIELD: Q. Yes. Can you show me on H what it is you are criticising, if it is there? A. It is not there, but other similar ones are there.

Q. I did not ask you about anything else but this 98 and the 99?
A. No, they came from

Q. This criticism does not appear from anything you see on H? 20
A. No. On H you have to apply the numbers 96 and 112.

Q. But 98 and 99 A. They apply to the 15 sheet set and not to the others. The two others apply to the other.

Q. Of course, the sizes of columns are not drawn accurately by architects at any time, are they? A. Yes, of course they are.

Q. Do you do that? A. When I have the structural details, yes.

Q. Is comment 6 to be found on Exhibit H? A. No, it is not on Exhibit H.

Q. Now there is another group of criticisms, where it starts "See second floor Carrington Street, ground floor George Street, for the 30 following items"—about comment 12? A. Yes.

Q. Are these taken from Exhibit H or Exhibit 12? A. They were taken from 12, but they apply to both.

Q. You can find those in H, can you? A. Yes.

Mr WALLACE: Which ones are you speaking of now?

WITNESS: No. 12 onward; is that right?

SIR GARFIELD: Q. Yes. Take 12, for example. Just show us the item you are referring to? A. This air lock—(Indicating).

Q. What dimensions are shown on the plan? A. 2 ft. 6 x 4 ft. 6.

Q. On the plan, are they? A. Yes. 40

- Q. Are you sure that is the floor dimension, or the door opening dimension? A. No, I think that is the—
- Q. Just look again. That is a door opening, isn't it? A. I do not think so.
- Q. No so much from scaling, but by what it looks like? A. I am sorry, I have made a mistake in this. We scaled this, and there is one dimension, and we scaled the other, and there was no dimension.
- Q. So what you told me just a moment ago was inaccurate? A. Yes.
- 10 Q. You took what dimension? A. There is a 4 ft. 6 inch dimension and it scales across here 3 feet, and you multiply those two, and you get 13.5 square feet.
- Q. But the 4 ft. 6 is not a floor dimension, is it; it is an opening dimension, a window or louvres or something? A. No, it certainly is not.
- Q. The 4 ft. 6 is between these two points, and they are opposite that opening? A. They are not. These relate to that wall. They are the dimensions of the wall. That is the wall, and that is how you dimension to build the wall.
- 20 Q. You say that is the wall and not the opening? A. Yes.
- Q. You say it is 4 feet 6. What is the width of the scale? A. Scale, 3 feet.
- Mr WALLACE: Q. What is 3 feet? A. From there to there— (Indicating). We are a little full in the scale, but we took it at 3 feet.
- SIR GARFIELD: Q. What do you mean by "a little full"; a little more? A. No, a little less.
- Q. Do you know whether or not the Council did in fact approve that which you criticised? A. I am not sure.
- Q. You are not sure? A. No, I do not know about that.
- 30 Q. Do you think the print is sufficiently accurate to warrant your scaling it? A. Oh, I think his 3 feet is.
- Q. You do? A. Small dimensions, yes.
- Q. Take Item No. 21, "Toilets and basins are all drawn too small." Do architects draw the toilet basins the right size, or simply draw them to show where they should be in position? A. If they have competent draftsmen they draw them to the right size.
- Q. You must have missed a good point. I notice the toilets are drawn rectangular in that plan? A. I noticed that too.
- Q. You did miss a good point? A. Yes.
- 40 Q. Item 27 to 31 are founded on a comparison of some architects' plans and preliminary structural plans, aren't they? A. Yes.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence
in reply.*

*No. 23.
E. M.
Nicholls.*

*—
Cross-
examination.*

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*Defendant's
Evidence
in reply.*

*No. 23.
E. M.
Nicholls.*

*Cross-
examination.*

Q. Just open those up. These are said to be sub-structural plans that came from your possession at some time—(m.f.i.15 shown)? A. Yes.

Q. They show this column 171 and the column from the centre of which you were taking certain measurements, don't they? A. Yes. They would appear down below to be concentric.

Q. There is no doubt about that. They have a line drawn through them, haven't they? A. Not through the centre. It so happens that that line is not through the centre.

Q. But that indicates they are on a common line, they are on a 10 common axis? A. That is what you have said.

Q. Doesn't that indicate that to you? A. Not necessarily.

Q. Doesn't that indicate to you that they are on a common line of centres? A. Not necessarily.

Q. Does it in fact when you look at it now? A. No, it does not necessarily, no.

Q. Inside your own plans there is a survey in there, isn't there? A. Yes.

Q. That shows them on a common line of centres. There is no doubt about that? A. No, this is as poorly drawn as the previous 20 architect's one.

Q. Doesn't it tell you they are on a common line of centres? A. No. The line is not even on the centre.

Q. Does not that tell you whether it is a common line of centres? A. No. A surveyor's line is supposed to be an accurate line, and if you take the surveyor's line accurately it is out of centre. Perhaps it is out of centre.

Q. Where is column 171. Compare it on the plan and on the survey? A. That is this one, and that shows—as the previous one—quite a bit off centre. 30

Q. You say it does not show they are built on a common line of centres? A. Of course not. A surveyor's plan is supposed to be a careful plan, and this deliberately shows the centre line not on the centre of the columns.

Q. You say that indicates to you they are not on a common line of centres? A. It could. One would have to check with the surveyor as to whether it is careful drawing or whether it is a fact.

Q. You see, on the top of this survey it says "A plan showing the basement column centres", and it has a series of dimensions between points, where the lines cross. Does not that indicate to you that these 40 lines were intended to be the centres of the columns? A. Well, if they are they are very badly drawn.

Q. You see what the plan is headed and you see the dimensions?
A. Yes.

Q. Doesn't that convey to you that this line of columns, particularly these two, are on a common centre? A. They are not the ones we are talking about. We are talking of those two—(Indicating).

Q. Well, those two? A. It does not finally show it, no.

(Six sub-structure sheets and survey plan, part of m.f.i. 15, tendered; objected to as being irrelevant; admitted and marked Exhibit CCC.)

10 Q. Would you open up the 1954 plan in Exhibit 12 or H and tell me where is the main entrance of the hotel to which those plans relate; in Carrington Street or George Street? A. Carrington Street.

Q. Is the main foyer there? A. Yes.

Q. And reception desk and office? A. Yes.

Q. Would you look at the bedroom floor plan for the moment and indicate if there is one bedroom that is 6 feet 6 wide? A. Yes. It is 45. There is another one I observe here, No. 60. There might be more, I do not recall.

RE-EXAMINED

20 Mr WALLACE: Q. You did your Exhibit 28 from the 15 drawings, Exhibit 12? A. Yes.

Q. And have you also checked the 15 with the 11? A. Yes.

Q. Would it be correct to say that 75% approximately of your comments apply to both? A. Yes.

Q. And 100% apply to the 15-sheet drawings? A. That is correct.

Q. Some of the comments, of course, are more important than others? A. Yes.

30 Q. When you said your comment No. 5 on columns 98 and 99 does not apply to H, do you wish to add that there were two columns in H, not 98 and 99, to which those comments did apply? A. Yes, 96 and 112.

Q. By the way, your plans, I think you told His Honor, were of a preliminary nature, were they? A. On the actual drawing, notation says "Advanced working drawings".

Q. Whose is that, Mr Ham's? A. No, mine; the 1956 plans.

Q. What about Mr Ham's plan? A. I understand 15 sheets, with the sheets that went to . . . (Objected to.)

40 HIS HONOR: Q. I have seen many of these drawings flourished before me. Is there a simple document anywhere where as it were you were looking down on the site and you saw the exact areas of first of all the 1954 plan and then the 1956 plan? A. There is none.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence
in reply.

No. 23.
E. M.
Nicholls.

Cross-
examination.

Re-
examination.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Defendant's
Evidence
in reply.

No. 23.
E. M.
Nicholls.

Re-
examination.

Q. The only way to do it is to look at the plan? A. That is correct.

Mr WALLACE: Q. It need not be to scale even; just drawings? A. In that particular, I have done that—a simple diagram.

Q. That is the isometric drawings? A. No, preceding that.

Q. Do you say it is in evidence? A. Yes, it is in evidence, the comparative drawing of mine, showing the two plans and the two elevations.

Q. (Ex. 3 shown)? A. This is correct, if you eliminate that—
(Marked with a cross).

No. 24**Notice of Motion under Section 89 of the Conveyancing Act,
1919-1954**

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 24.
Notice of
Motion under
Section 89
of the
Conveyancy
Act,
1919-1954.

TAKE NOTICE that by special leave this Honourable Court will be moved before the Honourable Charles McLelland a Judge of the Supreme Court sitting in Equity at 10.0 a.m. this day or so soon thereafter during the hearing of this suit now current as counsel may be heard on behalf of Avrom Investments Proprietary Limited, the abovenamed defendant, for the undermentioned declarations and orders AND FURTHER TAKE
10 NOTICE that it is intended to use (inter alia) on the hearing of this application the evidence in this suit.

1. Declarations as to whether or not the demised land the subject of the said suit is affected by any restrictions as to its user contained in the lease referred to in the Statement of Claim filed in the said suit, and if so,

(a) The nature and extent thereof.

(b) Whether the same is or are enforceable, and, if so, by whom.

- 20 2. If and in the event of it being declared that the said demised land is subject to restrictions arising as aforesaid and that the same are enforceable, for an order that the restrictions which may be declared as aforesaid be modified

(a) so as to allow of the erection of a building on the said demised land substantially in accordance with the plans being exhibit 42 in the said suit, the drawings being exhibit 10 in the said suit and the specifications being exhibit R in the said suit without the approval of the lessor to the said designs plans or specifications

(b) so as to allow of the erection of a building on the said demised land which is not in accordance or substantially in accordance with the plans being exhibit H in the said suit

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 24.
Notice of
Motion under
Section 89
of the
Conveyance
Act,
1919-1954.

- (c) so as to allow of the erection of a building on the said demised land which is not in accordance or substantially in accordance with the plans being exhibit W1-W6 in the said suit
- (d) so as to allow of the erection on the said demised land of a building in accordance with designs plans and specifications not approved by the lessor if the lessor should unreasonably refuse or fail to consent to the said designs plans and specifications.

DATED this 4th day of April, 1957.

No. 25
Notes of McLelland, J.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

TUESDAY, 5th MARCH, 1957.

SIR GARFIELD BARWICK Q.C. JENKYN Q.C. and H. JENKINS
for Plaintiff.

No. 25.
Notes of
McLelland, J.

WALLACE Q.C. MEARES Q.C. SELBY and MAY for Defendant.
BADHAM Q.C. and E. PERRIGNON to make a submission on behalf
of officer of Licensing Court.

J. L. Fitzmaurice, Secretary of Licenses Reduction Board produces
10 documents on subpoena duces tecum.

I refuse application by defendant for an adjournment.

I give defendant leave to amend statement of defence by adding
paragraphs 18 and 19 set out in document initialled by me and
placed with the papers.

SIR GARFIELD tenders copy lease: *EXHIBIT "A"*.

Tenders Permit to build on Wynyard Lane: *EXHIBIT "B"*.

Tenders bundle of correspondence 26/9/40 to 20/6/41: m.f.i. (1).

Tenders bundle of letters 27/8/30 to 4/9/35: m.f.i. (2).

Plans of substructure: m.f.i. (3).

20 Blue prints undated of superstructure: m.f.i. (4).

Elevation of proposed Hotel: m.f.i. (5).

Original tender and accompanying documents: m.f.i. (6).

Tenders bundle of correspondence 28/8/42 to 12/3/51: *EXHIBIT "C"*.

Bundle of correspondence (14/2/45 to 13/4/53) re sub-structure repair:
EXHIBIT "D".

Bundle of correspondence (24/8/53 to 25/10/54) re 1954 plans and
approval: *EXHIBIT "E"*.

SIR GARFIELD applies for injunction.

I refuse the application.

30

WEDNESDAY, 6th MARCH, 1957.

Tenders minute of order 9/11/53 re application No. 9 and order to
carry out work of 9/11/53: *EXHIBIT "F"*.

Minute of order of 26/5/54: *EXHIBIT "G"*.

Series of plans marked "Approved" of 9/11/53 and plan of 26/5/54:
EXHIBIT "H".

Application for extension of time of 28/9/55 plus statement:
EXHIBIT "J".

Application of 5/9/56 for variation: *EXHIBIT "K"*.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
No. 25.
Notes of
McLelland, J.

1956 plans referred to in Exhibit " K " : *EXHIBIT " L "*.
Application of 19/9/56 for authority to carry out work : *EXHIBIT " M "*.
Bundle of correspondence (27/3/56 to 27/8/56) : *EXHIBIT " N "*.
Transcript of evidence before Judge Rooney : *EXHIBIT " O "*.
Diagrammatic sketches : *EXHIBIT " P "*.
WALLACE tenders bundle of rent accounts and receipts : *EXHIBIT 1*.
WALLACE examines Eric Milton Nicholls.
Tenders isometric diagram : *EXHIBIT 2*.
Sheet No. 10 : m.f.i. (7). 10
Sheet No. 9 : m.f.i. (8).
Schedule of area : m.f.i. (9).
WALLACE tenders m.f.i. (9) : *EXHIBIT 3*.
Tenders m.f.i. (8) : *EXHIBIT 4*.
Tenders document comparing schemes : *EXHIBIT 5*.

THURSDAY, 7th MARCH, 1957.

WALLACE tenders plan of proposed lift alteration : *EXHIBIT 6*.
SIR GARFIELD cross-examines.
Three sheets of structural steel drawings : m.f.i. (10).
Specifications : m.f.i. (11). 20
SIR GARFIELD tenders contract of 24/8/56 and 10 sheets : *EXHIBIT " Q "*.
Letter of Instruction of 8/6/56 : m.f.i. (12).
Plans of substructure : m.f.i. (13).
Tenders m.f.i. 11 : *EXHIBIT " R "*.
Copy of Exhibit 4 : m.f.i. (14).

MONDAY, 11th MARCH, 1957.

SIR GARFIELD continues cross-examination of Mr Nicholls.

TUESDAY, 12th MARCH, 1957.

Substructure plans of Mr Nicholls' : m.f.i. (15). 30
List of utensils for kitchen : m.f.i. (16).
WALLACE re-examines.
SIR GARFIELD tenders m.f.i. (16) : (list of utensils for kitchen) :
EXHIBIT " S ".
WALLACE tenders copy letter of instruction of 8/6/56 : *EXHIBIT 7*.
Tenders plan of scheme to remove encroachment : *EXHIBIT 8*.

Tenders Book of photographs : *EXHIBIT* 9.
 Tenders m.f.i. (10) : *EXHIBIT* 10.
 Tenders sketch of loads on beams : *EXHIBIT* 11.
 WALLACE examines Henry Arthur Llewellyn.

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*

No. 25.
 Notes of
 McLelland, J.

WEDNESDAY, 13th MARCH, 1957.

WALLACE continues examination.
 SIR GARFIELD cross-examines.
 Set of plans 25/6/56 : m.f.i. (17).
 Plans : m.f.i. (18).
 10 Four sheets of plans : m.f.i. (19).
 Bundle of engineering plans : m.f.i. (20).
 Four sheets of tracings of architectural drawings : m.f.i. (21).

THURSDAY, 14th MARCH, 1957.

MR LLEWELLYN produces calculations re 1956 plans on subpoena
 duces tecum.
 WALLACE examines Walter Ralston Bunning.
 WALLACE re-examines Mr Llewellyn.
 Set of plans sent by Sly & Russell to Railway Commissioner :
EXHIBIT 12.

20 TUESDAY, 19th MARCH, 1957.

MR FOX now appears with Mr Wallace.
 Allan Grant Crawford, solicitor, produces documents on subpoena
 duces tecum.
 WALLACE further examines Eric Milton Nicholls.
 SIR GARFIELD cross-examines.
 Document prepared by Mr Nicholls : m.f.i. (22).
 WALLACE further examines Henry Arthur Llewellyn.
 Work Sheets : m.f.i. (23).
 Structural plans : m.f.i. (24).
 30 SIR GARFIELD cross-examines.
 Sketch : *EXHIBIT* " T ".
 Book of plans Plaza Hotel : m.f.i. (25).
 WALLACE re-examines.
 Tenders sketch of proposed truss : *EXHIBIT* 13.
 WALLACE further examines Walter Ralston Bunning.
 Tenders slide and accompanying pages of typescript : *EXHIBIT* 14.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 25.
Notes of
McLelland, J.

Calculations of floor areas: m.f.i. (26).
WALLACE re-examines.
Examines William Ray Laurie.
SIR GARFIELD cross-examines.

WEDNESDAY, 20th MARCH, 1957.

WALLACE further examines William Ray Laurie.
SIR GARFIELD cross-examines.
WALLACE re-examines.
WALLACE examines John Roland Harrowell.

THURSDAY, 21st MARCH, 1957. 10

WALLACE further examines Henry Arthur Llewellyn.
Bundle of plans: m.f.i. (27).
Tenders sketch of columns: *EXHIBIT* 15.
Sketch of proposed truss: *EXHIBIT* 16.
SIR GARFIELD cross-examines.
WALLACE further examines John Roland Harrowell.
Calculations: m.f.i. (28).
Summary of balance sheets: m.f.i. (29).
WALLACE examines Elizabeth Dorothea Randall.
Bundle of plans: m.f.i. (30). 20
Tenders m.f.i. (28): *EXHIBIT* 17.

MONDAY, 25th MARCH, 1957.

Defendant's admissions: m.f.i. (31).
WALLACE further examines Henry Arthur Llewellyn.
Sheets showing result of calculations re Columns 53 and 55: *EXHIBIT*
18.
WALLACE examines Royle Stone Connolly.
Tenders summary of net profits 1943-1956: *EXHIBIT* 19. (Admitted
subject to relevance and checking.)
SIR GARFIELD cross-examines. 30
Tenders copy leasehold account and leasehold improvements account
from private ledger: *EXHIBIT* 20.
Tenders m.f.i. (6) (original tender): *EXHIBIT* 21.
Tenders plan accompanying letter of 5/10/54: *EXHIBIT* 22.
Tenders agreement of 10/7/42: *EXHIBIT* 23.

SIR GARFIELD examines Thomas Maxwell Scott.
Tenders isometric diagram prepared by Mr Scott: *EXHIBIT "U"*.
WALLACE cross-examines.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

TUESDAY, 26th MARCH, 1957.

SIR GARFIELD continues examination.

WALLACE cross-examines.

SIR GARFIELD examines Alexander Theodore Britten.

Bundle of plans: m.f.i. (32).

Bundle of plans: m.f.i. (33).

10 Bundle of calculations: m.f.i. (34).

Document shown to Mr Britten: m.f.i. (35).

Bundle of blue prints: m.f.i. (36).

Further bundle of plans: m.f.i. (37).

Bundle of calculations: m.f.i. (38).

Specifications: m.f.i. (39).

Three files of correspondence: *EXHIBIT "V"*.

m.f.i. (4): *EXHIBIT "W1"*.

m.f.i. (5): *EXHIBIT "W2"*.

m.f.i. (30): *EXHIBIT "W3"*.

20 m.f.i. (32): *EXHIBIT "W4"*.

m.f.i. (33): *EXHIBIT "W5"*.

m.f.i. (39): *EXHIBIT "W6"*.

KERR.

Tenders so many of documents in File No. 4 as are mentioned in typed document which appears in front of file: *EXHIBIT "X"*.

Plans: *EXHIBIT "X1"*.

File No. 5: *EXHIBIT "Y"*.

m.f.i. (36): *EXHIBIT "Y1"*. Structural drawings: *EXHIBIT "Y2"*.

Architectural drawings: *EXHIBIT "Y3"*.

30 File No. 6 (as mentioned in list attached): *EXHIBIT "Z"*.

Bundle of plans mentioned in "Z": *EXHIBIT "Z1"*.

File No. 7 (as mentioned in this attached): *EXHIBIT "AA"*.

m.f.i. (13): sub-structure plans: *EXHIBIT "AA1"*.

File No. 8 (as mentioned in list attached): *EXHIBIT "BB"*.

m.f.i. (35) (computations by Mr Stanley): *EXHIBIT "BB1"*.

Tenders m.f.i. (38): (calculations): *EXHIBIT "CC"*.

Letter of 29/9/47: *EXHIBIT "DD"*

m.f.i. (25): *EXHIBIT "DD1"*.

Valuer General's valuation: *EXHIBIT "EE"*.

No. 25.
Notes of
McLelland, J.

WEDNESDAY, 27th MARCH, 1957.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*No. 25.
Notes of
McClelland, J.*

File No. 9 (as mentioned in list attached): *EXHIBIT "FF"*, File No. —.

Balance of Files No. 9 and 10 not tendered by plaintiff: *EXHIBIT 24FF*.

Plans marked "J": *EXHIBIT "FF1"*.

File No. 11 (as mentioned in list attached): *EXHIBIT "GG"*.

Balance of File No. 11 not tendered by plaintiff: *EXHIBIT 25GG*.

Statement of Claim, Statement of Defence and Replication in Suit No. 1102 of 1939: *EXHIBIT "HH"*. 10

File No. 12 (as mentioned in list attached): *EXHIBIT "JJ"*.

Draft agreement of execute lease: *EXHIBIT "KK"*.

Two blue paints each endorsed by Mr Stanley: m.f.i. (40).

Specifications (Warden): m.f.i. (41).

Letterhead from Mr Roberts: m.f.i. (42).

File No. 13: *EXHIBIT "LL"*.

Copy letter of 8/4/57: m.f.i. (43).

Three letters of 22/5/47, 28/5/47 and 10/7/47: *EXHIBIT "MM"*.

File No. 14: *EXHIBIT "NN"*.

Letter of 17/10/47: *EXHIBIT "OO"*. 20

Minutes of conference of 24/11/54 signed by Ham, Stanley and Llewellyn: *EXHIBIT "PP"*.

SIR GARFIELD further examines Britten.

Tenders Plan re Britten's evidence: *EXHIBIT "QQ"*.

Three sheets of plans prepared by Mr Britten: *EXHIBIT "RR"*.

WALLACE cross-examines.

MONDAY, 1st APRIL, 1957.

WALLACE cross-examines Mr Britten.

Sketch drawn by Mr Wallace: m.f.i. (44).

Second sketch of trusses: m.f.i. (45). 30

Diagram: *EXHIBIT 26*.

Sketch: m.f.i. (46).

Calculations: m.f.i. (47).

TUESDAY, 2nd APRIL, 1957.

WALLACE continues cross-examination Mr Britten.

SIR GARFIELD re-examines.

Tenders By-Law No. 52: *EXHIBIT "SS"*.

WEDNESDAY, 3rd APRIL, 1957.

SIR GARFIELD further re-examines Mr Britten.

WALLACE further cross-examines Mr Britten.

SIR GARFIELD further re-examines.

SIR GARFIELD examines David Davis.

WALLACE cross-examines.

SIR GARFIELD tenders three plans drawn by Mr Davis : *EXHIBIT* "TT".

Tenders letters marked "A" and "B" : *EXHIBIT* "UU".

10 m.f.i. (44) (45) and (46) tendered : *EXHIBIT* 27.

THURSDAY, 4th APRIL, 1947.

WALLACE further examines Llewellyn.

SIR GARFIELD cross-examines.

I permit notice of motion for declarations and relief under s. 89 of the Conveyancing Act to be filed. I reserve the question of terms.

SIR GARFIELD tenders file of correspondence : *EXHIBIT* "VV".

Tenders file of letters and plans : *EXHIBIT* "WW".

Tenders Warden plans and specifications : *EXHIBIT* "XX".

Tenders blue prints of facade : *EXHIBIT* "YY".

20 Tenders Bundle of blue prints (1941) : *EXHIBIT* "ZZ".

Tenders four letters of 10/2/56, 6/2/56, 20/1/56 and 9/6/55 : *EXHIBIT* "AAA".

Tenders letter dated 25/11/41 (m.f.i. 42) : *EXHIBIT* "BBB".

Tenders statement of Mr Nicholls : *EXHIBIT* 28.

Tenders tenancy agreements : *EXHIBIT* 29.

I allow plaintiff to amend statement of claim so as to make it conform to the document initialled by me and placed with papers.

MONDAY, 8th APRIL, 1957.

WALLACE further examines Eric Milton Nicholls.

30 Tenders six sheets and survey plan (part of m.f.i. (15) : *EXHIBIT* "CCC".

TUESDAY, 9th APRIL, 1957.

SIR GARFIELD tenders Minute of 16/5/29 and document of 4/4/29 : *EXHIBIT* "DDD".

I give plaintiff leave to add John Birkett Wakefield as a party defendant.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 25.
Notes of
McLelland, J.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
No. 25.
Notes of
McLelland, J.

In lieu of all orders for amendments made heretofore since the commencement of the hearing, I give leave to the plaintiff to amend the statement of claim in accordance with the document now initialled by me and placed with the papers.

In lieu of all orders made heretofore since the commencement of the hearing I give leave to the Defendant Avrom Investments Pty. Ltd. to amend the statement of defence in accordance with the document initialled by me and placed with the papers.

I give leave to the plaintiff to amend the replication generally. Costs of and occasioned by all amendments to be costs in the suit. 10
SIR GARFIELD addresses.

Tenders document setting out effect of documents in Licensing Court as to the area of licence: *EXHIBIT "EEE"*.

WEDNESDAY, 10th APRIL, 1957.

SIR GARFIELD addresses.

THURSDAY, 11th APRIL, 1957.

SIR GARFIELD addresses.
MR WALLACE addresses.

MONDAY, 15th APRIL, 1957.

MR WALLACE addresses. 20

TUESDAY, 16th APRIL, 1957.

MR WALLACE addresses.

WEDNESDAY, 17th APRIL, 1957.

MR WALLACE addresses.

THURSDAY, 18th APRIL, 1957.

MR WALLACE addresses.

I give leave to the plaintiff to amend the statement of claim in accordance with the document now initialled by me and placed with the papers. The plaintiff agrees that any amendments to the statement of defence arising out of these amendments to the statement of claim need not be under the Seal of the defendant company. Costs of the amendment reserved. 30

TUESDAY, 23rd APRIL, 1957.

MR WALLACE addresses.

WEDNESDAY. 24th APRIL, 1957.

MR WALLACE addresses.

MONDAY, 29th APRIL, 1957.

MR WALLACE addresses.

List of admissions (m.f.i. 31): *EXHIBIT* 30.

MONDAY, 6th MAY, 1957.

Stood over till 7th May, 1957.

TUESDAY, 7th MAY, 1957.

JENKINS for Plaintiff.

10 FOX for Defendant.

Stood over till 8th May, 1957.

WEDNESDAY, 8th MAY, 1957.

JENKINS for Plaintiff.

FOX for Defendant.

I give the plaintiff leave to file an amended replication in accordance with document initialled by me and placed with papers. I reserve costs of this amendment.

MONDAY, 20th MAY, 1957.

JENKINS for Plaintiff.

20 FOX for Defendant.

I reserve my judgment.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 25.
Notes of
McLelland, J.

IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY

CORAM : McLELLAND, J.

CMR. FOR RAILWAYS V. AVROM INVEST-
MENTS PTY. LTD. & ANOR.

FRIDAY, 12th OCTOBER 1956
TUESDAY, 16th OCTOBER 1956
WEDNESDAY, 17th OCTOBER 1956
FRIDAY, 2nd NOVEMBER 1956
TUESDAY, 5th FEBRUARY 1957
FRIDAY, 15th FEBRUARY 1957
TUESDAY, 5th MARCH 1957
WEDNESDAY, 6th MARCH 1957
THURSDAY, 7th MARCH 1957
MONDAY, 11th MARCH 1957
TUESDAY, 12th MARCH 1957
WEDNESDAY, 13th MARCH 1957
THURSDAY, 14th MARCH 1957
TUESDAY, 19th MARCH 1957
WEDNESDAY, 20th MARCH 1957
THURSDAY, 21st MARCH 1957
MONDAY, 25th MARCH 1957
TUESDAY, 26th MARCH 1957
WEDNESDAY, 27th MARCH 1957
MONDAY, 1st APRIL 1957
TUESDAY, 2nd APRIL 1957
WEDNESDAY, 3rd APRIL 1957
THURSDAY, 4th APRIL 1957
MONDAY, 8th APRIL 1957
TUESDAY, 9th APRIL 1957
WEDNESDAY, 10th APRIL 1957
THURSDAY, 11th APRIL 1957
MONDAY, 15th APRIL 1957
TUESDAY, 16th APRIL 1957
WEDNESDAY, 17th APRIL 1957
THURSDAY, 18th APRIL 1957
TUESDAY, 23rd APRIL 1957
WEDNESDAY, 24th APRIL 1957
MONDAY, 29th APRIL 1957
MONDAY, 6th MAY 1957
TUESDAY, 7th MAY 1957
WEDNESDAY, 8th MAY 1957
MONDAY, 20th MAY 1957
COPY OF HIS HONOUR'S NOTES

Received 26/-

No. 26
Judgment of McLelland, J.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958

HIS HONOUR: This suit arises out of a lease of certain land situated at Wynyard Railway Station, being partly under the Real Property Act and partly under Old System title granted by the plaintiff on the 26th June, 1941, to Rachel Gardiner and Permanent Trustee Company of New South Wales Limited, which lease was on the 24th February, 1943, with the consent of the plaintiff transferred and assigned to the defendant, the defendant covenanting, inter alia, that any and every cove-
10 nant, condition, proviso, stipulation and agreement of the lease to be performed or observed by the lessee should be binding upon it as fully and effectually as in the lease set forth.

The lease is Exhibit "A".

The plaintiff is a body corporate and is the successor in title to and the office of an earlier body corporate.

I shall for convenience, except when some other reference is expedient, refer to both the corporations and their respective agents as the plaintiff.

20 The land on the surface covers an area lying between George Street and Wynyard Lane, having frontages of about 148 feet to George Street and to Wynyard Lane with a depth of about 91 feet, and an area lying between Wynyard Lane and Carrington Street, having a frontage of about 173 feet to Wynyard Lane and to Carrington Street with a depth of about 91 feet.

On the surface the land, therefore, goes through from George Street to Carrington Street but is divided by Wynyard Lane which is 20 feet wide.

Carrington Street is at a higher level than George Street being approximately two stories higher.

30 Underneath the land at the George Street frontage a subway enters from Hunter Street and the level at which this subway enters the land has been referred to as the Hunter Street level.

From the entrance at George Street, the subway proceeds in two passages through the land.

The Carrington Street boundary of the land beneath the surface is east of the entrances to Wynyard Railway Station itself. On the George Street level two passages enter from George Street and proceed on a ramp which slopes down to the railway station, each passage being 25 feet wide, being splayed out at the George Street entrance.

40 These two passages represent the principal entrance from George Street to the railway station for members of the public and are exceedingly busy thoroughfares.

The lease arose out of a tender made by Mr M. McFadden, a solicitor, on the 6th April, 1927, which was accepted by the plaintiff some months later.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

At this time the plaintiff was engaged in completing the underground railway and the railway station at Wynyard and the land in question, together with other land, had been resumed for railway purposes.

A large body of evidence relating to transactions and negotiations between Mr McFadden and a Mr Gardiner (for whom he was a trustee) and their respective agents on the one hand and the plaintiff on the other which took place prior to the execution of the lease was tendered on behalf of the plaintiff. To this evidence the defendant objected, not on matters of form such as the proof of the posting and receipt of letters and such like, but on matters of substance. 10

I took the course of admitting the evidence without passing judgment on its admissibility or relevance as this appeared to me to be the only practical course in the circumstances, particularly since the question was raised in the suit of the reasonableness of the plaintiff in refusing to approve of certain plans submitted to it on behalf of the defendant.

It will be convenient to set out the facts appearing from this and from the other evidence in the suit without, at this stage, adverting to their admissibility or effect but which may possibly be relevant. 20

They emerge principally from a mass of documents, but I think I have gleaned all the facts which may possibly be relevant.

On the 6th April, 1927, Mr McFadden sent in his tender in the following terms:—

“TO THE RAILWAY COMMISSIONERS FOR NEW SOUTH WALES.

I, MATTHEW McFADDEN of No. 90 Belmore Road Randwick do hereby tender Eighteen thousand five hundred pounds (£18500) per annum for the lease of certain lands described in the schedule hereunto annexed for the period of 60 years commencing from a date to be subsequently decided but not to be earlier than 1st January 1929 in accordance with and subject to the Specification and Terms and Conditions annexed hereto and marked ‘A’. 30

I enclose herewith a Bank Cheque Bank Draft Post Office Money Order or Cash for the sum of Fifteen thousand pounds (£15,000) which sum shall be returned to me if this tender is unsuccessful but such sum shall be forfeited to the Railway Commissioners if the said tender be withdrawn after it has been opened whether the said tender has been accepted or not. If a successful tenderer I hereby agree that such sum shall be forfeited to the Commissioners if I fail to execute and deliver to them within twenty-eight days after being requested so to do a counterpart agreement and/or lease embodying the Specification Terms and Conditions of the Tender and Acceptance. I also agree to pay the Commissioners’ legal costs and expenses incurred in and about 40

the preparation and execution of the said agreement and/or lease and also all stamp duties chargeable. Upon completion of the counter-part agreement and/or lease the sum deposited as aforesaid shall be held by the Commissioners as security for the due performance and observance by me of the said Specification Terms and Conditions until the building is certified by the Commissioners as satisfactorily completed when Five thousand pounds (£5,000) shall be credited to the Lessee's rent account, and Ten thousand pounds (£10,000) shall become the property of the Lessors as a bonus to them on the transaction.

10 DATED at Sydney this sixth day of April in the year of Our Lord one thousand nine hundred and twenty-seven.

M. McFADDEN."

"SPECIFICATION AND TERMS AND CONDITIONS OF SALE. 'A'.

The property will be leased in one line and for a term of sixty years.

The date of commencement of the said term of 60 years will be subsequently decided but will not be earlier than 1st January 1929.

The land was acquired for the purposes of the Commissioners and the Commissioners will lease same by virtue of the provisions of the 20 Government Railways Act 1912 as amended. No other particulars or abstract of title shall be required by the Tenderer, nor shall any objection be taken to the Commissioners' title or to their power to lease the land, which the Tenderer shall assume was duly acquired and is now vested in the Commissioners in fee.

The lease will be subject to a rental of not less than Fifteen thousand pounds (£15,000) per annum, which shall be paid by quarterly instalments in advance, and the payment of a bonus after acceptance of tender, of Ten thousand pounds (£10,000) (the latter to be deducted by the Commissioners from the sum of Fifteen thousand pounds 30 (£15,000), which is to be lodged with the tender).

The lease shall also be subject to the following additional terms and conditions:—

Every tenderer shall make his tender according to and upon the forms provided by the vendors (being form of tender and this form of Specification and terms and conditions) and shall lodge same (duly signed and or executed) together with a deposit to the value of Fifteen thousand pounds (£15,000) at the office of the Railway Commissioners for New South Wales, Bridge Street, Sydney, not later than noon on Wednesday 6th April, 1927.

40 In the event of the tender being accepted the Commissioners may retain the deposit as such until the lease has been duly completed and charges paid as hereinafter provided and until the Commissioners duly certify that the building to be erected by the Lessee has been satisfactorily completed, when the sum of Five thousand pounds (£5,000)

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

shall be transferred to the credit of the Lessee's rent account and Ten thousand pounds (£10,000) shall be paid into Consolidated Revenue as a bonus.

The tenderer shall be deemed to have lodged his tender after inspection of the premises, and with a full knowledge of the actual condition thereof and of the Commissioners' intention in regard thereto. Should any wall be a party wall the Tenderer shall make no objection on that account.

Without prejudice it is the intention of the Commissioners to clear away all existing buildings and to excavate the sites to a certain depth with due regard, however, to adjoining (private) property, and such excavation is expected to provide ample basement and sub-basement space as indicated on plans attached. **10**

Through the lands the Commissioners will construct a flat tube passage having a floor and roof both carried on piers and leading from about the level of George Street and into the Wynyard Square Railway Station and appurtenances. The lessee may use such passageway within his curtilages and have access thereto from lifts, shops and offices, but such passage shall always remain under the control of the Commissioners, who may close same or any part as to them may seem necessary. **20**

Should the Commissioners at any time notify the Lessee that they consider it necessary for him to render the tube passage immune from fire, the lessee shall forthwith provide suitable isolating doors, shutters or other satisfactory protection to passengers.

The lessee may subject to the requirements of the Commissioners also use all space above and below such tube passage consistent with the safety thereof, but the Commissioners at all times reserve the right to build and use such tube passage to a width of 50 feet clear in the narrowest part, and have access to inspect, maintain, amend, effect such widening and or improve such passage and the parts thereof. **30**

In the event of the Commissioner so deciding at any time the lessee shall allow the construction use and maintenance of a tube passage diverging from the aforesaid tube passage and leading therefrom across under George Street.

The Commissioners reserve the right to require the lessee at any time to provide forthwith suitable space (probably on Carrington Street front only) for goods lift down to any required Railway level and also for ventilating shafts or areas necessary for the Commissioners' premises adjoining and such premises shall have means of access of a reasonable character to the building to be erected on the subject lands. **40**

Without prejudice reasonable effort will be made by the Commissioners in exercising any reservations herein to meet the wishes of the Lessee.

The Commissioners will not subject to their requirements for and about the tube passage prevent the lessee exercising any opportunity that may exist to use for interconnection any intervening space under Wynyard Lane, nor any space above a satisfactory height over such lane; but the Commissioners' said requirements in regard to the tube passage shall be paramount.

The accepted tenderer shall complete the lease within fourteen days of delivery of the particulars.

Among the covenants to be included in the lease will be the following:—

The lessee shall erect upon the land within two (2) years from date of commencement of lease a building of not less value than One hundred and fifty thousand pounds (£150,000) and in accordance with plans and specifications to be approved by the Railway Commissioners, the Sydney Municipal Council, the Fire Commissioners, and any other public authority thereto authorised and such building shall be erected and maintained to their satisfaction and in accordance with the lawful requirements ordinances regulations and by-laws of the said Council and such building and all fencing and other appurtenances shall be of such design and construction as shall be deemed by competent authority to be applicable to the premises and the locality.

The Lessee will covenant with the Commissioners to observe and fulfil the requirements of all Acts of Parliament rules, regulations, by-laws and ordinances and requisitions thereunder and whether applying to the lessor or the lessee in the same manner as though the land were privately owned.

And to pay in full all rates, taxes, fees, charges, impositions, assessments and outgoings whatsoever which are at the commencement of the term or may at any time thereafter be levied or imposed upon the premises or upon the Commissioners or lessee or on account of the existence of a liquor license in respect thereof.

And to pay the rent; to repair; to insure in the joint names of the Commissioners and himself; that the Commissioners may enter and view the state of repair; that the Lessee will repair according to notice; that he will not assign without leave, that he will leave the premises in good repair. Proviso for re-entry by the Commissioners on non-payment of rent or non-performance of covenants. Any other usual lease-hold conditions of the Commissioners will also apply.

The terms and conditions will be embodied in a lease to be prepared by the Solicitor for Railways, and the Lessee shall pay all the usual costs and charges of the Solicitor for Railways in such connection, and upon such being done and the building being satisfactorily erected the aforesaid deposit shall be divided and credited Five thousand pounds (£5,000) to the Lessee's rent account and Ten thousand pounds (£10,000) to Consolidated Revenue as hereinbefore provided.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.*

The lessee shall have no power to debar the Commissioners and/or their nominees using as they think fit any part of Wynyard Square Railway Station and the approaches thereto or the appurtenances thereof.

News-vending and bookstall rights are reserved to the Commissioners.

The Commissioners reserve the right to carry any telegraph or other wires or cables, drains or pipes across the land and also to erect and have unrestricted view and access to Railway notice boards, but the Lessee shall have the right to display within or upon the leased 10 premises approved signs relative to his trade and business.

The lessee at the expiration of the term shall close to the satisfaction of the Commissioners any means of access from premises not owned by the Commissioners.

If the tenderer shall not pay his deposit as hereinbefore provided or shall fail to comply with these conditions or the covenants and conditions of the agreement and/or lease or any of them, all moneys which he shall have paid on account of his tender shall be absolutely forfeited to the Railway Commissioners, who shall be at liberty to rescind this contract or at their option to sue the tenderer for breach 20 of contract or to resell the lease for the said term in any manner and upon such terms and conditions as they may think proper, and it shall not be necessary for the Commissioners previously to tender any lease of the premises or any part thereof to the tenderer nor to give notice of any such re-sale, and all loss and expenses consequent upon such re-sale or upon any abortive attempt to re-sell or upon the tenderer making default under this contract and all damages which the Commissioners may sustain thereby shall be recoverable by them from the tenderer as and for liquidated damages, nor shall the tenderer so making 30 default be entitled to any profit (if any) on the re-sale of the lease purchased by him.

The Commissioners shall not be bound to accept the highest or any tender but a rental higher than Fifteen thousand pounds (£15,000) per annum will be a favourable condition.

In the event of any dispute arising as to the meaning or effect of any of the terms and conditions herein contained or referred to or in any other relative matter, the decision of the Railway Commissioners shall be final and conclusive."

On the 27th July, 1927, the plaintiff wrote to Mr McFadden in the following terms:—

"Referring to your letter of the 25th June, 1927, on the subject of the tender submitted by you under date 6th April, 1927, for the lease of certain railway lands, situate in Wynyard Square.

Sydney, as described in the Schedule annexed to such tender, for the period of 60 years, commencing from a date to be subsequently decided, but not earlier than the 1st January, 1929, I desire to inform you that the Commissioners are of the opinion that the rental value of the lease in question should not be less than £19,200/-/- per annum *for the whole term*, and provided you are prepared to amend your tender to this figure the Commissioners will accept same—the lease to be in strict accordance with, and subject to, the Specification and Terms and Conditions submitted with your tender.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10

On receipt of an intimation from you (which should be forwarded not later than the 10th August proximo), agreeing to amend your tender as indicated above, and enclosing cheque for £15,000/-/-, the papers will be forwarded to the Solicitor for Railways for preparation of necessary documents.”

On the 1st August, 1927, Mr McFadden wrote to the plaintiff in the following terms:—

20

“I am in receipt of yours of the 27th inst. and am agreeable to the rental value therein mentioned viz., £19,200 being charged for the whole term of the lease of 60 years herein, subject however to the payment of the deposit of £15,000 as follows:—

The sum of £5000 to be paid by 10th August, £5000 six months thereafter, and £5000 by August 10th 1928.

My reason for requiring this accommodation in the matter of the payment of deposit is largely due to the fact that the original deposit has been diverted into other channels, and it would be most inconvenient to alter my present arrangements.

30

As the lease itself will not commence to operate before 1st January, 1929, the whole deposit on my suggested payments would be in hand some five months or thereabouts prior to such commencement.”

On the 10th August, 1927, the plaintiff wrote to Mr McFadden in the following terms:—

40

“Referring to your letter of the 1st instant, in reply to mine of the 27th ultimo, in connection with your tender for the lease of certain railway lands situate in Wynyard Square, Sydney, and intimating that you are prepared to amend your tender to provide for payment of rental at the rate of £19,200/-/- per year for the full term of the lease of 60 years, subject to your being permitted to make payment of the £15,000/-/- deposit necessary, in instalments as set out in your letter, I am directed to inform you that the matter has had consideration.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

In reply I have to state that the Commissioners are unable to agree to your request to make payment of the £15,000/-/- deposit on the basis indicated in your letter. They are, however, agreeable to your making payment of this sum as follows:—

First instalment of £5,000/-/- immediately; the second instalment of a like amount to be paid within six (6) months from the date of payment of the first instalment, and to bear interest at the rate of 5½%, commencing on the 1st day after the initial instalment has been paid; final £5,000/-/- to be paid on the 10th August, 1928. 10

Alternatively the Commissioners are agreeable to your making payment of £10,000/-/- forthwith, and balance (£5,000/-/-) on the 10th August, 1928.

Awaiting your reply.”

On the 10th August, 1927, Mr McFadden wrote to the plaintiff in the following terms:—

“I am in receipt of yours of the 10th instant herein, and beg to intimate my acceptance of your variation of my tender on the lines therein indicated.

Enclosed please find cheque for £5000 as agreed.” 20

The man behind Mr McFadden was a Mr R. Gardiner, a well-known city business man. When this fact was first made known to the plaintiff in 1931 the plaintiff refused to recognise Mr Gardiner in the matter but on the 22nd November, 1933, Mr McFadden wrote to the plaintiff:—

“In this matter I have at all times been acting as Trustee for Mr Reuben Gardiner although the tender and subsequent agreements were made in my name with the Commissioner for Railways.

I would be pleased if you would advise me whether you will 30 consent to my release from all liability in connection with such agreements and to fresh agreements with you being prepared in the name of another nominee of Mr Gardiner.”

and on the 11th December, 1933, the plaintiff wrote to Mr McFadden:—

“In reply to your letter of the 22nd November, 1933, I wish to advise that the Commissioner has no objection to assignment of the above-mentioned lease to Mr Reuben Gardiner, or his approved nominee.”

In matters arising after that date, I shall refer to the person who made the tender as Mr Gardiner. 40

Mr Gardiner employed an architect, Mr Innes Kerr, to design a hotel building for the site and to prepare the architectural plans which were necessary. He also employed a firm of structural engineers,

Messrs. James Bell & Co. Pty. Limited, to prepare the engineering details and drawings. The engineer who actually did the work was a Mr Stanley.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Mr Gardiner also employed an estate agent named Roberts to deal on his behalf with matters relating to the project.

The principal scheme in mind when Mr Innes Kerr prepared his plans was the construction of a large hotel on the site to the full building limit utilising virtually the whole of the site with shops alongside the ramps, and the architect and the engineer prepared plans and details to that end. The hotel was to be called the Plaza Hotel.

*No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.*

On the 3rd December, 1928, Mr McFadden advised that detailed plans were nearing completion.

On the 29th December, 1928, Mr McFadden wrote to the plaintiff a letter which contained the following paragraph:—

“ . . . I have to advise . . . that regarding the excavation and steel construction on the above site to suit the requirements for erecting the building as now contemplated, it will be most essential to have good basement depth independent of that now proposed by the Commissioners, and the fact of the site being leasehold and eventually becoming the property of the Railway Commissioners, I ask that they excavate to the required depth to give ample basement accommodation for the Ramp Shops and Hotel, also to erect the necessary steel construction and concrete floors up to and including the roof over the whole area to Ramp Roof Height thereby relieving me of some portion of the capital expenditure which it is estimated will cost approximately £600,000 exclusive of furnishings.”

It was apparently realised, as was stated on more than one occasion, that it would have been impracticable for the plaintiff and Mr McFadden to carry out independently their separate responsibilities of construction and the Railway Commissioner agreed to excavate as required and to construct a building to ramp roof height on the George Street entrance but not including finished floors, walls, and ceilings.

Some of the work was recognised as being properly chargeable against the plaintiff and some against Mr McFadden. It was estimated at the time that the work in question would involve a charge of £62,257 against the plaintiff and £104,536 against Mr McFadden.

The cost of the work attributable to Mr McFadden was to be borne by the plaintiff and Mr McFadden was to pay 6½% thereon by way of additional rent.

Mr McFadden also agreed to increase his guarantee deposit to £10,000.

Prior to the 26th September, 1929, preliminary plans had been handed to the plaintiff.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958.
continued.

In 1930, of course, the affects of the Economic Depression first manifested themselves and the worst of such affects continued through until 1935-1936 and perhaps later. It is necessary to consider the course of events in the light of such affects.

By the 15th February, 1930, the major excavation work had been completed.

By the 27th August, 1930, there had been delivered to the plaintiff by or on behalf of Mr McFadden:

- Preliminary architectural drawings from basement to the roof;
- Preliminary engineering drawings from Wynyard Lane level 10 to the roof;
- Architectural working drawings from basement to third floor;
- Detailed drawings of structural design to the third floor;
- Preliminary structural drawings from the third floor to roof level;
- Architects' specifications.

These plans were for a building to be built over Wynyard Lane of a large hotel covering the whole site extending up to the full permissible limit of 150 feet on the George Street frontage and up to 120 feet on the Carrington Street frontage. 20

These plans and any alterations or additions thereto I shall for convenience call the Innes Kerr plans.

On the 24th October, 1930, the Chief Civil Engineer of the plaintiff wrote to Mr McFadden:

“I am directed to inform you that the Railway Commissioners consider the general design of the Hotel ‘Plaza’ building to be satisfactory and, provided that certain requisitions are fulfilled, see no reason why the plans should not be submitted to the City Council and other statutory bodies for their approval.”

Certain requisitions were then set out. 30

The plans were apparently amended to meet these requisitions.

On the 23rd January, 1931, the plans were deposited with the City Council. On the 8th May, 1931, the plans were disapproved by the City Council on the ground that the building was being built over Wynyard Lane. On the 15th July, 1931, Mr McFadden suggested that the plaintiff resume Wynyard Lane.

On the 2nd October, 1931, Mr McFadden by letter indicated that, if he could not build over Wynyard Lane, a new set of plans would be necessary and suggested that the existing plans in so far as the basement and sub-basement were concerned be accepted as the basis for 40 the construction of the building.

On the 1st March, 1932, difficulties existing were discussed between the parties and a note made by the estate agent of the plaintiff at the time indicates that discussions took place on various matters and his note includes the following:

“Capital Involved. It was admitted that both parties would find it difficult to negotiate for funds necessary to execute the several liabilities which were approximately estimated at £100,000/-/- for each party, or a total of £200,000/-/-.

10 *Erection of Building.* It was also agreed that it was not economical at the present time to consider any expenditure as above, in view of the difficulty of obtaining adequate returns in rentals etc.

Sectional occupation. This was desired to be permitted, but departmentally no objection was apparent to such occupation in approved locations and agreed conditions, yet it was preferable that the same should be under separate agreements, as completed in the particular instance of the ‘Plaza Hotel’.

20 *Moratorium.* All parties appeared to be unanimous that subject to the above limitations a Moratorium should be agreed upon, provided that conditions thereof contained no ‘surprise’, and was equitable to both parties.

I would add that Mr Bretnall concurs in the above conclusions . . . ”

(Mr Bretnall was at that time the Chief Commissioner for Railways.)

About March, 1932, Wynyard Station was opened for railway traffic.

30 On the 23rd June, 1932, the plaintiff wrote to Mr McFadden asking whether, since approval by the City Council of the plans providing for a building over Wynyard Lane had not been obtained, did he require the sub-structural work to be as expensive, to which Mr McFadden replied on the 29th June, 1932: Will you please proceed with the work “according to the Plans and Computations delivered to your Department in July, 1930”.

On the 12th August, 1932, Mr McFadden wrote to the estate agent of the plaintiff:

“The only alterations to the plans will be the elimination of the portion crossing the lane, otherwise they remain unaltered, even though the sub-structure may be heavier—I am prepared to have it so.”

40 On the 17th October, 1932, the solicitor for Mr McFadden wrote to the plaintiff suggesting a moratorium of five years.

On the 7th December, 1932, the Secretary of the plaintiff wrote a letter to the Minister for Transport which contained the following paragraph:

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

“The Department has to assume the lessee’s ability to carry out his part of the bargain. It is known that he has good financial backing, but to this the Department has no recourse and would therefore face this risk, viz., that if upon completion of our obligation by expenditure of the sums above referred to the lessee’s principals decided not to go on, a judgment in favour of the Department for specific performance or damage would be fruitless against the lessee himself. The Department would need to interest another investor in the property, and in this connection the Departmental engineers are of opinion that the foundation work above referred to would be adaptable for practically any use to which the site might be put.”

The foundation work here referred to was the excavations and the steel construction to ramp level.

On the 30th December, 1932, the solicitor for Mr McFadden wrote to the estate agent of the plaintiff that the plans already submitted would be the plans for which the sub-structure would be designed.

In March, 1933, some amended drawings were left by Mr Roberts with the estate agent of the plaintiff, being preliminary architectural drawing to Wynyard Lane level. The plaintiff requested structural drawings from Mr Stanley. By the 8th June, 1933, the parties had agreed on terms for payment of interest on the amount expended and to be expended by the plaintiff on excavation and sub-structure and for the recommencement of work on the sub-structure. The work was to be completed within one year and four months from the date of recommencement.

On the 6th February, 1934, Messrs. Roberts, Innes-Kerr and Stanley handed to the plaintiff a first batch of amended plans of the proposed Plaza Hotel with engineering calculations to the Chief Civil Engineer of the plaintiff. These plans were of floors up to the George Street level.

Similar information regarding the floors at a higher level was promised and also architects’ plans and sections.

On the 2nd March, 1934, the plaintiff wrote to Mr Roberts asking for further information and plans to enable work on the sub-structure to proceed.

On the 14th June, 1934, Mr Innes-Kerr handed to the plaintiff certain calculations for the second and third floors.

On the 10th July, 1934, it was agreed that the time for completing the work on the sub-structure should be extended to one year ten months from the date of recommencement.

On the 7th November, 1934, although the whole of the plans were not to hand, sufficient were to hand to enable a commencement to be made of fabrication of steel work on the 26th November, 1934.

On the 7th January, 1935, the actual erection of structural steel work on the site was expected by the plaintiff to begin at the end of February, 1935, such day to be taken as the date of the recommencement of the work.

One of the buildings resumed on the area in question by the plaintiff was a hotel known as the "Cafe Francais" Hotel and it seems that the plaintiff obtained the licence for this hotel as well as the land on which it was situated. At some time shortly after the acceptance of the tender, the benefit of the licence appears to have been made available to
 10 Mr McFadden or those he represented and applications were from time to time made to the Licensing Court for the approval of temporary arrangements in relation to temporary premises, temporary bars and so on.

By reason of action taken before the Licensing Court, the lack of completion of the sub-structure, which prevented the erection of buildings necessary to meet licensing requirements, was a considerable embarrassment.

During 1935 certain details relating to columns and column loads were supplied to the plaintiff. In February, 1936, it was agreed that
 20 the time for completion of the work on the sub-structure should be extended to twenty-four months from the date of recommencement.

Prior to October, 1936, Mr Gardiner had been let into occupation of some small areas and had applied for further space to be made available to him.

On the 23rd October, 1936, four written tenancy agreements providing for weekly tenancies at weekly rents were entered into between the plaintiff and Mr Gardiner in respect of four areas occupied or to be occupied by him.

On the 13th November, 1936, two other similar tenancy agreements
 30 were entered into for two other areas and four other similar agreements were entered into respectively on the 8th December, 1936, 23rd December, 1936, 12th November, 1937 and 18th January, 1938. Each of the agreements contained a clause in the following terms:—

"This agreement is separate from and independent of the tender of one Matthew McFadden for a building lease of certain land upon part of which the premises the subject of this agreement are situate which said tender is not nor is it to be deemed by this agreement to be in any wise affected."

By the 13th March, 1937, the work of the plaintiff on the sub-structure was virtually completed.
 40

On the 25th May, 1937, the plaintiff wrote to Mr Roberts a letter forwarding statement of expenditure on behalf of Mr Gardiner up to the cost period ended on the 13th March, 1937. The total figure shown was £108,105 1s. 5d.

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*
 No. 26.
 Judgment of
 McLelland J.,
 11th
 February,
 1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

The final cost of the work on the sub-structure including excavating and columns which was recognised as properly charged against Mr Gardiner was £109,134 5s. 9d. This is the same sum as is mentioned in Covenant 3 of the lease which was subsequently executed.

The columns which were constructed by the plaintiff under the arrangement were columns which were necessary to enable a building according to the designs supplied by Mr Gardiner's experts to be constructed on the land and were placed on the sites and according to the sizes designed by such experts and approved by the plaintiff and in accordance with the requirements of the plaintiff in connection with 10 such approval. Some of the said columns support concrete ramps leading to the railway station but in some instances much smaller and in other instances smaller columns would have been sufficient for such purpose alone.

The plaintiff placed a good deal of reliance on the facts relating to these columns which in the evidence were for convenience referred to by numbers and the evidence relating to them supports the following conclusions:

The line of columns numbered 51, 76, 96 and 112 and the line of columns numbered 57, 81, 101 and 119 were constructed of a size and 20 strength sufficient to permit the development above the fourth floor from the George Street level of the demised area lying between the lines of columns 51, 53, 55 and 57 and the line of columns 112, 114, 117 and 119 to the full city building limits measured from George Street but as qualified by ordinances relating to light and air.

The design of the building originally proposed involved stopping columns numbered 53, 55, 78, 79, 98, 99, 114 and 117 at the floor level of the ballroom shown in the said design of the said building.

This was because the ballroom was to be without columns and the building was to be continued with internal columns above the ball- 30 room.

As a result of such design and of the plaintiff building inter alia, columns numbered 53, 55, 78, 79, 98, 99, 114 and 117 according to such design, such columns are unable to carry any greater load than they were designed to carry in the said design except to the extent that greater loads are now permissible under altered and liberalised building ordinances and regulations.

In short, there was a central core of relatively weak columns and to the east and west some very large strong columns particularly two on the west. 40

The design of such building contemplated trussing or some other heavy form of construction over the said two lines of columns from 53 to 114 inclusive and from 55 to 117 inclusive for development above the fourth floor from the George Street level of the demised area lying between the line of columns 51 to 57 inclusive and 112 to 119 inclusive.

The line of columns 51, 76, 96 and 112 and the line of columns 57, 81, 101 and 119 were built of greater size and strength than they otherwise might have been in order to carry the loading to be imposed upon them by the said trusses over the line of columns 53, 57, 98 and 114 and columns 55, 79, 99 and 117 in the development of the area between the line of columns 51, 53, 55 and 57 and the line of columns 112, 114, 117 and 119.

Despite the nature of the particular design of the columns, I am satisfied, as were the plaintiff's engineers, that the foundation work including the columns was adaptable for practically any use to which the site might be put.

During 1937 it appears that the plaintiff had submitted a draft lease to Mr Schrader, Mr Gardiner's solicitor, and that various alterations were being suggested on behalf of Mr Gardiner and claims made for allowances by reason of changes in the situation since the tender was made and for reduced rent and similar matters. These negotiations continued in 1938.

Up to the 15th January, 1938, all payments of interest which were due by him up to that date had been paid by Mr Gardiner to the plaintiff.

On the 25th March, 1938, Mr Innes-Kerr wrote to the plaintiff forwarding plans of additional floors "proposed to be erected at the Plaza Hotel". These included a George Street elevation, certain sections, a roof plan and plans of the fourth floor, the third floor and part of the third floor.

On the 17th June, 1938, amended plans were lodged by Mr Innes-Kerr with the plaintiff. These were similar to the plans lodged on the 25th March, 1938, and had been altered to meet some minor objections to the earlier ones. It is quite clear that these plans indicated an intention, at any rate in the first instance, to build a building with two additional floors starting at the level over Wynyard Lane consisting principally of bedrooms and roofed over.

About the middle of the year Mr Gardiner was to have a conference with the plaintiff relating to the negotiations.

Prior to July, 1938, strong representations had been made to the Government on behalf of public bodies in connection with the entrances to the licensed premises from the Railway ramp at Wynyard Station and the display there of liquor advertisements.

On the 10th June, 1938, the Premier wrote to the Minister for Transport:—

"I think that the whole position with regard to the leasing of the property now known as the Plaza Hotel might well be reviewed by Ministers and I should be glad if you would

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 26.
Judgment of
McLelland J. ,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

kindly have prepared and forwarded to me a memorandum dealing with the position.”

On the 17th August, 1938, Mr Gardiner wrote to the plaintiff in reference to the conference to be held by him. This letter was written on a letterhead containing a picture of a completed hotel with five floors below the street level in George Street and with the words across it “under construction”. Letters on this letterhead were sometimes thereafter used by Mr Gardiner and by Mr Roberts in their correspondence.

On the 18th August, 1938, the plaintiff wrote to Mr. Gardiner a letter in the following terms:—

10

“I have to acknowledge receipt of your letter of the 17th instant regarding your request for an interview with the Commissioner in connection with the lease of the Plaza Hotel.

In reply, I am directed to say that the matter of the lease is under consideration by the Government in connection, it is understood, with certain representations which have been made to it, and until the departmental papers are returned the Commissioner is not in a position to see you.”

On the 8th September, 1938, the solicitors for Mr Gardiner wrote to the plaintiff complaining of “unwarranted delay” in finalising the lease—

“As you are aware, there is but one matter outstanding between the parties yet we were recently advised that the whole matter had now been referred to the Honourable The Premier.”

On the 18th October, 1938, the Minister for Transport gave directions to the plaintiff to give effect to certain recommendations approved by Cabinet. These recommendations were in the following terms:—

- “(1) That the original intention to use the portion of the premises abutting on the tube frontages as shops must be strictly adhered to; that under no circumstances will they be permitted to be used for the purpose of liquor bars or be allowed to form part of the licensed premises;
- (2) That no entrance to the licensed premises will be permitted from the passage-ways;
- (3) That no liquor advertisements will be permitted in the tube passage-ways;
- (4) That shops fronting the tube passage-ways must not be used for liquor displays;
- (5) That the use of the shops fronting the tube passage-ways must be confined to businesses not engaged in the manufacture or cooking of foodstuffs; and

40

(6) That the Commissioner retain to himself full power to effectively control such shops and prevent the creation of offensive odours.”

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

These recommendations were submitted to Mr Gardiner's solicitors.

Mr Gardiner's solicitors did not agree with the terms as stated and made counter proposals.

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

On the 31st January, 1939, the Minister for Transport wrote to the plaintiff informing him that the Government could in no way amend the recommendations numbered 1, 2, 3, 4 and 5 and that the Government would not agree to any lease that did not conform with those recommendations.

In the meantime, throughout the period of the negotiations, Mr Gardiner was in difficulties with the licensing authorities by reason of the lack of accommodation to comply with licensing requirements and on the 6th March, 1939, a summons was received to show cause why the licence should not be cancelled.

On the 17th March, 1939, Mr Gardiner gave notice of action in respect of a proposed suit in equity for specific performance of an agreement for lease.

On the 31st March, 1939, a conference was held between the plaintiff and its solicitors on the one hand and Mr Gardiner and Mr Schrader his solicitor and Mr Roberts on the other hand to try and solve the problem relating to the entrances to Wynyard Station.

On the 18th April, 1939, the Minister for Transport wrote to the plaintiff that the preparation of the lease could now proceed but that a copy of the new lease should be submitted to him before execution.

Negotiations continued between the plaintiff and the defendant and their respective advisers concerning the terms of the lease. Questions were raised in relation to reduction of rent, compensation for the splaying of passages and reduced areas made available and relating to the payment of interest and other like matters.

On the 27th June, 1939, the solicitor for the plaintiff wrote to the Secretary for Railways a letter which contained the following:—

“Because the concessions approved on my report of 16.5.39 did not have the effect of bringing about a conclusion of negotiations, the proposed Lessee's Solicitors have been notified that the Commissioner no longer holds himself bound to make them.”

On the 3rd July, 1939, the Licensing Court refused to renew the licence and Mr Gardiner lodged an appeal to Quarter Sessions against this decision. When the appeal came on for hearing, it was stood over to a day to be fixed in the following year.

In September, 1939, the Second World War commenced.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

On the 16th September, 1939, negotiations not having been concluded, Mr Gardiner filed and served a statement of claim against the plaintiff claiming specific performance of an alleged agreement for lease.

In the statement of claim the agreement was referred to in the following terms:

“By an agreement in writing made on or about the sixth day of April One thousand nine hundred and twenty-seven the Commissioners agreed to grant to the plaintiff and the plaintiff agreed to accept from the Commissioners a lease of the said 10 lands for the term of Sixty (60) years computed from
day of at the rental of Nineteen thousand two hundred pounds (£19,200) per annum and otherwise upon the terms and conditions therein and in a plan then agreed upon between the Commissioners and the plaintiff more particularly set forth.”

The fact that the day of commencement of the lease was left blank indicates in the circumstances an understandable simplicity of expression.

It highlights an obvious difficulty and it is not surprising that, 20 amongst the defences raised, was a paragraph in the following terms:

“In further answer to the Statement of Claim I say and it is the fact that although there were negotiations between the said Railway Commissioners and one Matthew McFadden for a lease of the lands described in the schedule to the Statement of Claim the said negotiations never resulted in a concluded contract. In particular I say and it is the fact that no agreement was ever made as to the date on which the proposed lease the subject of the said negotiations was to commence.”

If it be relevant, I am of opinion that at this stage no enforceable 30 agreement for lease had been concluded.

On the 13th October, 1939, the National Security (Capital Issues) Regulations made under the provisions of the National Security Act, 1939, were promulgated forbidding the formation of companies, the increase of capital of companies and the giving of security or mortgages without the consent of the Treasurer. From time to time thereafter amended regulations were promulgated controlling these matters.

On the 27th March, 1940, when the equity suit came on for hearing in the first instance, it was stood over to enable preparations to be made for trial, negotiations at this stage having practically ceased. 40

On the 26th June, 1940, the solicitor for the plaintiff wrote to the Secretary for Railways setting out the proposed lessee's case for consideration in connection with “compensation” and reduction of rent,

drawing attention to the outbreak of War and the consequent obscurity of prospects from a business point of view, the possible effect of the regulations on the proposed lessee and stating, amongst other things:

10 “It is extremely improbable that any other arrangement for the use of the land to be leased could be made at present, and it is certain that no arrangement could be made which would offer reasonable prospects of an adequate return on the capital expended on the sub-structure. I am of the opinion that it will be in the interests of the Department, so far as these can be foreseen, to carry on with the existing arrangement and to make liberal concessions to the proposed Lessee for assisting him in his part of it.

20 The proposed Lessee is in a dilemma. He does not see his way to abandoning the venture because of the amount of money he has already invested in it, nor does he see his way clearly to carrying it on successfully. He feels, however, that the attempt to carry on offers both to himself and to the Department the better prospects, and he is prepared to make the attempt if the Department will make to him now a substantial concession and will reasonably consider further concessions in the future, if circumstances make them requisite. The probability of further concessions being sought is indicated by statements made during discussions that the venture is at present being run at a loss because of business falling off and of reductions of rents made for the purpose of keeping tenants.”

On the 27th June, 1940, the appeal to Quarter Sessions was successful and the licence was renewed till the 30th June, 1940, and thereafter the Licensing Court renewed the licence till the 30th June, 1941.

30 Prior to the 2nd October, 1940, Mr Gardiner had apparently made an application to the Department of the Treasury pursuant to the National Security (Capital Issues) Regulations for on that day the Treasury wrote to the plaintiff for information. On the 9th October, 1940, the plaintiff supplied the information.

On the 18th November, 1940, the National Security (Building Control) Regulations were promulgated to come into operation on the 5th December, 1940. Inter alia, these regulations contained Regulation 4 in the following terms:

40 “A person shall not, without the consent in writing of the Treasurer, apply to a building authority for a building permit in respect of the erection or alteration of any building, the estimated cost of which exceeds £5,000.”

By the 19th December, 1940, it seems that all the terms of the proposed lease had been settled between the parties except a question relating to window displays. On that day, Mr Gardiner wrote to the plaintiff on the question of window displays.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

On the 27th December, 1940, the plaintiff wrote to Mr Gardiner suggesting for his consideration whether he would rather have what had been already offered than a formal decision based on the tender.

On the 7th January, 1941, the plaintiff wrote to Mr Gardiner informing him that, with respect to the outstanding point, he had decided that the lease should be prepared in accordance with the tender.

On the 8th January, 1941, Mr Gardiner wrote to the plaintiff informing him that he was prepared to accept the decision that the matters dealt with in clause 20 should be prepared in accordance with the tender, but in subsequent letters showed clearly that he differed from the plaintiff as to what was the result of applying what was in the tender. 10

While correspondence was passing on this subject, Mr Gardiner died on the 5th February, 1941.

By his will he appointed his wife Rachel Gardiner sole executrix and she appointed Permanent Trustee Co. of N.S.W. Limited to act as executor with her.

Mrs Gardiner took over the management of the Plaza Hotel.

On the 19th February, 1941, Regulation 4 of the National Security (Building Control) Regulations was amended by adding at the end thereof the words "or, in the case of a hotel, £1,000." 20

On the 22nd April, 1941, Regulation 4 was again amended by substituting the word "three" for the word "five".

By the 19th May, 1941, Mrs Gardiner had been in touch with the Licensing Inspector and had submitted altered plans to him in accordance with his requirements.

Since questions of the renewal of the licence were to come up before the Licensing Court on the 13th June, 1941, the question of completion of the lease was a question of urgency. 30

On the 3rd June, 1941, an application was made on behalf of the licensee under section 40 (2) of the Liquor Act for approval of plans and specifications for work to be done on the licensed premises.

The executors indicated that they were willing to enter into a lease on the terms which had been agreed upon, apparently accepting the plaintiff's view as to window displays and on the 6th June, 1941, Mr Schrader, who was acting for Mrs Gardiner, purported to approve of a draft agreement to execute a lease on behalf of the executors.

On the 11th June, 1941, the previous Building Control Regulations were repealed and new National Security (Building Control) Regulations were promulgated. Regulation 6 was in the following terms:— 40

"6. (1) Subject to this regulation, a person shall not, without the consent in writing of the Treasurer, apply to a building

authority for a building permit in respect of the erection or alteration of any building.

(2) The last preceding sub-regulation shall not apply to an application for a building permit in respect of—

(a) the erection of a building for use as a dwelling-house, the estimated cost of which does not exceed Three thousand pounds; or

(b) any alteration—

10 (i) of a building (other than a hotel, a building containing shop premises or a dwelling-house) where the estimated cost thereof, together with the cost of any alterations of that building in respect of which a building permit has been granted during the prescribed period, does not exceed One thousand pounds;

20 (ii) of a hotel or a building containing shop premises where the estimated cost thereof together with the cost of any alterations of that hotel or building in respect of which a building permit has been granted during the prescribed period, does not exceed Five hundred pounds; or

(iii) of a dwelling-house where the estimated cost thereof, together with the cost of any alterations of that dwelling-house in respect of which a building permit has been granted during the prescribed period, does not exceed Two hundred and fifty pounds.

(3) In this regulation, 'the prescribed period' means—

30 (a) the period commencing on the date of commencement of these Regulations and ending on the date on which the application for the building permit is made; or

(b) the period of twelve months ending on the date on which the application for the building permit is made, whichever is the shorter."

The general position in the community having regard to the state of the War at this stage must, of course, be remembered.

On the 11th June, 1941, the solicitor for Transport wrote to the Acting Secretary of the defendant a letter in the following terms:

40 "On behalf of the Executors of the estate of the late J. R. Gardiner, Mr W. D. Schrader, Solicitor, has sent me a set of plans and particulars of material alterations to the Plaza Hotel (both attached hereto) for the bedroom accommodation to be

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 28.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

built on the present structure, saying that such accommodation will be part of the main structure, and that up to the present time authority can only be obtained to expend the sum of £10,000."

The lease was printed, executed by Mrs Gardiner and Permanent Trustee Co. of N.S.W. Limited and on the 26th June, 1941, was executed by the plaintiff.

On the same day the plaintiff executed a permit in the following terms:—

"THE COMMISSIONER FOR RAILWAYS in exercise of the 10 power conferred upon it by section twenty-five of the Transport (Division of Functions) Act, 1932-1940, in respect of the parcels of land in the City of Sydney between George Street and Wynyard Lane and Wynyard Lane and Carrington Street respectively which were resumed for the purposes of the construction of and provision of access to Wynyard Railway Station permits the erection making or construction of a building or part of a building across or under Wynyard Lane but any such building shall be so constructed as to leave a clear space of not less than twenty feet above the surface of the roadway of such lane as it 20 has been restored and as not to impede or restrict pedestrian or vehicular traffic in and along such lane."

The power to give this permission had been created by section 25 of the Transport (Division of Functions) Act, 1932, which was assented to on the 19th November, 1932.

On the same day the executors paid to the plaintiff an amount which included the following:—

£9,928 11s. 5d. Interest up to and including 30/6/41.

£661 11s. 8d. Rent up to and including 30/6/41.

It appears that the total of the rents payable under the weekly tenan- 30 cies had been about £8,300 a year and in addition, of course, there had been the obligation to pay interest at 6½ per cent. on the amount allocated to Mr McFadden and Mr Gardiner in respect of excavations and sub-structure.

The following facts relating to the area of the licence were admitted by the defendant subject to relevance:—

"In conjunction with an Application to the Metropolitan Licensing Court, made the 4th February, 1929, for an increase of the licensed area, a plan is lodged with the papers, which plan shows the whole of the area of the demised premises from George 40 Street to Carrington Street, including Wynyard Lane, in accordance with dimensions virtually identical to those shown in the Lease (Exhibit A). This plan indicated an area with a frontage of 90 feet to George Street coloured pink and inscribed

'Existing Hotel'. It also has inscribed the word 'shop' between such pink area and the northern boundary of the premises delineated in the plan.

There is in the Licensing Court papers a set of plans endorsed 'Approved' by the Chairman of the Court, under date 14th June, 1937. The first of these plans is entitled 'areas for licensing coloured pink' and included four (4) separate plans:—

- 10 i. A Plan of the basement level showing the whole area of the demise from George Street to Carrington Street, coloured pink (the goods lift is excluded).
- ii. A Plan of the Hunter Street level showing the whole area between George Street and Carrington Street, coloured pink with the exception of the two (2) ramps and the space between them. In such space however, the stairs leading up and down from that level are shown coloured pink.
- iii. A Plan of the Mezzanine floor level. The whole of this floor is coloured pink.
- 20 iv. A Plan of the George Street level corresponding broadly to the plan of the Hunter Street level insofar as it excludes the two (2) ramps and the space between them (but includes the stairs leading up and down) and also excluding the shops flanking the sides of the ramps.

There are also two (2) further sheets showing detailed plans of the Mezzanine and George Street levels respectively."

On the 30th June, 1941, the Licensing Court renewed the licence until the 30th June, 1942, an undertaking being given on behalf of the licensee that the bedroom and ancillary accommodation, estimated to cost £10,000 and of which plans had already been approved would

30 be constructed within seven months.

The position in relation to the licensed area had not changed up to the 1st July, 1941, and has not changed up to the present time.

The lease is a formidable document. It was a lease of the subject land with certain reservations for a term of 60 years computed from 1st July, 1941, yielding and paying the yearly rents stipulated as follows:—

- 40 "(a) For the first two years the yearly rent of nine thousand pounds (£9000/-/-) payable at the office of the Estate Agent for Railways or elsewhere in Sydney to the Lessor as it may at any time or from time to time direct by equal quarterly instalments of two thousand two hundred and fifty pounds (£2,250/-/-) in advance on the first day of the months of January April July and October in each and every one of the said two years free from any rate tax imposition or assessment whatsoever.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

(b) For the third fourth fifth sixth and seventh years of the said term of sixty years the yearly rent of fifteen thousand pounds (£15,000/-/-) payable at the office of the Estate Agent for Railways or elsewhere in Sydney to the Lessor as it may at any time or from time to time direct by equal quarterly instalments of three thousand seven hundred and fifty pounds (£3,750/-/-) in advance on the first day of the months of January April July and October in each and every one of the said five years free from any rate tax imposition or assessment whatsoever.

(c) For the eighth ninth tenth eleventh and twelfth years of 10 the said term of sixty years the yearly rent of nineteen thousand two hundred pounds (£19,200/-/-) payable at the office of the Estate Agent for Railways or elsewhere in Sydney to the Lessor as it may at any time or from time to time direct by equal quarterly instalments of four thousand eight hundred pounds (£4,800/-/-) in advance on the first day of the mouths of January April July and October in each and every one of the said five years free from any rate tax imposition or assessment whatsoever.

PROVIDED HOWEVER that if in any of the said five years 20 that is the eighth the ninth the tenth the eleventh or the twelfth year of the said term of sixty years the net profit of the Lessee derived from or in connection with the demised premises and from or in connection with any sub-lease or tenancy or occupancy of the demised premises or any part of them by through or under the Lessee and from any trade business or occupation undertaken by or on behalf of the Lessee on or in connection with the demised premises or any part of them is more than ten per centum on the capital invested the said yearly rent of nineteen thousand two hundred pounds (£19,200/-/-) will be 30 unaffected but if the said net profit is from nine per centum to ten per centum the said rent for the year in question will be subject to a rebate of one thousand pounds (£1,000/-/-) if the said net profit is from eight per centum to nine per centum the said rent for the year in question will be subject to a rebate of two thousand pounds (£2,000/-/-) if the said net profit is from seven per centum to eight per centum the said rent for the year in question will be subject to a rebate of three thousand pounds (£3,000/-/-) and if the Lessee makes no net profit or his net profit is less than seven per centum the said rent for the year 40 in question will be subject to a rebate of four thousand pounds (£4,000/-/-) PROVIDED FURTHER that the Lessee will only become entitled to any rebate stipulated in this paragraph if the rent for the year in question and the interest payable by the Lessee under his covenant numbered 3 hereinafter contained has been duly paid and in addition the capital invested and the

net profit are and each of them is ascertained or computed to the satisfaction of the Lessor after an examination on its behalf of the books accounts documents and records of the Lessee which examination the Lessee will permit and in all respects facilitate PROVIDED FURTHER that the amounts specified as rebate will be reducible on a proportionate basis where the rate of net profit is not exactly the percentage specified but includes in addition a fraction of one per centum AND PROVIDED ALSO that any amount to which the Lessee may become entitled as rebate will not be paid or refunded to him but will be allowed to him as a credit against rent due or to accrue due.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10

(d) And for the remaining forty eight years of the said term of sixty years the yearly rent of nineteen thousand two hundred pounds (£19,200/-/-) payable at the office of the Estate Agent for Railways or elsewhere in Sydney to the Lessor as it may at any time or from time to time direct by equal quarterly instalments of four thousand eight hundred pounds (£4,800/-/-) in advance on the first day of the months of January April July and October in each and every year free from any rate tax imposition or assessment whatsoever AND ALSO YIELDING AND PAYING a proportionate part of the rent for the time being payable for any period which may elapse between any quarterly day of payment and the date of the determination of this lease in the event of it expiring otherwise than by effluxion of time such proportional rent to become payable immediately upon such determination PROVIDED that if the Lessor permits the Lessee to continue in occupation of the demised premises or any building to be erected or constructed on in under over through or along the same after the expiration by effluxion of time or sooner determination from any cause whatever of the said term of sixty years the tenancy shall continue as a weekly tenancy only at a rental proportionate to the said sum of nineteen thousand two hundred pounds (£19,200) subject to determination by one week's notice in writing given at any time or on any day by either party hereto."

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The following are provisions of the lease which have been referred to as relevant;—

Covenants by the lessee:

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"3. THAT during the said term of sixty years computed from the first day of July one thousand nine hundred and forty-one and during any subsequent occupation whatever by the Lessee of the demised premises or any building or other constructional work erected or constructed or to be erected or constructed thereon or any part thereof the Lessee will on the first day of each month of each and every year pay to the Lessor without any deduction

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

whatever a sum equivalent to interest on the sum of one hundred and nine thousand one hundred and thirty four pounds five shillings and ninepence (£109,134 5s. 9d.) (which sum the Lessee hereby acknowledges has been expended by the Lessor at his request and on his behalf in the erection or construction of permanent improvements on the land hereby leased and under part of Wynyard Lane) at the same rate as may at any time or from time to time be debited against the Lessor for the corresponding monthly period by the Colonial Treasurer or other officer person or authority for interest exchange sinking fund or any other charge on Railway Capital Debt and a certificate showing such rate by the Comptroller of Accounts and Audit for the time being of the Lessor or such other officer person or authority as may at any time or from time to time be deputed by the Lessor in respect thereof shall be final and conclusive and binding upon the parties hereto PROVIDED THAT if such rate be not known to the Lessor at the time of rendering any monthly account or at the time of payment by the Lessee of any monthly instalment of interest the interest exchange sinking fund or other charge shall be calculated at the rate last notified to the Lessor by the Colonial Treasurer or other officer person or authority and will be paid by the Lessee subject to any over payment being refunded or under payment made good by and between the parties hereto when the proper rate becomes known to the Lessor BUT the rate at which interest exchange sinking fund or any other charge on Railway Capital Debt shall be computed on the said sum of one hundred and nine thousand one hundred and thirty-four pounds five shillings and nine pence (£109,134 5s. 9d.) shall not exceed six and a half per centum ($6\frac{1}{2}\%$) per annum the first such payment of interest after the commencement of this lease being payable on the first day of August next AND in the event of the Lessee making default in the payment of any monthly instalment of interest for the space of twenty-one (21) days the Lessor may without prejudice to any other remedy right or power it may have treat such default as a breach of the covenant for payment of rent and in any event any sum unpaid shall until payment be a charge upon the leasehold interest of the Lessee created by this lease PROVIDED THAT on the expiration of this lease by effluxion of time or in the event of this lease being determined by any means whatever prior to the date upon which it would have expired by effluxion of time the Lessee shall immediately upon such determination pay to the Lessor interest on the said sum of one hundred and nine thousand one hundred and thirty-four pounds five shillings and ninepence (£109,134 5d. 9d.) calculated at the said rate from the date on which the last payment of interest became due up to the date when this lease expired by effluxion of time or was otherwise determined.

4. THAT the Lessee will within two (2) years from the date of the commencement of this lease expend a sum of not less than one hundred and fifty thousand pounds (£150,000) in erecting constructing and completing in a workmanlike and substantial manner in every respect complying with any provision of any law statutory or otherwise having application thereto and to the satisfaction of any civic licensing local public or statutory authority (hereinafter called the said authority) and the Lessor a new building on in under over through or along the demised premises (hereinafter included in the expression 'said building' which expression shall include also the permanent improvements erected or constructed or other constructional work which has been carried out by the Lessor on the land hereby leased) and the said building shall be erected constructed and completed with external walls of stone brick concrete or other approved material and shall at all times be in accordance with such building design plan and specification as the said authority or the Lessor may in their absolute discretion approve and the plan and specification shall be completely prepared and submitted by the Lessee for the approval of the Lessor within sixteen weeks from the date of commencement of this lease and the Lessee will within a period of six months from the commencement of this lease commence or cause to be commenced the erection and construction of the said building and shall thereafter diligently and continuously proceed with or cause to be proceeded with such erection and construction so that at the expiration of the said period of two (2) years from the date of the commencement of this lease the Lessee without cost to the Lessor shall have erected constructed and completed on in under over through or along the demised premises the said building hereinbefore mentioned and shall have expended thereon the sum of not less than one hundred and fifty thousand pounds (£150,000) within the time aforesaid and the said building design plan and specification shall provide for the complete safety of the Lessor's passageway and the Lessee will only build subject to any requirements of the Lessor concerning the absolute stability safety and well being in every respect of the Lessor's passageway AND so that the space between the said building and the column known as Number 155 of the Lessor on the George Street level will be not less than six feet (6 ft.) AND there shall be no openings of any description onto any splayed alignment of the said building on or near the George Street frontage unless approved in writing by or on behalf of the Lessor AND the Lessee will at any time or from time to time produce and show to the Lessor on demand any book document paper bill account voucher and evidence relating to any money expended as aforesaid for material labour or any

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

other item used or employed or upon which expenditure has been made in and about the said building AND the said building shall be erected constructed and completed in a good workman-like and substantial manner in accordance with the said building design plan and specification and in accordance with any requirement and subject at every reasonable time to inspection and approval of the said authority and the Lessor and in accordance with any provision of any law statutory or otherwise having application to such erection construction and completion AND the Lessee will use no old or second-hand material therein except 10 such as shall be approved by the said authority and the Lessor AND the Lessee will if the said building be three or more storeys in height provide the same with ample cut-off escapes to the requirement and satisfaction of the said authority and the Lessor AND the Lessee will in case of any shop and dwelling in combination so arrange them as to permit of the two portions being absolutely cut off from one another by a fire resisting wall floor and ceiling or other thing of separation or partition AND the Lessee will erect or construct any awning to be erected of the cantiliver or suspended type in accordance with a building design 20 and plan and specification approved by the said authority and the Lessor AND the Lessee will use damp courses if any be required of material approved by the said authority and the Lessor AND the Lessee will not erect or construct a roof on the said building which contains any corrugated iron excresence or tank or any tower or other cowl cupola dome cistern or thing unless treated ornamentally and specially approved or permitted by the said authority and the Lessor AND the Lessee will in the course of such erection and construction as aforesaid make construct and 30 complete any necessary drain and other convenience of the like or a different kind as may be required by the said authority and the Lessor and in accordance with any provision of any law statutory or otherwise having application thereto AND notwithstanding anything hereinbefore contained the building design plan and specification of the said building shall be subject to the reasonable requirements of the Lessor AND if during the erection construction and completion of the said building it shall in the opinion of the said authority or the Lessor be necessary for the purpose of providing for the stability safety or well 40 being thereof in any respect that any alteration or amendment should be made in or to the building design or plan or specification thereof then and on every such occasion the Lessee at his own expense will immediately carry out such alteration or amendment as may be required by the said authority or the Lessor.

5. THAT the lessee will during the said term well and sufficiently repair mantain pave cleanse amend and keep the demised premises and the said building with any appurtenance of either of them and any fixture or thing or any fitting thereto belonging or which at any time during the term shall be erected or constructed or made by the Lessor or the Lessee when where and so often as need shall be in good clean and substantial repair and condition in all respects and replace any such fixture or thing or any fitting as is requisite and as shall during the said term become useless or unsuitable for use because of being worn out broken beyond repair damaged beyond repair obsolete or out of date with a new or suitable one in keeping with the premises approved by the Lessor AND will also make and carry out any cleansing and any amendment alteration reparation or addition whether structural or otherwise which by virtue of any provision of any law statutory or otherwise having application thereto now or hereafter in force or by virtue of any requirement of the said authority may be required to be made or carried out by either the Lessor or the Lessee in or upon the demised premises or the said building or any appurtenance of either of them.

9. THAT the Lessee will at his own expense and in a workmanlike manner and with the best materials to the satisfaction of the said authority at any time or from time to time during the said term whenever the same shall be required or notified by the said authority or on being informed by the Lessor of such requirement or notification forthwith execute and do or cause to be executed and done internally or externally any such repair renovation alteration or other work whether structural or not and such cleansing using or application of paint or any other material acceptable to the said authority or papering for the covering protection preservation or renovation of any present and future building appurtenance or fitting drain tap engine machine cistern trade or tenant's fixture and any convenience for the time being on the demised premises as the said authority shall require or notify AND in default thereof the Lessor may at any reasonable time and from time to time with or without any means of conveyance or transportation and any kind of tool implement material appliance merchandise article or thing enter return go pass and repass upon the demised premises and the said building for the purpose of carrying out any such work and the cost thereof as certified by the Chief Civil Engineer of the Lessor or other officer or person deputed by it for the purpose shall be a debt due and owing by the Lessee to the Lessor and payable upon demand and the Lessor without prejudice to any other remedy right or power it may have may treat non-payment thereof as a breach of covenant.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10. THAT the Lessee will during the said term keep and at the expiration or sooner determination thereof peaceably surrender and yield up unto the Lessor in good and substantial repair and condition reasonable wear and tear excepted the demised premises together with the said building and any appurtenance and fitting and together with any landlord's fixture or thing in the nature of or usually considered a landlord's fixture which at any time during the said term shall be fixed or belonging to the demised premises or the said building and is then therein or thereon together with any property article and thing 10 belonging to the Lessor now in or upon the demised premises or the said building or which shall be brought upon the demised premises or the said building in addition thereto including any renewal or replacement thereof.

11. THAT the Lessee will forthwith insure the said building and any appurtenance fixture and fitting and all of the plate glass therein in the full insurable value thereof in the joint names of the Lessor and the Lessee in such insurance office as the Lessor shall approve from loss damage or injury caused by fire and will during the erection and construction and upon the completion of any building appurtenance fixture and fitting as shall 20 be erected or constructed on in under over through or along the demised premises in pursuance of this lease likewise insure such building appurtenance fixture and fitting in the full insurable value thereof in the joint names of the Lessor and the Lessee in such insurance office as the Lessor shall approve and will during the said term duly renew or keep up any such insurance as aforesaid and will whenever required produce to the Lessor the policy of such insurance and the receipt for the premium for the then current year and will during the last ten years of the lease hereby 30 granted hand any said policy of insurance to the Lessor together with the receipt for each annual premium AND if at any time or from time to time the Lessee fail or omit to pay when due any premium of such insurance it shall be lawful for the Lessor to pay the same and any sum so paid by the Lessor for insurance shall be a debt due and owing by the Lessee to the Lessor and payable upon demand and the Lessor without prejudice to any other remedy right or power it may have may treat non-payment thereof as a breach of covenant.

12. THAT in case the said building appurtenance fixture or 40 fitting or any part thereof shall be destroyed or damaged by any means the Lessee will immediately proceed with the work of well and substantially rebuilding repairing and reinstating the same to the satisfaction of the said authority and the Lessor and in accordance with any provision of any law statutory or otherwise having application thereto PROVIDED that any

plan and specification of such rebuilding repairing or reinstating shall be first approved by the Lessor or an officer or persons appointed by it for that purpose and during the erection or construction and upon completion of such rebuilding repair or reinstatement any provision herein contained relating to and governing insurance shall apply AND PROVIDED ALSO that for the purposes of any such rebuilding repairing or reinstating any money recovered or received by the Lessor in respect of any insurance effected under the last preceding covenant shall be made available to the Lessee as required.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10

16. THAT any building that may be erected or constructed on in under over through or along the demised premises in addition to or in substitution for the said building (which building shall where applicable be included in the phrase 'said building' where such phrase hereinafter appears) shall be erected or constructed in all respects in accordance with any provision herein contained relating to and governing the erection or construction and completing of the said building and shall be built in a workmanlike and substantial manner and with external walls of stone brick concrete or other approved material in accordance with any provision of any law statutory or otherwise having application thereto and that any such building shall be erected or constructed in accordance with a building design and plan and specification to be approved by the Lessor or any officer of it authorized for such purpose and of the said authority and to its his and their satisfaction PROVIDED ALWAYS that in respect of any such building the Lessee shall be subject to similar covenants conditions agreements provisions and stipulations as are herein contained and shall be entitled to similar rights as are hereby granted to him in relation to the said building and the erection construction support maintenance and repair thereof.

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17. THAT the Lessee his sub-lessee or sub-tenant will not during the said term assign transfer demise sublet or part with the possession of the demised premises or the said building or any part of either of them or by any act or deed procure the demised premises or the said building to be assigned transferred demised sublet or put into the possession of any person company or body corporate without the consent in writing of the Lessor first had and obtained PROVIDED FURTHER that in the event of the granting of any such consent in respect of that part of the demised premises which is now or may hereafter be licensed or otherwise authorized under any law statutory or otherwise having application to the use or conduct of any building premises or place as and for the trade or business of a licensed or otherwise authorized victualler hotelkeeper innkeeper or publican or retailer of any spirit wine spirituous or alcoholic

40

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

or other liquor or as and for a place for the reception accommodation or entertainment of any traveller guest or other person (any licence permission or other authority allowing permitting or otherwise authorizing the conduct or carrying out of any such trade business purpose or use being hereinafter included in the phrase 'licence or other authority') the Lessee shall at his own expense arrange for the intending sub-lessee or assignee to enter into and execute a Power of Attorney in respect of any licence or other authority similar to that hereinafter contained or otherwise suitable and acceptable to the Lessor and no assigning or subletting hereunder shall be complete or effective until the written consent thereto of the Lessor shall have been obtained and so far as regards any part of the demised premises so licensed or authorized the said Power of Attorney from the sub-lessee or assignee shall have been duly executed and delivered to the Lessor without any expense to the Lessor PROVIDED FURTHER that it will not be a breach of this covenant by the Lessee for him his sub-lessee or sub-tenant to assign transfer demise sublet or part with the possession of any portion of the demised premises having an area of one thousand 20 one hundred square feet or less if he has the consent of the Lessor to the kind of business to be carried on therein PROVIDED FURTHER that the Lessor will not unreasonably withhold consent to any subletting or mortgage of this lease whether in either case by way of assignment sub-demise or otherwise AND PROVIDED ALSO that for any consent of the Lessor given in respect of anything included in this covenant no fine or sum of money in the nature of a fine will be payable by the Lessee his sub-lessee or sub-tenant but the Lessor will not be precluded from requiring the payment of legal costs or 30 any other expenses reasonably incurred in relation to any such consent.

19. THAT the lessee will not carry on nor permit to be carried on on the demised premises or in the said building or any part of either of them the business of a news vendor or bookseller or vendor of any magazine periodical or publication whatever or any noxious noisome or offensive trade or objectionable user or any trade or user providing harbourage to rats or any other species of vermin nor will he carry on nor cause or permit to be carried on thereon or therein any art trade business occupation or calling of which he has not obtained the previous approval in writing 40 of or on behalf of the Lessor which approval shall not be unreasonably withheld nor will he carry on nor cause or permit to be carried on thereon or therein any art trade business occupation or calling after receiving notice in writing from or on behalf of the Lessor of objection thereto nor will he use

the demised premises or the said building or any part of either of them in any manner nor for any purpose which the Board of Fire Commissioners of New South Wales or any other person or authority or the Lessor informs him in writing that they or any of them consider may cause or create an unreasonable fire hazard and the Lessee shall immediately upon being requested in writing so to do by the said Board person or authority or the Lessor cease to use or cause the cessation of the use of the demised premises or the said building or any part of either of them in the manner or for the purpose mentioned or described in such notice and remove therefrom any material thing or article which he may in any such notice be required so to do and will at any time or from time to time take and continue effective steps for keeping the demised premises and the said building and every part of either of them clear of rats mice white ants wood borers and all other species of vermin and will not use exercise or carry on nor permit or suffer to be exercised or carried on in or upon the demised premises or the said building or any part of either of them any auction sale and no act matter or thing whatsoever shall at any time during the continuance of this lease be done in or upon the demised premises or the said building or any part of either of them which will or may be or grow to the annoyance nuisance grievance damage or disturbance of the Lessor or the public or any occupier or owner of any neighbouring premises or which may cause or create an unreasonable fire hazard AND the decision of the Lessor as to what is a noxious noisome or offensive trade or objectionable user or disapproved or unapproved art trade business occupation or calling or whether any trade or business provides harbourage to rats or any other species of vermin or what is attractive to rats mice white ants wood borers or any other species of vermin or as to what causes or creates an unreasonable fire hazard shall be accepted by the Lessee as final and conclusive PROVIDED THAT the Lessor in the exercise of any power or authority under or in making any decision in respect of this covenant will not act arbitrarily but as far as in its opinion its or public convenience or requirements may permit will refrain from causing unreasonable inconvenience to or interference with the Lessee his sub-lessee or sub-tenant.

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24. THAT with the exception of any building or part of a building erected made or constructed pursuant to any permission given by the Lessor under or by virtue of the Transport (Division of Functions) Act 1932 no building or other structure other than any awning or other projection beyond the building line which the said authority may permit to remain now or

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

—
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

hereafter erected on the demised premises shall project beyond the building line of any street or lane.

29. THAT if and while the Lessee during the continuance of this Lease exercises or undertakes in or upon some part of the demised premises or the said building (hereinafter called licensed premises) the trade or business of a licensed or otherwise authorized victualler hotelkeeper innkeeper or publican or retailer of spirit wine spirituous or alcoholic or other liquor or otherwise uses the licensed premises solely as and for a place for the reception accommodation or entertainment of any traveller 10
guest or other person resorting thereto or frequenting the same (such trade business purpose or use or any one of them being hereinafter included in the phrase 'hotel inn or public house') he will manage and conduct such hotel inn or public house in a proper quiet and orderly manner and so as not to afford any ground for any licence or other authority for the licensed premises or any part thereof (hereinafter referred to as 'any licence or other authority') being withdrawn or withheld from the licensed premises and will not do commit permit or omit or suffer to be done committed permitted or omitted nor shall there 20
be done committed permitted or omitted or suffered to be done committed permitted or omitted by the licensee or person company or body corporate licensed or otherwise authorized to exercise or undertake the said trade or business for the time being in or upon the licensed premises (hereinafter called 'licensee') nor done committed permitted omitted or suffered on the licensed premises any act matter or thing whatsoever the doing commission permission or omission of which may either alone or in conjunction with the doing commission permission or omission of any other act matter or thing directly or indirectly render 30
any licence or other authority liable to be taken away with held suppressed suspended forfeited lost or cancelled or become void or voidable in any manner howsoever or a renewal of any licence or other authority refused or directly or indirectly render the licensed premises liable to disqualification from being used as an hotel inn or public house AND will do any act matter or thing necessary for keeping any licence or other authority in existence and will not without the previous consent in writing of the Lessor transfer remove or part with the possession of any licence or other authority AND the Lessee shall arrange for or procure 40
that all and every holder of any licence or other authority including the present holder thereof shall abide by observe and perform any such term provision and condition of this covenant as is applicable to him and the Lessee shall immediately obtain from the present holder of any licence or other authority and contemporaneously with any assignment transfer or other setting

over of any licence or other authority obtain from each new licensee a written undertaking in favour of the Lessor whereby such new licensee shall be bound to observe and perform every term provision and condition contained and described in this covenant and applicable to such new licensee.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

10 30. THAT if and while the Lessee during the continuance of this lease exercises or undertakes in or upon the licensed premises the trade or business of an hotel inn or public house he will at his own expense apply for and endeavour to obtain any licence or other authority or renewal thereof as is or may be necessary for using the licensed premises as and for an hotel inn or public house AND for that purpose will at least sixty days prior to the date of expiration of any licence or other authority or renewal thereof sign and execute in proper form any necessary application for any licence or other authority or renewal thereof and duly lodge the same as required by any provision of any law statutory or otherwise having application thereto AND will appear at or before the Licensing or other proper Court or authority or person on any application for renewal or transfer of
20 any licence or other authority and will use his best endeavours to procure such renewal or transfer and will abstain from any opposition direct or indirect to such application AND the Lessee will immediately upon any such renewal being granted take up any Certificate or other document authorizing or directing the renewal of any licence or other authority from the Licensing or other Court or other authority officer or person and forthwith lodge the same at the Colonial Treasury or elsewhere as required by any provision of any law statutory or otherwise having application thereto and will thereupon pay to the Colonial Treasurer
30 or other officer appointed for that purpose the necessary fee for the issue or renewal of any licence or other authority or otherwise do or omit or cause to be done or omitted whatever may be required by any provision of any law statutory or otherwise having application thereto to be done or omitted in the circumstances AND if the Lessee should fail to take up or lodge any such certificate or other document or pay any such fee at the time hereinbefore mentioned or otherwise to do or omit or cause to be done or omitted whatever may be required by any provision of any law statutory or otherwise having application thereto to be done or omitted in the circumstances then it shall be lawful for
40 the Lessor or any officer or person deputed by it for the purpose to take up or lodge such certificate or other document or pay such fee or otherwise to do or omit or cause to be done or omitted whatever may be required by any provision of any law statutory or otherwise having application thereto to be done or omitted in the circumstances and any fee and all the Lessor's costs and

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

expenses in relation to any licence or other authority shall on demand in writing by the Lessor be paid to the Lessor by the Lessee and the Lessor without prejudice to any other remedy right or power it may have may treat non-payment thereof as a breach of covenant AND the lessee shall and will thirty-five days at least before the expiration or other sooner determination of this lease or of any renewal or extension thereof or before the expiration of any notice given to the Lessor by the Lessee of his intention of ceasing to exercise or undertake in or upon the licensed premises the trade or business of an hotel inn or 10 public house sign and give or cause to be signed and given such notice of a renewal or transfer of any licence or other authority as may be required by any provision of any law statutory or otherwise having application thereto and allow such notice of a renewal or transfer of any licence or other authority as may be required by any provision of any law statutory or otherwise having application thereto to be affixed to the licensed premises to be thereto affixed and remain so affixed during such time as shall be necessary or expedient in that behalf and generally shall and will do and perform any such act deed matter and thing 20 as shall be necessary to enable the Lessor or any person nominated or authorised by the Lessor to obtain the renewal of any licence or other authority or any new licence or other authority or the transfer of any licence or other authority then existing or in force and will or at the expiration of any notice given to the Lessor by the Lessee of his intention of ceasing to exercise or undertake in or upon the licensed premises the trade or business of an hotel inn or public house or at the expiration by effluxion of time or other sooner determination of this lease hand over to the Lessor or the Lessor's nominee any licence 30 or other authority which shall absolutely belong to the Lessor subject to the payment by the Lessor to the Lessee of a due proportion of any fee therefor for the unexpired term of any licence or other authority AND the Lessee shall arrange for or procure that all and every holder of any licence or other authority including the present holder thereof shall abide by observe and perform every such term provision and condition of this covenant as is applicable to him and the Lessee shall immediately obtain from the present holder of any licence or other authority and contemporaneously with any assignment transfer or other 40 setting over of any licence or other authority obtain from each new licensee an undertaking in favour of the Lessor whereby such new licensee shall be bound to observe and perform every term provision and condition contained and described in this

covenant and applicable to such new licensee and shall forthwith hand such undertaking to the Lessor or any officer or person deputed by it for the purpose.

10 31. THAT if and while the Lessee during the continuance of this lease exercises or undertakes in or upon the licensed premises the trade or business of an hotel inn or public house the Lessor or the Estate Agent for Railways or such other officer or person as may at any time or from time to time be deputed by the Lessor for the purpose shall at any time or from time to time be of opinion that the Lessee has been guilty of any breach of or default under any proviso covenant condition stipulation or agreement herein contained or implied which may be likely to endanger or injure any licence or other authority or if any licensee for the time being of the licensed premises shall do or omit to do or suffer to be done or omitted anything which had it been done or omitted or been suffered to be done or omitted by the Lessee would have been a breach or non-observance or non-performance of any covenant herein contained or implied

20 regarding any licence or other authority or use of the licensed premises as an hotel inn or public house and the Lessor is of the opinion that the Lessee in the event of the licence or other authority for the licensed premises being declared void or cancelled or lapsing or being lost or taken away or a renewal of it being refused is unlikely to be able to obtain a licence or other authority new renewed or substituted for the licensed premises or to pay the sum hereinafter fixed in respect of the licence or other authority for the licensed premises then the Lessor may obtain ex parte or otherwise an interim mandatory injunction or any other authority for giving entry to and possession to the Estate Agent

30 for Railways or any officer or person deputed by the Lessor for the purpose of the demised premises and the said building or may obtain the appointment ex parte and without security of an interim receiver or manager of the demised premises and the said building or any licence or other authority hotel or other business or may obtain a judgment for ejection of the Lessee from the demised premises and the said building subject to a subsequent adjustment of rights PROVIDED ALWAYS that the Lessor shall not be liable in damages for any bona fide mistake.

40 33. THAT if and while the Lessee during the continuance of this lease exercises or undertakes in or upon the licensed premises the trade or business of an hotel inn or public house he without qualification of his liability for any breach of any covenant condition proviso stipulation or agreement herein contained or implied doth hereby irrevocably appoint the Lessor and the Estate Agent for Railways or such officer or person as may from

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

time to time be deputed by the Lessor for the purpose jointly and each of them severally his Attorneys and Attorney in the name of the Lessee and on his behalf to give sign publish execute date and perfect any notice deed summons application request consent authority appointment transfer memorandum sublease surrender assignment of or other document or admission relating to any licence or other authority issued or held in respect of the licensed premises or any other document in exercise of any power covenant condition proviso stipulation or agreement herein contained or implied relating to any licence 10 or other authority and for the Lessee and in his name and on his behalf to sign complete date or lodge any application for any licence or other authority or any renewal thereof and also to appear for him at or before the Licensing or any other Court or any other authority or person or to appoint a solicitor to appear and make such application to the said Court authority or person for him and in his name and on his behalf as may seem necessary and expedient to the Lessor or Estate Agent for Railways or such officer or person as may from time to time be deputed by the Lessor for the purpose and otherwise to use their and his 20 best endeavours to obtain any licence or other authority or renewal of any licence or other authority for the licensed premises AND ALSO for him and in his name and on his behalf to take up and lodge any such certificate or other document authorizing or directing the renewal of any licence or other authority and to pay any fee as aforesaid to the Colonial Treasurer or other proper authority officer or person and to take up and receive for him or other the person entitled thereto every licence or other authority or renewal thereof and to appoint a Solicitor to appear for the Lessee in any Court or before any 30 authority or person and in his name and on his behalf to request apply for consent or submit to any transfer removal or renewal of any licence or other authority or to any negative or mandatory interim injunction or appointment of receiver or manager without security or to judgment in an ejectment action brought by the Lessor for the purpose of protecting any licence or other authority or for enforcing any positive or negative covenant herein contained or implied relating to any licence or other authority and generally to do sign execute carry out carry on or conduct consent to or dissent from in the Lessee's name and 40 on his behalf any act thing business trade document or transaction which the Lessee has herein covenanted or agreed to do sign execute carry out carry on conduct or transact relating to any licence or other authority and to appoint or remove any substitute for or agent under any such attorney with such of the said powers as the attorney shall delegate to such substitute

or agent and generally to act as effectually as the Lessee could do and the Lessee doth hereby ratify and confirm and agree to ratify and confirm any such act deed matter and thing and to recover from the Lessee any fee costs and expense of so acting as rent payable immediately under these presents together with interest thereon at the rate of six per centum per annum until payment.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,

11th
February,
1958—
continued.

10

34. THAT if and while the Lessee during the continuance of this lease exercises or undertakes in or upon the licensed premises the trade or business of an hotel inn or public house he will not at any time revoke the Power of Attorney herein contained or any power authority or licence hereby given or any other power authority or licence of the Lessor or Estate Agent for Railways for the time being or its or their agent or any officer or person or do or permit or suffer to be done or permitted any act deed matter or thing whereby the said Power of Attorney or other power authority and licence or any of them may become void or of no effect.

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35. THAT the Lessee will contemporaneously with the delivery to him of this Deed of Lease hand to the Lessor or his Solicitor an irrevocable Power of Attorney from the person at that time holding the publican's licence or any other licence or authority in respect of the licensed premises in terms as similar as possible to those of the Power of Attorney herein granted by the Lessee appointing the Lessor and the Estate Agent for Railways for the time being or another officer or person directed by the Lessor jointly and each of them severally the attorneys and attorney of the person holding any abovementioned licence or other authority.

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36. THAT if and while the Lessee during the continuance of this lease exercises or undertakes in or upon the licensed premises the trade or business of an hotel inn or public house he will whenever and so frequently as any licence or other authority which is now or shall hereafter be held or granted in respect of the licensed premises is assigned or transferred to another licensee or by any other means becomes held by another licensee immediately upon such assignment transfer or change becoming effective procure from the new licensee an irrevocable Power of Attorney in terms as similar as possible to those of the Power of Attorney herein granted by the Lessee appointing the Lessor and the Estate Agent for Railways for the time being or another officer or person directed by the Lessor jointly and each of them severally his attorneys and attorney.

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37. THAT on each and every occasion on which the Lessee shall for a period which the Lessor or the Estate Agent for Railways

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

or such officer or person as may from time to time be deputed by the Lessor for the purpose considers unreasonable omit or neglect to pay moneys or to do anything or to erect or construct any building or effect any alteration addition repair covering protection preservation renovation painting papering washing stopping whitening colouring or cleansing or anything else which the Lessee has herein covenanted to pay do erect or effect then it shall be lawful for but not obligatory upon the Lessor and without prejudice to any right and power arising from such default to pay such money or do such thing or to erect construct 10 or effect such building alteration addition repair covering protection preservation renovation painting papering washing stopping whitening colouring or cleansing or carry out any other works as if it were the Lessee and for the purpose of so doing the Lessor or its architect contractor or its his or their workman or other agent is hereby authorised to enter return go pass and repass with or without any means of conveyance or transportation or any manner of tool material appliance article or thing at any reasonable time upon any part of the demised premises or the said building and there to remain for the purpose 20 of erecting or constructing such building or effecting such alteration addition repair covering protection preservation renovation painting papering washing stopping whitening colouring or cleansing or carrying out any other work and the Lessor may recover from the Lessee the amount so expended and the cost of the erection or construction of such building or the effecting of such alteration addition repair covering protection preservation renovation painting papering washing stopping whitening colouring or cleansing or other work with interest at the rate of six pounds per centum per annum from the time of 30 such expenditure until payment and the Lessor for the recovery of the same shall have in addition to a right of action any remedy hereby or by any provision of any law statutory or otherwise having application thereto given for the recovery of the rent hereby reserved.

Covenant by the lessor:

THAT he paying the rent hereby reserved and performing every covenant hereinbefore on his part contained shall and may peaceably possess and enjoy the demised premises for the term hereby granted without any interruption or disturbance from 40 the Lessor or any other person lawfully claiming from or under it AND THAT the Lessee may on or before the expiration by effluxion of time or other sooner determination of the lease hereby granted take remove and carry away from the demised premises or the said building any fixture fitting plant machinery utensil shelving counter safe or other article upon the demised premises

or the said building in the nature of a trade or tenant's fixture brought upon the demised premises or the said building by the Lessee but the Lessee shall in such removal do no damage to the demised premises or the said building or shall forthwith make good any damage which he may occasion thereto."

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

"AND IT IS HEREBY AGREED AND DECLARED by and between the parties hereto

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10 I. THAT the Lessee will continue to exercise or undertake in or upon the licensed premises the trade or business of an hotel inn or public house under or by virtue of the licence of the Lessor held by or on behalf of the Lessee at the time of the execution hereof or any renewal thereof or any new or substituted licence or other authority obtained or held by or on behalf of the Lessee in the place thereof but in case he may at any time desire to cease so to exercise or undertake such trade or business he may give to the Lessor in writing as long notice as practicable but at the least six months' notice to expire during the currency of the said licence or other authority or any renewal thereof or of any new or substituted licence or other authority obtained or held by or on behalf of the Lessee in the place thereof of his intention of ceasing so to exercise or undertake such trade or business and upon the expiration of such notice or upon the complete and effectual performance by or on behalf of the Lessee of any transfer handing over or other act in relation to the licence or other authority required of the Lessee by the Lessor under this lease and upon the observance and performance otherwise of any covenant on his part in relation to the said licence or other authority whichever shall be the later the provisions of this lease relating to the licence or other authority and to the exercise or undertaking in or upon the licensed premises of the trade or business of an hotel inn or public house will not be binding upon the Lessee who will have no then future duty obligation or liability under them Provided that any notice by the Lessee of his intention of ceasing to exercise or undertake such trade or business shall immediately become of no force or effect for any purpose whatsoever if for any reason during the period of notice the licence or other authority shall be taken away withheld suppressed suspended forfeited lost or cancelled or become void voidable or disqualified for renewal And the Lessee having been duly discharged from any duty obligation or liability under the provisions of this lease relating to the licence or other authority and to the exercise or undertaking in or upon the licensed premises of the trade or business of an hotel inn or public house will not thereafter have any duty obligation or liability under them relating to a licence or other authority although he may at any time or from time to time exercise or

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30

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*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

undertake in or upon the demised premises or any part of them under or by virtue of any licence or other authority the trade or business of an hotel inn or public house.

V. THAT any covenant condition proviso stipulation and agreement of this lease binding upon the Lessee shall bind the leasehold interest hereby created and every part thereof unto whosoever hands the same may come and shall bind any person interested therein and the parties hereto mutually agree to request and direct the Registrar General to endorse accordingly every Certificate of Title now or hereafter comprising the said 10 leasehold interest or any part thereof.

VIII. THAT if the rent hereby reserved or any part thereof or if the interest payable hereunder or any part thereof is in arrear for the space of twenty-one (21) days (although no formal demand therefor has been made) or in case default is made in the fulfilment of any covenant condition or stipulation herein contained whether expressed or implied and on the part of the Lessee or of any holder of any licence or other authority for the licensed premises or any part thereof to be performed or observed the Lessor may serve upon the Lessee a notice requiring payment of rent or interest as the case may be or if any default other than payment of rent or interest is in the opinion of the Lessor capable of remedy requiring the Lessee to remedy the same and in case the Lessor claims compensation in money for any default requiring the Lessee to pay the same and the Lessee fails within a reasonable time thereafter to pay such rent or interest to remedy such default or where compensation in money is required to pay reasonable compensation to the satisfaction of the Lessor the Lessor may re-enter upon the demised premises or any part thereof in the name of the whole 30 and thereby determine the estate of the Lessee therein but without releasing him from liability in respect of any non-payment or default PROVIDED HOWEVER that if the licence or other authority for the licensed premises has been declared void or has been cancelled or has lapsed been lost or taken away or a renewal of it refused and the Lessee within six months after the happening of any such event obtains a licence or other authority new renewed or substituted for the licensed premises or having used his best endeavours has been unable to obtain a licence or other authority new renewed or substituted for 40 the licensed premises and pays to the Lessor the sum of ten thousand pounds (£10,000) as an amount agreed upon for this purpose only as the value of the licence or other authority for the licensed premises no right of re-entry shall accrue to the Lessor in respect of the said licence or other authority for the licensed premises having been declared void or having been

cancelled or having lapsed been lost or taken away or a renewal of it having been refused.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

IX. THAT any licence or other authority new renewed or substituted for the licensed premises obtained by the Lessee for replacing any licence or other authority for the licensed premises declared void or cancelled or which has lapsed been lost or taken away or of which a renewal has been refused shall be subject in all respects to any provision of this Lease applicable to the licence or other authority for the licensed premises existing at the time of the execution hereof.

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X. THAT upon the request of the Lessee and a payment in advance by him to the Lessor as hereinafter provided and subject to any covenant condition proviso stipulation and agreement in this clause contained the Lessor will grant to the Lessee leave and licence to use in common with the Lessor the area reserved out of this lease by the Lessor for access from Wynyard Lane to the goods lift of the Lessor such area being shown marked 'approach' in the plan of level 'J' in the plan hereto annexed marked 'D' TOGETHER WITH leave and licence to use the goods lift of the Lessor which is constructed and installed on or over the land delineated in the plan hereto annexed marked with the letter 'D' if such goods lift is in the opinion of the Lessor in a condition fit for use at such times between the hours of six of the clock in the forenoon and five of the clock in the afternoon on Monday Tuesday Wednesday Thursday Friday and Saturday other than during such periods of time aggregating in all three hours during each day at any time or from time to time chosen by the Lessor in its absolute discretion notice of which shall be given by the Lessor in writing during which the Lessor shall be entitled to the exclusive use of such goods lift for which aforesaid leave and licence the Lessee if the leave and licence is to continue for one calendar year will pay the sum of three hundreds pounds (£300) or if the said leave and licence is to continue for two or more calendar years will pay the sum of three hundreds pounds (£300) at or before the commencement of each calendar year during its currency and if the said leave and licence shall continue for a time involving a part of a calendar year will pay at or before the commencement of such part such proportion of the sum of three hundred pounds (£300) as the part of the year bears to a calendar year PROVIDED THAT if at any other time the Lessor and the Lessee require the use of the lift simultaneously the Lessor shall have preference and that if the Lessee requires the use of the goods lift and the Lessor is prepared to make it available between the hours of five of the clock in the afternoon and midnight and midnight

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30

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*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

and six of the clock in the forenoon on Monday Tuesday Wednesday Thursday Friday and Saturday or at any time on Sunday the Lessee may use the goods lift during such time provided he shall have given to the Lessor fourteen hours' notice of any such requirement on week days or twenty-four hours' notice of any such requirement on Sundays AND the Lessee will in any such case pay to the Lessor upon demand additionally to the said payment at the rate of three hundred pounds the cost actually incurred by the Lessor in making the said goods lift so available PROVIDED FURTHER that upon the request of the Lessee the 10 Lessor will extend the said goods lift as far up or down in the said building as the Lessee may require and the cost of doing so and of providing a lift service for the Lessor while preparation is being made for and during the construction and completion of such extension as certified by the Chief Civil Engineer of the Lessor or such other officer as may at any time or from time to time be deputed for that purpose will be paid by the Lessee to the Lessor upon demand in such amounts and at such times as the Lessor may require and upon completion of the work the Lessor will grant to the Lessee upon his request therefor leave 20 and licence to use the said goods lift upon the terms and conditions in this clause contained but whether or not such leave and licence has been requested or granted the Lessee will from time to time pay to the Lessor any cost of the operation after such extension of the said goods lift which exceeds the cost of its operation before such extension upon receiving from the Lessor a statement in writing showing the amount of such additional cost PROVIDED FURTHER that the goods lift will at all times be controlled and operated only by an employee of the Lessor deputed for that purpose THAT the Lessee will arrange 30 his requirements in connection with the use of the goods lift so as to leave the services of the employee of the Lessor who will control and operate it as fully available to the Lessor as is reasonably practicable AND THAT the Lessee will not place nor cause to be placed on or in the goods lift any thing or things of or aggregating a weight exceeding eleven thousand pounds gross or of a nature likely to cause damage to it PROVIDED FURTHER that the Lessee will upon demand pay to the Lessor one half of the cost as certified by the Chief Civil Engineer for the time being of the Lessor or such other officer as may at any time 40 or from time to time be deputed by the Lessor for that purpose of repairing and maintaining any floor wall and ceiling of the area reserved out of this lease by the Lessor for access from Wynyard Lane to the goods lift of the Lessor and shown marked 'approach' on the plan of level 'J' in the plan hereto annexed marked 'D' and of any fittings or other things of any kind or nature appertaining thereto PROVIDED FURTHER that the

10 said payment at the rate of three hundred pounds shall be reduced to a payment at the rate of two hundred pounds payable in like manner as is hereinbefore provided in respect of the said sum of three hundred pounds from the first day of the calendar year following that in which the Lessee installs a goods lift adjacent to the goods lift of the Lessor subject to the Lessee maintaining such lift in good repair and refraining from using the Lessor's goods lift for the carrying of loads which are within the capacity of the Lessee's said goods lift PROVIDED ALSO that the said annual payment at the rate of three hundred pounds whether so reduced or not may be reviewed by the Lessor after the expiration of ten years from the date of the commencement of this lease AND THAT in case of the breach non-observance or non-performance by the Lessee of any covenant condition proviso stipulation and agreement in this deed of lease contained or implied on the part of the Lessee to be observed or performed the Lessor shall at any time thereafter be entitled to terminate the said licence without notice.

20 XI. THAT in the event of any dispute arising as to the meaning or effect of any covenant condition proviso stipulation agreement or term herein contained or referred to or as to any other matter relative thereto the decision of the Lessor shall be final and conclusive but the Lessor will as far as to it seems practicable refrain from making any decision which would unreasonably subject the Lessee to risk of forfeiture.

30 XII. THAT no approval or notice herein required to be given by or on behalf of the Lessor shall be effective for any purpose whatsoever unless it is in writing and any approval of the Lessor may at any time or from time to time be wholly or partly withdrawn PROVIDED THAT the withdrawal of any approval shall not be made arbitrarily but the Lessor will as far as in its opinion its or public convenience or requirements may permit will refrain from causing unreasonable inconvenience to or interference with the Lessee his sub-lessee or sub-tenant AND PROVIDED ALSO that approval of a sub-letting will in no case be withdrawn unless the Lessee having been informed in writing of any objection thereto and having had such time for overcoming such objection as is fixed by the Lessor (a request for reasonable extension of which will be granted) has failed or refused to do so."

40

The description of the land and reservations and plans annexed to the lease were also referred to but, in order to follow these, it is necessary to examine the original document.

Apart from the sub-structure there must have been at the date of the lease other structures on the land but what these precisely were the evidence does not enable me to say.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

In 1928 the cost of the Innes-Kerr building was estimated to be £600,000. At the date of the lease I am satisfied that the cost of such a building would have been substantially more, approximately perhaps £1,500,000. In 1954 the cost of such a building would probably have been several millions of pounds.

The plans and particulars of the proposed alterations were prepared on behalf of Mrs Gardiner and Permanent Trustee Co. of N.S.W. Limited by Mr Warden, an architect. The particulars of material alterations, prepared by Mr Warden and supplied to the plaintiff, contained the following:

10

“It is proposed to carry up the existing reinforced concrete columns and steel stanchions to the new section to the sizes and heights required for the eventual building, also to construct a reinforced concrete slab over the new portion to form the roof of sufficient strength to form the floor slab of the eventual higher structure. The new facade, which will extend the whole frontage in George Street, is the permanent front that will be used in the eventual higher structure, also the steel frames to the windows, this facade will be treated in texture bricks with a coloured ornamental coping on top.”

20

On the 28th August, 1941, Permanent Trustee Co. of N.S.W. Limited wrote to the estate agent for the plaintiff as follows:—

“Towards the end of June, you had submitted to you, and approved of, certain plans for the additional accommodation required by the Licensing Authorities at the ‘Plaza’ Hotel.

As you are aware, the Executors are prohibited by Commonwealth Government Regulations, from complying with the building covenant provided for in Clause 4 of the lease, but the Capital Issues and Building Control Branch approved of an expenditure of £10,000/-/-.

30

Tenders were called, and the lowest of twelve tenders received was that of Messrs. Hutcherson Bros. amounting to £10,493/-/-.

On further application to the Building Control Branch, formal consent was given to the expenditure of £11,130/-/-, which represents the amount of the above tender, plus architect’s fees at 6%.

Since the plans were submitted to you, a slight alteration was considered advisable, so as to provide for a small office and kitchenette at the top of the stairs leading into the residential portion. This accommodation has been provided by reducing the size of the men’s toilet.

40

The alteration meets with the approval of the City Council, and of the Licensing Authorities, and we shall be glad to have your formal approval as soon as possible.

We have had a separate plan prepared, showing the alterations, and we forward it herewith for your inspection and retention.

The Contract with the Builder is before us, for signature, and we understand he intends commencing his building on Monday next. Your early reply will, therefore, be much appreciated.

A selection of bricks is being made for use in the facade of the building, and if you would care to have a voice in the selection, the writer would be pleased to so arrange.”

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10 The offer contained in the last paragraph was subsequently accepted by the plaintiff.

On the 9th October, 1941, the Secretary of the plaintiff wrote to the Secretary of the Minister for Transport as follows:—

“The lease was completed recently and operates from the 1st July, 1941.

20 There has been no variation in the terms of the Agreement for Lease in regard to the amount to be expended on the building, but such expenditure will doubtless be limited by National Emergency legislation. The comparatively minor building now being erected is simply to comply with the requirements of the Liquor Act and does not represent the fulfilment of requirements of the erection of a building worth £150,000.”

30 On the 20th October, 1941, Mr Stanley apparently received from the plaintiff copies of two plans of the original Innes-Kerr design. One showed the facade at George Street and the other showed the facade at Carrington Street. On copies remaining with the plaintiff, Mr Stanley wrote “Official facade copy received October 20th 1941”, but under what circumstances, for what purpose and on whose behalf the evidence does not disclose. The facade, which is shown in the plans prepared by Mr Warden and sent to the plaintiff, is quite dissimilar to that portion of the Innes-Kerr facade which disclosed the same storeys.

It seems that the executors employed Mr Roberts to do some managerial work for them in connection with the Plaza Hotel and shops and some letters were written by Mr Roberts to the plaintiff (to which I have already referred) using the letterhead showing “Hotel under Construction”. The last in date appears to be the 25th November, 1941.

40 The plans prepared by Mr Warden were modified at various times to suit the requirements of the plaintiff and the building was completed on 30th November, 1942.

On the 10th July, 1942, the defendant entered into an agreement with Permanent Trustee Co. of N.S.W. Limited and Rachel Gardiner

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

as executors of the will of Joseph Reuben Gardiner deceased to purchase the interest of the executors in the lease for the sum of £56,364. By the agreement, it was provided that the purchaser should covenant to pay, perform and observe and to indemnify the executors against the rents and covenants of the lease. The executors were to be entitled to the rents and profits and were to pay and bear all rates, taxes and outgoings up to the date of completion.

On the 28th August, 1942, a firm of accountants acting for the parties wrote to the Comptroller of Accounts of the plaintiff in the following terms: 10

“We are enclosing herewith cheques for £108:2:3 and £216:4:5 in settlement of your account re Estate J. R. Gardiner for £324:6:8.

You have probably been informed that the lease has now been purchased by Avrom Investments Proprietary Limited, and we would ask you to please send all correspondence in future, to the registered office in New South Wales, Rawson Chambers, 333 Rawson Place, Sydney.

Will you kindly forward separate receipts for this payment.”

It seems, therefore, that the defendant must have gone into pos- 20
session shortly before the date of this letter.

On the 24th February, 1943, the executors with the consent of the plaintiff transferred and assigned the lease to the defendant and, in consideration of such consent, the defendant for itself, its successors in title and permitted assigns expressly covenanted with the plaintiff that:

- “(a) Any and every covenant condition proviso stipulation and agreement of the said Memorandum of Lease hereafter to be performed or observed by the Lessee shall be binding upon it and them as fully and effectually as in the said 30
Memorandum of Lease set forth.
- (b) Clause XIV of the said Memorandum of Lease shall not operate at law in equity or otherwise hereafter to affect the full performance and observance of any covenant condition proviso stipulation and agreement of the said Memorandum of Lease according to the tenor thereof by the said Transferee its successors in title and permitted assign.”

The word “lessee” wherever appearing in the Memorandum of Lease and in the Instrument of Lease was thereafter to be read and construed as meaning and referring to the defendant. 40

On the 24th January, 1944, the defendant wrote to the plaintiff requesting a reduction of rent to £9,000 per annum “until two years after such time as we are permitted to go ahead with the building scheme as provided for in clause 4 of the lease”.

On the 31st May, 1944, the National Security (Building Operations) Regulations were promulgated. These replaced the earlier Building Control Regulations but for all purposes material to this suit continued to have the same effect as the earlier regulations.

On the 23rd May, 1944, the defendant, whilst writing to the plaintiff concerning a complaint about ventilators which had been erected by tenants, wrote, inter alia:

10 “. . . . We have taken steps to see that nothing of this nature, or, for that matter, any building operations, are commenced without due reference to you as provided in the lease.”

On the 31st October, 1945, the defendant wrote to the plaintiff a letter in the following terms:—

“Since this Company acquired the Leasehold of the Hotel and Arcades of Shops, certain expenditure has been incurred which it is considered would form part of the £150,000 to be spent by the Company, in accordance with the Lease.

Attached is a schedule giving details of this expenditure, and we should be glad if you would confirm the fact that these items may be included as part of that amount.

20 It is pointed out that this Company will be assisted in any negotiations it makes with the Taxation Department regarding the allowance of this expenditure under the heading of ‘Leasehold Amortization’, if we are in possession of a Certificate from your Department which recognises the amount.”

The Schedule set out six items amounting to £638.

On the 21st December, 1945, the plaintiff wrote to the defendant that it did not consider that certain of the items totalling about £270 could be regarded as part of the permanent structure but that the remaining items in the list were acceptable.

30 On the 16th January, 1946, The Building Operations and Building Materials Control Act, a New South Wales Act, was assented to to commence upon a day to be proclaimed which in fact was 4th February, 1946.

On the 6th February, 1946, by regulation made under the National Security Act, the National Security (Building Operations) Regulations ceased to apply in New South Wales. Section 5 (1) of the Act provided:

“A person shall not, without the consent in writing of the Minister, commence or continue to carry out any building operations.”

40 So far as is material, the effect of this Act was the same as the effect of the Building Operations Regulations.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

Section 26 of the Act was in the following terms:—

“This Act shall remain in force until the thirtieth day of June, one thousand nine hundred and forty-six: Provided that the Governor may from time to time by regulation extend the operation of this Act for such period or periods as he may determine. Any such period shall not exceed three months.”

By a series of proclamations the operation of the Act was extended until the 30th September, 1952.

On the 28th February, 1946, the defendant wrote a letter to the plaintiff in the following terms:—

10

“Mr D. F. Cowell Ham has been appointed Architect to this Company for the building proposed for this site.

For this purpose, it is necessary that he have access to the original foundation plans and other relative information, all of which are held by the Department.

We ask that you will be good enough to allow him this privilege and shall appreciate any assistance which the Department can give in this connection.”

and on the 7th May, 1946, the plaintiff supplied the plans as requested.

On the 12th June, 1946, an order was made under section 40A 20 of the Liquor Act, 1912, as amended, requiring certain work to be done in the dining room, kitchen and bars.

Mr Cowell Ham, a Melbourne architect, and Mr Nicholls, a Sydney architect, were engaged by the defendant to plan and supervise the work.

On the 7th March, 1947, the defendant wrote a letter to the plaintiff which contained, inter alia, the following:—

“The third question was that of the re-adjustment of the rentals and term of the lease.

It was, of course, in the contemplation of the parties when 30 the lease was entered into—

- (a) That the Commissioners should have the ultimate benefit of the expenditure of a sum of £150,000 on the site, and
- (b) That the Company should have the benefit of the full and economic use of the whole site.

The result of the war was to frustrate the intention of the parties with regard to both these matters.

The Commissioners have lost the benefit of the covenant to expend the moneys and the Company has lost six years benefit of the user of the site in respect of the following matters. 40

Firstly, the Company was unable to expend the £150,000 and was, therefore, unable to get the benefit of the site, except to a trifling extent above the George Street level.

Secondly, the Company was unable by reason of building restrictions to let the Hunter Street level at all. Without taking into account the improved rents which might have been obtained therefor by the installation of ventilators and escalators the loss to the Company has been, at the very least, at the rate of 4s. 4d. per square foot per annum, this being the sum at which, we understand, your officers valued the site some years ago in its present state.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10 Thirdly, and probably most importantly, the Company has been prevented from building out to its building line in George Street, i.e. to within six feet of the pillars where the entrance is splayed at George Street and to the George Street building line in the centre. The sites which it has been compelled thus to leave idle and unproductive are of very great value, indeed we estimate that an additional rental of above £100 per week (say £5,000 p.a.) could be obtained from the letting of them.

20 Fourthly, the war-time legislation has pegged the rents of the premises at their unduly low 1939 figures and has prevented the Company from obtaining increased rents commensurate with the rising rent being paid under the Head Lease.

30 We do not know what view the Commissioners take of the effect which the rent fixing provisions of the Landlord and Tenant Regulations will have upon their right to receive the increased rent of £19,200 set out in the Lease. During our recent discussion, it was put upon the footing that the Lease provided for the increase. This however, does not appear to us necessarily to make it payable since the Regulations fix the rent regardless of the provisions of the Lease at that payable at the 1st March, 1945. This, however, is an aspect which could be regularised by obtaining the Rent Controller's approval to any arrangement ultimately agreed to between us.

40 We concede that during the war the Lessee did obtain some compensation for the restrictions before mentioned by reason of its increased bar trade in the Hotel. This increase was, of course, due not only to the war but to the application of the Lessee's skill, enterprise and trading capacity to the situation which had arisen. To whatever extent this was a compensatory advantage it has now, of course, ceased to be so with the disbandment of the Forces and the departure of the Allied Troops."

In connection with these matters, the defendant made certain proposals to the plaintiff.

On the 1st July, 1947 in a letter to the plaintiff the defendant said:

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

“In addition, the recent pronouncements by Mr McGirr concerning his building programme appear to us to make the possibilities for permanent structure, grimmer than ever.”

On the 10th July, 1947 the defendant wrote a letter to the plaintiff in the following terms:—

“We have read a letter dated 26th June 1947 written by your Chief Civil Engineer, Major General A. C. Fewtrell, to Mr D. F. Cowell Ham, suggesting that this Company write to you regarding his connection with the work at present being carried out at Wynyard and with the proposed future building. 10

Mr Ham and Mr E. M. Nicholls have been retained as Architects in conjunction, to supervise the work at present being carried out at the Hotel Plaza. A large part of this work will be of a permanent nature but certain portions will have to be rebuilt when the ultimate building scheme is put in hand.

With regard to the development of the site as required under the terms of our lease, this has been treated as a matter entirely separate from the present work.

Mr Ham is the sole appointee of the Company to prepare designs covering an expenditure of £150,000, having regard of 20 course to possible further development. Suggestions have been made by him and are being fully investigated by the Company and we hope shortly to be in a position to submit them for your Department's approval.

Mr Ham has advised us that he has retained Messrs Stanley and Llewellyn as Consultant Engineers for both projects.”

Mr Stanley was the same Mr Stanley as had been associated with the Innes-Kerr plans and it was he of that firm and not Mr Llewellyn who was doing the actual work.

On the 12th September, 1947, Mr Ham forwarded to the engineers 30 branch of the plaintiff some diagrammatic plans of “the proposed future extensions which indicate the alternative positions of the major trusses.” Alternative schemes in diagrammatic form are shown for buildings in part to the full height. Mr Ham's letter indicated that it was proposed to develop the Carrington Street frontage first.

On the 29th September, 1947, Mr Ham wrote to the plaintiff with a view to a conference between the parties concerning the proposed new building “for a discussion relative to the proposed accommodation that the Company is desirous of providing in the first section of the building”. 40

On the 14th October, 1947, a conference was held and at the conference Mr Ham indicated that the diagrams which had been forwarded were subject to amendment.

Amended plans continued to be prepared in connection with the work in the dining room, bars, etc. and this work was finally completed by January, 1950.

On the 19th December, 1950, the defendant wrote a letter to the Secretary of the plaintiff in the following terms:—

“The attached schedule sets out details of expenditure incurred by this Company in carrying out construction work to Wynyard Leasehold property to comply with—

- a. Orders from the Licensing Court.
- 10 b. Orders from the City Council.
- c. Improvements and additions to the property, which were not the subject of orders from Statutory Authorities.

These alterations have been made in accordance with plans submitted to, and approved by, the Commissioner for Railways, the Licensing Court and the City Council.

The costs were incurred during period March 1947 to June 1950, and it is the submission of this Company that the total of £77,215-15-8 is portion of the Capital Expenditure of £150,000-0-0 to which it is committed under Clause 4 of the Lease.

- 20 We shall be glad if you will confer with the Commissioner on this matter and obtain his approval, or submit to us any further requisitions he may desire to make.”

The Schedule set out details showing a total cost on building of £56,966/2/9 and a total cost on plant of £20,249/12/11.

Apart from an acknowledgment of this letter and of further correspondence requesting a reply, there is no evidence to show what the plaintiff's attitude was.

- 30 Between the 14th February, 1945, and the 13th April, 1953, correspondence passed between the parties relating to anti-corrosion measures to be taken in respect of exposed steel work on the Carrington Street side of the premises and from time to time necessary work was carried out by the plaintiff and paid for by the defendant or carried out by the defendant.

As I have already mentioned, the Building Operations and Building Materials Control Act, 1946, came to an end on the 30th September, 1952.

- 40 I am satisfied that from the commencement of the lease until the 30th September, 1952, it would not have been lawful for the defendant to have erected, constructed or completed a building in the terms of clause (4) of the lease.

There is no evidence that any application was ever made to the Treasurer under the National Security (Building Control) Regulations or to the Minister under the Building Operations and Building

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

Materials Control Act for permission to erect a building of the nature described in clause 4 of the lease, but it is clear that any such application could only have been a mere gesture and could not have succeeded. During the period no hotels were allowed to be built. During the period the Licensing Court obviously acted upon that view. It is fairly clear that during the period the parties accepted the position that an application for leave to erect a building of the nature described in clause (4) could not have succeeded.

Prior to 1954 the defendant had embarked upon the work of remodelling the southern bars including the construction of new cool room and plans for this work had been approved by the plaintiff and approval for the doing of this work had been granted by the Licensing Court on the 21st March, 1953. 10

On the 14th July, 1953, the Metropolitan Licensing Inspector gave notice of intention to apply under section 40A of the Liquor Act, 1912-1946, for an order directing the construction, inter alia, of 200 bedrooms.

Section 40A of the Liquor Act as it then stood was in the following terms:—

“40A. (1) (a) Upon proof that public convenience requires additional accommodation in, or the renovation, structural alteration, or rebuilding of any premises in respect of which a publican’s license is held, the licensing court may order the owner of the premises to carry out, within a reasonable time to be set out in the order, the work specified in the order. 20

(b) Not less than thirty days’ notice of intention to make application for any order under this subsection shall be given to the owner and to the occupier of the premises, and to the clerk of the licensing court for the licensing district.

(c) The Notice shall set out reasonable particulars of the work which it is proposed to ask the court to order to be done. 30

(2) Where an order has been made under the last preceding subsection—

(a) the court may if it thinks fit authorise an increase or decrease of the area licensed, and thereafter renew the license for the premises with the area so increased or decreased;

(b) where an owner has carried out the work and he is not the occupier of the premises, the occupier shall, during the remainder of his tenancy, pay to the owner, by way of increase in the rent, an amount at the rate of eight pounds per centum per annum on the total amount expended by the owner in carrying out such work; 40

(c) where the work is not completed by the owner within the time specified in the order, the court may if it thinks fit, upon application made for the purpose, extend the period;

(d) if the owner fails to carry out the work within the time allowed by the court, the occupier may within the prescribed period make application to the court for an authority to carry out the same, and the provisions of subsection six of this section shall apply accordingly;

10

(e) upon proof to the satisfaction of the court that—

(i) an owner has failed to comply with an order within the time allowed by the court, and that no authority as aforesaid has been granted to the occupier to carry out the work; or

(ii) an occupier has failed to carry out the work within the period specified in an authority granted to him under this subsection,

the court may suspend the license for such period as it thinks fit, or may cancel the license.

20

(3) The making of any such order shall not prevent the owner and occupier of any such premises from surrendering the license and receiving compensation in pursuance of section twelve of the Liquor (Amendment) Act, 1919.

(4) Pending the completion of any such work, the licensing court may renew the license for the premises notwithstanding the temporary non-provision of the required accommodation, or the temporary carrying on of the business on neighbouring premises or on part of the licensed premises, and on the completion of the work may thereafter renew the license for the premises so altered.

30

(5) In any award of compensation under Part II of the Liquor (Amendment) Act, 1919, in respect of the closing of any such premises, any additional loss arising through the carrying out of any work under an order made by the court in pursuance of this section shall be taken into consideration.

40

(6) Where the occupier of any such premises is not the owner thereof, and is not under covenant or agreement with the owner to do any work which the court may order under this section, the owner shall pay to such occupier any money expended by him pursuant to paragraph (d) of subsection two of this section in carrying out any such work, and in default such occupier shall, in addition to any other remedy available to him, be entitled to retain possession of the premises at the same rental he was paying at the time the expenditure was incurred, until the rent

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

accruing is sufficient to repay him the money expended as aforesaid, and such rent may be retained by him, and the authority of this Act shall be an answer to any action by the owner for the recovery of the same. The occupier shall pay to the owner during the remainder of his tenancy by way of increase in the rent an amount at the rate of six pounds per centum per annum on the total amount so expended by the occupier.

(6A) Where an order is made under subsection one of this section it shall be lawful for the owner of the licensed premises to which the order relates to authorise his architect and contractor, together with such of their employees as may be necessary, to enter upon the licensed premises for purposes of or connected with the carrying out of the order, and such architect, contractor and employees may enter accordingly and do and perform all such acts matters and things as may be necessary or convenient for those purposes.

(7) For the purposes of this and the twenty-ninth section of this Act, 'additional accommodation' shall include the provision of additional sitting rooms and sleeping rooms and of facilities for the consumption of liquor at tables in lounges, gardens, under awnings or in the open air, the provision of a bottle department, the provision of bath facilities, the erection of garages for the accommodation of motor vehicles, the installation of a water storage system in cases where a water supply service is not available, the provision of additional closets, privies and other sanitary necessities.

(8) The provisions of this section shall extend and apply to premises in respect of which an Australian wine license is held in like manner as those provisions apply to premises in respect of which a publican's license is held." 30

Certain amendments were made to the section by the Liquor (Amendment) Act, 1954, which commenced on the 1st February, 1955, including an amendment by which the following paragraph was added to the end of section 40A (2):

"The court may, on application being made by the owner or occupier or district licensing inspector, subject to such conditions as it considers fit, revoke, or vary the terms of, an order made under paragraph (a) of subsection one of this section."

It will be convenient to refer also to the terms of section 40 (2) of the Liquor Act, 1912-1954, which are in the following terms, the words underlined having been added by the 1954 Act:

"40. (2) (a) In this subsection 'licensed premises' means premises in respect of which a publican's license or an Australian wine license or a spirit merchant's license is held.

(b) Any owner or licensee of licensed premises, who is desirous of making any material alterations or additions thereto or of increasing or decreasing the area of the licensed premises, shall apply to the court for authority so to do, and shall furnish the court with a properly drawn plan showing the character of the alterations or additions or increase or decrease proposed to be made.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10 (c) On granting any such authority the court shall specify a period within which the proposed alterations or additions or increase or decrease shall be completed, and the authority shall remain in force until the expiration of such period or of such further period or periods (not exceeding six months at any one time) as the court, upon application made for the purpose, may allow.

(d) If any owner or licensee of licensed premises makes any material alteration or additions thereto or increase or decrease of area thereof without the authority of the court granted under this section he shall be liable to a penalty not exceeding one hundred pounds.”

20 Mr Cowell Ham had prepared plans for additional accommodation. On the 3rd November, 1953 the solicitors for the defendant wrote to the solicitor for the plaintiff in the following terms:—

“Referring to your letter of the 19th October and our letter of the 23rd, we desire to inform you that as a result of conferences we have held, our clients propose at the Hearing on the 9th instant to consent to the making of an Order for the construction of one hundred bedrooms with their ancillary sitting rooms bath and toilet facilities in accordance with Plans to be submitted for approval within six months, the work to be carried out within twelve months.

30 If as we expect this Order will be made on Monday next, we shall after obtaining the approval of the Licensing authorities to the Plans, submit them to the Commissioner for his approval before lodging them with the City Council for its approval.”

At all material times the licensee and nominal occupier of the hotel was John Bonaventure Limerick named a defendant in the suit but he, of course, was only the agent of the defendant.

On the 9th November, 1953 the application under section 40A came on for hearing and a consent order was made by the Licensing 40 Court.

The minute of the proceedings before the Licensing Court is in the following terms:—

“APPLICATION BY THE METROPOLITAN LICENSING INSPECTOR FOR AN ORDER UNDER SECTION 40A IN RESPECT OF THE ‘PLAZA’ HOTEL, SYDNEY.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

CHAIRMAN WE MAKE ORDER THEN FOR 100 BED-ROOMS + TOILET BLOCKS AND ADEQUATE TOILET AND BATHROOMS.

PLANS TO BE LODGED BY 31st March, 1954, AND BUILDING TO BE COMPLETED BY 31st March, 1955.

ESTIMATED COST £200,000.

PLANS FOR CARRINGTON STREET EXTENSION TO BE LODGED AT SAME TIME.

CARRINGTON STREET EXTENSION COST £50,000.

J. BLISS

10

CHAIRMAN

R. M. STEWART MEMBER

METROPOLITAN LICENSING COURT,

42 Bridge Street, Sydney.

9th Nov., 1953.”

The order made by the Licensing Court was in the following terms:

“ORDER TO CARRY OUT WORK AT PREMISES IN RESPECT OF WHICH A PUBLICAN’S OR AN AUSTRALIAN WINE LICENSE IS HELD

LIQUOR ACT, 1912, SECTION 40A.

20

PREMISES:

‘PLAZA’ HOTEL,
293 George Street, SYDNEY.

LICENSING DISTRICT:

METROPOLITAN.

OWNER:

Commissioner for Railways.

OCCUPIER:

John Bonaventure Limerick.

IN PURSUANCE of the provisions of Section 40A of the Liquor Act, 1912, THE COURT DOTH ORDER that the work specified in the Schedule hereunder shall be carried out by the owner of the premises herein named by the 31st March, 1955.

Schedule of work to be carried out:—

30

Construct an addition to the building in brick or concrete and to contain the undermentioned accommodation:—

100 public bedrooms.

four sitting rooms.

Adequate toilet blocks complete with baths, shower recesses, water closets and wash basins.

(PLANS TO BE LODGED BY 31st MARCH 1954)

GIVEN under my hand and the Seal of the said Court at 42 Bridge Street, Sydney this ninth day of November 1953.

J. BLISS

40

Chairman and Licensing Magistrate
constituting the Licensing Court for
the Metropolitan Licensing District.”

On the 1st March, 1954, on the application of the defendant the time for lodging plans was extended to the 30th April, 1954. On the 21st April, 1954, the solicitor for the defendant wrote to the Secretary for the plaintiff in the following terms:—

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

10 “We forward you herewith a copy of the basic plans for additions to be made to the existing Plaza Hotel building in compliance with an order made under Section 40A of the Liquor Act on the 9th November last, together with a copy of a letter addressed to the Licensing Court by the Architect, Mr D. F. Cowell Ham, and formally seek your approval to these plans as required by the terms of the Lease.

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

A copy of these plans has already been handed to a representative of the Chief Civil Engineer, in order to expedite his consideration thereof and recommendations to you.

20 The Lessee, under the terms of the order, is obliged to lodge the plans with the Licensing Court for approval not later than the 30th instant, and we propose to lodge the plans and the letter from Mr Ham forthwith, requesting the Court to approve of them as sufficient compliance with the order made, having regard to the peculiar difficulties of the site and the enormous cost involved.

Following lodgement of the plans, it is likely that the matter will be listed some time late in May for the formal hearing of the application for approval and we should like very much to have your approval before this hearing.

30 We shall esteem it a favour therefore if you will give the matter your urgent consideration, and if there is any matter arising out of these plans and proposals on which you would like further information, the writer, with the New South Wales Manager of the Lessee Company, will be glad to confer with you at a suitable time.”

The plans provided for a building which did not cover the whole site and provided for an additional number of bedrooms to be placed on the 1st floor level above Carrington Street and on the 3rd floor level above George Street. In his letter, Mr. Ham estimated the cost of the structure equipment and furniture to be £380,000 and stated that the work was expected to take two years to complete.

On the 28th April, 1954, the plans were submitted by the defendant to the Court.

40 On the 7th May, 1954, the solicitors for the defendant forwarded an amended Sheet 5 to the Secretary for the plaintiff.

On the 21st May, 1954, the solicitor for the plaintiff wrote to the solicitors for the defendant in the following terms:—

“Your letters of 21st ultimo and 7th instant have been referred to me, and I am instructed that the Commissioner approves of

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

the plans submitted with your letter of 21st ultimo as amended by the plan submitted with your letter of 7th instant, subject to the building being constructed in accordance with the requirements of any civil, licensing or other authorities, as well as the Commissioner, and subject, also, to the following modifications and conditions:—

1. The area on the first floor level between Wynyard Lane and Carrington Street which has not been allocated for any particular purpose is not to be used as a car parking area, and if used for storage the loading on the floor shall not exceed 100 lbs. per sq. ft. In this connection, it is noted that if the area in question is converted at any future date into shops or offices the entrance from the concourse on the second floor to the access stairway will have to be modified to meet the Commissioner's requirements, and the door opening into the bar will have to be bricked up if the Commissioner so requires. 10

2. A brick fence, not less than 6 ft. high, or similar type of fence, is to be erected on the Carrington Street boundary from the proposed building to Shell House.

3. The stairway from the Concourse on the second floor to Wynyard Lane is to be moved slightly towards Carrington Street so that at least 7 ft. 6 in. head room is provided to the underside of the floor of the male lavatory. 20

4. The 5 ft. 3 in. wide corridor at the Western end of the third floor shall not be reduced in width where columns occur to less than a width of 3 ft. 9 in.

5. Mechanical exhaust ventilation is to be provided to bathrooms and W.Cs. between bedrooms 29 and 30, those adjoining bedrooms 32, 51 and 52, and the bathrooms of bedrooms Nos. 1 to 7, and 16 to 26, inclusive, on the third floor level, also the shops and W.C. in the female lavatory on the second floor level. 30

6. Provision is to be made to ventilate mechanically, at a future date, the existing offices and conveniences facing west on the first floor level, also the present unoccupied areas shown on drawing of this and other floor levels.

7. The existing ventilating ducts are to be carried up and discharged above the new roof level or as may be directed by the Department.

8. Exposed service pipes under the third floor level and over Wynyard Lane are to be encased where exposed to view, and the minimum height and clearance over Wynyard Lane are to be maintained. Adequate sized ducts for all services are to be provided on all floors sufficient for future extensions of the building. 40

9. Provision is to be made in the construction of the building for the support of the new elevator and the installation, at a future date, when the building is carried up to the maximum height allowed by the building regulations, of additional elevators.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

10. The columns, beams and other structural work are to be designed and constructed so as to permit the building being carried up to the full height allowed by the building regulations.

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10

11. Detail drawings, specifications and calculations of the structural work, mechanical ventilation, sewer and drainage, and all other services, are to be submitted to the Department for approval before any work is commenced. These drawings are to have the approval of the Sydney City Council, Metropolitan Water, Sewerage and Drainage Board, and such other authorities as may be concerned, before being submitted.

12. The maintenance of the building, including all services and mechanical ventilation and other equipment, is to be carried out at all times to the satisfaction of the Department.

20

13. A window is to be provided in the W.C. of the female convenience in the beer garden provided for in amended Sheet 5 of the plans.”

On the 26th May, 1954, an application was made by the defendant to the Licensing Court.

A transcript of the proceedings and of the minute made by the Court is in the following terms:—

“APPLICATION No. 1

30

APPLICATION BY AVROM INVESTMENTS PTY. LTD.
FOR APPROVAL OF PLANS ON ORDER UNDER SECTION
40A IN RESPECT OF PREMISES SITUATE AT GEORGE
STREET, SYDNEY, AND KNOWN AS THE ‘PLAZA’
HOTEL.

Const. Taylor for the M.L.I.

Mr. Wailes for the Applicant.

BENCH The number of rooms is short of the figure asked but is satisfactory. Alterations are sufficient and I offer no objection.

MR WAILES There is an additional plan lodged. Sheet No. 5. This had to be substituted for the original one.

40

BENCH Subject to the addition of that the plans are approved.

MR WAILES I have copies of letters from the Railways.
PRODUCES COPIES TO THE BENCH

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

SUBJECT TO THE PROVISION OF ONE EXTRA W.C. FOR FEMALES AND FOUR URINALS AND WIDENING OF THE DOORWAY, PLANS ARE APPROVED.

PLANS APPROVED SUBJECT TO ADDITIONS.

J. BLISS

Chairman.

(Sgd.) G. Stewart

Member.

18/4/55

Amendment approved

10

(see papers 9/11/53)

Metropolitan Licensing Court,
42 Bridge Street, Sydney,
26 May, 1954."

The notation under date 18/4/55 was obviously not on the minute as made on the 26th May, 1954, but I have included the notation for completeness.

These plans provided for 62 additional bedrooms with lounges and auxiliary facilities and, with the alterations made to them subsequently, I shall refer to them as the 1954 plans. 20

On the 4th June, 1954, the defendant let a contract for structural work on columns 76, 51 and 26 and for other associated work at a total cost of £16,237. This work was completed in May, 1955.

On the 6th August, 1954, the solicitors for the defendant wrote to the solicitor for the plaintiff in reference particularly to the condition 10 referred to in the letter of the 21st May, 1954, and requesting a conference to discuss the difficulties involved.

On the 19th August, 1954, the solicitors for the defendant wrote a letter to the plaintiff in the following terms:— 30

"We refer to the letter to us dated 21st May, 1954, from the Solicitor for Railways approving of the plans submitted by us for additions to the existing hotel building and to the conference with your officers on 18th instant at which in particular condition 10 as set out in the letter was discussed.

As you are aware, prior to the Licensing Court requiring the construction of additional bedrooms, the Lessee Company had embarked upon the remodelling of the Southern Bars including the construction of new cool rooms and its plans approved by you. 40

As a direct result of the new planning to provide additional bedrooms which involves construction on the Carrington Street frontage, it became both necessary and desirable to redesign the

coolroom on the Wynyard Lane level adjacent to Carrington Street and it was decided, on the economic factors involved, to utilise the roof of this coolroom as an open beer garden.

This involved the planning of a concrete slab for such roof and the consequential amendment of the original plans for the Southern Bars to dovetail this work with the proposed new project.

10 Before, however, incurring the expense and time involved in preparing detailed plans and specifications for the new project it became necessary to consider the size and strength of the various columns already on the site and upon which the whole construction depends.

These columns are of a very substantial nature as originally planned many years ago and entail costly construction at the present time.

It will be appreciated therefore that any unnecessary column construction will involve the Lessee Company in many thousands of pounds which could be better utilised in productive improvements on the site.

20 It will also be appreciated that the Lessee Company proposes to expend on the present proposed development of the site alone, more than twice as much as it is obliged so to do in order to comply with the literal terms of its lease.

30 The Lessee Company realises, however, that literal compliance with the requirements of the lease would be an ineffectual and undesirable method of development and would probably result in great difficulty and expense for itself or its successors in further developing the site. The Lessee Company proposes to erect the building in accordance with the plans submitted and approved providing, in so doing, for the future upward extension of such building by itself or its successors to the full height permitted by the City Council.

It does not envisage building over any portion of the ground plan not built over in the present plans except for the corner on Carrington Street adjoining Shell House where provision already exists for four lifts. It is contemplated that this area will and must be built up in any further development.

40 To assist you in the following future possible development we attach a plan which shows the proposed layout of a bedroom floor. It is estimated that the areas outlined in red can be built up to the maximum of 150 feet above George and Carrington Streets while the area in wide green hatching can be built up to 79 feet above Wynyard Lane and the area in narrow green hatching can be built up to 90 feet above Carrington Street (i.e.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

the bottom of the light Court). This should produce eleven floors on George Street (including the existing floors), twelve floors on Carrington Street and about seven floors in the inner portions. On both Street frontages there will be included a parapet about five feet high.

On both the George and Carrington Streets frontages it is estimated that the building can be constructed to the full height of 150 feet while in the centre the maximum height will vary and be somewhat less by reason of the light areas.

One reason why it is not thought possible or desirable to build 10 over or provide for building over the areas left vacant on the present plans is that at all stages of development and particularly as the building becomes higher it is necessary to provide light and air for the bedrooms etc.

If therefore these vacant areas are not to be built over it becomes uneconomic and indeed wasteful to construct any columns to an extent greater than is required to support the full building as envisaged.

Before, therefore, preparing detailed plans and obtaining engineering data required before such plans can be prepared, we 20 consider it essential to have condition 10 abovementioned clarified.

What the Lessee Company proposes to do with your approval is so to construct the columns required for the support of the present proposed building as to permit future construction of that building (including the area adjoining Shell House abovementioned) to the maximum height permitted by the City Council which will permit of some reduction in the dimensions of those columns by reason of the areas left vacant for the provision of light and air. A particular illustration may be given in regard 30 to the rectangular columns against the building on the southern side between Wynyard Lane and Carrington Street. There are three such columns which are of substantial size but which, under the present plans, will support only the concrete slab over the coolroom which will also be the floor of the proposed beer garden.

As no further construction above this area is proposed, such columns become unnecessary and the slab can be adequately supported by other means such as a brick wall upon a steel beam across the tops of the columns as at present constructed which would result in a saving of some thousands of pounds. 40

Your concurrence to this proposal is therefore sought. If, however, for any particular purpose of the Railway Department it is desired that such columns be constructed to greater dimensions than would be required for this purpose two alternatives are proposed namely:

(1) that the Department should bear the difference in cost,
or

(2) that the term of the present lease be extended.

In view of the requirements as to time of the Licensing Court and the fact that work upon the Southern Bars is in abeyance until a decision is reached, we request you to give this matter your urgent attention."

On the 5th October, 1954, the Secretary of the plaintiff wrote to the solicitors for the defendant in the following terms:—

10 "I refer to your letter (Reference 7) of the 19th August, 1954, further regarding the additions proposed to the existing hotel building, and wherein you advise that the Lessee Company proposes, inter alia, to erect a building in accordance with the plans submitted and approved, providing, in so doing, for the future upward extension of such building by the Company, or its successors, to the full height permitted by the City Council.

20 As regards your statement that, before preparing detailed plans and obtaining the requisite engineering data which is essential to have Condition 10 dealing with the sizes and strength of the columns, etc., referred to in the letter dated 21st May, 1954, forwarded to you by the Solicitor for Railways, clarified, I have been directed by the Commissioner to advise you as follows:

1. All columns within the area, west of Wynyard Lane, coloured red on the plan enclosed herewith are to be constructed of sufficient strength to permit of the building on such area being carried to a height of 150 ft. above the existing level of Carrington Street.
- 30 2. All columns within the area, east of Wynyard Lane, coloured red on the plan enclosed herewith, are to be constructed of sufficient strength to permit of the building on such area being carried to a height of 150 ft. above the existing level of George Street.
3. All columns in the remaining areas, coloured green on the plan enclosed herewith, are to be constructed of sufficient strength to permit of the building on such areas being carried to a height of 105 feet above Carrington Street.
- 40 4. Columns in the cool room which are to support the beer garden on the plans submitted may be regarded as temporary columns and may be built to carry the actual loading to be imposed at present.

The Commissioner for Railways is not prepared to bear any of the expenditure for complying with the foregoing, nor is he agreeable to any extension of the term of the lease.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958.

continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

As the area adjoining Shell House in Carrington Street does not appear to be fully developed, the Lessee Company is requested to submit a complete set of drawings showing the layout of the whole of the proposed future building, and I shall be glad if you will arrange for this to be done."

On the 23rd March, 1955, the defendant made an application to the Licensing Court for an extension of time until the 30th September, 1955, and for the approval of substituted plans lodged with the Court. There is no evidence to indicate that these substituted plans were submitted to or approved by the plaintiff. 10

These substituted plans did not vary in general principle from the former ones.

On the 18th April, 1955, the Licensing Court approved of the substituted plans and advice was sent to the defendant that no adverse action would be taken prior to the 30th September, 1955.

On the 6th May, 1955, a contract was let for structural work on further columns on the Carrington Street frontage at a total cost of £32,020/10/3. This work was for the extension of columns. These columns were so designed that no matter what building went up they would be capable of carrying the full load. Primarily they were to be constructed for the 1954 building but were suitable for use to carry 20 any other building on the Carrington Street frontage.

These extensions were in fact completed.

On the 29th September, 1955, the defendant lodged an application for a further extension of time. With this application there was lodged a history which was put in evidence by the plaintiff of the action taken by the defendant pursuant to the Court's orders setting out in detail the many difficulties which had been encountered by the defendant.

In this history, the then "present position" was described as follows:— 30

- "(1) Messrs W. E. Bassett & Associates advise that the final plans and specifications for electrical services, hot water services, mechanical ventilation and passenger service lift will be ready for the calling of tenders on the 6th and 10th December, 1955.
- (2) With one week Mr Llewellyn will be in a position to make available to the Architect, Mr Ham, sufficient details of all structural work to enable bills of quantities to be prepared and for builders to tender.
- (3) Mr Ham has completed his detailed plans which are sub- 40 mitted herewith. These plans will have to be duplicated in larger scale by half inch plans, but only drawing work is involved and this should be completed within five or six weeks.

- (4) All the various plans and specifications will have to be finally submitted for approval to the City Council, the Railway Commissioner and certain of the plans will have to be approved by the Metropolitan Water, Sewerage and Drainage Board and by the Board of Fire Commissioners. In addition, the plans will have to be submitted to the Town Planning Section of the Cumberland County Council.
- (5) Notwithstanding the necessity of obtaining these various consents, all designers have purposely maintained the closest liaison with the authorities in question in order to save time and it is hoped that there should not be any substantial delay in obtaining final approval from the authorities concerned.
- (6) The Quantity Surveyors have advised that they will be ready to have bills of quantities prepared ready for tenders on Wednesday, the 21st December, 1955.
- (7) For the last eighteen months Mr Ham has devoted one-third of his own and of his office's time to the Plaza Hotel.
- (8) It is anticipated that the cost of the building will be in the vicinity of £388,000.
- (9) The necessary finance was arranged last year by the lessees for the construction of the building."

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

There is no direct evidence before me to show the course of the proceedings on the application for an extension of time but it is clear from the correspondence that before March, 1956, the Licensing Court had refused the application.

The appeal to Quarter Sessions from the decision of the Licensing Court was lodged by the defendant but was not prosecuted, and the appeal was accordingly dismissed. The Licensing Inspector took proceedings for the suspension or cancellation of the licence.

The defendant had called for tenders for the major work of carrying out the proposed additions closing on the 12th March, 1956, and when the tenders were opened the lowest tender received was for £525,881.

In these circumstances, on the 27th March, 1956, the solicitors for the defendant wrote to the Secretary of the plaintiff setting out shortly the general position and asking for a conference with the object of discussing:

- “1. Whether it is in the best interests of the Commissioner and the public to maintain the licence at Wynyard.
2. Whether the licence should be transferred elsewhere or surrendered.
3. Whether a substantial extension of the lease can be granted.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

4. Whether the Commissioner will approve of a less costly type of construction.”

On the 6th April, 1956, a conference was held between the parties but the conference did not bear any fruit.

On the 10th May, 1956, the solicitor for the defendant wrote to the plaintiff a letter in the following terms:

“You will recall that on Friday the 6th April last the writer, together with one of the Directors and the Secretary of the abovenamed Company conferred with you and some of your Officers concerning the difficulties which the Company is 10 encountering in carrying out the order for further construction made by the Licensing Court under the provisions of Section 40A of the Liquor Act, 1912, and you will recall that these discussions were entirely without prejudice and of an exploratory nature.

Since that conference a summons has been issued at the incidence of the Metropolitan Licensing Inspector calling upon the Licensee of the Plaza Hotel to show cause why his licence should not be suspended or cancelled, and notice of this summons has been served upon the Company and also possibly upon yourself. 20

This summons is returnable on the 28th inst. and we understand will be adjourned until the following day for hearing.

Since the conference the Company has been giving constant consideration to the position and what could be done, and we have now been asked to write to you putting the position clearly before you and the possible courses to be followed.

Our client has always been aware of its obligations to the Licensing Authorities and also to you under the terms of the lease.

You will recall that our client acquired the lease in 1942 when 30 World War II was at its height and it was not possible during the War or for some years thereafter to effect any major building construction.

Since acquiring the leasehold our client has consistently spent large sums of money upon the premises to provide the public with the most up-to-date drinking facilities in Sydney, and in fact to date have expended on the leasehold as a whole and on plant and equipment the sum of £275,005.0.0.

On the 26th March, 1947, the Company entered into an agreement with Mr D. F. Cowell Ham, Architect and Consulting 40 Engineer, for him to design a building to cost £150,000.0.0 at least with a provision covering further expenditure and on the 15th October, 1957, it submitted proposals for the development of the site to the then Commissioner for Railways and suggested it

expend the minimum of £250,000.0.0 in return for an extension of the lease for a further period of thirty-nine years. In the event this offer was refused on the 1st March, 1948.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

Prior to the order made by the Licensing Court on the 9th November, 1953, many plans had been considered, but none of them were thought to be satisfactory.

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10

Following the making of the order by the Licensing Court plans were prepared for a building containing sixty-two additional bedrooms with lounges and ancillary facilities, the cost of which was estimated at £390,000.0.0. These plans were approved by you and by the Court.

Our client made arrangements with its Bankers to finance the cost of this construction over and above its own resources and such finance, we believe, is still available.

20

Many delays due to technical difficulties occurred before tenders were finally called and during this time the Company went ahead with some of the basic work which would be required in any event for any structure and expended the sum of £52,600.0.0 in the extension of certain of the columns and the construction of certain concrete slabs.

On the 12th March 1956 tenders for the remainder of the construction were received, the lowest of which was £525,881.0.0. The estimated full cost of the work necessary to carry out the order of the Licensing Court is as follows:—

Moneys already expended.	£ 52,600	0	0
Lowest tender price.	525,881	0	0
Architects' fees.	38,704	0	0
Quantity Surveyors' fees.	5,206	0	0
Furnishings, minimum	50,000	0	0

30

£672,391 0 0

in addition to which there are unknown amounts for Engineers' fees and fees due to other technical advisers.

While the Company is desirous of carrying out the order of the Licensing Court and of retaining the licence of the Hotel Plaza it is unable to provide the funds required out of its own reserves and while it has not yet received a definite answer from the Commonwealth Trading Bank to which it has made representations for additional financial assistance, it does not think that such assistance will be forthcoming.

40

In any event, even if the finance required were available, it is not economically possible having regard to the term of the lease still to run and known trading results, to recover the expenditure over the term of the lease and still show a reasonable profit.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

Our client and its technical advisers have been investigating methods of cheapening the cost of construction while still carrying out the requirements of the Licensing Court, but so far without success.

An application has been made by our client to another large company which conducts a number of hotels on the basis either of taking over the lease or of combining with our client for the purpose of carrying out the order, but these negotiations have so far been unsuccessful as that Company does not think the necessary investment could be recouped over the remaining term 10 of the lease.

The Company's conduct of the Hotel Plaza at Wynyard has never been criticised and in fact it claims with some justification to have rectified many undesirable features associated with the Hotel when it acquired the lease thereof.

In our client's view the only way a residential hotel on the Wynyard side could be made to pay involves a long extension of the lease and the construction of a building providing for a very large number of bedrooms, dining rooms, lounges and the like to do which would entail very substantial expenditure and 20 probably make it necessary to form a public company to provide the necessary finance.

It appears to our client impossible to develop the George Street portion only of the premises for the purposes of a hotel because of the difficulty of access thereto.

The possible courses which the Company sees available to it or to anyone else who may become the lessee, are:—

1. To get in large additional capital to enable the construction of a building much larger than the projected one which will involve an extension of the lease in order to 30 make it economically practicable.
2. To surrender to the Commissioner part of the premises, namely the land lying between Wynyard Lane and Carrington Street together with the licence to enable the Commissioner if possible to lease this area with the licence to someone else financially able to erect the large hotel required leaving the residue of the land in the lease to our client for use as commercial premises.
3. The Commissioner may apply to transfer the licence elsewhere. 40
4. To allow the licence to be suspended or cancelled, in which case our clients may be involved in the payment of £10,000.0.0 to the Commissioner in terms of the lease.
5. To seek from the Licensing Authorities reduction of the amount of new construction at present ordered by them.

As regards paragraph (1), on behalf of our client we now ask formally that the existing lease be extended for a period of at least forty-five years provided the Lessee expends on the construction of a building the sum of £750,000.0.0 at the least.

As regards paragraph (a) provision would need to be made on any surrender for the reimbursement to our client of the amounts already expended on this particular portion of the lease alone for cool rooms, extension of columns and the like.

10 If the licence is transferred or taken from the Company it proposes to utilise the site for commercial purposes including storage space, cold storage of goods in the existing cool rooms and the Hunter Street level in the first instance for the purpose of holding exhibitions, but if this latter proves unsuccessful, this area will be developed commercially as well.

20 The Company proposes at the hearing of the summons to endeavour to satisfy the Licensing Court that the licence should not be suspended or cancelled, but in the event of the Court being adverse to that it proposes to ask that the licence be suspended and not cancelled in order to give the Commissioner the opportunity of having it transferred.

On behalf of our client we seek the support of the Commissioner at the hearing of the summons and would welcome any suggestions concerning matters which might be put before the Licensing Court at the hearing or the attitude which our client should adopt.

30 While we cannot expect the Commissioner to give a firm answer concerning any of the proposals abovementioned, we feel that the matter should be discussed at an open conference with the Commissioner, which in view of the shortness of time available, we should like to have next Tuesday or Wednesday if at all possible."

On the 25th May, 1956, the solicitor for the plaintiff wrote to the solicitors for the defendant a letter in the following terms:

40 "Your letter herein of 10th instant, addressed to The Commissioner for Railways, has been referred to me with instructions to inform you that, in respect of the five possible courses referred to on page 4 of your letter under reply, the Commissioner does not agree with those numbered 2, 3, 4 and 5, and that, in respect of course 1 therein, the Commissioner takes the view that your client Company is bound under Covenant 4 of the lease of the premises in question, to construct a building in accordance with the plans approved by the Licensing Court and the Commissioner, as referred to on page 2 of your letter under reply.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

In light of the above, I am further instructed to inform you that the Commissioner hereby requires your client Company to construct a new building on the demised premises conforming with the plans referred to above, and that, in respect of Covenant 4 of the lease, time is now to be regarded to be of the essence of the contract, and unless a new building conforming with the plans referred to is constructed within eighteen months from the date hereof the Commissioner will enforce the conditions contained in the lease in respect of a breach of covenant by the lessee.”

10

On the 29th May, 1956, the Licensing Court made an order cancelling the licence as from the close of business on the 21st June, 1956.

During the proceedings before the Court the defendant made it abundantly clear that it was a financial impossibility for it to build according to the 1954 plans and that for that reason it did not propose to do so.

On the 19th June, 1956, an application by the defendant for the renewal of the licence was refused by the Licensing Court.

The defendant through the licensee lodged an appeal to Quarter 20 Sessions against both these orders.

All rent and the interest payable under clause 3 of the lease up till the 30th June, 1957, was paid to and accepted by the plaintiff.

The rent for the quarter ending 30th June, 1956, fell due on the 1st April, 1956, and was received by the defendant on the 13th April, 1956. An account dated 20th June, 1956, for interest under clause 3 in respect of the month of June was paid by cheque and posted by the defendant on the 28th June, 1956, and the receipt for this sum was dated 4th July, 1956.

Rent and interest for periods subsequently to the 30th June, 1956, 30 was tendered by the defendant to the plaintiff but the plaintiff refused to accept any further payments.

On the 8th June, 1956, the defendant retained a new architect, a Mr E. M. Nicholls, to design a new type of building which was to be economical and, in addition, to comply with the requirements of the Licensing Court. The original retainer to Mr Nicholls was in the following terms:—

“We refer to the discussion today at which we asked that you would be good enough to advise us about, and if found possible, to draw sketches for, a design and type of construction that would 40 make it possible to construct a building on the Hotel Plaza site, with a broad framework as follows.

1. Cost: Not to exceed £300,000. including built-in furniture, but excluding other furnishings.

2. Requirements:

a. Immediate:

For 63 bedrooms with ancillary services such as pantries and linen rooms etc. and with the following additions:—

A. Lounge accommodation enough to serve the above with if possible a separate lounge for the house guests, as distinct from the public lounge.

10

B. Each bedroom to have a shower recess, pedestal, and hand wash basin. Any suites to have also a plunge bath.

C. The necessary bathroom and lavatory accommodation (with plunge baths) on each bedroom floor, to satisfy the building requirements. These would presumably be blocks on each floor.

D. The built-in furniture to consist of wardrobe, dressing table, and fixed bed. The latter to operate as a lounge in the daytime.

20

E. Hot and cold running water in each bedroom.

F. Electric outlets in each room to provide if possible, for a radio relay from master receiver in basement.

G. Power outlet to provide easy usage for electric razors and bed lamp, also telephone.

H. Please also consider the question of mosquito protection. That is, if it is desirable and also possible to provide such protection with shutters instead of having to use nets.

30

I. The main entrance of the Hotel to be on Carrington Street level with foyer, office, booking desk etc., and entrance to lift.

J. Public and Saloon bars, bottle departments, shops to front on to Carrington Street. Area as large as is possible, with suggestion that area shown on present scheme modified as to shape and lay-out as your design would require. The cool room to serve these is already built on the West side of Wynyard Lane along the South boundary on the Wynyard Lane level.

40

K. Generally, the bedroom and lounge appointments will be of a standard applicable to a high class family type Hotel, which will consider its house trade to be a most profitable part of its business. It is not proposed to build a luxury hotel.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

- b. Potential in foreseeable future:
- A. That another 37 bedrooms, making a total of 100, will be built after the immediate requirements are satisfied.
 - B. That the areas over which we build are so designed as to structural strength as to permit building at any future time to the full limit of 150 feet.
 - C. That our design does not, as to the area over which we may not or do not, build, interfere **10** with extensions by the Lessor at the end of the lease, which is in 45 years.

3. General.

- A. Remember present dining room is on George Street frontage. Access from bedrooms to it. May consider if within cost limit, transfer to Carrington Street, or new dining room there, whilst retaining old one.
- B. The limit of £300,000. is to include architects and engineering fees.
- C. If more than 63 bedrooms, because of the cost of **20** construction being less, can be built, then so much the better. We realise that this letter leaves a wide latitude, and that is its intent. We do not want to restrict you, except as to cost, but wish to avail ourselves of your experience and knowledge.

We wish you to consider yourself as having complete freedom of design.

Yours faithfully,

(Sgd.) E. D. Randall

Acting Sydney Manager. **30**

P.S. The shower and toilet area for each single room need not necessarily exceed about 5 ft. x 5 ft.—that is the area in the Sea View at Honolulu. But if the shower is not of the enclosed type some provision should be made so that the dressing gown and slippers of the occupier are protected from water.”

Mr Nicholls immediately consulted with a structural engineer, Mr Llewellyn. Mr Llewellyn had been a partner with Mr Stanley in the firm of Messrs Stanley & Llewellyn from 1946. Mr Stanley had been associated with the Plaza Hotel and the various schemes in connection with it from the time Mr Gardiner was first interested in **40** the project and he had been the structural engineer responsible for the engineering details in connection with the 1954 plans until the date of his death in June, 1955. Upon Mr Stanley’s death, Mr Llewellyn took

over the completion of the structural designs for the 1954 plans and of the preparation of the final documents required for the tenders. He was thus conversant with the 1954 plans and with the structural difficulties relating to the site and also had knowledge of the sub-structure and of the various columns.

Mr Nicholls, with the benefit of consultations with Mr Llewellyn, designed and prepared plans for additions of a different type of construction from the 1954 plans, the principal features of which were a new building of three storeys on the Carrington Street frontage back to Wynyard Lane making provision for 76 additional bedrooms and with a public bar, lounge and a coffee lounge on the Carrington Street level and with a shopping court on either side of Wynyard Lane with provision for nine new shops. These plans appear to have been completed on the 25th June, 1956. I shall refer to them as the 1956 plans.

The extended columns which had been erected were suitable for the 1956 plans.

Mr Llewellyn made sufficient calculations and made sufficient preliminary steel drawings to enable a contractor to give a ceiling price for the construction of the scheme. These were apparently completed prior to the 25th June, 1956.

It was estimated that the cost of a building erected according to the 1956 plans would be £420,000.

On the 31st July, 1956, the plaintiff served upon the defendant a notice dated 31st July, 1956, under section 129 of the Conveyancing Act, 1919-1943 in respect of certain alleged breaches by the defendant of the terms of the lease. After describing the relevant land, the notice proceeded in the following terms:

“With reference to the lease of the abovementioned premises dated the 26th day of June, 1941, from The Commissioner for Railways to Rachel Gardiner and Permanent Trustee Company of New South Wales Limited duly transferred and assigned by the said Rachel Gardiner and Permanent Trustee Company of New South Wales Limited on the 14th day of February 1943 to Avrom Investments Pty. Limited the said Avrom Investments Pty. Limited expressly covenanting with The Commissioner for Railways to observe the lessee’s covenants in the said lease AND with reference to the covenants by the Lessee therein contained viz:—

Covenant 4: To expend not less than £150,000 in erecting a new building complying with any law statutory or otherwise having application thereto and to the satisfaction of any licensing authority and in accordance with such building design plan and specification as approved by the said Licensing Authority or The Commissioner for Railways.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

- Covenant 5:* To make and carry out any amendment alteration reparation or addition whether structural or otherwise which by virtue of any provision of any law statutory or otherwise or by virtue of any requirement of any licensing authority may be required to be carried out by either the Lessor or Lessee.
- Covenant 9:* To execute at the Lessee's expense any repair renovation alteration or other works whether structural or not whenever the same shall be required or notified by the said licensing authority. 10
- Covenant 29:* Not to do commit permit or omit or suffer to be done committed permitted or omitted any act directly or indirectly rendering any licence liable to be taken away withheld suspended or cancelled or a renewal of such licence refused or directly or indirectly render the licensed premises liable to disqualification from being used as an hotel inn or public house.
- Covenant 29:* To keep any licence in existence.
- Covenant 29:* To arrange and procure that the holder of any licence observe and perform covenants. 20
- Covenant 30:* To apply for and endeavour to obtain any licence or renewal for using the licensed premises as an hotel inn or public house.
- Covenant 30:* To use best endeavours to obtain a renewal of licence.
- Covenant 30:* To abstain from any opposition direct or indirect to an application for renewal of licence.
- AND the breaches by you of the abovementioned covenants THE COMMISSIONER FOR RAILWAYS hereby gives you notice and requires you to remedy such breaches by— 30
- (1) Commencing the erection of a building in accordance with plans approved by the Licensing Court and The Commissioner for Railways.
 - (2) Carrying out the Order of the Licensing Court made on 9th November, 1953, under Section 40A of the Liquor Act, 1912, as amended.
 - (3) Undertaking on the appeal from the Order of the Licensing Court dated 29th May, 1956, cancelling the licence of the 'Plaza' Hotel, to comply with the said order under Section 40A of the Liquor Act. 40
 - (4) Submitting to whatever conditions may be imposed by the Court on appeal from the said order of the Licensing Court dated 29th May, 1956, in an endeavour to obtain a renewal of the licence.

- (5) Refraining from any action which may result in the appeal from the said order of the Licensing Court dated 29th May, 1956, being dismissed, discontinued or not prosecuted.
- (6) Keeping the publican's licence for the 'Plaza' Hotel in existence.
- (7) Arranging and procuring that the holder of the licence of the 'Plaza' Hotel observes and performs the above-mentioned covenants and remedies the breaches thereof.
- 10 (8) Endeavouring to obtain a renewal of the licence for the 'Plaza' Hotel.
- (9) Using your best endeavours to obtain a renewal of licence for the 'Plaza' Hotel.
- (10) Abstaining from any opposition direct or indirect to the renewal of the licence."

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

On the 1st August, 1956, the solicitors for the defendant wrote to the solicitor for the plaintiff a letter in the following terms:—

20 "We refer to your letter of the 25th May last to which we have delayed replying as the Company desired to consider its position fully in the light of the events which had happened and were still happening.

At this juncture we do not propose to deal in detail with the demand expressed in your letter or with the matters raised in the Notice of Breach of Covenant which was served on the Company on the 31st ultimo, as we hope that this will become unnecessary, but as you are aware, our client denies that it is in any way in breach of any of the covenants in the lease. You may rest assured, however, that the Company will do everything in its power and use its best endeavours to retain the licence on the hearing of the appeals.

30

The summons issued at the instance of the Metropolitan Licensing Inspector calling upon the Licensee to show cause why his licence should not be cancelled was heard by the Metropolitan Licensing Court which on the 21st May last made an Order cancelling the licence as from the close of business on the 21st June, and the application for the renewal of the licence which was for hearing the same day was stood over until the 19th June on which date that application was also refused.

40 Appeals against both orders have been made to Quarter Sessions and are set down for hearing on the 28th inst.

Following the Order made by the Metropolitan Licensing Court on the 9th November, 1953, plans were prepared for a building containing, inter alia, sixty-three bedrooms and these plans were approved by the Licensing Court and The Commissioner for Railways, the estimated cost of the building being

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

*No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.*

£390,000. While final details of these plans were being settled the Company undertook and carried out some of the basic work required for such building expending thereon a sum in excess of £50,000 apart from fees to its architect and other technical advisers.

The lowest tender received for the work was £525,881 which with other costs already or necessarily to be incurred made the project financially and economically unsound. The delays in preparing plans and calling for tenders and the enormous tender prices were, as you are aware, caused by the demands 10 of the Department as to the basic structural design upon which it insisted.

The Company's architect advised the Company that he was unable to suggest any amendment of his plans to render the scheme practicable while at the same time conforming with the Department's requirements.

The Company then sought the advice of another architect and as a result fresh plans for the construction of a building have been prepared. These plans envisage seventy-six bedrooms on the Carrington Street frontage with a public bar, lounge, coffee 20 lounge and other facilities on the Carrington Street level. The plans also provide for what is tantamount to a public concourse and passageway through from Carrington Street to Wynyard Lane and thence via steps and the existing Wynyard Ramps to George Street, thus providing convenient public access for passengers using the Government Bus Services.

The plans allow for the building to be continued to the full permissible height and will not obstruct or prevent development of the remainder of the site to the fullest possible extent. It is too difficult for us with our somewhat limited technical know- 30 ledge of building to set out all matters relating to the building in this letter, and any information required can be supplied by the Company's architect and engineer at any time, but we hand you herewith a comprehensive and comparative statement prepared by the architect, Mr E. M. Nicholls.

Although not forming part of the proposed building and intended to form the subject of a separate work, the Company proposes to create a shopping concourse in Wynyard Lane by effectively widening the narrow area at present available to the public between the steps leading up through the proposed build- 40 ing to Carrington Street. This will be roofed over and provide shelter for members of the public proceeding from Carrington Street to George Street. We have discussed the new plans with the Metropolitan Licensing Authorities. We have every reason to believe that such plans are fully acceptable to them, and are in fact awaiting their formal approval thereof.

The cost will be a maximum of £392,000 exclusive of architects' and other fees and of the amount already expended as above-mentioned, and the proposed contractor estimates that the work will be completed within fourteen months from the time of commencement, which is likely to be early November.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

10 The Company proposes to enter into a contract forthwith with the contractor for the construction of the proposed building, such contract being subject of course to the approval of all necessary Authorities being given and to the Company succeeding in retaining the licence.

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

The plans are being submitted forthwith to the City Council for its approval.

We hand you herewith a copy of the plans and specifications prepared by the Architect, Mr E. M. Nicholls together with a booklet containing photographs and floor layouts of modern hotels, which booklet we would ask you to return to us in due course. We now seek the approval of The Commissioner for Railways to these plans and specifications in lieu of the plans formerly submitted and approved.

20 If the Commissioner's approval is given, we are advised by Senior Counsel that the Company's appeal to Quarter Sessions has every prospect of success. In this event, the Company will under the terms of its contract be obliged to proceed forthwith with the construction of the building, and the Commissioner for Railways will have a building containing seventy six first class bedrooms with bathrooms and other facilities including telephone and radio costing well over £400,000 by the end of 1957. In addition the City of Sydney would have another first-class hotel in a central and desirable position in lieu of the partly developed and unsightly area at present existing between
30 Wynyard Lane and Carrington Street.

The contractors with whom the Company proposes to deal are Civil and Civic Contractors Pty. Limited who are at present engaged in the construction of the Caltex Building, and the quality of their work is, in the opinion of Mr E. M. Nicholls, the best he has seen.

40 It will be appreciated that the Company has incurred considerable expenditure and devoted much time to the abovementioned arrangements which are now firm, subject to the Commissioner's approval.

It is requested that a conference be held between the Company's representatives and the Commissioner to discuss the proposals.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

It is requested also that the Commissioner's technical advisers confer with Mr Nicholls and the Company's engineer Mr Llewellyn, and arrangements to inspect Caltex House and the type of construction employed therein can be made.

In view of the fact that the Quarter Sessions Appeals are to be heard on the 28th inst. urgent attention to these matters is requested.

Yours truly,
(Sgd.) Sly & Russell.

P.S. Since writing the above we have ascertained that the statement prepared by the architect and referred to at the bottom of page 2 has taken the form of a plan showing the comparative areas in the two sets of plans."

On the 14th August, 1956, the solicitor for the plaintiff wrote to the solicitors for the defendant a letter in the following terms:—

"Your letter of 1st August instant is acknowledged. The allegations therein and particularly in the sixth paragraph thereof are, on my instructions, completely unfounded.

The Commissioner takes the view that the lessee was bound to erect the building which has been approved by him under the 20 lease and which the Licensing Court on 31st May 1953 ordered the lessee to build, and the Commissioner does not propose to diminish his rights in this regard or to waive the breaches of covenant on the part of the lessee."

On the 15th August, 1956, the solicitors for the defendant wrote a letter to the solicitors for the plaintiff in the following terms:—

"We refer to our letter of the 1st instant to which we have not received any reply or even an acknowledgement thereof.

As we pointed out the Appeals to Quarter Sessions relating to the license of the Hotel Plaza are to be heard on the 28th instant 30 and we requested urgent attention to the matters raised in our letter which included a request for a conference between our client's representatives and the Commissioner for Railways.

As we also informed you we have every reason to believe that the plans submitted with our letter will be acceptable to the Licensing Authorities and that they will be approved by the City Council, and that if the Commissioner's approval is given thereto we have been advised by Senior Counsel that our client's appeal to Quarter Sessions has every prospect of success.

Finance to carry out the proposed building has been for some 40 time, and still is, available and our client has completed arrangements with the proposed Contractor and will within the next week or so have entered into a firm contract for the erection of the

building subject to certain conditions, of course, one of which is the Commissioner's approval to the plans and to the expenditure thereon of the specific sum involved.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

10 It will be seen, therefore, that the only matter still outstanding which is likely to prevent the construction of a first class hotel at Wynyard is the consent of the Commissioner. Without wishing at this stage to deal further with the Notice of Breach of Covenant served upon our client by the Commissioner dated the 31st July last, we draw your attention to the numbered paragraphs on pages 4 and 5. What the Commissioner requires our client to do by such Notice is exactly what our client is endeavouring to do but to enable it so to do it is obvious that the consent of the Commissioner of Railways to the plans and specifications submitted is required.

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

We again ask you to deal with this matter as one of extreme urgency."

On the 17th August, 1956, the solicitor for the plaintiff wrote a letter to the solicitors for the defendant in the following terms:

20 "Your letters of 1st and 15th instant are acknowledged. The allegations therein, particularly in the sixth paragraph of the letter of 1st instant, are, on my instructions, completely unfounded.

30 The Commissioner takes the view that the lessee was bound to erect the building which has been approved by him under the lease and which the Licensing Court ordered the lessee to build in 1953, and in respect of which there was formal approval of plans by the Court in 1954. The Commissioner does not propose to diminish his rights in respect of the erection of the above-mentioned building, nor does he propose to waive the breaches of covenant on the part of the lessee.

40 It is pointed out that the Commissioner has spent £109,134 at the request of the lessee in the erection of columns and substructure (vide clause 3 of the lease) to support a building which would occupy substantially the whole of the land the subject of the lease, and the Commissioner has, in his view, always been entitled to have a building erected which would be based upon the whole of such columns and substructure. It is further pointed out that the expenditure of £109,134 was at a time when currency was at its pre-war value, and that the value of this expenditure today approximates £450,000.

In 1953 when the plans for a building were submitted to the Commissioner by the lessee, the Commissioner, in approving such plans, made substantial concessions to the lessee in that the building would only occupy approximately two thirds of the site. It is certainly not now proposed by the Commissioner that

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

his rights in respect of such building should be jettisoned so that, in lieu of such building, there will be erected by the lessee a building which will occupy, at the most, no more than one third of the site.

It is not agreed that the lessee's present proposal is in accordance with the requirements of the Notice of Breach of Covenant herein, but, on the contrary, the lessee has indicated in no uncertain manner that it does not proposed to remedy the breaches of covenant.

The lessee is required at the hearing of the appeal to undertake 10 to the Court that it will forthwith commence the erection of the building approved by the Commissioner and the Licensing Court in 1954, and to satisfy the Court that it will complete such building with a minimum of delay."

On the 22nd August, 1956, the solicitor for the defendant wrote a letter to the solicitor for the plaintiff in the following terms:—

"We acknowledge your letter of the 17th instant, contents of which are astonishing.

Adverting to your letter of the 25th May last and to the notice purporting to be under Section 129 of the Conveyancing Act 20 of the 31st July last we find it somewhat difficult to appreciate the Commissioner's sudden assertion that breaches of the lease have occurred as prior to the receipt of such notice no allegations of any breach of covenant had been made at any time.

Apart from the allegation that the Lessee did not construct a new building within two years from the date of commencement of the term and that it did not carry out the additions within the time required under the Order made by the Licensing Court on the 9th November 1953, we know of no matter which could possibly be construed as a breach of any of the covenants and 30 conditions of the lease.

If, therefore, there are any such known to you, we shall be glad to receive particulars and to be referred to the covenant alleged to be breached, and in this regard we refer particularly to the second and fifth paragraphs of your letter of the 17th instant and to the notice in which breaches of covenant are alleged but no details given.

As regards Clause 4 of the lease, apart from any other considerations if any breach did occur by reason of the failure of the Lessee to build within two years, such breach has been 40 waived by the Commissioner by his subsequent acceptance of rent.

Clause 4 of the lease does not impose upon the Lessee the obligation to build any particular building or a building over the whole of the site and we therefore cannot agree that the

Lessee is bound to carry out the additions, the plans of which were approved by the Licensing Court and the Commissioner in 1954 nor that the Commissioner has the right now to stipulate what building must be erected or to set a fixed time for the erection of the building as set out in your letter of the 25th May last or to force the Lessee to expend on such building a sum out of all proportion to the £150,000 mentioned in Clause 4.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,

11th
February,
1958—
continued.

10

In this connection we refer to the third paragraph of your letter of 17th instant and would like to point out that the Lessee's obligation is to expend a minimum of £150,000. With the new plans contemplated the building will cost well over £400,000 so that on any comparison of relative values the Lessee suffers from the depreciated value of currency just as much as the Commissioner.

With reference to your letter of the 17th August we think the Commissioner has overlooked the fact that the building contemplated by the plans approved in 1954 was not ordered by the Licensing Court.

20

The Court required certain additional construction and it was the Lessee who prepared the plans and submitted them to the Licensing Court as sufficient compliance with the Order. For good reason the Lessee now desires to comply with the Order by constructing a building in accordance with different and better plans, and these plans are acceptable to the Licensing Court.

Our client has noted with some amazement various statements in the Press attributed to a representative now in this country of the Hilton Group of Hotels to the effect that the Plaza site had been offered to the Hilton Group on which to erect a hotel.

30

It is also noted that contemporaneous in point of time with such statements, the Commissioner alleges for the first time, that the Lessee is in breach of the lease, and we are also surprised to notice that none of these statements attributed to the representative of the Hilton Group have been in any way denied by the Commissioner.

On the 15th inst. the Commissioner personally promised the Acting Manager in New South Wales of the Lessee that he would telephone her not later than yesterday and make an appointment for the Lessee's representatives to see him concerning the new plans.

40

Yesterday the Secretary for Railways advised the Lessee's Acting Manager that your letter of the 17th inst. had the approval of the Commissioner and set out the official attitude of the Department and that the Commissioner did not propose to grant the desired interview.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

The plans for satisfying the requirements of the Licensing Authorities are the ones submitted to you with our letter of the 1st inst. which the Commissioner, despite our persistent requests, apparently refuses even to consider.

In our letter of the 1st inst. it was requested that the Commissioner's technical advisers confer with the Lessee's technical advisers so that any technical explanations could be given, but it is apparent to us from the foregoing that the Commissioner has at no time considered the plans, and at all times has refused so to do.

10

Upon the Lessee ascertaining that the construction of the original building planned by it was economically unsound as well as being in accordance with building ideas long out of date, it sought other advice and now has plans for a building which

- (i) is economically practicable
- (ii) provides facilities of a much higher standard and of considerably greater extent
- (iii) can easily be extended to the maximum permissible height
- (iv) will allow construction over other parts of the site 20
- (v) is in accordance with modern conceptions of hotel construction, and
- (vi) provides considerable benefits to the travelling public.

The Lessee has also arranged with a contractor whose work is of the highest standard to erect the building within approximately eighteen months from its commencement subject of course to the appeals to the Court of Quarter Sessions being successful.

The plans have been submitted to the Licensing authorities who have advised that such plans meet with the approval of the Licensing Magistrates and had they been submitted at an earlier stage they would have been acceptable as a compliance with the Order made on the 9th November, 1953.

30

The plans have also been submitted to the City Council and its approval thereto is expected any day.

Senior Counsel has advised that if, in addition, the consent of the Commissioner for Railways be given to these plans the appeals to the Court of Quarter Sessions relating to the cancellation and non-renewal of the licence have every chance of success.

It will be seen therefore that the consent of the Commissioner 40 to the plans is the only matter outstanding which is likely to prevent the construction of a first class hotel building on the Wynyard site at a cost to the Lessee well in excess of £400,000.

Turning now to the notice purporting to be under Section 129 of the Conveyancing Act and the requirements of the Commissioner as set out on pages 4 and 5 thereof, we would point out that what such notice requires the Lessee to do is exactly what the Lessee is endeavouring to do.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

We cannot therefore see 'how the Lessee has indicated in no uncertain manner that it does not propose to remedy the breaches of covenant', assuming always, which we do not admit, that breaches of covenant have occurred.

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10 If the Commissioner's consent to the plans is given the Lessee will be able and in fact will be contractually bound, subject to the appeals being successful, to commence a building in accordance with plans approved by the Licensing Authorities and the Commissioner as required by Clause 1 on page 4 of such notice and moreover the requirements of Clauses 2 to 10 inclusive on pages 4 and 5 of such notice will be satisfied again assuming that the appeals are successful.

20 We find it difficult therefore to understand why the Commissioner by endeavouring to insist on the Lessee doing something far in excess of the requirements imposed upon it under the lease should by his own act render it impossible to observe the terms thereof.

On the one hand the Commissioner by his notice of the 31st July last calls upon the Lessee to take certain action upon various matters and on the other by his refusal to consent to the new plans or even to consider them, renders it impossible for such action to be taken.

30 If the Commissioner for Railways arbitrarily and unreasonably refuses his approval to the new plans submitted with or without amendments thereto and as a result the appeals to the Court of Quarter Sessions are unsuccessful then the loss of the publican's licence of the Hotel Plaza will be directly attributable to the Commissioner's attitude and our client will be compelled to avail itself of the legal remedies available to it consequent upon the damages it will suffer.

As the appeals are definitely listed for hearing on 28th instant we again ask the Commissioner as an extremely urgent matter to reconsider his attitude and we again seek the conference for which we asked in the first instance."

40 On the 24th August, 1956, a contract was entered into between the defendant and a building contractor to construct a building in accordance with the 1956 plans for £433,800 subject to modifications in price as provided for in the said contract.

On the 24th August, 1956, the 1956 plans were approved by the Council of the City of Sydney. Prior thereto, the Council had received

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

preliminary structural steel drawings, the practice being that the Council, prior to giving their preliminary approval, need the general sizing and that as the job proceeds detailed drawings are submitted to the Council for approval.

The plans had been submitted to the Fire Board and the Chief Secretary and no objections had been raised by these authorities.

On the 27th August, 1956, the solicitor for the plaintiff wrote a letter to the solicitors for the defendant in the following terms:—

“I acknowledge receipt of your letter of 22nd instant in reply to mine of 17th instant. 10

In view of your client's refusal on 29th May, 1956, to erect the building as ordered by the Licensing Court, and as approved by the Commissioner, and in view of the attitude of your client before the Court which brought about the cancellation of the licence, it should scarcely be ‘astonishing’ that the Commissioner is taking appropriate action necessary to protect his rights.

The attitude adopted by your client before the Licensing Court was subsequent to my letter of 25th May, 1956, in which your client was notified that it was required to construct a new building conforming with plans approved by the Court and the Commissioner, and that unless such building was constructed the Commissioner would enforce the conditions contained in the lease in respect of a breach of covenant by the lessee. Despite this notice your client deliberately defied the Order of the Court and refused to erect the building. In this connection attention is drawn to the following extracts from the transcript taken during the proceedings before the Licensing Court on 29th May, 1956:— 20

Statement by Counsel for Lessee: ‘It is all very well for the Press to criticise us, but if anyone has any constructive 30 ideas about the matter, we would like to know, because we have done all we can to ensure that this building will be built, and we can do no more.’ (Page 4).

‘The only case, I think, that we can put to the Court is this: Is there anyone else who would carry out the requirements of the Court or, to put it alternatively—that the Building Lessee has done all in its power to do that which has been ordered. And that which has been ordered is now completely without its power’.

‘We have overcome them, and we have got our tenders— 40 and then we get this blow; the sum of £670,000, we suggest, is an economical impracticability. We realise that having the license must be weighed with the burdens associated with the licence. But the burdens associated

with this project would be that no one would ever want the Licence.' (Page 6).

Evidence of Lessee's Secretary, Royal Stone Connolly, Sergeant Brownette:

Q. The conference with the Railway Commissioner so far as the building of this Hotel and the economic position was concerned was abortive? A. Yes.

10 Q. The only thing that has arisen is that he has told you that the Railway Commissioners have told you to build the Hotel? A. Yes. (Page 9).

Q. The Commissioner doesn't agree with Nos. 2, 3, 4 and 5—he does not agree with any extension of the lease whatsoever? A. No.

Q. And the only thing he puts is that you are bound by covenant to complete the building? A. Yes.

Q. Have you come to the conclusion now that the Court can expect nothing from your Company in relation to the building of this Hotel? A. I don't think that is quite so.

20 Q. You have indicated to the Court that it is an economic and financial impossibility to build it? A. To the cost of say £635,000.

Q. You are not going to put another proposition to put? A. We have been considering any way to satisfy the Court.

Q. We can expect nothing from the Company in regard to the building? A. Not the completion.' (page 9).

Sergeant Brownette:

Q. You have indicated that it is an economic and financial impossibility for the Company to build the premises? A. Yes.

30 Q. You say the Company refuses to build the premises? A. As set out in the plan—yes, they must—they can't build it'. (page 10).

40 It is noted that the lessee admits that the failure to 'carry out the additions within the time required under the Order made by the Licensing Court' could well be construed as a breach of covenant. The 'additions' to which reference is made constitute the building approved by the Court and the Commissioner. Time was extended for compliance with the Court's Order until eventually on 29th May, 1956, during the course of proceedings before the Licensing Court, the lessee refused to erect the building approved by the Court and the Commissioner, and, because of such refusal, secured no further extension of time and brought about the cancellation of the Licence.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

The Notice under Section 129 of the Conveyancing Act is in accordance with the prescribed form, and leaves no doubt as to the breaches of covenant committed by the lessee. However, so that there may be no complaint in this regard you are advised again as to breaches of covenant as follows:—

CLAUSE 4: (Pages 5 and 6 of the Lease).

On 29th May, 1956, the lessee refused to erect, construct and complete a new building in every respect complying with any provision of any law, statutory or otherwise, having application thereto and to the satisfaction of the Licensing Authority 10 and the lessor in under over through or along the demised premises in accordance with such building design, plan and specification as the Licensing Authority and the lessor had approved under Clause 4.

CLAUSE 5: (Page 6 of the Lease).

On the 29th May, 1956, the lessee refused to make and carry out structural amendments alterations reparations or additions which, by virtue of the provisions of a law having application to the demised premises (viz. the Liquor Act, 1912, as amended), and which, by virtue of the requirements of the 20 Licensing Authority (viz. the Order of the Licensing Court under Section 40A of the Liquor Act), were required to be made or carried out in and upon the said demised premises.

CLAUSE 9: (Page 6 of the lease).

On the 29th May, 1956, the lessee, having been required and notified by the Licensing Authority (viz. the Order of the Licensing Court under Section 40A of the Liquor Act) to execute and do and cause to be executed and done structural repairs renovations alterations or other work, refused to execute or do or cause to be executed or done such structural 30 repairs renovations alterations or other works.

CLAUSE 29: (page 10 of the Lease).

On 29th May, 1956, the lessee by its actions and omissions at the hearing before the Licensing Court rendered the licence liable to be cancelled and a renewal of such licence refused.

CLAUSE 29: (page 10 of the lease).

On 29th May, 1956, the lessee at the hearing before the Licensing Court refused to do an act necessary for keeping the licence in existence.

CLAUSE 29: (page 10 of the lease).

40

On 29th May, 1956, the lessee did not arrange for and procure that the holder of the said licence observed and performed

the terms provisions and conditions of Clause 29 applicable to him, by reason of which non observance and non performance the licence was cancelled.

CLAUSE 30: (pages 10 and 11 of lease).

On 29th May, 1956, and on 19th June, 1956, the lessee did not endeavour to obtain a renewal of the licence.

CLAUSE 30: (pages 10 and 11 of lease).

On 29th May, 1956, and on 19th June, 1956, the lessee did not use its best endeavours to procure a renewal of such licence.

10

CLAUSE 30: (pages 10 and 11 of lease).

On 29th May, 1956, and 19th June, 1956, the lessee did not abstain from acts and omissions which amounted to both direct and indirect opposition to an application for renewal of such licence.

In reference to the fifth paragraph of your letter under reply, attention is drawn again to my letter of 25th May, 1956, and, in view of the refusal of the lessee on the 29th May, 1956, to erect the building approved by the Licensing Court and the Commissioner, there was clearly a breach of Clause 4, which has not been waived by any acceptance of rent.

20

Where, as in this case, at the time of execution of the lease the lessor, at its own expense and at the request and on behalf of the lessee, had erected and constructed columns and sub-structure over the whole of the demised site, surely it cannot be seriously suggested that the lessee is not under an obligation to erect a building occupying the whole of the demised site. When one considers, in addition, that the original tender and plans submitted provided for a building covering the whole area of the demised site, and that a special Act of Parliament was passed to enable Wynyard Lane to be built over to achieve this result, it renders your contention in this regard completely untenable. The attitude adopted in the sixth paragraph of your letter, therefore, cannot be supported, and the assertions that the Commissioner has no 'right now to stipulate what building must be erected or to set a fixed time for the erection' of such building, evidences either a complete misunderstanding of the position or an intention on the part of the lessee to evade its real obligations under the lease.

30

With regard to your comments concerning the cost of the building and relative values, it is again emphasised that the Commissioner's expenditure on the foundations is equivalent to an expenditure of, approximately, £450,000 at the present value of money. It is pointed out that the lessee could have faced

40

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.
—
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.*

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

up to its obligations in respect of the building some years ago, and that, if it had done so, much of its complaint concerning cost of building would not have arisen. The Licensing Court, in its recent decision, commented that the lessee 'showed no sign of commencing to build the hotel as soon after 30th September, 1952, as was reasonable.'

It is not agreed that the plans approved by the Licensing Court in 1954 were not the subject of an Order under the Liquor Act. Attention is drawn to the following extract from page 1. of the transcript before the Licensing Court on 29th May, 1956— 10

'Sergeant Brownette: I understand Mr. Wales will admit that the order has not been complied with.

Mr. Wales: Yes.'

It is not possible, as a matter of law, to comply with an Order to build a particular building by refusing to build that building and offering to build another building which is not the subject of the Order. It is not understood what is meant by the phrase 'these plans are acceptable to the Licensing Court', which appears at the end of paragraph (9) of your letter. The Commissioner knows of no application to the Licensing Court which 20 has been made by the lessee or any person in respect of such plans, nor could any application to that Court, at this stage, be properly made or legally entertained.

In respect of the tenth and eleventh paragraphs of your letter, the lessee has no right to make such wrong and prejudicial insinuations, particularly when it is more than obvious that the Commissioner took his present stand on the 25th May, 1956. The Commissioner takes the view that the proper course for the lessee to adopt at the hearing of the pending appeal is to under- 30 take to erect the building approved by the Commissioner and the Court in 1954. If this undertaking were given, and adhered to, and if the licence were thereby preserved, I am instructed that the Commissioner would regard such actions on the part of the lessee as a substantial remedying of the breaches of covenant on its behalf.

I am instructed that the statement in paragraph 12 of your letter is incorrect.

In answer to the 14th and 15th paragraphs of your letter, you are referred to the fourth paragraph of my letter of 17th instant. Plans for a building occupying less than a third of the 40 site do not merit serious consideration.

In any event, the allegations that the plans provide facilities of a much higher standard and of considerably greater extent

made in paragraph 16 of your letter could not possibly be substantiated, especially when it is considered such plans are for a building occupying less than one third of the site.

The 'considerable benefits to the travelling public' would appear to consist solely in the fact that the lessee will be enabled to conduct two completely disconnected hotels under the one licence.

The allegations in paragraph 18 of your letter must be unfounded, as the procedures and purported approvals therein referred to would not, and could not, be entertained, or given.

It is urged upon your client that there is one way, and only one way, in which the appeal could have the best chance of success, and that is for your client to undertake to erect the building the subject of the Order under section 40A of the Liquor Act.

The present predicament of the lessee is entirely one of its own making, and the cancellation of the licence followed upon the default of the lessee. In the circumstances, it is hardly appropriate to thrust plans upon the Commissioner a short time before the hearing of the lessee's appeal and to threaten the Commissioner with an action for damages because he will not diminish, or relinquish, his rights under the lease.

In conclusion, it is pointed out that when the requirement was made in the Notice under Section 129 of the Conveyancing Act, that the lessee submit to whatever conditions might be imposed on appeal from the Order of the Licensing Court, the Commissioner had in mind that the Appellate Court would require an undertaking from the lessee that it would erect the building approved by the Licensing Court and the Commissioner in 1954.

Having regard to the views about the matter as expressed in this and earlier letters, it is felt that no good purpose can be achieved by holding any further conferences to discuss the technical aspect of your most recent plans."

On the 28th August, 1956, the appeals to Quarter Sessions from the two decisions of the Licensing Court came on for hearing. Upon certain undertaking being given on behalf of the defendant, the Chairman of Quarter Sessions set aside the order for cancellation of the licence and set aside the order refusing the continuation of the licence and renewed the licence on payment of the prescribed fees. In the transcript of the proceedings the undertakings are referred to in the following terms:—

"The undertakings that have been agreed upon between the Crown and the lessee are these:—

(1) The lessee undertakes within 7 days from the date hereof to make application to the Licensing Court under

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

Section 40 (A) (ii) to vary the terms of the order of the Court made on the 9th of November, 1953, by ordering the commencement and erection of a building in accordance with the plans marked Exhibit 1 as varied by the requirements of the Council of the City of Sydney marked Exhibit 2.

(2) The lessee undertakes immediately upon such application being made to apply to the said Court for its approval of the said plans as varied.

(3) The lessee undertakes within 2 months from the date of the Court's approval of the said plans as varied to use its 10 best endeavours to obtain the approval of all the necessary authorities, including the lessor, to the erection of the said building in accordance with the said plans as varied.

It is intended between us that if in fact we are unable to satisfy the Licensing Court that we can either get the lessor's approval, or build the building without approval, that the licence must be cancelled."

On the 5th September, 1956, the defendant made an application to the Licensing Court in the following terms:—

" . . . for a variation of the Order made under the said Sec- 20
tion on the 9th November, 1953, so as to require in lieu of the
100 bedrooms 4 sitting rooms and other facilities as required by
the said Order, the construction of 76 bedrooms and other facili-
ties as set out in plans prepared by Mr E. M. Nicholls, Architect
and lodged herewith, at an estimated cost of £433,800, the work
thereon to be commenced and completed on such dates as the
Court considers reasonable in lieu of the dates of commencement
and completion specified in such Order, and the said Company
doth hereby apply for the approval of the Court to the said plans,
upon the following grounds:

1. That the said plans provide a modern building suitable for 30
the requirements of the site and capable of full future
extension at a minimum of cost.
2. That the said plans are superior to and provide greater
facilities than the plans previously approved by the
Court.
3. That it is uneconomical to construct the building according
to the said plans previously approved for reasons set
out in the transcript of proceedings on 29th May, 1956,
before the Court on the hearing of a summons calling 40
upon the Licensee of the said hotel to show cause why
his licence should not be suspended or cancelled and
in the transcript of proceedings before the Court of
Quarter Sessions on the 28th August, 1956, to both of
which the Company craves leave to refer."

and the hearing of this application was fixed for the 18th October, 1956.

On the 19th September, 1956, the defendant lodged an application to the Licensing Court in the following terms:—

10 “*AVROM INVESTMENTS PROPRIETARY LIMITED* a Company duly registered under the Companies Act of the State of Victoria and having its registered office at Number 229 Elizabeth Street Melbourne in the said State and registered as a foreign company under the Companies Act of the State of New South Wales the registered office of which in New South Wales is at Room 333 Rawson Chambers, Rawson Place, Sydney being the occupier of the licensed premises known as the ‘Plaza Hotel’ situated at Number 291 George Street Sydney doth hereby pursuant to Section 40A of the Liquor Act 1912 as amended apply to the Court for an authority to carry out the work specified in the Order made under the said Section on the 9th November, 1953, upon the ground that the Commissioner for Railways being the owner of the said licensed premises has failed to carry out the same within the time allowed by the Court.”

20 With this application was a covering letter asking that it come on for hearing at the same time as the other application. Counsel for the defendant stated that this second application was filed in case without it the Court might not have jurisdiction to consider the principal application.

On the 4th October, 1956, the plaintiff commenced this suit by statement of claim.

30 On the 5th October, 1956, the plaintiff filed a notice of motion for an interlocutory injunction. The principal relief asked for at this stage was an injunction restraining the defendant from proceeding with its application to the Licensing Court. The motion was heard on the 14th, 15th, 16th and 17th days of October, 1956, and in the result I held that the plaintiff had not satisfied me that, upon the balance of convenience, any order for an injunction should be made. I adjourned the motion until the hearing of the suit with liberty to either party to restore it to the list at any time.

On the 18th October, 1956, the defendant’s application to vary the order made under section 40A came on before the Licensing Court.

40 On the 2nd November, 1956, the plaintiff applied for an order which would finally dispose of the motion at that stage and some additional facts were placed before me. On this application, in lieu of the orders I made on the 17th October, 1956, I dismissed the motion and reserved the question of the costs of the motion and of the application.

The plaintiff then applied to the High Court of Australia for special leave to appeal from this order. The High Court granted special leave to appeal “subject to the condition that if the appeal pursuant

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

to such leave be dismissed on any ground other than the ground that it was or would be right to refuse an interlocutory injunction on the balance of convenience, then the proposed appellant will submit to the dismissal of the suit in the Supreme Court in its equitable jurisdiction." The High Court also ordered that, if the applicant declined to accept the condition, the application was to be dismissed with costs and gave the applicant until the end of the High Court vacation (which was the 8th February, 1957) to make the election.

On the 5th February, 1957, I indicated that the hearing of the suit could be fixed for the 5th March, 1957, and that, if the plaintiff elected not to proceed with the appeal, the suit would be heard on that date. 10

The plaintiff elected not to pursue the appeal so that the application for special leave stood dismissed with costs.

There had been many adjournments of the hearing before the Licensing Court and finally the day set aside for the hearing was the 5th March, 1957.

On the 15th February, 1957, the defendant applied for an adjournment of the suit but this application I refused.

On the 5th March, 1957, the suit came on for hearing and on the same day the further hearing of the other application came on before the Licensing Court. 20

The application before the Licensing Court proceeded some distance but the further hearing was adjourned and still stands adjourned.

The hearing of the suit extended over a long period and from time to time applications for the amendment of and the re-amendment of the pleadings were made, particularly by the plaintiff. As it appeared to me that the facts relating to the subject-matter of the amendments proposed from time to time were not really in dispute and that any prejudice could properly be compensated by an appropriate order for costs, I saw fit to allow the amendments requested. 30

The issues as finally presented appear from the amended pleadings.

The amended statement of claim, after referring to the parties and the land in question, proceeded as follows:—

"4. ON the twenty sixth day of June One thousand nine hundred and forty one the Plaintiff as Lessor and one Rachel Gardiner and the Permanent Trustee Company of New South Wales Limited as Lessee executed a lease being a Memorandum of Lease under the Real Property Act and a Deed of Lease of the lands described in paragraph (3) hereof the said lands to be held by the said Rachel Gardiner and the Permanent Trustee Company of New South Wales (therein called 'Lessee') for the term of sixty years computed from the first day of July one thousand nine hundred and forty one subject to the exceptions 40

provisos reservations conditions and covenants contained in the said lease and the Plaintiff craves leave to refer to the said lease as if the same were fully set forth herein.

10 5. *THE* Plaintiff prior to the execution of the said lease was requested by the Lessee referred to in the said lease to expend certain moneys for the benefit and purposes of the said Lessee in the erection or construction of certain permanent improvements of the lands to be demised under the said lease and under a laneway known as Wynyard Lane in pursuance of designs and detail drawings prepared by the lessee of columns and substructure over substantially the whole of the demised lands of sufficient strength to support a building of thirteen floors to the maximum building height of one hundred and fifty feet and the said lessee then represented to the Plaintiff that if the plaintiff would agree to do the said work within the times and upon the conditions then stipulated the said lessee would erect upon such columns and substructure a building of thirteen floors to the maximum permissible building height according to certain designs then produced by the said Lessee to the plaintiff and would spend in the construction of such building a sum of Six hundred thousand pounds (£600,000) and thereupon the plaintiff in pursuance of the said request and relying upon the said representation agreed to construct such permanent improvements upon the land being the said columns and substructure within the times and upon the conditions aforesaid.

30 5A. *THE* Plaintiff in pursuance of the said agreement did thereafter erect such columns and substructure in accordance with the said designs and detailed drawings and in so doing expended a sum considerably in excess of the sum of One hundred and nine thousand one hundred and thirty four pounds five shillings and nine pence (£109,134.5.9).

5B. *SUBSEQUENTLY* it was agreed between the plaintiff and the said Lessee that the Lessee should pay to the plaintiff interest upon One hundred and nine thousand one hundred and thirty four pounds five shillings and nine pence (£109,134.5.9) being part of the sum expended by the Plaintiff in the construction of the said columns and substructure at a rate of interest then mutually agreed upon between the plaintiff and the Lessee.

40 5c. *PLANS* and designs for the said building of thirteen stories referred to in paragraph (5) hereof were submitted by the said Lessee to the Plaintiff and the Plaintiff approved such plans and designs.

5d. *AFTER* the granting of the said lease the said Lessee erected on part of the said land a certain building in accordance with plans and specifications submitted to and approved by the

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

Plaintiff such approval being given without prejudice to the Plaintiff's rights or in derogation of the Lessee's obligations under Covenant 4 of the said lease and such building being in part in accordance with the plans and designs referred to in paragraph (5A) hereof and in such part in performance pro tanto of the Lessee's obligation under the said covenant.

6. *BY* the said lease the Lessee covenanted with the Plaintiff in respect of the said sum of One hundred and nine thousand one hundred and thirty four pounds five shillings and nine pence (£109,134.5.9) in the words and figures following that is to 10 say—'

The terms of clause 3 of the lease are set out.

'7. *UNDER* the said lease the Lessee covenanted with the Plaintiff inter alia in the words and figures following, that is to say:—'

Here the following provisions of the lease are set out: 4, 5, 9, 10, 12, 16, 17, 29, 30, 31, 33, 34, 35, 36 and 37.

'8. *UNDER* the said lease the Plaintiff covenanted with the Lessee in, inter alia, the words following that is to say:—'

The covenant in the lease as to removal of fixtures, etc. is then 20 set out.

'9. *UNDER* the said Lease the Plaintiff and the Lessee agreed and declared inter alia as follows:—'

I, V, VIII, IX, XI and XII of the lease are then set out.

'10. *BY* mutual consent of the Plaintiff and the Lessee the time for compliance by the Lessee with Covenant 4 as set forth in the seventh paragraph hereof was extended and on the 24th day of February, 1943, the said covenant remained to be complied with and performed by the Lessee.

10A. *ALTERNATIVELY* to paragraph 10 hereof the Plaintiff 30 says that at the request of the said Lessee the Plaintiff before the expiry of the said two years acceded to a postponement of the times for compliance by the said Lessee with covenant 4 of the said Lease as set forth in paragraph (7) hereof.

11. *ON* the said 24th day of February, 1943, the Lessee with the consent of the Plaintiff transferred and assigned to the Defendant Avrom Investments Proprietary Limited the estate and interest of the Lessee in the lands demised under the said lease and the said Defendant Avrom Investments Proprietary Limited entered into covenants with the Plaintiff in a Memorandum of Transfer of Lease and a Deed both executed on the 40 said 24th day of February, 1943, in the words and figures following that is to say:—'

The terms of the memorandum of transfer of the lease and of the deed are then set out.

“11A. *IN* further alternative to paragraph (10) the Plaintiff says that at the request of the Defendant Avrom Investments Proprietary Limited the Plaintiff before the expiry of the said two years acceded to a postponement of the time for compliance by the said defendant with Covenant 4 of the said lease as set forth in paragraph (7) hereof.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

10 12. *THE* Defendant Avrom Investments Proprietary Limited submitted to the Plaintiff plans and specifications for the erection of a building in pursuance of Covenant 4 of the lease as set forth in paragraph (7) hereof and on the twenty-first day of May, 1954, the Plaintiff approved such plans and specifications.

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

20 12A. *ALTERNATIVELY* to paragraphs (10), (10A), (11), (12) hereof the Plaintiff says that the Defendant Avrom Investments Proprietary Limited did not comply with Covenant 4 of the lease within the time required by the said covenant whereupon the said Defendant became liable to the Plaintiff for damages for breach thereof and that thereafter it was agreed between the Plaintiff and the Defendant that the Defendant should build the building referred to in paragraph (5c) or a building utilising the columns and substructure referred to in clause 5 hereof and the full available area of the demised land to the Plaintiff's approval within a reasonable time and that the Plaintiff should accept the said promise of the Defendant in discharge of the Plaintiff's rights against the Defendant consequent upon the failure of the Defendant to build a building on the said land in accordance with Covenant 4 of the said lease within the said period of two years.

30 12B. *AFTER* the making of the agreement set forth in paragraph (12A) hereof the Plaintiff agreed in and about May, 1954, that the Defendant might build on the land a building according to certain plans and specifications then proffered by the Defendant to the Plaintiff and approved by the Plaintiff but so that such agreement and approval of the Plaintiff and the building of such building in accordance with such lastly mentioned plans should not release the Defendant from the agreement referred to in paragraph (12A) hereof.

40 12BB. *ALTERNATIVELY* to paragraph (10A), (11), (12) and (12A) hereof the Plaintiff says that the Defendant Avrom Investments Proprietary Limited did not comply with Covenant 4 of the said lease within the time required by the said Covenant *WHEREUPON* the Defendant became liable to the Plaintiff for damages for breach thereof and that thereafter it was agreed between the Plaintiff and the Defendant that the Defendant should build the building according to certain plans and specifications approved by the Plaintiff at the request of the said Defendant on the twenty first day of May, 1954, and that the

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

Plaintiff should accept the said promise of the Defendant in discharge of the Plaintiff's rights against the Defendant consequent upon the failure of the Defendant to build the building on the said land in accordance with Covenant 4 of the said lease within the said period of 2 years.

12c. *THE* Defendant Avrom Investments Proprietary Limited pursuant to one of the agreements set forth in paragraph (12A) and (12BB) hereof, or to the approval mentioned in paragraph (12) or the approval mentioned in paragraph (12B) hereof commenced to erect the building referred to in paragraph (12A) 10 hereof but after a time refused and neglected to continue with such erection.

12d. *THE* Plaintiff by notice in writing given on the 25th day of May, 1956, required the Defendant to erect such building the building in accordance with the plans and specifications approved by the Plaintiff on the twenty first day of May, 1954, within eighteen months from the said 25th day of May, 1956.

12e. *THE* Plaintiff submits that by reason of the matters herein alleged the Defendant at the date of institution of this suit was obliged to erect upon the full available area of the said land a 20 building to the Plaintiff's approval which should utilise the said columns and substructure and to spend in its construction a sum of at least One hundred and fifty thousand pounds (£150,000).

12ee. *ALTERNATIVELY* the Plaintiff submits that by reason of the matters herein alleged the Defendant at the date of the institution of this suit was obliged to erect on the said land a building in accordance with the said plans and specifications approved by the Plaintiff on the twenty first day of May, 1954.

13. *ON* the lands demised under the said lease were premises in respect of which a Publican's licence had been duly granted under 30 the Liquor Act 1912 as amended, and the Plaintiff transferred or caused to be transferred such licence to a nominee of the original lessee named in the said lease and the Defendant John Bonaventure Limerick was at all material times until the twentieth day of February, 1957, and the said Defendant John Birkett Wakefield is at present the holder of the said Publican's licence as the nominee of the Defendant Avrom Investments Proprietary Limited.

14. *ON* the 14th day of July, 1953, an application was made by the Metropolitan Licensing Inspector under Section 40A of the 40 Liquor Act 1912 as amended for an Order for the construction of additional accommodation on the said premises referred to in paragraph 13 hereof and with the consent of the Defendants an Order was made by the Licensing Court of the Metropolitan District on 9th November, 1953, whereby a building containing

100 bedrooms four sitting rooms and other facilities was required by the said Court to be built upon the lands demised in the said lease.

15. *ON* the 26th day of May, 1954, the said Licensing Court in the said proceedings under Section 40A of the Liquor Act approved the plans referred to in paragraph (12) hereof and later the time for compliance with the order of the said Court of 9th November, 1953, was extended to the 30th September, 1955.

10 16. *THE* said plans and specifications provided for a building which would occupy approximately two thirds of the lands demised under the said lease and would utilise most of the columns and the major part of the substructure which had been erected and constructed by the Plaintiff on the demised land as set forth in paragraph (5) hereof.

17. *AFTER* the 26th day of May, 1954, the Defendants commenced work on the erection of a building in accordance with the plans and specifications referred to in paragraph (12) hereof in that columns were extended, main beams were constructed and concreting done.

20 18. *THE* Defendants made an application to the Licensing Court for an extension of time beyond the 30th September, 1955, to comply with the said Order of the said Court and on the 20th day of October, 1955, the said Court in order to give the Defendants an opportunity of calling tenders for erection of a building on the lands demised in the said lease in accordance with the plans referred to in paragraph 1 hereof adjourned the application for an extension of time until the 23rd January, 1956.

30 19. *THE* application for extension mentioned in the preceding paragraph came on for hearing on the 31st day of January, 1956, before the said Licensing Court whereupon the said Court refused the application for extension of time.

20. *THE* Defendants lodged an appeal to the Court of Quarter Sessions and such appeal was heard on the 13th day of April, 1956, when the Court dismissed the appeal and confirmed the order of the Licensing Court.

40 21. *ON* the 25th day of May, 1956, the Plaintiff required the Defendants to construct a building on the demised lands in accordance with the plans and specifications referred to in paragraph 12 hereof within a period of eighteen months from the said 25th May, 1956, and in this respect made time of the essence of the contract.

22. *THE* Defendants not having complied with the Order of the Licensing Court made on the ninth day of November, 1953, and varied on the 26th day of May, 1954, application was made by

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

the Metropolitan Licensing Inspector for cancellation of the said publican's licence and on the 29th day of May, 1956, the Licensing Court duly cancelled the said licence.

23. *ON* the 19th day of June, 1956, the said Licensing Court refused an application for renewal of the said publican's licence.

24. *THE* Defendants appealed to the Court of Quarter Sessions against the cancellation of licence referred to in paragraph 22 hereof and the refusal to renew the said licence referred to in paragraph 23 hereof.

25. *THE* defendants are unwilling or refuse to construct a 10 building according to the plans and specifications referred to in paragraph 12 hereof and they have repeatedly so informed the Plaintiff.

26. *ON* 2nd August, 1956, the Defendants submitted to the Plaintiff certain plans (dated 25th June, 1956) and specifications for a building substantially different and considerably smaller and of less value than a building in accordance with the plans and specifications referred to in paragraph 12 hereof and requested the Plaintiff to approve such plans and specifications in lieu of the plans formerly submitted to and approved by the 20 Plaintiff as set forth in paragraph 12 hereof.

27. *THE* Plaintiff refuses to approve of such substituted plans and specifications referred to in paragraph 26 hereof and has required the Defendants to construct the building approved by the Plaintiff and the Licensing Court as mentioned in paragraphs 12 and 15 hereof.

28. *UPON* the said appeal referred to in paragraph 24 hereof coming on for hearing before the Court of Quarter Sessions the said Court allowed the appeals by the Defendants upon undertakings being given by the Defendants to the said Court 30 that within 7 days from the 29th day of August, 1956, the the Defendants would make application under Section 40A (2) of the Liquor Act to vary the order made by the Licensing Court on 9th November, 1953, by a further order that a building be commenced and erected in accordance with the plans referred to in paragraph 26 hereof, that the Defendants would immediately upon such application being made to the Licensing Court apply to such Court to approve the plans referred to in paragraph 26 hereof, and that within two months of the approval of the said plans by the Licensing Court the Defend- 40 ants would use their best endeavours to obtain the consent of all necessary authorities including the Plaintiff to the construction of such building and also upon the Defendants agreeing that if they were unable to satisfy the Licensing Court that they could obtain the Plaintiff's approval of the last mentioned plans

or that they could build the proposed building referred to in such plans without the approval of the Plaintiff the said publican's licence should be cancelled.

29. *THE* Defendants have made the applications to the Licensing Court referred to in paragraph (28) hereof but such applications have not yet been heard by the said Court.

30. *THE* Defendants have threatened and intend to build a building upon the demised lands in accordance with the plans referred to in paragraph 26 hereof subject only to the approval of the Licensing Court and without the consent or approval of the Plaintiff.

31. *THE* Plaintiff fears that unless the Defendants be restrained by order of this Honourable Court the Defendant will attempt to build a building other than in accordance with the plans referred to in paragraph (12) hereof.

32. *THE* Plaintiff fears that unless the Defendants be restrained by order of this Honourable Court from applying under Section 40A (2) of the Liquor Act for a variation of the existing Order of the said Licensing Court and from applying to the said Licensing Court for approval of the plans submitted to the Plaintiff on 2nd August, 1956, as set out in paragraph (26) hereof, the said last mentioned plans will be approved by the said Licensing Court in lieu of the plans approved by the Plaintiff and the said Licensing Court as set forth in paragraph (12) and (15) hereof."

The following relief was claimed:—

"1. That it may be declared that the Defendants are not entitled to build a building on the demised premises other than in accordance with plans and specifications approved by the Plaintiff.

2. That it may be declared that the Defendant Avrom Investments Proprietary Limited was and is bound under the said lease of the demised premises to build the building approved by the Plaintiff on the twenty first day of May, 1954, and by the Licensing Court on the twenty sixth day of May, 1954.

3. That it may be declared that an application by the Defendant under Section 40 or Section 40A of the Liquor Act, 1912, to the Licensing Court for its approval of plans and specifications which have not been approved by the Plaintiff for a building to be erected on the subject land is inconsistent with the performance by the Defendant of its covenants express and implied in the lease.

4. That it may be declared that an application by the Defendant to the Licensing Court for an Order under Section 40A of the Liquor Act, 1912, that the Plaintiff build upon the subject

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

land a building according to plans and specifications not approved by the Plaintiff is inconsistent with the performance by the Defendant of its covenants express and implied in the lease.

5. That the Defendants may be restrained from building a building on the demised lands other than in accordance with plans and specification approved by the Plaintiff.

6. That the Defendant Avrom Investments Proprietary Limited by itself or through any servant agent or person holding a licence under the Liquor Act 1912 as amended in respect of the demised land may be restrained from making or further proceeding with an application to the Licensing Court of the Metropolitan District for variation of the Order of that Court made on 9th November, 1953, under Section 40A of the Liquor Act 1912 as amended in respect of additions to the demised premises or for variation of the approval of that Court of 26th May, 1954, of certain plans for additions. 10

7. That the Defendant Avrom Investments Proprietary Limited by itself or through any servant agent or person holding a licence under the Liquor Act 1912 as amended in respect of the demised land may be restrained from making or further proceeding with an application to the Licensing Court of the Metropolitan District for approval of plans which have not been approved by the Plaintiff. 20

8. That the Defendant Avrom Investments Proprietary Limited by itself or through any servant agent or person holding a licence under the Liquor Act 1912 as amended in respect of the demised land may be restrained from making or proceeding with applications to the Licensing Court which are inconsistent with the Plaintiff's rights under the irrevocable power of attorney as set forth in the said lease. 30

8A. THAT an inquiry may be held as to damages suffered by the Plaintiff and that the Defendant Avrom Investments Proprietary Limited may be ordered to pay the same to the Plaintiff. 30

9. That the Defendants may be ordered to pay the costs of the Plaintiff of this suit.

10. That the Plaintiff may have such further or other relief as the nature of the case may require."

The amended statement of defence is in the following terms:

1. *IN* answer to paragraph 4 of the Statement of Claim the Company does not admit that the documents therein referred to or the effect thereof are in the said paragraph sufficiently or correctly set forth. 40

2. *IN* answer to paragraph 5 of the Statement of Claim the Company does not know and cannot admit that the Plaintiff prior to the execution of the said lease was requested by the Lessee referred to in the said lease to expend certain moneys for the

benefit and the purposes of the said Lessee or at all in the erection or construction of certain permanent improvements on the lands to be demised under the said lease and under a laneway known as Wynyard Lane in pursuance of designs and detail drawings prepared by the Lessee of columns and sub-structure over substantially the whole of the said demised lands of sufficient strength to support a building of thirteen floors to the maximum building height of one hundred and fifty feet or that the said Lessee then represented to the Plaintiff that if the Plaintiff would agree to do the said work within the times and upon the conditions then stipulated the said Lessee would erect upon such columns and sub-structure a building of thirteen floors to the maximum permissible building height according to certain designs then produced by the said Lessee to the Plaintiff and would spend in the construction of such building a sum of Six Hundred Thousand Pounds (£600,000.0.0) or that thereupon the Plaintiff in pursuance of the said request or relying upon the said representation or at all agreed to construct such permanent improvements on the land being the said columns and sub-structure within the times and upon the conditions therein alleged.

2A. *IN* answer to paragraph 5A of the Statement of Claim the Company does not know and cannot admit that the plaintiff in pursuance of the said agreement or at all did thereafter erect the columns and sub-structure therein referred to in accordance with the said designs and detailed drawings or that in so doing the Plaintiff expended a sum considerably or at all in excess of the sum of One Hundred and Nine Thousand One Hundred and Thirty Four Pounds Five Shillings and Ninepence (£109,134.5.9).

2B. *IN* answer to paragraph 5B of the Statement of Claim the Company does not know and cannot admit that subsequently or at all it was agreed between the Plaintiff and the Lessee therein referred to that the said Lessee should pay to the Plaintiff interest upon One Hundred and Nine Thousand One Hundred and Thirty Four Pounds Five Shillings and Ninepence (£109,134.5.9) or that the said sum was part of a sum expended by the Plaintiff in the construction of columns and sub-structure therein referred to or that a rate of interest was then mutually agreed upon between the Plaintiff and the said Lessee.

2c. *IN* answer to paragraph 5c of the Statement of Claim the Company does not know and cannot admit that plans or designs for the building of thirteen stories referred to in paragraph 5 of the Statement of Claim were submitted by the Lessee referred to in the said paragraph 5c to the Plaintiff or that the Plaintiff approved such plans and designs.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10

20

30

40

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

2D. *IN* answer to paragraph 5D of the Statement of Claim the Company does not know and cannot admit that after the granting of the said lease or at all the Lessee therein referred to erected on part of the said land a certain building in accordance with plans and specifications submitted to and approved by the Plaintiff or that any such approval was given without prejudice to the Plaintiff's rights or in derogation of the Lessee's obligations under Covenant 4 of the said lease or that any such building was in part or at all in accordance with the plans and designs referred to in paragraph 5A of the Statement of Claim or that in respect of such part such building was in part performance pro tanto of the Lessee's obligations under the said covenant. 10

3. *IN* answer to paragraphs 7, 8 and 9 of the Statement of Claim the Company does not admit that the covenants and terms are therein correctly or sufficiently set forth and the Company craves leave to refer to the said lease when produced as though the same were herein fully set forth.

4. *IN* answer to paragraph 10 of the Statement of Claim the Company does not know and cannot admit that by mutual consent of the Plaintiff and Lessee the time for compliance by the Lessee with the said Covenant 4 was extended, or that on the twenty fourth day of February One thousand nine hundred and forty three the said Covenant remained to be complied with or performed by the Lessee. 20

5. *IN* further answer to paragraph 10 of the Statement of Claim and in answer to the whole Statement of Claim the Company says that by reason of National Security (Building Operations) Regulations made under the National Security Act, 1939-1943 and the Building Operations and Building Materials Control Act, 1945 it became at the time of or shortly after the execution of the said lease and remained until the thirtieth day of September One thousand nine hundred and fifty two impossible lawfully to erect any building of the type and nature referred to in Clause 4 of the said lease and the Company says that by reason thereof the said Clause 4 was frustrated and was at all relevant times and still remains wholly void or inoperative. 30

5A. *IN* answer to paragraph 10A of the Statement of Claim the Company denies that at the request of the Lessee therein referred to the Plaintiff before the expiry of the said two (2) years acceded to a postponement of the times for compliance by the said Lessee with Covenant 4 of the said lease. 40

5B. *IN* answer to paragraph 11A of the Statement of Claim the Company denies that at its request the Plaintiff before the expiry of the said two (2) years acceded to a postponement of the time for compliance by it with Covenant 4 of the said lease.

6. *IN* answer to paragraph 12 of the Statement of Claim the Company admits that it submitted certain plans for the approval of the Plaintiff who purported to approve thereof but subject to many conditions and qualifications but save as aforesaid the Company denies that it submitted to the Plaintiff plans and specifications for the erection of a building in pursuance of the said Covenant 4 or that on the twenty first day of May One thousand nine hundred and fifty four or at any time the Plaintiff approved such plans and specifications.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10 6A. *IN* answer to paragraph 12A of the Statement of Claim the Company does not know and cannot admit that it did not comply with Covenant 4 of the said lease within the time required by the said covenant and that thereupon it became liable to the Plaintiff for damages for breach thereof and it denies that thereafter it was agreed between the Plaintiff and it that it should build the building referred to in paragraph 5A of the Statement of Claim or a building utilising the columns and substructure referred to in Clause 5 of the Statement of Claim and the full available area of the demised land to the Plaintiff's approval or at all within a reasonable or any other time or that the Plaintiff should accept
20 any such promise in discharge of the Plaintiff's rights consequent upon its alleged failure to build a building on the said land in accordance with Covenant 4 of the said lease within the said period of two (2) years.

30 6B. *IN* the further alternative to the allegations and submissions made in paragraph 5 hereof and in further answer to paragraphs 10 and 12A and in answer to paragraph 12BB of the Statement of Claim the Company says that by reason of National Security (Building Operations) Regulations made under the National Security Act 1919-1943 and the Building Operations and Building Material Control Act 1945 it became at the time of or shortly after the execution of the said lease and remained until the thirtieth day of September One thousand nine hundred and fifty two impossible lawfully to erect any building of the type or nature referred to in Clause 4 of the said lease or referred to in paragraphs 5 or 5A of the Statement of Claim and by reason thereof the Company was excused from complying with the said clause within the said period of two (2) years.

40 6C. *IN* the further alternative to the allegations and submissions made in paragraph 5 hereof and in further answer to paragraphs 12A and 12BB of the Statement of Claim the Company says that the agreements therein alleged were respectively not to be performed within the space of one year of the making thereof and any such agreements were not nor was any memorandum or note thereof in writing signed by the Company or any person thereunto by it lawfully authorised and the Company craves the benefit

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

of the Statute of Frauds as a defence to this Suit in the same manner as if it had pleaded or demurred to the Statement of Claim.

6D. *IN* further answer to paragraphs 12A and 12BB and in answer to paragraph 12E of the Statement of Claim the Company says that each of the agreements therein alleged would be or would be a variation of a contract for the sale or other disposition of land or an interest in land and the said agreements are not nor is any memorandum or note thereof in writing signed by the Company or any person thereunto lawfully authorised by the 10 Company and the Company craves the benefit of S. 54A of the Conveyancing Act, 1919-1954 as a defence to this Suit in the same manner as if it had pleaded or demurred to the Statement of Claim.

6E. *IN* further answer to paragraphs 12A and 12BB of the Statement of Claim the Company says that each of the agreements therein alleged would be, or would be a variation of, a contract which was not to be performed within the space of one year of the making thereof and the said agreements are not nor is any memorandum or note thereof in writing signed by the Company 20 or any person thereunto lawfully authorised by the Company and the Company craves the benefit of the Statute of Frauds as a defence to this Suit in the same manner as if it had pleaded or demurred to the Statement of Claim.

6F. *ALTERNATIVELY* to the matters hereinbefore alleged and in further answer to paragraph 12A of the Statement of Claim the Company says that the Plaintiff within the said period of two (2) years represented to the Lessee for the time being under the said lease and to the Company and led the Lessee and the Company to believe that he did not require and would not insist upon 30 the erection of any building upon the demised land in compliance with the provisions of the said lease within the said period of two (2) years or any other fixed time and in reliance upon the said representation the Lessee did not erect the same within the said period of two (2) years and the Company submits that the Plaintiff ought not to be heard to say that the Lessee was bound to erect a building upon the said land within the said period or any other specific period or that its failure to erect such a building within the said period of two (2) years made it liable to the Plaintiff in damages. 40

6G. *IN* answer to paragraph 12B of the Statement of Claim the Company does not know and cannot admit that after the making of the agreement set forth in paragraph 12A of the Statement of Claim or at all the Plaintiff agreed in and about May One thousand nine hundred and fifty-four or at any time that the Company might build on the land a building according

to certain plans and specifications then proffered by it to the Plaintiff and approved by the Plaintiff or that any such agreement and approval of the Plaintiff or the building of such building in accordance with such lastly-mentioned plans should not release the Company from any agreement such as that referred to in paragraph 12A of the Statement of Claim the making of which the Company denies as aforesaid.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

—
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10

6GG. *IN* further answer to paragraph 12BB of the Statement of Claim the Company does not know and cannot admit that it did not comply with Covenant 4 of the said lease within the time required by the said covenant and that thereupon it became liable to the Plaintiff for damages for breach thereof and it denies that thereafter it was agreed between the Plaintiff and it that it should build a building according to certain plans and specifications approved by the Plaintiff at the request of the Defendant on the twenty-first day of May One thousand nine hundred and fifty-four (which said approval the Company also denies) or at all and that the Plaintiff should accept the said promise in discharge of the Plaintiff's rights against the Company consequent upon its alleged failure to build a building on the said land in accordance with Covenant 4 of the said lease within the said period of two (2) years.

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6H. *IN* answer to paragraph 12c of the Statement of Claim the Company denies that pursuant to the said Agreements or either of them or to the said approvals or either of them or at all it commenced to erect the building referred to in paragraph 12A of the Statement of Claim.

30

6J. *IN* answer to paragraph 12d of the Statement of Claim the Company does not admit that the said notice or the effect thereof is in the said paragraph sufficiently or correctly set forth. In further answer to the said paragraph the Company submits that the said notice was and is void and of no effect.

40

6K. *IN* answer to paragraph 12E of the Statement of Claim the Company does not know and cannot admit that by reason of the matters alleged in the Statement of Claim it was obliged at the date of the institution of this Suit or at all to erect upon the full available area of the land in the said paragraph referred to a building to the Plaintiff's approval which should utilise the said columns and sub-structure or to spend in its construction a sum of at least One Hundred and Fifty Thousand Pounds (£150,000).

6KK. *IN* answer to paragraph 12EE of the Statement of Claim the Company does not know and cannot admit that by reason of the matters alleged in the Statement of Claim it was obliged at the date of the institution of this Suit or at all to erect on the said land a building in accordance with the plans in the said paragraph referred to.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

6KKK. *IN* further answer to paragraphs 12E and 12EE of the Statement of Claim the Company says that any obligation to the effect therein respectively referred to would arise under an agreement for the sale or other disposition of land or an interest in land and the same is not nor is any memorandum or note thereof in writing signed by the Company or any person thereunto lawfully authorised by it and the Company craves the benefit of Section 54A of the Conveyancing Act, 1919-1954, as a defence to this suit in the same manner as if it had pleaded or demurred to the Statement of Claim. 10

6KKKK. *IN* further answer to paragraphs 12E and 12EE of the Statement of Claim the Company says that any obligation to the effect therein respectively referred to would arise under an agreement which was not to be performed within the space of one (1) year of the making thereof and the same is not nor is any memorandum or note thereof in writing signed by the Company or any person thereunto lawfully authorised by it and the Company craves the benefit of the Statute of Frauds as a defence to this suit in the same manner as if it had pleaded or demurred to the Statement of Claim. 20

6L. *IN* answer to paragraph 14 of the Statement of Claim the Company does not admit that the Order of the Licensing Court therein referred to or the effect thereof is in the said paragraph correctly or sufficiently set forth.

7. *IN* answer to paragraph 15 of the Statement of Claim the Company says that on the said twenty-sixth day of May One thousand nine hundred and fifty-four the said Licensing Court purported to approve of certain plans being the plans referred to in paragraph 6 hereof which purported approval the Company submits was invalid inoperative and of no effect in the 30 law. Save as aforesaid the Company does not know and cannot admit that on the twenty-sixth day of May One thousand nine hundred and fifty-four the said Licensing Court in the said proceedings under Section 40A of the Liquor Act approved the plans referred to in paragraph 12 of the Statement of Claim or that later the time for compliance with the Order of the said Court of the ninth day of November One thousand nine hundred and fifty three was extended to the thirtieth day of September One thousand nine hundred and fifty five.

8. *IN* answer to paragraph 16 of the Statement of Claim the 40 Company does not know and cannot admit that the said plans and specifications provided for a building which would occupy approximately two-thirds of the lands demised under the said lease and would utilise most of the columns and the major part of the sub-structure which had been erected and constructed by

the Plaintiff on the demised lands as set forth in paragraph 5 of the Statement of Claim.

9. *IN* answer to paragraph 17 of the Statement of Claim the Company admits that subsequent to the twenty sixth day of May One thousand nine hundred and fifty four it carried out certain foundation and other preliminary work which would be appropriate for any substantial building which might thereafter be erected upon the said land but save as aforesaid the Company does not know and cannot admit that it commenced work on the erection of a building in accordance with the plans and specifications referred to in paragraph 12 of the Statement of Claim.

9A. *IN* answer to paragraph 18 of the Statement of Claim the Company says that it applied to the Licensing Court for an extension of time beyond the thirtieth day of September One thousand nine hundred and fifty five within which to erect the said building for which the Licensing Court had purported to approve the plans as aforesaid in order to give the Company an opportunity of calling tenders for the erection of a building on the lands demised in the said lease and that the said Court adjourned the application for an extension of time until the twenty third day of January One thousand nine hundred and fifty six but save as aforesaid the Company does not know and cannot admit that it made an application to the Licensing Court for an extension of time beyond the thirtieth day of September One thousand nine hundred and fifty five to comply with the said Order of the said Court and that on the twentieth day of October One thousand nine hundred and fifty five the said Court in order to give the Defendants an opportunity of calling tenders for erection of a building on the lands demised in the said lease in accordance with the plans referred to in paragraph 12 of the Statement of Claim adjourned the application for an extension of time until the twenty third day of January One thousand nine hundred and fifty six.

9B. *IN* answer to paragraph 19 of the Statement of Claim the Company says that it was the application referred to in paragraph 9A hereof which came on for hearing on the thirty first day of January One thousand nine hundred and fifty six.

10. *IN* answer to paragraph 20 of the Statement of Claim the Company says that prior to the hearing of the said Appeal it informed the Court that it did not propose to prosecute the said Appeal and it did not attend before and did not ask to be heard by the Court when the Appeal was dealt with, and the Company further says that it was in these circumstances and not otherwise that the Court dismissed the said Appeal.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10

20

30

40

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10A. *IN* answer to paragraph 21 of the Statement of Claim the Company says that the alleged requirement of the Plaintiff forms the subject of a written document and the Company does not admit that the same or the effect thereof is sufficiently or correctly set forth in the said paragraph. The Company further says that the Plaintiff was not entitled to make such a requirement and did not have the right in respect of such requirement to make time of the essence and that any attempt by him to do so was ineffectual for that purpose.

11. *IN* further answer to paragraph 21 of the Statement of 10
Claim and in further answer to paragraph 10 of the Statement
of Claim and in answer to the whole Statement of Claim the
Company says that throughout the period from the twenty
fourth day of February One thousand nine hundred and forty
three to the thirtieth day of June One thousand nine hundred
and fifty six the Company paid rent to the Plaintiff and the
Plaintiff accepted rent from the Company in pursuance of the
terms of the said lease and the Company further says that the
last payment for such rent was accepted by the Plaintiff on the
thirteenth day of April One thousand nine hundred and fifty six 20
in respect of the quarter ending the thirtieth day of June One
thousand nine hundred and fifty six and the Company further
says that throughout such period the Plaintiff also accepted
from the Company payment of interest under Clause 3 of the
said lease and that the last payment of such interest was accepted
by the Plaintiff on the fourth day of July One thousand nine
hundred and fifty six in respect of the period ending the thirtieth
day of June One thousand nine hundred and fifty six.

11A. *IN* answer to paragraph 22 of the Statement of Claim the
Company denies that the Order of the Licensing Court made on 30
the ninth day of November One thousand nine hundred and fifty
three was varied on the twenty sixth day of May One thousand
nine hundred and fifty four or at all.

12. *IN* answer to paragraph 26 of the Statement of Claim the
Company says that the plans in the said paragraph mentioned are
plans for a building which will cost over Four Hundred Thousand
Pounds (£400,000.0.0) to erect and that a building in accordance
with the plans and specifications referred to in Paragraph 12 of
the Statement of Claim will cost substantially more to erect but
save as aforesaid the Company denies that such firstmentioned 40
plans are for a building considerably or at all smaller or of a less
value than a building in accordance with the plans and specifica-
tions referred to in paragraph 12 of the Statement of Claim and
the Company further says that the said firstmentioned plans are
for a building which is better designed according to modern

architectural standards and contains substantially more bedroom and other accommodation and is more suitable efficient and convenient as modern hotel premises having regard to the locality and conformation of the subject land than the building envisaged by the plans referred to in paragraph 12 of the Statement of Claim and the Company further says that the said firstmentioned plans are better adapted to future extension of the building therein provided for than are the plans referred to in the said paragraph 12 of the Statement of Claim.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued

10 13. *ALTERNATIVELY* to the allegations and submissions made in paragraph 5 hereof the Company in answer to paragraph 27 of the Statement of Claim and in further answer to the whole Statement of Claim submits that the said lease contains a covenant condition or agreement against the making of improvements without the licence or consent of the Lessor and the Company charges the fact to be that the Plaintiff's refusal to approve of the Company's plans and specifications referred to in paragraph 26 of the Statement of Claim is an unreasonable withholding of the Plaintiff's licence or consent.

20 13A. *ALTERNATIVELY* to the allegations and submissions made in paragraph 5 hereof and in further answer to paragraph 27 of the Statement of Claim and to the whole Statement of Claim the Company says that the designs, plans and specifications referred to in paragraph 26 of the Statement of Claim were submitted by the Company to the Plaintiff for his approval and the Plaintiff refused to consider the said plans designs and specifications and rejected the same. The Company charges the fact to be that in rejecting the said plans designs and specifications the Plaintiff acted arbitrarily, capriciously, irrationally or unreasonably and that he exercised any discretion given to him on wrong principles, and that he rejected the said plans and refused or failed to approve of the same with a view to compelling the Company to erect a certain other building which would cost much more than the proposed building and several times One Hundred and Fifty Thousand Pounds (£150,000.0.0).

30

40 13B. *IN* the further alternative to the matters hereinbefore pleaded and in further answer to the whole of the Statement of Claim the Company says that it was a term or condition of the said lease that the Plaintiff would not unreasonably withhold its approval of plans for a building to cost not less than One Hundred and Fifty Thousand Pounds (£150,000.0.0) and that in withholding its approval of the plans referred to in paragraph 26 of the Statement of Claim the Plaintiff is withholding its approval unreasonably.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

13c. *IN* the further alternative to the allegations and submissions made in paragraph 5 hereof and in further answer to the whole of the Statement of Claim the Company says that the Plaintiff has waived compliance with the said Clause 4.

13d. *IN* the further alternative to the allegations and submissions made in paragraph 5 hereof and in further answer to the whole of the Statement of Claim the Company says that the Plaintiff has waived compliance with any requirement of the said lease that designs plans and specifications for a building to be erected on the demised land by the Company should be submitted to and approved by the Plaintiff before such building was erected. 10

13e. *IN* the further alternative to the allegations and submissions made in paragraph 5 hereof and in further answer to the whole of the Statement of Claim the Company says that the Plaintiff has waived compliance with any requirement of the said lease that a building was to be erected constructed and completed by the Lessee within the period of two (2) years from the date of the commencement of the said lease.

14. *IN* answer to paragraph 30 of the Statement of Claim the Company denies that it has threatened to build a building upon the demised lands in accordance with the plans referred to in paragraph 26 of the Statement of Claim subject only to the approval of the Licensing Court and without the consent or approval of the Plaintiff or that it intends so to do unless required or permitted by law. 20

15. *IN* further answer to paragraph 30 of the Statement of Claim and in further answer to the Statement of Claim the Company submits that on the true construction of the said lease and in the light of the facts hereinbefore alleged the Company is not required by law to obtain the approval of the Plaintiff to the plans referred to in paragraph 26 of the Statement of Claim. 30

16. *IN* answer to paragraph 31 of the Statement of Claim the Company does not know and cannot admit that the Plaintiff fears that unless the Defendants be restrained by Order of this Honourable Court the Defendants will attempt to build a building other than in accordance with the plans referred to in paragraph 12 of the Statement of Claim.

17. *IN* answer to paragraph 32 of the Statement of Claim the Company does not know and cannot admit that the Plaintiff fears that unless the Defendants be restrained by Order of this Honourable Court from applying under Section 40A (2) of the Liquor Act for a variation of the existing Order of the said Licensing Court and from applying to the said Licensing Court for approval of the plans submitted to the Plaintiff on the second day of August One thousand nine hundred and fifty six as set 40

out in paragraph 26 of the Statement of Claim the said last-mentioned plans will be approved by the said Licensing Court in lieu of the plans approved by the Plaintiff and the said Licensing Court as set forth in paragraphs 12 and 15 of the Statement of Claim.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

17A. *IN* the further alternative and in further answer to the Statement of Claim the Company submits that in the exercise of its discretion this Honourable Court will not grant the relief sought in the Statement of Claim on the ground that to do so would inflict undue hardship upon the Company in that

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10

- (a) The Plaintiff has threatened and intends to eject the Company from the said premises if and when it obtains the said relief.
- (b) The Plaintiff is seeking to prevent the Company from complying with its covenants under the said lease, and
- (c) In so doing is endangering the said licence and the Company's interest therein, and also the Company's right of occupation of the said premises for the remainder of the term granted by the said lease.

20

- (d) The Plaintiff seeks to compel the erection by the Defendant Company of a building which will cost several times the amount of One Hundred and Fifty Thousand Pounds (£150,000.0.0) referred to in Clause 4 of the said lease and which will contain substantially fewer bedrooms and bathrooms and shops and which will produce much less income than the building referred to in Clause 26 of the Statement of Claim and which will cost much more to build than such last-mentioned building.

30

- (e) The Defendant Company would suffer severe and continuing economic loss.

18. *IN* further answer to the whole Statement of Claim the Company submits that it discloses no equity against it and that the Plaintiff's proper remedy (if any) against the Company is in this Honourable Court in its Common Law Jurisdiction and the Company claims the same benefit as if it had demurred to the Statement of Claim."

The amended replication is in the following terms:—

40

"1. *THE* Plaintiff joins issue on the Statement of Defence of the Defendant Avrom Investments Proprietary Limited.

2. *IN* further reply to paragraph 5 of the Statement of Defence herein the Plaintiff submits in respect of the said Clause 4 that time was not of the essence of the promises made in the said clause.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

3. *IN* further reply to paragraph 5 of the Statement of Defence herein the Plaintiff says that if time was initially of the essence of the promises made in the said Clause 4 the Plaintiff waived its rights in respect of time until after the said thirtieth day of September One thousand nine hundred and fifty two when the Plaintiff made time of the essence by notice in writing to the Defendant Avrom Investments Proprietary Limited fixing a reasonable time for performance of such promises by the said Defendant.

4. *IN* further reply to paragraph 5 of the Statement of Defence 10 herein the Plaintiff submits that the said Statutes and Regulations did not excuse non-performance by the said Defendant Avrom Investments Proprietary Limited of the promises in the said Clause 4 from and after the said thirtieth day of September One thousand nine hundred and fifty two.

5. *IN* further reply to paragraph 6B of the Statement of Defence herein the Plaintiff repeats the replies as set forth in paragraphs (2) (3) and (4) hereof.

6. *IN* further reply to paragraph 7 of the Statement of Defence herein the Plaintiff submits that the said approval of the 20 Licensing Court operated and still operates as a judgment in rem in relation to the demised premises and that the said Defendant Avrom Investments Proprietary Limited cannot be heard to say in this suit that the said approval was invalid inoperative or of no effect in the law.

7. *IN* further reply to paragraph 7 of the Statement of Defence herein the Plaintiff says that the Defendant Avrom Investments Proprietary Limited ought not to be admitted to say that the said approval of the Licensing Court was invalid inoperative and of 30 no effect in the law because the Plaintiff says that before this suit the said Defendant as an Applicant in the said Licensing Court then being a court duly constituted and holden under the statutes relating to such a Court applied to the said Court for approval of the said plans as being the plans of the building to be built by the Plaintiff as owner of licensed premises under an order duly made by the said Court under Section 40A of the Liquor Act and the Plaintiff being represented on or having consented to such application to such Court for approval of the said plans the said Court in a judgment approved such plans and the said judgment remained and still remains in full force and 40 effect and has not been appealed against quashed set aside or otherwise nullified according to the law.

8. *IN* further reply to paragraph 14 of the Statement of Defence herein the Plaintiff submits that the said paragraph 14 of the Statement of Defence is in itself a threat to build in accordance with the said plans.

9. *IN* further reply to paragraph 15 of the Statement of Defence herein the Plaintiff submits that the said paragraph is a threat to build in accordance with the said plans.”

The rejoinder to the replication is a simple rejoinder of issue.

After the suit had commenced, namely on the 4th April, 1957, the defendant filed a notice of motion for relief under section 89 of the Conveying Act, 1919-1943 relying upon the evidence in the suit. The declarations and orders sought were in the following terms:—

- 10 “1. Declarations as to whether or not the demised land the subject of the said suit is affected by any restrictions as to its user contained in the lease referred to in the Statement of Claim filed in the said suit, and if so,
- (a) The nature and extent thereof;
- (b) Whether the same is or are enforceable, and, if so, by whom.
2. If and in the event of it being declared that the said demised land is subject to restrictions arising as aforesaid and that the same are enforceable, for an order that the restrictions which may be declared as aforesaid be modified.
- 20 (a) so as to allow of the erection of a building on the said demised land substantially in accordance with the plans being Exhibit 12 in the said suit, the drawings being exhibit 10 in the said suit and the specifications being Exhibit R in the said suit without the approval of the lessor to the said designs plans or specifications;
- (b) so as to allow of the erection of a building on the said demised land which is not in accordance or substantially in accordance with the plans being exhibit H in the said suit;
- 30 (c) so as to allow of the erection of a building on the said demised land which is not in accordance or substantially in accordance with the plans being exhibit W1—6 in the said suit;
- (d) so as to allow of the erection on the said demised land of a building in accordance with designs plans and specifications not approved by the lessor if the lessor should unreasonably refuse or fail to consent to the said designs plans and specifications.”

40 Before dealing with the issues of law raised by the pleadings, it will be convenient to deal with a number of other facts without at this stage advertent to their admissibility or effect.

There is first a series of facts relating to the 1954 plans and in the 1956 plans, the use of the site, the use of the columns and similar questions which arose chiefly out of the defence that the plaintiff

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

unreasonably refused to consent to the 1956 plans, which defence was primarily based on the provisions of section 133B of the Conveyancing Act, 1919-1943.

On these questions a number of expert witnesses were called.

Each of the experts called on behalf of the defendant impressed me as a reliable witness, and in particular Mr Nicholls, the architect, and Mr. Llewellyn, the constructional engineer, impressed me as extremely capable, practical and reliable.

On behalf of the plaintiff, apart from an assistant engineer who gave some evidence relating to an encroachment shown in the 1956 plans, 10 no officers of the plaintiff were called but evidence was given on behalf of the plaintiff by Mr Scott, an architect with considerable experience in hotel construction, and a Mr Britten, a constructional engineer.

Where the evidence of these witnesses was in conflict with those of the experts called on behalf of the defendant, I preferred the latter. I did not feel that I could place very much reliance on the evidence of Mr Britten.

A great deal of evidence was called but I do not propose to go through it in detail. The evidence satisfies me that the 1956 plans were 20 plans of a substantial modern building with modern bedrooms and with adequate facilities which would be built over an area of about one-third of the site to be used in conjunction with the buildings already on the site, the erection of which would not prejudice the reasonable future development of the site, and, in particular, would not interfere with the reasonable future development of the centre of the site.

So far as a comparison of the 1954 and 1956 plans is concerned, the 1956 plans disclose the following advantages:—

- (a) The design is better and more modern.
- (b) Provision is made for a greater number of bedrooms.
- (c) All the bedrooms have private bathrooms, whereas a con- 30 siderable number in the 1954 plans have not.
- (d) The bedrooms are of better design.
- (e) There is more first-class accommodation.
- (f) They make provision for a coffee lounge suitable for the provision of light meals. The 1954 plans make no such provision.
- (g) They make greater use of the Carrington Street frontage which is more suitable for an entrance to an hotel than George Street, this frontage being more suitable for com- 40 mercial development.
- (h) They make provision for a greater number of shops.
- (j) They would permit of extensions to the building at less cost.

(k) They would permit more flexibility so far as future development is concerned.

The building contemplated by the 1954 plans is spread over a larger area of the surface of the land than the building contemplated by the 1956 plans but, what virtue arises from that fact by itself, I am myself unable to see.

The cost of the building contemplated by the 1954 plans would be greater than the cost of the building contemplated by the 1956 plans but I do not think that cost alone can in the circumstances be treated as necessarily a criterion of value or worth.

I also find that the structural information supplied by the defendant to the plaintiff in connection with the 1956 plans was as detailed as the information sent on the 21st April, 1954, with the 1954 plans and I find that the 1954 plans were not and could not reasonably be considered to be an instalment of the Innes-Kerr plans.

There is a document in evidence, Exhibit 17, setting out estimates of the financial result to the defendant which would accrue respectively from a building according to the 1954 plans and a building according to the 1956 plans. I accept these estimates as giving a substantially accurate picture. I am satisfied from these figures and from the evidence generally that a building according to the 1956 plans would be a very much better economic proposition than a building according to the 1954 plans.

There are some features of the plans which were relied upon by the plaintiff.

By the colour used in the drawing of the roof slab, such slab appeared to go where it should not be. This proved only to be a mistake in colouring in that part of the drawing.

The plan in one place at the north-east corner disclosed an encroachment of about two feet into a motor room, being one of the reserved areas of the lease. This was in fact an encroachment.

It is not a large encroachment and the wall in question could be brought in with no practical consequences to the structure.

The plan showed a small duct of about three feet by four feet which was reserved in the lease going through a water closet. This would require replanning of a small sector with no appreciable consequences.

In the plan two pillars supporting a slab roof are not shown but extension of existing pillars are planned to give the necessary support. No difficulty arises from this.

There was a series of facts relating to further development if the 1956 plans were completed about which considerable evidence was given.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

In recent times amended and more liberal building ordinances and regulations make it now permissible to have greater loads on columns than was formerly the position at the time of the Innes-Kerr plans and for a considerable time thereafter.

I am satisfied that a building built according to the 1956 plans on the Carrington Street frontage could be extended to a height of 150 feet above Carrington Street with the floors above the 7th floor from Carrington Street stepped back 16 feet on the Wynyard Lane side of the building and that such an extension would be adequately supported.

If the centre portion of the site were ever built to the full height, 10 it would be necessary to use heavy trusses for the support of the upper floors above the 4th floor. These trusses preferably would be placed above the 4th floor level from George Street.

Provision for the support of such trusses at the Carrington Street side would be available from columns in the Carrington Street building.

If provision was made in advance for an appropriate set-back or bracket in the appropriate columns, the provision for support of the trusses would cause little difficulty or expense.

No provision was made in the 1954 plans relating to the use of 20 trusses in any future development.

If the specification of the concrete used in some of the concrete columns which in the 1956 contract was 3,000 lbs. to the square inch was changed to 5,000 lbs. to the square inch, no question of the ability of such columns to withstand the additional weight could possibly arise and the extra cost of altering the specifications would be about £50.

If the central portion of the site were built upon to the full height, it would be structurally possible to fill in the internal recessed part of the Carrington Street building by the use of the cantilever principle.

I should also mention some inferences which I draw from the facts 30 in evidence and from the circumstances.

The first is that no officers of the plaintiff gave consideration to the 1956 plans as plans presented to the plaintiff by the defendant for approval.

The experts called on behalf of the plaintiff were not experts who had been called in by the plaintiff to aid it in considering whether the plans should be approved or not but were called simply to indicate any defects in the plans or points of criticism of the plans as far as possible future development and like questions were concerned. There is no evidence that any of the matters raised by them were ever con- 40 sidered by the plaintiff or its officers.

The next is that the real desire of the plaintiff is not to have a building constructed according to the 1954 plans but, conceiving that the defendant is under a legal obligation to build a building which

utilises substantially the whole of the site and the substructure and at the least a building according to the 1954 plans and knowing that the defendant is unwilling and unable to do so, desires to use these circumstances to bring the legal relations between the defendant and itself under the lease to an end.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

There was a series of facts elicited in connection with the defence of hardship and to some extent in connection with the defence based upon unreasonableness to approve the plans.

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

10 The defendant tendered evidence from officers of the defendant and from financial documents relating to its financial position.

Exhibit 19 represents a summary of the profit and loss account of the defendant for the years ended 30th June from 1943 to 1956 inclusive.

Exhibit 20 represents details of the defendant Company's Wynyard Leasehold Account and Wynyard Leasehold Improvement Account.

I accept these two documents as substantially accurate.

From the evidence which was given the following facts emerge:

There has been a recession in profits after the year 1947.

In 1949 the rent under the terms of the lease increased from £15,000 to £19,200.

20 The amount for wages increased very considerably over the years. In 1952 the figure was £55,400 and in 1956 £72,000.

The amount payable in respect of rates increased considerably. In 1948 the rates amounted to £7,400 and in 1956 to £16,500.

For many years the rents of the shops have been affected by the relevant provisions of the Landlord and Tenant legislation.

Since 1942 the defendant has invested about £119,000 as capital in its leasehold account.

30 The arguments before me ranged over a wide area and a great multitude of authorities was cited to me but I shall confine myself to those submissions only which I think are necessary to be dealt with in order to arrive at a right conclusion.

It will first be expedient to deal with some of the particular allegations of fact in the statement of claim.

Paragraph 5. The excavation and the sub-structure, including the columns, were made and erected under the circumstances which I have narrated. Mr McFadden did represent that the proposed lessee's then intention was to erect an hotel which was estimated to cost £600,000. Except for this, I find that the "representation" alleged has not been established.

40 *Paragraph 5A.* The agreement referred to has not been made out to my satisfaction. Any sums expended over £109,134/5/9 were considered by the parties to be for the plaintiff's benefit.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

Paragraph 5B. It was agreed between the plaintiff and Mr McFadden and their respective representatives that the proposed lessee would pay interest on £109,134/5/9.

Paragraph 5c. The plans and designs for a building of 13 stories were approved to the extent which I have already narrated.

Paragraph 5D. After the granting of the lease, Mrs Gardiner and Permanent Trustee Co. of N.S.W. Ltd. did erect the building to meet the requirements of the Licensing authorities which I have mentioned and which cost £11,130 in accordance with plans and specifications submitted to and approved by the plaintiff. The 10 other allegations have not been made out.

Paragraph 10. It has not been established that by mutual consent of the plaintiff and the lessee the time for compliance by the lessee with Covenant 4 was extended.

Paragraph 10A. I find that this allegation has not been made out.

Paragraph 11A. I find that this allegation has not been made out.

Paragraph 12. The defendant submitted the 1954 plans to the plaintiff in the circumstances and in the manner I have described and the plaintiff gave a conditional approval of the nature I have described.

Paragraph 12A. I find that the agreement alleged has not been made 20 out.

Paragraph 12B. The plaintiff gave a conditional approval to the 1954 plans of the nature and in the circumstances I have described. Apart from this, I find that the "agreement" and approval alleged has not been established.

Paragraph 12BB. I find that the agreement alleged has not been made out.

Paragraph 12c. The defendant extended the columns on the Carrington Street frontage at the total cost of £32,020 in the circumstances and in the manner I have referred to and did refuse to build a 30 building according to the 1954 plans, but otherwise the allegations have not been made out.

Paragraph 12D. I have referred to the terms of the notice which speak for themselves.

Paragraphs 12E and 12EE are submissions of law.

Paragraph 13. These facts were made out.

I shall not refer in detail to the allegations contained in paragraphs 14-32 inclusive. I have already alluded in detail to the course of events following the making of the order under section 40A of the Liquor Act.

The particular agreements alleged by the plaintiff not having been 40 established, the question then is whether the plaintiff is entitled to the relief which it seeks, having regard to the true construction of the lease and the events which took place subsequently to its execution.

At the threshold of this inquiry is the question: What is the true construction and effect of clause 4 of the lease and primarily what is the building which the lessee covenanted to build?

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

In this connection, the plaintiff submitted that, upon the true construction of clause 4, the building was a building—

- 10 (a) which occupied the whole available area of the site and utilised the whole of the structure. At times counsel for the plaintiff used the word “utilised” simply to mean “built over” but at other times he used the expression in the sense of “substantially utilised” which would mean make substantial use of the capacity of the whole of the sub-structure. If the condition of utilisation of the sub-structure were to add anything to the condition of covering the whole of the available area, the latter construction of the use of “utilise” would I think be necessary.
- (b) As a subsidiary submission the building was to be one built according to the Innes-Kerr plans.
- (c) The building was to be a building which was approved by the plaintiff.

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

20 Submissions (a) and (b) were of particular importance to the plaintiff because, until plans were submitted for approval which were plans of a building of the nature covenanted to be built, the question of the lessor’s approval would not really arise.

30 The submission so far as (a) is concerned was based on the provision that the new building was to be constructed “on in under over through or along the demised premises”. “Over” meant, it was said, “over the whole”, “through”, it was said, means “through the whole” and “or along” meant “and along”. The phrase is an extraordinary one but I see no reason to construe the words other than according to their literal meaning. The requirements are alternatives. A building would comply if it was built “on the demised premises” and on the demised premises does not necessitate building on the whole of the demised premises.

So far as (b) is concerned, it is sufficient to say that the clause simply requires that the plan and specification should be completely prepared and submitted by the lessee for the approval of the lessor within 16 weeks from the date of the commencement of the lease, that such words are quite clear and unambiguous and do not say anything about the Innes-Kerr plans.

40 So far as (c) is concerned, the building was of course to be a building subject to the approval of plans in accordance with the clause.

In connection with the construction of clause 4 and in particular in connection with the submissions (a) and (b), the plaintiff argued that the lease should be construed in the light of the surrounding

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

circumstances, including the physical situation when the lease was executed and the course and conduct and happenings from the tender onwards.

I would agree that the physical situation is relevant but, where as here you have a document which expresses the final concluded deliberate terms of the contract between the parties, the prior negotiations and agreements and the particular facts which occurred since the inception of the transaction cannot be legitimately referred to for the purpose of adding a term or of altering its ordinary legal construction.

The plaintiff in particular referred to the tender, the agreement 10 by the plaintiff to excavate and to build the sub-structure, the representation as to the hotel which was intended to be built, the nature of the columns, their weight, their position, their cost, etc., and the Innes-Kerr plans showing a building of 13 stories.

I am of opinion that in the circumstances of this case these and the other events antecedent to the lease cannot legitimately be referred to. The words of the lease speak for themselves.

Quite apart from this consideration, if it had been intended that the new building described in clause 4 should either be a building 20 covering the whole area and substantially utilising the whole of the sub-structure or a building conforming to the Innes-Kerr design, there was nothing to prevent this having been stated in clear and unmistakable terms and the draftsmanship was the draftsmanship of the lessor.

Having regard to the circumstances prevailing when the lease was executed, the lack of any reference to the position created by the National Security Regulations is somewhat remarkable. Each of the parties no doubt was anxious that at long last some finality should be reached at any cost and the actions of the Licensing Court made an early finality essential so far as the licence was concerned, the retention of which was so important at that stage, but the provision of a specific 30 time for building without any reference whatsoever to what was to happen if it was impossible to build (a situation which was then almost inevitable) and the inclusion of a great number of provisions which are all framed on the hypothesis that the new building was in fact erected raises some very difficult problems.

The original lessees could, of course, have completely prepared and submitted the plan and specification within the 16 weeks, but what of the building?

The parties were aware of the regulations at the time of the lease. This fact, I think, would imply no higher an obligation than that the 40 lessees would use their best endeavours to obtain a permit to build: see *Re Anglo-Russian Merchant Traders Ltd. and John Batt & Co. (London) Ltd.* ((1917) 2 K.B. 679). This particular position was not alluded to by counsel on either side but it seems to me that it necessarily follows from the circumstances.

If an application for a permit was not made, the onus of proving that it was no use attempting to make an application for a permit to build because it was foredoomed to failure would, of course, be on the lessees.

In the present case, I am satisfied that at all relevant times until the 30th September, 1952, it would not have been of any use attempting to make an application for a permit to build a building of the nature described in clause 4 because such an application would have been foredoomed to failure.

10 Accordingly, the original lessees were excused by impossibility from building until the date of the assignment, namely, 24th February, 1943, and the defendant was excused by impossibility from building until the 30th September, 1952. The defendant until the 30th September, 1952, at any rate would not accordingly have been liable for any damages.

But what of the obligation to build? Did it still subsist? Eleven years is a considerable time and many changes of circumstances had taken place.

The defendant argued that the obligation to build had come to an
20 end and referred at length to the cases dealing with frustration arguing by analogy that, although these were cases dealing with the circumstances under which the whole contract came to an end (and in the present case the lease was not frustrated), similar principles should be applied to one complete term of a contract such as clause 4 of the lease.

The defendant also argued that, since the clause was broken once and for all as to the termination of the two years allowed for building, the acceptance of rent thereafter prevented the plaintiff from relying on the breach as a breach of condition: *Stephens v. Junior Army and Navy Stores Ltd.* ((1914) 2 Ch. 516); *Larking v. Great Western*
30 *(Nepcan) Gravel Ltd.* (64 C.L.R. 221). If there was a breach once and for all, how could the lessee be subsequently liable for a future breach of the same obligation?

The plaintiff argued that, where there is a covenant to do a thing by a certain day, although failure to do the thing by that day can only be treated as a breach of condition if so treated immediately, nonetheless the covenant to do the thing remains.

The positive covenant to build on the land, it was said, remains assuming it was never varied by the parties notwithstanding the passing of the two year period. Such obligation was at the lowest to build
40 what the lessor approved.

Some very difficult questions are raised. For example, assuming that the impossibility to build had subsisted until there was but a few years of the lease to run, would the lessee still be liable to build in

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1953—
continued.

accordance with clause 4? However, on the view I have formed of other matters, I do not think it necessary that these difficult questions should be resolved.

I shall assume that an obligation of some kind to build in accordance with clause 4 still subsisted in 1953.

The positive obligation in clause 4 implied, I think, a negative, namely that the defendant would not build a building unless the plan and specification was approved by the plaintiff in the manner provided for in clause 4 read so far as the section may be material in the light of section 133B of the Conveyancing Act, 1919-1943.

10

The plaintiff relied strongly upon such a negative covenant in the interlocutory proceedings and, although it was but faintly referred to at the hearing of the suit, the plaintiff still relied upon such a negative covenant at the hearing.

No specific reference to the terms of such an implied negative covenant are contained in the statement of claim but, since the lease is itself set out, that is I think a sufficient allegation.

The defendant was content to conduct the case on the basis that there was in existence at all relevant times a negative covenant of the nature I have described.

20

An implied negative covenant such as I have mentioned was not the only implication upon which the plaintiff sought to rely. It was argued that the agreement in clause 4 was one which called for the co-operation of both parties and that the case was one for the application of the principle referred to in *Stirling v. Maitland* ((1864) 6 B. & S. 840) by Cockburn C.J. at p. 852 in the following terms:—

“I look on the law to be that, if a party enters into an arrangement which can only take effect by the continuance of a certain existing state of circumstances, there is an implied engagement on his part that he shall do nothing of his own motion to put an end to that state of circumstances, under which alone the arrangement can be operative.”

30

and applied in many subsequent cases. In *Southern Foundries (1926) Ltd. v. Shirlaw* ((1940) A.C. 701) Lord Atkin at p. 717 referred to the proposition in the following terms:—

“That proposition in my opinion is well established law. Personally I should not so much base the law on an implied term, as on a positive rule of the law of contract that conduct of either promiser or promisee which can be said to amount to himself ‘of his own motion’ bringing about the impossibility of performance is in itself a breach.”

40

In the circumstances of the present case, I do not see how the plaintiff could succeed on the basis referred to if it could not succeed by reliance on a negative covenant such as I have referred to.

It is necessary now to consider what is the result of the events which happened between the 30th September, 1952, and the date of the commencement of the suit.

The first important fact is the making of the order under section 40A of the Liquor Act on the 9th November, 1953. Such an order is an order made upon an owner. It was argued for the plaintiff that as between lessor and lessee the obligation to carry out the order was placed upon the lessee under the terms of clause 5 of the lease. This I do not think is correct.

- 10 The clause is primarily concerned with the repair and maintenance of the "said building" which has not yet come into existence. It is true that in terms the words of the second part of the clause include the words "and will also make and carry out any alteration or addition whether structural or otherwise having application thereto now or hereafter in force or by virtue of any requirement of the said authority may be required to be made or carried out by either the lessor or the lessee in or upon the demised premises or the said building" and that these words may literally cover the order made but, having regard to the terms of the lease as a whole and to the context in which the words appear, I do not think that they were intended to cover an order made under section 40A. Section 40A was in force when the lease was executed and, if it had been intended that the lessee should undertake the possibly very heavy burden of such an order, one would have expected the burden to have been created in clear and unmistakable terms.
- 20

- 30 However, even if I were wrong on this question of the construction of clause 5, I do not think that the result would be affected. The fact that the burden of the order was on the defendant as between the parties would not, I think, if the provisions of clause 4 and of the implied covenant did not otherwise create rights to the relief asked for, of itself provide a basis for such relief.

Whether the defendant was bound as between itself and the plaintiff to carry out the order, it appears clear that it either thought it was so bound or deemed it expedient itself to endeavour to comply with it. After all, if the licence were lost, the most valuable part of the plaintiff's business would have disappeared.

The defendant obviously took over the burden of the conduct of the proceedings in the Licensing Court and since it was the occupier through its nominee was no doubt entitled to be heard.

- 40 The second important fact is the application made by the defendant on the 26th May, 1955, and the order purported to be made under it.

For the defendant, it was argued that this order was quite ineffective. It was said that there was no jurisdiction in the Licensing Court to approve plans under section 40A. But, even if this were so, it is to be remembered that the person then making the application

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

to build in accordance with the plans was the lessee and not the owner against whom the order had been made and a lessee in order to build is required by section 40 (2) to have plans approved. In this connection, I do not think that because section 40 (2) was not expressly referred to in the application, this is of vital importance.

Again, it was said that, as the Act then stood, the Court had no jurisdiction to vary the order from an order of 100 bedrooms to an order for in fact 62 bedrooms but the order made on the 26th May, 1955, might very well be considered as a new order and the section might very well have given jurisdiction to make a new order. 10

However, I do not think it is necessary to determine these questions for the purposes of this suit and in such circumstances it would be inexpedient to do so.

The tentative views which I have expressed should not be taken to be decisions as to what the true position was.

Whether the plaintiff is entitled to the relief sought does not in the view I take in any way depend upon the question whether the order made on the 26th May, 1955, was or was not made with jurisdiction.

The third important fact is the submission of the original 1954 plans and of the amended Sheet 5 for the approval of the plaintiff. 20

It is possible that the defendant submitted the plans in the belief that it was bound to do so under clause 4. If it was in error in this belief, that fact I do not think would affect the legal position arising but I shall assume that the defendant was bound to submit the plans for approval.

What was the legal result of what followed?

The plaintiff has argued that a stage was reached when the plaintiff by reason of the provisions of clause 4 and of its approval of the plans and of the approval of the plans by the Licensing Court became entitled to have specific performance to compel the defendant to build a building 30 according to the 1954 plans.

I am of opinion, however, that no such stage was ever reached.

The approval given by the plaintiff was subject to many conditions, some of which required fulfilment before the building was commenced and there is no evidence that they were fulfilled.

On the 23rd March, 1955, substituted plans were lodged with and approved by the Licensing Court and, although these plans do not vary in general principle from the former ones, there is no evidence to show that the substituted plans were submitted to or approved by the plaintiff. 40

The facts set out in the history lodged by the defendant with the application for an extension of time on the 29th September, 1955, particularly the facts set out in paragraph 4 thereof, make it clear that the defendant was not on the 25th September, 1955, entitled as between itself and the plaintiff to go ahead with the building.

I think it is clear that the plaintiff could not have obtained a decree for specific performance on the 25th September, 1955, and the evidence does not establish that after the 25th September, 1955, the position materially altered.

The last important fact is the submission of the 1956 plans.

I am of opinion that until the building design, plan and specification was so approved as to give the defendant the right then to go ahead with the building, there is nothing in the terms of clause 4 to prevent the defendant proffering to the plaintiff for approval substituted plans
10 for a different kind of building and to have the plaintiff consider them.

What then is the nature of the approval referred to in clause 4, remembering that clause 4 implies a negative covenant of the nature I have described?

For the plaintiff, it was argued that the plaintiff had an absolute discretion. For the defendant, it was argued that the plaintiff's right could not in any case be exercised arbitrarily or capriciously and had to be exercised in the light of the main purpose of the lease and not in derogation of the grant in the lease and in particular that the early words of clause 4 must be read subject to the phrase "and notwithstanding
20 ing anything hereinbefore contained the building design and specification of the said building shall be subject to the reasonable requirements of the lessor." This, it was said, had the effect of limiting the plaintiff's discretion to reasonable requirements.

For the plaintiff, it was argued that these words assume a prior approval of the building design, plan and specification. Although the lessor had approved the building design, plan and specification, the lessor could require reasonable variations of it. It was primarily intended to cover matters arising after approval and during construction.

30 The conclusion I have arrived at is that the defendant's contention as to the effect of the phrase "notwithstanding . . . etc." is correct.

The requirement that the building design plan and specification was to be such as the "said authority" may in their absolute discretion approve is in the circumstances an extraordinary one and the use of the word "or" also raises difficulties but I do not propose to spend any time on the construction of these words. I shall deal with the situation as if the words read "in accordance with such building design plan and specification as the lessor may in its absolute discretion approve".

40 A reading of the whole lease and of the first part of clause 4 does give the impression that the draftsman was primarily concerned with the protection of the lessor and leads to a suspicion that any words which he introduced would not have been intended to cut down rights already given to the lessor but the intention must be gathered from the words which are in fact used.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

If it were intended that the building design plan and specification, notwithstanding that it had been approved by the lessor, should in addition from time to time be subject to the reasonable requirements of the lessor, nothing would have been easier than to have said so.

The words following the phrase “notwithstanding . . . etc.” are very wide and do provide a substantial safeguard for the lessor during construction.

The words “notwithstanding anything hereinbefore contained” refer more naturally to the words used earlier in clause 4 than to something done in pursuance of the provisions of clause 4. 10

A consideration of the timetable of clause 4; complete preparation and submission within 16 weeks; the necessity thereafter for the obtaining of consents, involving consideration of the documents; the building to be commenced within six months and to proceed continuously thereafter, suggests that finality was required.

I do not think that it is putting undue strain on the words to read them as meaning that, notwithstanding what has been said previously, namely that the building design plan and specification should be such as the lessor may in its absolute discretion approve, the building design plan and specification is to be subject only to the reasonable require- 20
ments of the lessor.

I am of opinion that what the lessor insisted upon in 1956 were not reasonable requirements.

However, even if the construction which I have placed upon the phrase were wrong, the result would not be different.

Section 133B (2) of the Conveyancing Act, 1919-1943 is in the following terms:—

“In all leases whether made before or after the commencement of the Conveyancing (Amendment) Act, 1930, containing a covenant, condition, or agreement against the making of improve- 30
ments without license or consent, such covenant, condition, or agreement shall be deemed, notwithstanding any express provision to the contrary, to be subject to the proviso that such license or consent is not to be unreasonably withheld; but this proviso does not preclude the right to require as a condition of such license or consent the payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to the lessor, and of any legal or other expenses properly incurred in connection with such license or consent nor, in the case of an improvement which does 40
not add to the letting value of the holding, does it preclude the right to require as a condition of such license or consent, where such a requirement would be reasonable, an undertaking on the part of the lessee to reinstate the premises in the condition in which they were before the improvement was executed.”

I am of opinion that the word "improvements" covers a building of the nature described in clause 4, that the negative covenant I have mentioned is contained in the lease, that such covenant is a covenant against the making of improvements without consent, and that the negative covenant is subject to the proviso mentioned in the section.

The question then is: Did the plaintiff reasonably refuse to approve?

The plaintiff's response to the request that the 1956 plans be considered is contained in the letters of 14th August, 1956 and 17th August, 10 1956.

The effect of these letters may be summarised thus:

The plaintiff takes the view that the defendant became bound to erect a building according to the 1954 plans.

The plaintiff takes the view that the plaintiff is entitled to have the defendant erect a building which would be based upon the whole of the columns and sub-structure.

The plaintiff takes the view that the plaintiff is entitled to have the defendant erect a building which covers the whole of the site.

Since it takes these views, the plaintiff will not consider the plans 20 and will not approve of them.

For reasons which I have already given, the plaintiff's views were wrong and in my opinion the plaintiff should have considered the plans. I have already referred to the facts relating to the 1956 plans and the proposed new building.

In all the circumstances, the conclusion I have reached is that approval to the 1956 plans was unreasonably withheld by the plaintiff. The effect of this conclusion is, that that part of the negative covenant relating to the approval of the lessor, so far as the 1956 plans are concerned, no longer has effect. This does not mean, of course, that the 30 defendant is relieved from an obligation not to build a building which otherwise does not comply with clause 4, that is approved by authority, to cost at least £150,000, providing for the complete safety of the lessor's passageway, subject to any requirements of the lessor concerning the absolute stability, safety and well being in every respect of the lessor's passageway, etc., nor does it mean that the defendant can build anything in any of the reserved areas.

The 1956 plans disclose some errors relating to reserved areas which I have mentioned and the effect of these errors is, it was argued on behalf of the plaintiff, that I could not possibly find that approval 40 was unreasonably withheld; but this I do not think is the true position. They are in the circumstances but minor discrepancies and approval of the plans as plans would not permit the defendant to build on the reserved areas.

If the plaintiff's contention as to the effect of the "notwithstanding . . ." clause be correct, the plaintiff could always make further and reasonable requirements.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*
—
No. 28.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 26.
Judgment of
McLelland J.,
11th
February,
1958—
continued.

The suit was obviously commenced for the particular purpose of preventing the defendant from pursuing its application to the Licensing Court for a variation of the order made under section 40A and for the approval of the 1956 plans. Section 40A and section 40 (2) of the Liquor Act gives the defendant statutory rights to pursue its application. It is true that, if the order made under section 40A be varied, a new statutory obligation may be imposed upon the plaintiff but, if in the circumstances the defendant is not in so pursuing its application committing a breach of the implied covenant, I see no reason why the defendant should be restrained from pursuing the application, even though it is in the defendant's contemplation that at a future time, if the circumstances then enable it to do so and it considers it then expedient to do so, it will make an application under section 40A (2) (d). 10

I have used the word "may" in referring to the statutory obligation imposed upon the plaintiff because recently the High Court of Australia in *Wynyard Investments Pty. Ltd. v. Commissioner for Railways* (N.S.W.) (93 C.L.R. 376) held that section 4 (2) of the Transport (Division of Functions) Act, 1932-1952 (N.S.W.) means that for the purposes of any Act the Commissioner shall be deemed to represent the Crown as its servant or agent and it may very well be that, having regard to the principle that in order that the Crown should be bound by a statute it must be expressly named or be bound by necessary implication, the plaintiff is not bound by an order purported to be made under section 40A and would not be bound by the provisions of section 40A (2) (e) and would not be liable to a fine under the provisions of section 40A (2) (e). 20

I do not find it necessary to resolve this question.

Amongst the relief claimed is paragraph 8 relating to the power of attorney provided for in clause 33 of the lease but no argument was addressed to me in respect to this and nothing, so far as I can see, has been proved to enable relief to be given in respect of it. 30

It is possible that in the future circumstances may arise in which the plaintiff may be able to obtain relief in this Court but at the present time I do not think that the plaintiff is entitled to any of the relief which it claims in the suit.

Having regard to the conclusion I have arrived at it is unnecessary for me to deal with the defence of hardship raised by the defendant or to deal with the application made by the defendant under section 89 of the Conveyancing Act and I say nothing about either of these matters. 40

I dismiss the suit with costs, the defendant Company's costs to include the costs of the motion for an interlocutory injunction and of the proceedings before me on the 2nd November, 1956, and to include the costs of and occasioned by the amendments made by the plaintiff to the statement of claim and to the replication.

No. 27

Decree

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

IN THE SUPREME COURT }
OF NEW SOUTH WALES }
IN EQUITY }

No. 1231 of 1956

No. 27.
Decree.

BETWEEN THE COMMISSIONER FOR RAILWAYS
Plaintiff

— and —

10

AVROM INVESTMENTS PROPRIETARY
LIMITED and JOHN BONAVENTURE
LIMERICK

Defendants

AND BY AMENDMENT made the Eleventh day of April
1957 pursuant to leave granted on the Ninth day of April
1957

BETWEEN THE COMMISSIONER FOR RAILWAYS
Plaintiff

— and —

20

AVROM INVESTMENTS PROPRIETARY
LIMITED
JOHN BONAVENTURE LIMERICK and
JOHN BIRKETT WAKEFIELD

Defendants

TUESDAY the Eleventh day of February in the year of our
Lord one thousand nine hundred and fifty eight.

30

THIS SUIT coming on to be heard before the Honourable Charles
McLelland a Judge of the Supreme Court sitting in Equity on the
fifth, sixth, seventh, eleventh, twelfth, thirteenth, fourteenth, nineteenth,
twentieth, twenty first, twenty fifth, twenty sixth and twenty seventh
days of March 1957 and the first, second, third, fourth, eighth, ninth,
tenth, eleventh, fifteenth, sixteenth, seventeenth, eighteenth, twenty
third, twenty fourth and twenty ninth days of April 1957 and the
sixth, seventh, eighth and twentieth days of May 1957 WHEREUPON
AND UPON READING the pleadings filed herein AND UPON
HEARING what was alleged by Sir Garfield Barwick Q.C. with whom
was Mr. Jenkyn Q.C. and Mr. H. Jenkins of Counsel for the Plaintiff
and by Mr. Wallace Q.C. with whom was Mr. Meares Q.C., Mr. Selby
and Mr. May of Counsel for the Defendants THIS COURT DID grant
leave to the Plaintiff to amend the statement of Claim and to the
defendants to amend the Statement of Defence in accordance with

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*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 27.
Decree.

amendments already filed herein and to the plaintiff to amend the Replication generally AND such amendments having been made accordingly WHEREUPON AND UPON HEARING READ the pleadings as so amended as aforesaid AND UPON HEARING the oral evidence of Eric Milton Nicholls, Henry Arthur Llewellyn, Walter Ralston Bunning, William Ray Laurie, John Roland Harrowell, Elizabeth Dorothea Randall and Royle Stone Connolly called on behalf of the defendants and of Thomas Maxwell Scott, Alexander Theodore Britten and David Davis called on behalf of the plaintiff AND UPON READING AND EXAMINING the Exhibits put in evidence on behalf 10 of the plaintiff and marked with the letters and figures A, B, C, D, E, F, G, H, J, K, L, M, N, O, P, Q, R, S, T, U, V, W1, W2, W3, W4, W5, W6, X, X1, Y, Y1, Y2, Y3, Z, Z1, AA, AA1, BB, BB1, CC, DD, DD1, EE, FF, FF1, GG, HH, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, DDD, EEE, respectively and the Exhibits put in evidence on behalf of the defendants and marked with the figures and letters 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24FF, 25GG, 26, 27, 28, 29, 30 respectively AND UPON HEARING what was alleged by the said Counsel for the said parties respectively THIS COURT DID ORDER 20 that this suit should stand for Judgment AND the same standing in the paper this day for Judgment accordingly THIS COURT DOTH ORDER that this suit be and the same is hereby dismissed AND THIS COURT DOTH FURTHER ORDER that it be referred to the Deputy Registrar or Chief Clerk in Equity to tax and certify the costs of the defendants of this suit including the costs of and occasioned by the amendments made by the plaintiff to the said Statement of Claim and Replication AND that such costs when so taxed and certified be paid by the plaintiff to the defendants or their Solicitor within fourteen days after service upon the plaintiff or its Solicitor of an office copy 30 of the certificate of such taxation.

No. 28

Order allowing final leave to appeal to Her Majesty in Council

THURSDAY the first day of May One thousand nine hundred and fifty-eight

UPON MOTION made this day on behalf of the Appellant before the Honourable Charles McLelland a Judge of the Supreme Court sitting in Equity pursuant to the Notice of Motion filed herein on the Twenty-ninth day of April One thousand nine hundred and fifty-eight WHERE-
 UPON AND UPON READING the said Notice of Motion the Certificate
 10 of the Acting Deputy Registrar in Equity of Compliance dated the thirtieth day of April last and the Affidavit of Alan Grant Crawford sworn the Thirtieth day of April last and both filed herein AND UPON HEARING what was alleged by Mr. H. Jenkins of Counsel for the Appellant and Mr. Fox of Counsel for the Respondents THIS COURT DOETH ORDER that final leave to appeal to Her Majesty in Her Majesty's Privy Council from the whole of the Judgment and decree of the Honourable Charles McLelland Judge of the Supreme Court sitting in Equity as pronounced herein on the Eleventh day of February One thousand nine hundred and fifty-eight be and the same is hereby
 20 granted to the Appellant.

C. D. IRWIN

Chief Clerk in Equity.

*In the
 Supreme
 Court of New
 South Wales
 in its
 Equitable
 Jurisdiction.*

No. 28.
 Order
 allowing final
 leave to
 appeal to
 Her Majesty
 in Council.

*In the
Supreme
Court of New
South Wales
in its
Equitable
Jurisdiction.*

No. 29.
Order
allowing final
leave to
appeal to
Her Majesty
in Council.

No. 29

**Certificate of Deputy Registrar in Equity of the Supreme Court
of New South Wales verifying the transcript record**

I RONALD THOMAS CLYDE STOREY of the City of Sydney in the State of New South Wales Commonwealth of Australia Deputy Registrar In Equity of the Supreme Court of the said State DO HEREBY CERTIFY that the numbered sheets hereunto annexed and contained in pages numbered one to six hundred and thirty inclusive contain a true copy of all the documents relevant to the appeal by the Appellant The Commissioner for Railways to Her Majesty in Her Majesty's Privy Council from the decree made in suit instituted by Statement of Claim No. 1231 of 1956 by the Honourable Charles McLelland a Judge of the said Supreme Court sitting In Equity on the Eleventh day of February One thousand nine hundred and fifty-eight so far as the same have relation to the matters of the said appeal together with the reasons for the said decree given by the said Judge *and* that the sheets hereunto annexed and contained in pages numbered i to x contain an index of all the papers documents and exhibits in the said suit included in the annexed transcript record and of all the papers documents and exhibits in the said suit not reproduced in the annexed transcript record which true copy and index are remitted to the Privy Council pursuant to the Order of his late Majesty King Edward The Seventh in his late Majesty's Privy Council of the Second day of April in the year of Our Lord One thousand nine hundred and nine.

IN FAITH AND TESTIMONY whereof I have hereunto set my hand and caused the seal of the said Supreme Court in its Equitable Jurisdiction to be affixed this 28th day of May in the year of Our Lord one thousand nine hundred and fifty-eight.

R. T. C. STOREY (L.S.)
Deputy Registrar In Equity of the
Supreme Court of New South Wales.

No. 30.
Order
allowing final
leave to
appeal to
Her Majesty
in Council.

No. 30

Certificate of Chief Justice

I the HONOURABLE SIR KENNETH WHISTLER STREET Knight Commander of the Most Distinguished Order of St. Michael and St. George Chief Justice of the Supreme Court of New South Wales DO HEREBY CERTIFY that Ronald Thomas Clyde Storey who has signed the Certificate above written is the Deputy Registrar In Equity of the said Supreme Court and that he has the custody of the records of the said Supreme Court in its equitable jurisdiction.

IN FAITH AND TESTIMONY whereof I have hereunto set my hand and caused the seal of the said Supreme Court to be affixed this 28th day of May in the year of Our Lord one thousand nine hundred and fifty-eight.

K. W. STREET (L.S.)
Chief Justice of the Supreme
Court of New South Wales.

EXHIBIT E

1. Letter from Avrom Investments Proprietary Limited to Commissioner for Railways, dated 24th August, 1953

*Exhibit*E

On the 20th instant we sought, through Mr. Smith (Works Officer), an appointment to discuss with you various matters arising out of the application by the Metropolitan Licensing Inspector to the Licensing Court under Section 40A of the Liquor Act for an order directing the construction, inter alia, of 200 public bedrooms. We were unable to obtain an appointment with you but we understood from our conversation with Mr. Smith that no financial assistance in connection with any work which may be ordered, could be expected from you.

1. Letter from Avrom Investments Proprietary Limited to Commissioner for Railways, dated 24th August 1953

As you are the owner of the land upon which the Hotel is erected and therefore have a considerable interest in any construction which may take place altogether apart from the matter of the license, we wished to discuss with you not only the possibility of financial assistance, but also the reaching of a general agreement in principle on the proposal to be put by us to the Licensing Court so that if and when an order is made, the work ordered to be done will not be objectionable to you. We feel that any building operations carried out now must affect the usefulness of the site in your hands at the termination of the lease.

The funds which are available to us are only sufficient to enable the construction of a strictly limited number of rooms, having regard to the special nature of the building and especially its foundations and the special structural work necessary in order to support any substantial construction above a certain level. We, therefore, seek a conference with you at the earliest opportunity and shall be glad if you will let us know at least seven to ten days ahead what would be a convenient time. You will understand that our directors reside in Melbourne and it is not easy for them to come to Sydney at short notice, although they are prepared to make a special trip for the purpose of such a conference. As regards the possibility of financial assistance, if in fact you are unable under any circumstances to assist financially, we would appreciate an early reply clearly indicating this fact, so as to assist us in formulating our proposals to be submitted to the Licensing Court.

*Exhibit*E

2. Letter from Solicitor for Railways to Messrs. Sly & Russell, dated 25th August, 1953

2. Letter
from
Solicitor
for
Railways to
Messrs.
Sly &
Russell,
dated 25th
August,
1953

With reference to my Mr. Paterson's telephonic conversation with your Mr. Wailes on Thursday last, regarding the Application herein under Section 40A of the Liquor Act, 1912, as amended, which is listed for hearing before the Licensing Court on Monday next, 31st instant, when the latter indicated that you would write to the Department regarding the matter: my instructions are that, up to the present, no such communication has been received. However, in the light of the position generally, and particularly having regard to your client's 10 obligations and covenants under the lease, it is assumed that it will take the requisite steps to comply with the Notice, or any other order the Licensing Court may make, and it would be appreciated if, prior to the hearing, you will indicate what steps it is proposed to take in order to meet the situation.

3. Letter
from
Secretary
for
Railways
to Avrom
Investments
Proprietary
Limited,
dated 25th
August,
1953

3. Letter from Secretary for Railways to Avrom Investments Proprietary Limited, dated 25th August, 1953

Referring to your letter, No. RSC/JM, of the 24th August, 1953, addressed to the Commissioner for Railways, as already intimated to you by Mr. R. Smith per telephone, the Commissioner is not prepared 20 to make any financial assistance available for the carrying out of any work which may be ordered by the Licensing Court, and it is felt that the conference sought prior to the submission to the Department of plans etc., of any building contemplated by you would be premature. However, the matter will receive further consideration in the light of the information asked for by the Solicitor for Railways in his letter of today's date to your Solicitors.

4. Letter
from
Solicitor
for
Railways
to Sly &
Russell,
dated 25th
August,
1953

4. Letter from Solicitor for Railways to Sly & Russell, dated 25th August, 1953

With reference to my Mr. Paterson's telephonic conversation with your Mr. Wailes on Thursday last, regarding the Application herein 30 under Section 40A of the Liquor Act, 1912, as amended, which is listed for hearing before the Licensing Court on Monday next, 31st instant, when the latter indicated that you would write to the Department regarding the matter: my instructions are that, up to the present, no such communication has been received. However, in the light of the position generally, and particularly having regard to your client's obligations and covenants under the lease, it is assumed that it will take the requisite steps to comply with the Notice, or any other order the Licensing Court may make, and it would be appreciated if, prior to the hearing, you will indicate what steps it is proposed to take in order to 40 meet the situation.

5. Letter from Sly & Russell to Solicitor for Railways, dated 25th August, 1953*Exhibit*E

We are in receipt of your letter of to-day's date, and we are informed that since the writer's conversation with your Mr. Paterson the Lessee Company has written direct to the Commissioner for Railways seeking an interview for the purpose of discussing matters arising out of this application.

For your information the application has been already adjourned by the Licensing Court until the 7th of September, and on that date we propose to seek a further adjournment.

5. Letter from Sly & Russell to Solicitor for Railways, dated 25th August, 1953

10 6. Letter from Solicitor for Railways to Sly & Russell, dated 26th August, 1953

I am in receipt of your letter of 25th instant, and am instructed that your client Company wrote to the Commissioner on 24th August, requesting, inter alia, that a conference be arranged with the Directors of the Company. I am further instructed that the above letter was replied to on 25th idem, in the following terms:—

6. Letter from Solicitor for Railways to Sly & Russell dated 26th August, 1953

20 “Referring to your letter, No. RSC/JM, of the 24th August, 1953, addressed to the Commissioner for Railways, as already intimated to you by Mr. R. Smith, per telephone, the Commissioner is not prepared to make any financial assistance available for the carrying out of any work which may be ordered by the Licensing Court, and it is felt that the conference sought prior to the submission to the Department of plans etc., of any building contemplated by you would be premature. However, the matter will receive further consideration in the light of the information asked for by the Solicitor for Railways in his letter of today's date to your Solicitors.”

It will be appreciated if you will let me have the information requested in my letter of 25th August as soon as possible.

7. Letter from Solicitor for Railways to Sly & Russell, dated 19th October, 1953

30 With reference to my letters herein of 25th and 26th August: it is noted that information has not yet been furnished as to what steps your client is taking to meet the position in regard to its covenants under the lease relating to building construction or in regard to the requirements of the Licensing Court.

7. Letter from Solicitor for Railways to Sly & Russell dated 19th October, 1953

40 As the application before the Licensing Court on 7th September was adjourned on the ground that plans and specification of a new building were being prepared, and the matter will be again before the Court on 9th November, it would be appreciated if full details of such plans, etc., are made available for the Department's consideration, without delay.

*Exhibit*E

8. Letter
from
Sly & Russell
to Solicitor
for Railways,
dated 23rd
October,
1953

8. Letter from Sly & Russell to Solicitor for Railways, dated 23rd October, 1953

We acknowledge your letter of the 19th instant, and do not quite appreciate what you mean by meeting the position in regard to our client's covenants under the lease relating to building construction.

As regards the pending application to the Licensing Court under Section 40A of the Liquor Act, our client has not yet determined what proposals it intends to place before the Court. When these proposals are completed, we will communicate with you again. We might mention that on the 9th proximo we expect a date to be fixed for the actual hearing of the application.

10

9. Letter
from
Sly & Russell
to Solicitor
for Railways
dated 3rd
November,
1953

9. Letter from Sly & Russell to Solicitor for Railways, dated 3rd November, 1953

Referring to your letter of the 19th October and our letter of the 23rd, we desire to inform you that as a result of conferences we have held, our clients propose at the Hearing on the 9th instant to consent to the making of an Order for the construction of one hundred bedrooms with their ancilliary sitting rooms bath and toilet facilities in accordance with Plans to be submitted for approval within six months, the work to be carried out within twelve months.

If as we expect this Order will be made on Monday next, we shall 20 after obtaining the approval of the Licensing authorities to the Plans, submit them to the Commissioner for his approval before lodging them with the City Council for its approval.

10. Letter
from
Sly & Russell
to Secretary
for Railways,
dated 21st
April,
1954

10. Letter from Sly & Russell to Secretary for Railways, dated 21st April, 1954

We forward you herewith a copy of the basic plans for additions to be made to the existing Plaza Hotel building in compliance with an order made under Section 40A of the Liquor Act on the 9th November last, together with a copy of a letter addressed to the Licensing Court by the Architect, Mr. D. F. Cowell Ham, and formally seek your 30 approval to these plans as required by the terms of the Lease.

A copy of these plans has already been handed to a representative of the Chief Civil Engineer, in order to expedite his consideration thereof and recommendations to you.

The Lessee, under the terms of the order, is obliged to lodge the plans with the Licensing Court for approval not later than the 30th instant, and we propose to lodge the plans and the letter from Mr Ham forthwith, requesting the Court to approve of them as sufficient compliance with the order made, having regard to the peculiar difficulties of the site and the enormous cost involved.

40

Following lodgement of the plans, it is likely that the matter will be listed some time late in May for the formal hearing of the application for approval and we should like very much to have your approval before this hearing.

We shall esteem it a favour therefore if you will give the matter your urgent consideration, and if there is any matter arising out of these plans and proposals on which you would like further information, the writer, with the New South Wales Manager of the Lessee Company, will be glad to confer with you at a suitable time.

Exhibit

E

10 11. Letter from D. F. Cowell Ham to the Registrar, Licensing Court, Sydney, dated 13th April, 1954

The proposed additions to the above hotel are to be constructed with steel, reinforced concrete and brickwork to carry out the type of structure which has been used in the existing sections and so comply with the Railway Commissioners' requirements.

The additional number of bedrooms will be placed on the First Floor level above Carrington Street on the Third floor level above George Street.

The proposed additions will provide a fully serviced hotel with
20 the following accommodation:—

The main residential entrance will be from the level of Carrington Street, adjoining which will be the administrative offices of the Hotel Company, with staff lavatories conveniently placed. The Concourse Entrance will be near the centre of the site and will be flanked by shops and provided with staircases leading to the lower levels.

One Bar approached from Carrington Street and flanked with an open deck and male lavatories is placed on the Southern side of the Concourse Entrance.

The present scheme provides for one elevator on the Eastern side
30 of Wynyard Lane which will service the internal traffic between the present Dining Room and Lounges on the George Street mezzanine and the upper Bedroom Floors.

The existing bedrooms on the First floor to George Street will be connected to George Street and the new residential floor above by two staircases at the North and South end of the central passage of the building and a staircase from a central Lounge.

The existing bedrooms and toilets are to be remodelled and will provide this section with block toilets for each sex and two Lounges. Portions of this floor will be serviced by exhaust ventilation.

The Third floor level will be devoted entirely to bedrooms and
40 residential services as follows:—

Single bedroom serviced with toilet and bathroom, Five;
Single bedroom serviced with toilet and shower, Eleven;
Single bedroom serviced with common toilet and showers,
Fourteen. Total, Thirty (30).

10. Letter from Sly & Russell to Secretary for Railways, dated 21st April, 1954

11. Letter from D. F. Cowell Ham to the Registrar, Licensing Court, Sydney, dated 13th April, 1954

Exhibit

E

11. Letter
from
D. F. Cowell
Ham to the
Registrar,
Licensing
Court,
Sydney,
dated 13th
April,
1954

Double bedrooms serviced with toilet and bathroom, Fourteen;
Double bedrooms serviced with toilet and shower, Ten;
Double bedrooms serviced with common toilets and showers,
Eight. Total, Thirty-two (32). Grand total, (62).

Room service facilities in Liquor and meals are situated near the
elevator and will provide continuous service.

Bedrooms without separate toilets, bathrooms or showers will
have basins with hot and cold water in each case.

Finishing Surfaces:

Private Entrance, Bar, Concourse Shops: Will have tiled floors 10
and rendered walls above tiled dados. Plaster ceilings are to
be painted in lead and oil to match the other painted surfaces.

Bedrooms: Will be finished with rendered surfaces painted in
lead and oil with polished or painted furniture built into the
structure.

Bathrooms, Showers & Toilets: Will, in all cases, be tiled on
floors and up to six feet on walls. Finish above dado on walls
and to ceilings to be enamelled plaster.

Plumbing fittings are to be superstandard. In the case of inter-
nal bathrooms, mechanical ventilation will be provided. 20

Floors: Will be concrete covered with wall to wall carpet to bed-
rooms, lounges and passages. To bathrooms and toilets, finished
in tile.

Electrical services: Included will be ample illumination and
cleaning points.

Externally: The fronts are to be faced in tapestry bricks with
some sandstone trimming.

Flat Roof: The flat roof will be insulated and will provide a
service to guests for open air recreation, with male and female
toilets. 30

Estimated cost: The estimated cost of the structure, equipment
and furniture is Three hundred and eighty thousand Pounds
(£380,000), and the work is expected to take two years to
complete.

12. Letter
from
Sly & Russell
to Secretary
for Railways,
dated 7th
May,
1954

12. Letter from Sly & Russell to Secretary for Railways, dated 7th May, 1954

On the 21st of April we forwarded you a copy of the basic plans
for additions to be made to the existing Plaza Hotel building in com-
pliance with an order made by the Licensing Court, and we requested
your approval thereto.

In addition to these plans we now enclose another copy of Sheet 5 40
which varies from the original layout for the Carrington Street level
and adds to it an area shown as a beergarden.

13. Letter from Secretary for Railways to Avrom Investments Proprietary Limited, dated 13th May, 1954

Exhibit

E

With reference to the telephone conversation which an Officer of this Department had with you recently relative to the parking of motor vehicles on the roof of the Plaza Hotel, I have to advise that the matter has been investigated further. It is considered that the continued use of this area as a car park will possibly lead to deterioration of the concrete owing to dripping of oils and grease from the cars, and that the movement of relatively heavy bodies over the concrete is likely to cause cracks to develop and permit seepage of water to business premises beneath. The present practice, therefore, is to be discontinued forthwith and I shall be glad to have your early advice that alternative arrangements have been made for future parking of these vehicles.

13. Letter from Secretary for Railways to Avrom Investments Proprietary Limited, dated 13th May, 1954

14. Letter from Solicitor for Railways to Sly & Russell, dated 21st May, 1954

14. Letter from Solicitor for Railways to Sly & Russell, dated 21st May, 1954

Your letters of 21st ultimo and 7th instant have been referred to me, and I am instructed that the Commissioner approves of the plans submitted with your letter of 21st ultimo as amended by the plan submitted with your letter of 7th instant, subject to the building being constructed in accordance with the requirements of any civil, licensing or other authorities, as well as the Commissioner, and subject, also, to the following modifications and conditions:—

1. The area on the first floor level between Wynyard Lane and Carrington Street which has not been allocated for any particular purpose is not to be used as a car parking area, and if used for storage the loading on the floor shall not exceed 100 lbs. per sq. ft. In this connection, it is noted that if the area in question is converted at any future date into shops or offices the entrance from the concourse on the second floor to the access stairway will have to be modified to meet the Commissioner's requirements, and the door opening into the bar will have to be bricked up if the Commissioner so requires.
2. A brick fence, not less than 6 ft. high, or similar type of fence, is to be erected on the Carrington Street boundary from the proposed building to Shell House.
3. The stairway from the Concourse on the second floor to Wynyard Lane is to be moved slightly towards Carrington Street so that at least 7' 6" head room is provided to the underside of the floor of the male lavatory.
4. The 5' 3" wide corridor at the Western end of the third floor shall not be reduced in width where columns occur to less than a width of 3' 9".

Exhibit
 E
 14. Letter
 from
 Solicitor for
 Railways to
 Sly & Russell,
 dated 21st
 May,
 1954

5. Mechanical exhaust ventilation is to be provided to bathroom and W.Cs. between bedrooms 29 and 30, those adjoining bedrooms 32, 51 and 52, and the bathrooms of bedrooms Nos. 1 to 7, and 16 to 26, inclusive, on the third floor level, also the shops and W.C. in the female lavatory on the second floor level.
6. Provision is to be made to ventilate mechanically, at a future date, the existing offices and conveniences facing west on the first floor level, also the present unoccupied areas shown on drawing of this and other floor levels. 10
7. The existing ventilating ducts are to be carried up and discharged above the new roof level or as may be directed by the Department.
8. Exposed service pipes under the third floor level and over Wynyard Lane are to be encased where exposed to view, and the minimum height and clearance over Wynyard Lane are to be maintained. Adequate sized ducts for all services are to be provided on all floors sufficient for future extensions of the building.
9. Provision is to be made in the construction of the building 20 for the support of the new elevator and the installation, at a future date, when the building is carried up to the maximum height allowed by the building regulations, of additional elevators.
10. The columns, beams and other structural work are to be designed and constructed so as to permit the building being carried up to the full height allowed by the building regulations.
11. Detail drawings, specifications and calculations of the structural work, mechanical ventilation, sewer and drain- 30 age, and all other services, are to be submitted to the Department for approval before any work is commenced. These drawings are to have the approval of the Sydney City Council, Metropolitan Water, Sewerage & Drainage Board, and such other authorities as may be concerned, before being submitted.
12. The maintenance of the building, including all services and mechanical ventilation and other equipment, is to be carried out at all times to the satisfaction of the Department.
13. A window is to be provided in the W.C. of the female con- 40 venience in the beer garden provided for in amended Sheet 5 of the plans.

15. Letter from Avrom Investments Proprietary Limited to Secretary for Railways, dated 15th June, 1954

Exhibit

E

We refer to your letter of 13th May, 1954, and cannot recall a recent conversation with an Officer of the Department on the subject matter, although the Writer does recall some casual reference some 12-15 months ago.

15. Letter
from Avrom
Investments
Proprietary
Limited to
Secretary for
Railways,
dated 15th
June,
1954

10 Whilst appreciating the reasons mentioned in your letter, we should like to point out that there is no general parking of motor vehicles in the area adjoining the Carrington street frontage, and no charge is, or ever has been made for parking there. That is, it is not public parking, and such parking as there is, is restricted to the private cars of the Officers of this Company and, in the main, to its professional contacts, such as its Architects, Accountants, and Solicitors. It is true that certain of the tenants of the Ramp shops use the area from time to time, and we are glad to have your letter for the purpose of supporting action we had already instituted before it was received, concerning abuse of the privilege by some of them.

20 As you know, access to the area is by locked gates from the Lane, but you may not know that it is by key issued and recorded by us, and that the parking is supervised by our employees, so that no unauthorised person make use of the area.

Concerning the two specific points mentioned in your letter: that is, deterioration by oil, and weight, it is clear that if this were in fact the case, we should be as concerned as you, because of our commitments under the Head Lease.

It does not seem to us though, that as parking has been done for very many years, any deterioration by oils would surely have been apparent by now, if any had in fact occurred. We can see no sign that this is so, nor can our Engineers.

30 As to weight of motor vehicles, we repeat that they are only private cars, mostly small or medium types. We received a letter dated 21st May, 1954 from the Solicitor for Railways dealing with the proposed new building at Wynyard. In this was mentioned a loading not in excess of 100 lbs. per square foot. We found this indeed surprising, and asked our Construction Engineers, who as you know were retained on the original structure, for advice on the point.

40 They assure us that no possible damage could be caused by the parked cars and that, in fact, the structure can easily bear many times the weight now upon it. We may add that over the years, we have had no trouble by water seepage into our shops by reason of the cars parked above.

We feel sure you will understand the great inconvenience that would be caused to us if the parking arrangements were to stop. This is particularly so now, because of the frequent visits by our

*Exhibit*E

15. Letter
from Avrom
Investments
Proprietary
Limited to
Secretary for
Railways,
dated 15th
June,
1954

professional Consultants, made necessary by the projected new building. In any event, when building on the area begins, no doubt some alteration will be necessary to present arrangements.

We shall appreciate it if you will re-consider your objections in the light of this letter.

16. Letter from Sly & Russell to Solicitor for Railways, dated 6th August, 1954

16. Letter
from
Sly & Russell
to Solicitor
for Railways
dated 6th
August,
1954

We refer to your letter to us of 21st May last, Clause 10 of which is not clear to us under the circumstances.

As you know, the plans referred to in your letter do not cover the whole of the ground site and while provision will be made to permit of the upward extension of the building to the maximum height and manner permitted by the City Council's requirements over the area which it is proposed to cover with building, it is not proposed to make plans for building over those portions of the ground site which are left vacant other than the corner where the land adjoins the Shell Company's building in Carrington Street where it is recognized that provision will have to be made for lifts etc. if further floors are added at a later date. 10

Apart from the not inconsiderable other difficulties of constructing a building on a site of this nature, the very vital question arises now as to the size and strength of the columns on which the building and any future construction will rest. 20

In view of the very large cost involved in column construction it is essential for us to know at this juncture exactly which columns have to be carried up to any particular height and the dimensions etc. of them. As this may involve a question of policy with the Commissioner for Railways, we feel that a conference should be held at which should be present not only the Commissioner's technical officers but also someone who can speak with authority on the other matters involved. We propose that the Lessee should be represented at that conference by the writer and one of its Directors, its Sydney Manager and Mr. Ham the architect who prepared the plans, and if thought desirable, Mr. Stanley the engineer who is concerned with the size of the columns. 30

In view of the fact that the Lessee is pressed for time by the Licensing Court and this particular matter is vital to the preparation of any detailed plans and specifications, we shall be grateful if you can arrange such a conference and indicate to us when it will be convenient to have it. If possible, we would like several days notice so that we can advise those interested parties who reside in Melbourne.

**17. Letter from Sly & Russell to Commissioner for Railways, dated
19th August, 1954**

Exhibit

E

17. Letter
from
Sly & Russell
to
Commis-
sioner for
Railways,
dated 19th
August,
1954

We refer to the letter to us dated 21st May, 1954 from the Solicitor for Railways approving of the plans submitted by us for additions to the existing hotel building and to the conference with your officers on 18th instant at which in particular condition 10 as set out in the letter was discussed.

As you are aware, prior to the Licensing Court requiring the construction of additional bedrooms, the Lessee Company had embarked upon the remodelling of the Southern Bars including the construction of new cool rooms and its plans approved by you.

As a direct result of the new planning to provide additional bedrooms which involves construction on the Carrington Street frontage, it became both necessary and desirable to redesign the coolroom on the Wynyard Lane level adjacent to Carrington Street and it was decided, on the economic factors involved, to utilise the roof of this coolroom as an open beer garden.

This involved the planning of a concrete slab for such roof and the consequential amendment of the original plans for the Southern Bars to dovetail this work with the proposed new project.

Before, however, incurring the expense and time involved in preparing detailed plans and specifications for the new project it became necessary to consider the size and strength of the various columns already on the site and upon which the whole construction depends.

These columns are of a very substantial nature as originally planned many years ago and entail costly construction at the present time.

It will be appreciated therefore that any unnecessary column construction will involve the Lessee Company in many thousands of pounds which could be better utilised in productive improvements on the site.

It will also be appreciated that the Lessee Company proposes to expend on the present proposed development of the site alone, more than twice as much as it is obliged so to do in order to comply with the literal terms of its lease.

The Lessee Company realises, however, that literal compliance with the requirements of the lease, would be an ineffectual and undesirable method of development and would probably result in great difficulty and expense for itself or its successors in further developing the site. The Lessee Company proposes to erect the building in accordance with the plans submitted and approved providing, in so doing, for the future upward extension of such building by itself or its successors to the full height permitted by the City Council.

Exhibit
E
 17. Letter
 from
 Sly & Russell
 to
 Commis-
 sioner for
 Railways,
 dated 19th
 August,
 1954

It does not envisage building over any portion of the ground plan not built over in the present plans except for the corner on Carrington Street adjoining Shell House where provision already exists for four lifts. It is contemplated that this area will and must be built up in any further development.

To assist you in following future possible development we attach a plan which shows the proposed layout of a bedroom floor. It is estimated that the areas outlined in red can be built up to the maximum of 150 feet above George and Carrington Streets while the area in wide green hatching can be built up to 79 feet above Wynyard Lane and the area in narrow green hatching can be built up to 90 feet above Carrington Street (i.e. the bottom of the light Court). This should produce eleven floors on George Street (including the existing floors), twelve floors on Carrington Street and about seven floors in the inner portions. On both Street frontages there will be included a parapet about five feet high. 10

On both the George and Carrington Streets frontages it is estimated that the building can be constructed to the full height of 150 feet while in the centre the maximum height will vary and be somewhat less by reason of the light areas. 20

One reason why it is not thought possible or desirable to build over or provide for building over the areas left vacant on the present plans is that at all stages of development and particularly as the building becomes higher it is necessary to provide light and air for the bedrooms etc.

If therefore these vacant areas are not to be built over it becomes uneconomic and indeed wasteful to construct any columns to an extent greater than is required to support the full building as envisaged.

Before, therefore, preparing detailed plans and obtaining engineering data required before such plans can be prepared, we consider it essential to have condition 10 abovementioned clarified. 30

What the Lessee Company proposes to do, with your approval, is so to construct the columns required for the support of the present proposed building as to permit future construction of that building (including the area adjoining Shell House abovementioned) to the maximum height permitted by the City Council which will permit of some reduction in the dimensions of those columns by reason of the areas left vacant for the provision of light and air. A particular illustration may be given in regard to the rectangular columns against the building on the southern side between Wynyard Lane and Carrington Street. There are three such columns which are of substantial size but which, under the present plans, will support only the concrete slab over the coolroom which will also be the floor of the proposed beer garden. 40

As no further construction above this area is proposed, such columns become unnecessary and the slab can be adequately supported by other means such as a brick wall upon a steel beam across the tops of the columns as at present constructed which would result in a saving of some thousands of pounds.

Your concurrence to this proposal is therefore sought. If, however, for any particular purpose of the Railway Department it is desired that such columns be constructed to greater dimensions than would be required for this purpose two alternatives are proposed namely;

- 10 (1) that the Department should bear the difference in cost, or
 (2) that the term of the present lease be extended.

In view of the requirements as to time of the Licensing Court and the fact that work upon the Southern Bars is in abeyance until a decision is reached, we request you to give this matter your urgent attention.

18. Letter from Secretary for Railways to Sly & Russell, dated 5th October, 1954

I refer to your letter (Reference 7) of the 19th August, 1954, further regarding the additions proposed to the existing hotel building, and wherein you advise that the Lessee Company proposes, inter alia, to erect a building in accordance with the plans submitted and approved, providing, in so doing, for the future upward extension of such building by the Company, or its successors, to the full height permitted by the City Council.

As regards your statement that, before preparing detailed plans and obtaining the requisite engineering data which is necessary to enable such plans to be produced, you consider it essential to have Condition 10 dealing with the sizes and strength of the columns etc., referred to in the letter dated 21st May, 1954, forwarded to you by the Solicitor for Railways, clarified, I have been directed by the Commissioner to advise you as follows:

1. All columns within the area, west of Wynyard Lane, coloured red on the plan enclosed herewith are to be constructed of sufficient strength to permit of the building on such area being carried to a height of 150-ft. above the existing level of Carrington Street.
2. All columns within the area, east of Wynyard Lane, coloured red on the plan enclosed herewith, are to be constructed of sufficient strength to permit of the building on such area being carried to a height of 150-ft. above the existing level of George Street.

Exhibit

E

17. Letter from Sly & Russell, to Commissioner for Railways, dated 19th August, 1954

18. Letter from Secretary for Railways to Sly & Russell, dated 5th October, 1954

*Exhibit*E

18. Letter
from
Secretary
for Railways
to
Sly & Russell,
dated 5th
October,
1954

3. All columns in the remaining areas, coloured green on the plan enclosed herewith, are to be constructed of sufficient strength to permit of the building on such areas being carried to a height of 105-ft. above Carrington Street.
4. Columns in the cool room which are to support the beer garden on the plans submitted may be regarded as temporary columns and may be built to carry the actual loading to be imposed at present.

The Commissioner for Railways is not prepared to bear any of of the expenditure for complying with the foregoing, nor is he agree- 10
able to any extension of the term of the lease.

As the area adjoining Shell House in Carrington Street does not appear to be fully developed, the Lessee Company is requested to submit a complete set of drawings showing the layout of the whole of the proposed future building, and I shall be glad if you will arrange for this to be done.

19. Letter
from
Secretary for
Railways to
Messrs.
Stanley &
Llewellyn,
dated 25th
October,
1954

19. Letter from Secretary for Railways to Messrs. Stanley & Llewellyn, dated 25th October, 1954

Referring to your letter of the 8th October, 1954, regarding plans of proposed additions to the Plaza Hotel, which your Mr Stanley left 20
at this office of the Railway Chief Civil Engineer on the 29th September, 1954, I have to inform you that the drawing concerned, viz:—

O.W.L. 1. dated 21.9.54: Details of steel columns S.76

O.W.L. 2. dated 14.9.54: Details of steel columns S. 26

have been checked and are satisfactory, so far as this Department is concerned.

EXHIBIT J

*Exhibit*J

1. Applica-
tion for
Extension
of Time to
Carry Out
Section 40A
Order

1. Application for Extension of Time to Carry Out Section 40A Order

IN THE LICENSING COURT FOR THE METROPOLITAN
LICENSING DISTRICT HOLDEN AT SYDNEY

30

AVROM INVESTMENTS PROPRIETARY LIMITED a Company
duly registered under the Companies Act of the State of Victoria and
having its registered office at Number 229 Elizabeth Street, Melbourne
in the said State and registered as a foreign company under the
Companies Act of the State of New South Wales the registered office
of which in New South Wales is at Room 333, Rawson Chambers,
Rawson Place, Sydney being the owner of the licensed premises known

as the "Plaza Hotel" situated at Number 291 George Street Sydney doth hereby pursuant to Section 40A of the Liquor Act 1912 as amended apply to the Court for an extension of time until the 31st March, 1956 within which to carry out the additions to the said "Plaza Hotel" ordered to be done by the Court on the 9th of November 1953 upon the following grounds:—

Exhibit

J

1. Application for Extension of Time to Carry Out Section 40A Order

1. Since the application of the Company dated the 22nd March 1955 for an extension of time until the 30th September, 1955 most of the matters causing delay as mentioned in paragraph 11 of the Company's said application have been satisfactorily adjusted except for the receipt by the Company's Architect of the engineering drawings and details which on the 28th February 1955 the Company's Consulting Engineers, Messrs. Stanley & Llewellyn had stated would be available by the 30th April, 1955 which would have enabled the Company's Architect to complete his plans and specifications as mentioned in paragraph 15 of the Company's said application. Attached hereto is a copy of a letter written by Messrs. Stanley & Llewellyn to Mr. D. F. Cowell Ham, the Company's Architect dated the 16th March, 1955 which indicates that they were proceeding with the technical calculations required and encountering some difficulty in regard thereto.
2. On the 11th day of June, 1955 Mr. Malcolm Stanley of Messrs. Stanley & Llewellyn, who was the member of that firm actually engaged on the work, was accidentally killed while crossing the railway line near his home.
3. Subsequently investigations have failed to produce the computations and engineering data relating to the bedroom scheme on which the late Mr. Stanley was working, and it is assumed that he had them with him when he met his death and that they were destroyed, as it was a known custom of his to carry a satchel with him almost always.
4. The Company immediately conferred with Mr. H. A. Llewellyn of Messrs. Stanley & Llewellyn who immediately made investigations into the matter with a view to completing the drawings and engineering data required, but he informed the Company's Architect that he was compelled to commence his investigations and calculations from the beginning in the absence of any papers containing the work already done by the late Mr. Stanley.
5. At the Company's request he dealt first with the calculations and drawings required for the erection of additional columns on the site and then proceed with the work required for the further construction of the bedroom scheme.

Exhibit
J
 1. Application for
 Extension
 of Time to
 Carry Out
 Section 40A
 Order

6. The drawings and calculations for such further construction have been partly completed and the Company's Architect is now proceeding with the completion of his detailed plans and specifications as quickly as possible concurrently with which Quantity Surveyors are calculating the necessary Bill of Quantities which is essential for the calling of tenders.
7. Such drawings and calculations necessitated conferences between the Company's Architect and Mr. Llewellyn and with the Engineers for the Department of Railways.
8. Attached hereto is a letter from Mr. D. R. Cowell Ham the 10 Company's Architect reporting the position and giving estimates of times within which the documents required for the calling of tenders are likely to be completed, from which it will be seen that the Architect expects to complete his plans, specifications and quantities by the 1st day of December, 1955 and to be in a position to call for tenders immediately after receipt of written approval from the Commissioner for Railways.
9. As the Company realised that completion of the preparation of the plans and specifications and other data for the whole 20 bedroom project would still take a considerable time it decided that it could proceed with the construction of a further five columns and for the extension of the three columns already installed as these were a basic part of the future work and could be proceeded with independently. By letter of the 26th April 1955 the Contractors already engaged on other work at the hotel quoted for the fabrication and erection of five columns additional to the three columns referred to in paragraph 5 of the Company's prior applica- 30 tion and for the further extension of these three columns at the price of Thirty Two Thousand and Twenty Pounds Ten Shillings and Threepence (£32,020.10.3), and attached hereto is a copy of the Contractor's quotation. This quotation was accepted by the Company on the 6th day of May 1955 and the prefabrication of such columns is at present being undertaken by Luke Muras Limited as sub-contractors to T. C. Whittle Pty. Limited.
10. Due to the initial delay in receiving the calculations and drawings of Messrs. Stanley and Llewellyn for the reasons earlier set forth and the delays encountered by Luke Muras 40 Limited in obtaining the steel required and to pressure of work already on hand by that Company, it is not expected that the first of these additional columns will be available for delivery and installation until the 31st October, 1955.

- Exhibit*
J
1. Applica-
tion for
Extension
of Time to
Carry Out
Section 40A
Order
11. The work actually completed to date by the Company forming part of the bedroom scheme and solely attributable to it consists of the construction of a reinforced concrete roof over the cool room between Wynyard Lane and Carrington Street to form part of the floor on the Carrington Street level, and the erection of three reinforced steel and concrete columns required to support this slab and the further construction of the bedroom scheme at a cost of over Fifteen Thousand Pounds (£15,000.0.0).
- 10 12. Work for which the Company has already entered into a binding contract and which forms part of and is solely attributable to the bedroom scheme is the erection of five more columns required to support the building and an extension of three columns mentioned in paragraph 9 hereof at a contract price of Thirty Two Thousand and Twenty Pounds Ten Shillings and Threepence (£32,020.10.3).
- 20 13. The Company undertakes to advise the Court as soon as tenders have been called and again when a contract has been let for the remainder of the work involved in the bedroom scheme, and when making application to the Court for a further extension of time the Company will be in a position to give much fuller information as to the actual progress made and as to estimated times for completion of the whole work.

No. 2

Submissions by Applicant for Extension of Time

- No. 2
Submissions
by Applicant
for Extension
of Time
1. *TENURE OF APPLICANT*:
- 30 (a) Lease from the Commissioner for Railways registered on the 15th August, 1941. The lease was assigned by the lessees, Rachel Gardiner and Permanent Trustee Company of New South Wales (Limited) to the applicant on the 24th February, 1943.
- (b) The lease has approximately 46 years to run.
- (c) The annual amount payable by the applicant to the Commissioner thereunder is:—
- | | | |
|-------|---------|---|
| (i) | £19,200 | rent. |
| (ii) | 4,500 | payment of interest on certain moneys expended by the Commissioner. |
| (iii) | 16,000 | rates. |
| | £39,700 | |
- 40
- (d) By Clause 16, any building erected by the lessees on the subject property is to be in accordance with the design, plans and specifications to be approved by the lessor.

Exhibit
J
No. 2
 Submissions
 by Applicant
 for Extension
 of Time

2. *HISTORY OF THE MATTER BEFORE THE COURT:*

- (a) *14th July, 1953* Notice from Metropolitan Licensing Inspector of intention to apply for an Order under S. 40A of the Liquor Act.
- (b) *9th November, 1953* Hearing of the application when the Court made an order for 100 bedrooms and ancillary rooms. The plans to be submitted by the 31st March, 1954. Work to be completed by 30th March, 1955 at an estimated cost of £200,000.
- (c) *1st March, 1954* Time extended for lodgment of plans until 10 30th April, 1954.
- (d) *28th April, 1954* Plans submitted to the Court.
- (e) *26th May, 1954* Plans approved by the Court.
- (f) *23rd March, 1955* application for extension of time until the 30th September, 1955 and for approval to substituted plans lodged with the Court.
- (g) *18th April, 1955* Advice from the Court that no adverse action would be taken prior to the 30th September, 1955.
- (h) *29th September, 1955* application lodged for further extension of time. 20

3. *HISTORY OF ACTION TAKEN PURSUANT TO THE COURT'S ORDERS:*

- (1) On the 27th May, 1954 Mr. Stanley, the Structural Engineer, appointed by the lessee and was instructed forthwith to proceed with the necessary structural plans and specifications.
- (2) Mr. Ham, the Company's Architect, proceeded to prepare his detailed plans.
- (3) The building had been planned and built at a time when the By-laws relating to buildings were very much less stringent than they have been for some years past. 30
- (4) The construction of a large number of columns on which to support the building was quite unsuitable to the lessee's plans to erect substantial bedroom accommodation on the subject premises.
- (5) The plans drawn by Mr. Gardiner's Architects could not be carried out to any extent in view of the new building code.
- (6) On the 21st May, 1954 the Commissioner for Railways advised that he would not approve of the plans submitted to the Court without certain alterations being made thereto, but in particular refused approval unless the columns, beams and other structural work were designed and constructed so as to permit the building being carried up to the full height allowed by the Building Regulations. From then until the 6th August, 40

- a period of ten weeks, Mr. Stanley was engaged in endeavouring to prepare a structural design which would render the erection of the proposed building practicable. Numerous conferences were held with the lessee's Architect and with the Railway authorities and great engineering difficulties were experienced in connection with extending the columns in such a way as to support the building as required by the Railway Commissioner. In this connection, Mr. Ham and Mr. Stanley held many conferences and on more than one occasion Mr. Stanley took the view that the scheme was impossible of performance.
- (7) In the light of substantial difficulties which became more evident as research continued, a letter was addressed to the Solicitor for Railways on the 6th August, 1954 requesting a conference.
- (8) This conference was duly held and was attended by the Company's advisers, when the structural problems were put to the Commissioner for Railways' representatives.
- (9) Following on the conference a further letter was addressed to the Commissioner for Railways dated the 19th August, 1954 requesting a modification of the Commissioner's demands in regard to structural work.
- (10) From the date of this letter until a reply was received on the 5th October, 1954 the lessee's Solicitors contacted the Railway authorities on the 7th and 23rd days of September and on the 1st October requesting that in view of the time factor a decision be reached at the earliest possible moment.
- (11) On the 5th October, 1954 the Commissioner for Railways agreed to modification of his demands.
- (12) Messrs. Stanley and Ham were directed to proceed with engineering and architectural plans and specifications pursuant to the modified structural plan agreed upon by the Commissioner for Railways.
- (13) In that month Messrs. Crisp & Wolferstan were retained as Quantity Surveyors and Messrs. W. E. Bassett & Associates were retained to design the ventilation system. The Quantity Surveyors were retained at this early stage rather than when all the plans and specifications had been drawn in order that they could proceed with bills of quantities in respect of such matters as soon as they were finalised and, in this connection complete coloured plans were completed by Mr. Ham in November, less than one month after the Commissioner for Railways modifications and the same were forwarded to the Quantity Surveyors.

Exhibit

J

No. 2

Submissions
by Applicant
for Extension
of Time

Exhibit
J
 No. 2
 Submissions
 by Applicant
 for Extension
 of Time

- (14) The closest liaison was essential between the ventilation engineering, the structural engineers, the Architects, the Department of Railways, the City Council and the Railways authorities in the detailed preparation of all the various plans as they proceeded, it being appreciated that it was essential that there should be a dovetailing of planning for the purpose of saving as much time as possible, but the substantial problem was initially and has remained a structural one.
- (15) Mr. Stanley devoted substantially the whole of his time to the project and was working at night on it. As he proceeded 10 with his plans at different levels fresh problems would be encountered and on five occasions he formed the view that particular problems were, substantially speaking, insoluble. These problems were however ironed out as a result of his visits to Melbourne and of Mr. Ham's visits to Sydney and conferences between the experts and the lessee. As problems were met Mr. Ham had to prepare further complete new sets of plans. This was done on some five or six different occasions, the sets of plans being in the shape of the ones now produced to the Court as the final plans. 20
- (16) On the 26th April, 1955 Mr. Stanley, in a letter to Mr. Ham, referred to the problems as being "difficult engineering problems which came only once in a lifetime".
- (17) Notwithstanding all these difficulties, Mr. Stanley advised that his preliminary drawings would be available on the 20th April, 1955.
- (18) On the 22nd April, 1955 the building owners, after discussion with their Solicitors, wrote to Mr. Ham formally stressing the vital necessity to proceed with all necessary expedition.
- (19) On the 11th May, 1955 Mr. Ham wrote to Mr. Stanley stressing 30 the urgency of the matter despite the difficulties of the problem.
- (20) In order to save time and to proceed with what work which could safely be done, a contract was let on the 4th June, 1954 to T. C. Whittle Pty. Ltd. for structural work on columns 76, 51 and 26 and for other associated work at a total cost of £16,237. This work was completed in May of 1955 and is solely associated with the bedroom scheme.
- (21) On the 6th May, 1955 a further contract was let to T. C. Whittle Pty. Ltd. for structural work on five further columns—numbers 28, 30, 32, 57 and 81, at a total cost of £32,020.10.3. The 40 lessee authorised this work on the 28th February, 1955. It is anticipated that work will be started on these columns, which has been delayed because of steel shortages, within the next two weeks, and the columns will be erected well before building commences.

- Exhibit*
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No. 2
Submissions
by Applicant
for Extension
of Time
- (22) Plans and specifications for an electrical sub-station plant for the building when completed were prepared under instructions from the lessee by W. E. Bassett & Associates. These plans have been submitted to the Chief Secretary, the Board of Fire Commissioners and the Department of Railways and have been approved in principle.
- (23) On the 11th June, 1955 Mr. Stanley died.
- 10 (24) On the 13th June, 1955 his partner, Mr. Llewellyn was approached by the lessee's Architect and undertook to continue with the preparation of the structural plans and specifications.
- (25) Although Mr. Llewellyn had the disorganisation of his firm to cope with, due to Mr. Stanley's death, and also had his other partner away in America, he spent three weeks immediately following on Mr. Stanley's death working constantly until late hours in the night, endeavouring to sort out the records left by Mr. Stanley. He discovered certain preliminary drawings but practically no other records, and it was accordingly necessary for him to commence calculations de novo. He possessed certain knowledge of the matter as a result of many discussions with Mr. Stanley concerning the problems that had been encountered, and the lessee maintains that no criticism can be levelled at it for appointing Mr. Llewellyn in Mr. Stanley's place.
- 20 (26) Some three weeks after Mr. Stanley's death Mr. Llewellyn had made sufficient preliminary investigations to detail one of his engineers to concentrate on the problem. Since that time a draughtsman has been permanently employed and the engineer has devoted all such time of his as was necessary in the preparation of scale drawings and calculations for the draughtsman.
- 30 (27) From June, 1955 until now Mr. Llewellyn has maintained the closest liaison with the Architect, the ventilation engineers and the Council, the Railway Commissioner, the Metropolitan Water, Sewerage and Drainage Board and Plumbing Designers, F. Hill & Co. who have been engaged on the plumbing problem for a considerable period of time.
- (28) Example of the difficulties associated with the project is contained in Mr. Stanley's letter to Mr. Ham of the 16th March, 1955. As a result of this letter substantial alterations had to be made in Mr. Ham's plans and the necessity to make alterations has been continuing right up-to-date, the last alteration being made only a matter of a few weeks ago.
- 40 (29) The mechanical ventilation problem has been of prime importance because of the columns and supporting beams necessary

Exhibit

 J

 No. 2

 Submissions
 by Applicant
 for Extension
 of Time

and it has been necessary to integrate these problems with those of the structural engineer and of the Architect at all times.

- (30) All preliminary drafts and drawings of the ventilating engineers W. E. Bassett & Associates and of the structural engineers have been submitted to the Quantity Surveyors, immediately they have been prepared, in order to enable preliminary work to be done so that as much time can be saved as possible.

The Architect and Engineers have maintained that the 10 problems of building on the existing columns and of continuing the columns as directed by the Commissioner for Railways has almost trebled the work ordinarily involved in the normal building, and Mr. Llewellyn maintains that the engineering problems are the most difficult he has ever encountered.

- (31) Two additional substantial causes of delay were, Mr. Stanley's death and the months taken in finally getting the Commissioner for Railways to modify his initial requirements.

4. *PRESENT POSITION* :

- (1) Messrs. W. E. Bassett & Associates advise that the final plans 20 and specifications for electrical services, hot water services, mechanical ventilation and passenger service lift will be ready for the calling of tenders on the 6th and 10th December, 1955.
- (2) With one week Mr. Llewellyn will be in a position to make available to the Architect, Mr. Ham, sufficient details of all structural work to enable bills of quantities to be prepared and for builders to tender.
- (3) Mr. Ham has completed his detailed plans which are submitted herewith. These plans will have to be duplicated in larger scale by half inch plans, but only drawing work is 30 involved and this should be completed within five or six weeks.
- (4) All the various plans and specifications will have to be finally submitted for approval to the City Council, the Railway Commissioner and certain of the plans will have to be approved by the Metropolitan Water, Sewerage and Drainage Board and by the Board of Fire Commissioners. In addition, the plans will have to be submitted to the Town Planning Section of the Cumberland County Council.
- (5) Notwithstanding the necessity of obtaining these various con- sents, all designers have purposely maintained the closest 40 liaison with the authorities in question in order to save time and it is hoped that there should not be any substantial delay in obtaining final approval from the authorities concerned.

- (6) The Quantity Surveyors have advised that they will be ready to have bills of quantities prepared ready for tenders on Wednesday the 21st December, 1955.
- (7) For the last eighteen months Mr. Ham has devoted one-third of his own and of his office's time to the Plaza Hotel.
- (8) It is anticipated that the cost of the building will be in the vicinity of £388,000.
- (9) The necessary finance was arranged last year by the lessees for the construction of the building.

*Exhibit*J

No. 2

Submissions
by Applicant
for Extension
of Time

10

EXHIBIT N

(Apart from the letter hereunder, this exhibit is not reproduced)

**Letter from Sly & Russell, Solicitors, to the Secretary for Railways,
dated 27th March, 1956***Re Avrom Investments Proprietary Limited and Wynyard Lease*

As you are aware, in 1953 the Metropolitan Licensing Court made an Order under section 40A of the Liquor Act calling upon the above-named Company as lessee of, inter alia, the Hotel Plaza to construct additional bedrooms and other accommodation and finally approved of plans providing for an additional sixty four bedrooms with lounge
20 rooms and other consequential facilities.

The plans for the proposed additions were approved by the Commissioner for Railways, and on the 12th inst the tenders for the major portion of the proposed work closed. The lowest tender received was £525,881.0.0 although the estimated figure was £390,000.0.0.

Apart from other moneys which the lessee has expended on the site the lessee has expended moneys or incurred liabilities directly attributable to the proposed new construction as follows:—

	£	s.	d.
Construction of columns	32,520	0	0
30 Construction of concrete slab between Wynyard Lane and Carrington Street	14,992	0	0
Architects' fees	21,067	0	0

together with fees due to Quantity Surveyors, plumbing and mechanical engineers. In addition, the cost of furnishings, such as carpets, bedding and the like must be taken into account, and will probably exceed £50,000.0.0.

This unexpectedly huge actual and potential expenditure has caused the Company to consider its position, having regard to the unexpired residue of the lease which is only forty five years, and to the

*Exhibit*NLetter from
Sly & Russell,
Solicitors,
to the
Secretary
for Railways,
dated 27th
March,
1956

*Exhibit*N

Letter from
Sly & Russell,
Solicitors, to
the Secretary
for Railways,
dated 27th
March,
1956

economic possibility of expending such a large total sum and being able to recover it during the residue of the lease while still making a reasonable profit.

On an application by the Company to the Metropolitan Licensing Court for an extension of the time within which the order made in 1953 was to have been completed, the Court saw fit to refuse the application, leaving the way open to the Metropolitan Licensing Inspector to call upon the Company to show cause why the licence should not be suspended or cancelled. This action has not been taken to date because the Company lodged an appeal to Quarter Sessions from the 10 refusal of the Metropolitan Licensing Court, and this appeal is listed for the Quarter Sessions commencing on the 4th April.

It is unlikely that the Company will prosecute this appeal as even if successful it would only postpone temporarily the need for close consideration of the position, for even if the large sum required could be found it is not economically possible to proceed with the proposal as it is at present.

It will be appreciated that large expenditure of a capital nature on a leasehold property is only economic for a lessee where the sum expended can be recouped after taxation together with reasonable 20 profits over the term of the lease.

To assist the Company in determining what is the best course for it to follow, having regard to the particular site, the Directors desire an urgent conference with the Commissioner for Railways himself with the object of discussing the following:

1. Whether it is in the best interests of the Commissioner and the Public to maintain the licence at Wynyard.
 2. Whether the licence should be transferred elsewhere or surrendered.
 3. Whether a substantial extension of the lease can be granted. 30
 4. Whether the Commissioner will approve of a less costly type of construction.
-

EXHIBIT AAA
Four Letters

**1. Letter from Secretary for Railways to Avrom Investments Pty. Ltd.,
dated 9th June, 1955**

I have been directed by the Commissioner for Railways to inform you that an inspection by an officer of this Department of the work at present being carried out in the construction of reinforced columns and main beams for the main structure of the Plaza Hotel reveals unsatisfactory work in the reinforced concrete construction.

10 In the main structure the columns and beams throughout are badly honeycombed and the bars and stirrups are exposed, while the vertical bars in the columns are unevenly spaced, and on one face all of the bars can be seen for a length of 18 inches. The main beam on the Carrington Street frontage shows that the formwork had sagged during pouring, and that it had not been cleaned out beforehand. The underside of the beam is badly honeycombed, bars are exposed, and the concrete can be removed with the fingers up to the main bars.

As to the cool room, it is reported that the underside of the floor beams is badly honeycombed throughout, and bars and stirrups are
20 exposed.

The view is held that the reason for the defects mentioned is that the concrete poured on 2.5.55 and 3.5.55 was not properly placed and packed.

Mr Malcolm Stanley of Stanley and Llewellyn, Consulting Engineers for the work in question is aware of the position outlined above, and I shall be glad if you will advise me at an early date of the proposals for remedying the defects mentioned, in order that this Department may be assured that the corrective steps will be to its satisfaction, and that the structure will be capable of carrying the
30 designed loading.

Awaiting your reply.

**2. Letter from Secretary for Railways to Messrs. Ham and Morris, Architects,
dated 20th January, 1956**

Re Plaza Hotel

Referring to your letter of the 16th January, 1956, intimating that Messrs. T. C. Whittle Pty. Ltd., intend erecting various structural steel columns for the Plaza Hotel building at Wynyard, commencing on Saturday, 21st January, 1956, which will necessitate cordoning off a portion of the Northern rampway, I have to inform you that while
40 the arrangements proposed are generally satisfactory so far as this Department is concerned, the precautions which were taken for the erection of the steel columns on the 18th December, 1954, may be adopted with the following modifications, viz.—

- (1) The R.S.Js. supporting the mobile crane to be increased to 22 in. x 7 in. x 75-lb. in lieu of 20 in. x 6½ in. x 65-lb. to

Exhibit

AAA

1. Letter from Secretary for Railways to Avrom Investments Pty. Ltd., dated 9th June, 1955

2. Letter from Secretary for Railways to Messrs. Ham and Morris, Architects, dated 20th January, 1956

Exhibit

AAA

2. Letter from Secretary for Railways to Messrs. Ham and Morris, Architects, dated 20th January, 1956

accommodate the additional weight of steel columns to be lifted into position.

- (2) Steel columns Nos. 26, 51 and 76 between the second and third floor levels to be erected from the northern side only, and the concrete casing around the protruding second floor ribs to be chipped off and reinforcement bent down to facilitate the lifting of columns, and the placing of the crane as near the column as possible.

Barricading similar to that previously used will be acceptable, subject to it being erected, and subsequently removed, to the entire satisfaction of the Railway Chief Civil Engineer. 10

It is to be definitely understood that the Commissioner for Railways must be fully indemnified against all claims of any kind to property and/or persons arising from the erection of the columns and/or the barricading.

A representative of this Department will be in attendance during the operations.

3. Letter from Messrs. Ham and Morris, Architects, to The Secretary, Department of Railways, dated 6th February, 1956

3. Letter from Messrs. Ham & Morris, Architects, to The Secretary, Department of Railways, dated 6th February, 1956

Hotel Plaza: Contract 2

20

In furtherance of your telephone request we advise having been informed by T. C. Whittle Pty. Ltd. that the erection of the structural steel columns for the above Hotel building will be proceeded with on 11th and 12th Feb. 1956, weather permitting.

4. Letter from the Secretary for Railways to Messrs. Ham and Morris, Architects, dated 10th February, 1956

4. Letter from the Secretary for Railways to Messrs. Ham and Morris, Architects, dated 10th February, 1956

Your letter of the 6th February, 1956, stating that you have been informed by T. C. Whittle Pty. Ltd., the erection of structural steel columns for the Hotel Plaza building will, weather permitting, be undertaken on the 11th and 12th February, 1956, was not received by me until yesterday afternoon. 30

It is understood that your Mr Morris this morning advised an official of this Department, because of the prevailing inclement weather, the work proposed to be carried out this coming weekend would not now be proceeded with, but that it would be undertaken on the 18th and 19th February, 1956, provided the weather then was suitable.

The arrangements planned are considered satisfactory so far as this Department is concerned, subject, of course, to the work being carried out strictly in accordance with the conditions, etc., set out in my letter to you of the 20th January, 1956. 40

Any advice which it may be necessary to give to the Police Department or to any other authorities is not a matter for this Department's attention.

EXHIBIT 5

Comparison of Previous and Present Schemes

Exhibit

5

Comparison
of Previous
and Present
Schemes

	Previous Scheme	Present Scheme
	<i>Bedroom Accommodation.</i>	
	<i>Bedrooms : 64.</i>	
	Twin Beds. 23	Twin Beds. 39
	Double Beds. 9	Double Beds. 3
	Single Beds. 32	Single Beds. 34
10	— 64	— 76
	<i>Bedroom Accommodation.</i>	
	<i>Bedrooms : 76</i>	
	Twin Beds. 12	Twin Beds. with Baths 39
	Twin Beds. with Showers 5	Double Beds. with Baths 3
	Double Beds. with Baths 4	Single Beds. with Showers 34
	Double Beds. with Showers 4	—
	Single Beds. with Bath 5	76
	Single Beds. with Showers 13	—
20	— 43	—
	Thus : 6 Twin Rooms = 12 persons.	
	1 Double Room = 2 "	
	14 Single Rooms = 14 "	
	— 28 "	
	—	
	28 persons rely on public pan and bath facilities.	
	<i>Persons Accommodated.</i>	
30	23 Twin Beds. = 46 persons.	39 Twin Beds. = 78 persons.
	9 Double Beds. = 18 "	3 Double Beds. = 6 "
	32 Single Beds. = 32 "	34 Single Beds. = 34 "
	— 96 "	— 118 "
	—	—
	<i>Bedroom Units</i>	
40	Bedrooms designed on obsolete basis—wardrobes are along Bedroom walls and Bath and Shower Rooms, where they occur, open directly off Bedroom.	
	These two factors tend to make room small and destroy Bed-Lounge character.	
	Bedrooms are often odd shapes; twin bedrooms are sometimes only 7' 11½" wide; single bedrooms are often only 6' 6" wide for half their length and one is only 5' 6" wide for this length.	
	<i>Bedroom Units</i>	
	Bedroom Units designed on world wide standard modern basis. From the corridor one uniformly enters a lobby, on one side of which is a wardrobe, and on the other side the entry to Bath or Shower Room.	
	The Bedrooms thus have a clear spacious Bed-Lounge character.	
	Bedrooms are generally of uniform square shape; no bedroom is narrower than 9' 6"	

Exhibit 5 Comparison of Previous and Present Schemes	Comparison of Previous and Present Schemes— <i>continued.</i>	
	Previous Scheme	Present Scheme
	<p><i>Bedroom Units—continued</i></p> <p>Some Single Rooms are only 93 sq. ft. in area and some Twin Rooms only 128 sq. ft. area.</p> <p>Almost no two rooms have the same size and arrangement.</p> <p><i>Sun to Bedrooms</i></p> <p>15 Bedrooms are without sun.</p> <p><i>Outlook from Bedrooms</i></p> <p>10 Bedrooms overlook Wynyard Park. 15 Bedrooms overlook George Street, which is very noisy. 39 Bedrooms are in light wells.</p> <p>— 64 —</p>	<p><i>Bedroom Units—continued</i></p> <p>The smallest Single Bedroom is 130 square feet and the smallest twin Room is 153 sq. feet.</p> <p>Bedrooms are substantially uniform in size and arrangement.</p> <p><i>Sun to Bedrooms</i></p> <p>2 Bedrooms are without sun. 10</p> <p><i>Outlook from Bedrooms</i></p> <p>39 Bedrooms overlook Wynyard Park. 37 Bedrooms overlook Roof Garden and Wynyard Shopping Court.</p> <p>— 76 —</p> <p>As bedrooms are elevated on 2nd and 3rd floors, they get further away from city noises. 20</p>
	<p><i>Effect of Extension of Building on Bedrooms.</i></p> <p>If another floor is added Bedrooms Nos. 39, 40 and 41 would have to be abandoned as bedrooms as necessary lift and vestibule thereto would cut off light and air.</p>	<p><i>Effect of Extension of Building on Bedrooms.</i></p> <p>No bedroom affected if additional floor or floors are added.</p>
	<p><i>Access to Public Toilets from Bedrooms without Toilet Facilities.</i></p> <p>A man occupying some of the bedrooms without toilet facilities would have to walk up to 200 ft. to a public toilet. If all the 3 pans at 200 ft. distance were in use, then a climb to the roof toilets is necessary, involving another 72 ft. of covered walk and then 48 ft. of uncovered walk on the roof.</p>	<p>All bedrooms have full toilet facilities.</p>
	<p><i>Accommodation at Carrington Street Level.</i></p> <p>Bar with 202 lineal feet of counter frontage.</p> <p>Female Bar and Lounge Toilets :</p> <p style="padding-left: 40px;">3 Pans 2 Basins</p> <p>Male Bar and Lounge Toilets :</p> <p style="padding-left: 40px;">2 Pans 2 Basins</p> <p>Shops : 4.</p> <p>Hotel Foyer and Drinking Lounge combined.</p>	<p><i>Accommodation at Carrington Street Level.</i></p> <p>Bar with 211 lineal feet of frontage.</p> <p>Female Bar and Lounge Toilets :</p> <p style="padding-left: 40px;">3 Pans 3 Basins</p> <p>Male Bar and Lounge Toilets : 30</p> <p style="padding-left: 40px;">3 Pans 3 Basins</p> <p>Shops : 6.</p> <p>Separate Drinking Lounge.</p> <p>Coffee Shop for quick breakfasts and light meals to seat 100 persons.</p>

Comparison of Previous and Present Schemes—*continued.*

		Previous Scheme	Present Scheme	Exhibit 5 Comparison of Previous and Present Schemes
		<i>Development at Wynyard Lane Level.</i> Shops : 4. These shops are built on the building line thus perpetuating the narrowness of this lane. Pedestrians when walking from the present stairs across Wynyard Lane and up the stairs to Carrington Street have no roof over Wynyard Lane. To gain partial cover they must go to right or left of direct route and go under the Bedrooms above to gain shelter.	<i>Development at Wynyard Lane Level.</i> Shops : 9. These shops are grouped around a Shopping Court about 50 ft. wide and 80 ft. long. The Shopping Court has a covered way on each side 80 ft. long and average 10 ft. wide, furthermore a 37 ft. wide roof covers Wynyard Lane over the direct route from the present stairs from George Street Ramps to the new stair to Carrington Street. As this will be the only covered way to the Bus Ranks in Carrington Street, it will be a most busy thoroughfare.	
10		<i>Extent of Immediate Building Work.</i> At Wynyard Lane Level : 4 shops. At Carrington St. Level : 15,743 sq. ft. gross of floor area. 1st Bedroom Floor : 21,682 sq. ft. gross of floor area. Total floor area : 37,425 sq. ft.	<i>Extent of Immediate Building Work.</i> At Wynyard Lane Level : 9 shops. At Carrington St. Level : 15,743 sq. ft. gross of floor area. 1st, 2nd and 3rd Bedroom Floors : 26,643 sq. ft. gross of floor area. Total floor area : 42,386 sq. ft. Extra floor area at above levels : 4,961 sq. ft.	
20		<i>Potential Development of Site.</i> The use of Light Courts as a basis element in the design determines the future development in two manners : (i) 2nd and 3rd class Bedroom or future office space is inevitably created. (ii) The centre core of the building drops off at the 6th Floor due to City Council angle of light requirements.	<i>Potential Development of Site.</i> The use of "slab" type of planning with a central corridor creates only 1st class Bedrooms or future office space.	
30		Presupposing a maximum development to 150 ft. height, the gross sq. ft. floor space possible would be :— 1st Class Space 134,350 sq. ft. 2nd " " 39,170 " " 3rd " " 32,280 " " Total area 205,800 " "	Presupposing a maximum development to 150 ft. height, the gross sq. ft. floor space possible would be :— 1st Class Space 234,200 sq. ft. 2nd " " Nil 3rd " " Nil Total area 234,200 " "	
40				

EXHIBIT 19

Summary of Net Profits of Respondents, 1943 to 1956

Exhibit

19

Summary of
Net Profits
of
Respondents
1943 to 1956

AVROM INVESTMENTS PROPRIETARY LIMITED.

Year ended 30th June—	HOTEL PLAZA and WYNARD SHOPS.					COMPARISON—PROFITS AND LOSSES.				
	Liquor.	Restaurant.	Accommoda- tion.	Tobacco.	Sundry.	TOTAL.	Adminis- trative Expenses.	Profit.	SHOPS Profit or Loss.	NET RESULT.
1943	25,697				680	26,377	...	26,377	5,181	31,558
1944	43,371	2,733	32	254	31	40,383	...	40,383	2,407	42,790
1945	54,673	8,190	729	1,217	164	63,515	5,747	57,768	1,930	59,698
1946	60,558	6,984	733	1,652	168	68,629	6,790	61,839	1,339	63,178
1947	53,332	2,177	1,056	2,489	170	52,758	8,107	44,651	288	44,939
1948	35,513	6,834	1,507	2,935	137	30,144	7,384	22,760	1,143	21,617
1949	32,730	11,194	2,743	4,134	158	23,085	6,909	16,176	3,984	12,192
1950	32,185	7,486	1,493	4,182	145	27,532	7,744	19,788	4,956	14,832
1951	43,104	8,565	1,967	4,551	171	37,294	8,846	28,448	6,416	22,032
1952	48,276	12,971	3,076	5,011	8,566	45,866	10,116	35,750	8,313	26,937
1953	53,446	9,114	3,190	3,271	441	44,854	11,217	33,637	6,104	27,533
1954	39,515	2,848	3,436	3,142	212	36,585	12,387	24,198	6,079	18,119
1955	35,644	7,734	3,257	3,229	204	28,086	12,688	15,398	5,462	9,936
1956	39,529	10,780	3,263	4,829	2,035	32,350	14,270	18,080	3,334	14,746

Italics = Losses.