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Judgment
LH, 1965

IN THE PRIVY COUNCIL

No. 53 of 1964

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N :

MOBIL OIL AUSTRALIA LIMITED
(formerly called Vacuum Oil Company Proprietary
Limited) Appellant

- and -

THE COMMISSIONER OF TAXATION OF THE
COMMONWEALTH OF AUSTRALIA Respondent

RECORD OF PROCEEDINGS

Allen & Overy,
9-12, Cheapside,
London, E.C.2.
Solicitors for the Appellant.

Coward, Chance & Co.,
St. Swithin's House,
Walbrook,
London, E.C.4.
Solicitors for the Respondent.

P.C.
~~GD/6~~ 6

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 9 FEB 1966
25 BEDFORD SQUARE
LONDON, W.C.1.

51963

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PRIVY COUNCIL

No.	Description	
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1.

NO. 1.

NOTICE OF TRANSMISSION OF OBJECTION
AGAINST ASSESSMENT OF 12TH MAY 1955.

In the High
Court of
Australia

No.1

Notice of
Transmission
of Objection
against
Assessment of
12th May 1955
28th September
1960

10 TAKE NOTICE that the objection dated the 1st day of July 1955 lodged by Vacuum Oil Company Proprietary Limited against assessment of income tax and social services contribution notice of which issued on the 12th day of May 1955 relating to income derived during the year ended 30th day of June 1953 has this day been forwarded to the High Court of Australia at Melbourne:

AND TAKE FURTHER NOTICE that pursuant to Order 65 of the Rules of the High Court of Australia the following documents have also been forwarded to the said High Court:

<u>Folio</u>	<u>Description of Documents</u>
1	Return of Income for year ended 30th June 1953.
2	Balance Sheet as at 30th June 1953.
20 3	Trading and Profit & Loss Accounts and Appropriation Statement - Australasia.
4	Trading and Profit & Loss Accounts - Australia.
5	Trading and Profit & Loss Accounts - New Hebrides.
6	Reconciliation of Trading and Profit & Loss Statement.
7-9	Lists of Items charged to Australian Branches and New Hebrides.
30 10-11	Australian and New Hebrides proportion of Australasian items charged to Profit and Loss.
12,13	Statements showing depreciation claimed.
14	Reconciliation of Net Profits and taxable income for the year ended 30th June 1953.
15	Letter to company dated 29th April 1954.

<u>In the High Court of Australia</u>	<u>Folio</u>	<u>Description of Documents</u>	
No.1	16,17	Letter from company dated 17th May 1954.	
	18	Letter to company dated 19th May 1954.	
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<u>Folio</u>	<u>Description of Documents</u>	<u>In the High Court of Australia</u>
46	Letter to company dated 13th October 1959.	
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50	(2) : Trading Agreement (9 clause).	
51	(3) : Trading Agreement (11 clause).	
10 52,53	(5) : SSl-B Agreement predominately used during relevant period.	28th September 1960
54,55	(8) : SSl-C Agreement predominately used during relevant period.	continued
56	(11) : Statement of periodical allowances to resellers.	
57	(12) : Breakdown of Sundry Sales Promotion Expenses at Solo Outlets.	
58-60	(13) : Accounting Instruction dated 4th July 1952.	
20	<u>DATED</u> the 28th day of September 1960.	

H. E. RENFREE

Crown Solicitor for the Commonwealth and Solicitor for the Respondent.

TO: Vacuum Oil Company Proprietary Limited,
City Road,
MELBOURNE. S.C.4.

AND TO:

30 Its Solicitors
Messrs. Arthur Robinson & Co.,
360 Collins Street,
MELBOURNE.

In the High
Court of
Australia

No.2

NO. 2

NOTICE OF TRANSMISSION OF OBJECTION
AGAINST AMENDED ASSESSMENT OF 10TH
APRIL 1959.

Notice of
Transmission
of Objection
against amend-
ed Assessment
of 10th April
1959

28th September
1960

TAKE NOTICE that the objection dated the 4th day of June 1959 lodged by Vacuum Oil Company Proprietary Limited against amended assessment of income tax and social services contribution notice of which issued on the 10th day of April 1959 relating to income derived during the year ended 30th day of June 1953 has this day been forwarded to the High Court of Australia at Melbourne:

10

AND TAKE FURTHER NOTICE that the documents required to be forwarded to the Court pursuant to Order 65 of the Rules of the High Court in connection with the objection herein are the documents which have been forwarded with the objection by the abovenamed Appellant dated the 1st day of July 1955.

20

DATED the 28th day of September 1960.

H. E. RENFREE

Crown Solicitor for the
Commonwealth and Solicitor
for the Respondent.

TO: Vacuum Oil Company Proprietary Limited,
City Road,
MELBOURNE. S.C.4.

AND TO:

Its Solicitors,
Messrs. Arthur Robinson & Co.,
360 Collins Street,
MELBOURNE.

30

NO.3

EVIDENCE GIVEN AT THE HEARING BEFORE
HIS HONOUR MR. JUSTICE TAYLOR ON 14TH
AND 15TH MARCH 1961.

In the High
Court of
Australia

Appellant's
Evidence

No. 3

Evidence given
at the hearing
before His
Honour Mr.
Justice Taylor
on 14th and
15th March 1961

APPEARANCES:

MR. K.A. AICKIN Q.C., with him MR.N.M.STEPHEN
(instructed by Arthur Robinson & Co.)
appeared on behalf of the Appellant.

10

MR. C.I. MENHENNITT Q.C., with him MR.H.R.NEWTON
(instructed by the Crown Solicitor for
the Commonwealth) appeared on behalf of
the Respondent.

MR. AICKIN WAS HEARD TO OPEN HIS CASE

NO.3 (a)

No.3(a)

JOHN DAVID ROGERS, sworn:

John David
Rogers
Examination
14th March 1961

MR. AICKIN: Mr. Rogers, your full name is John
David Rogers? --- Yes.

And you live at 38 Grandview Grove, Armadale? -
Yes.

20 You were formerly Chairman of Directors of the
Vacuum Oil Co., and you retired from that
office in what year? --- In 1959.

You first joined the Vacuum Oil Company in 1923?
--- Yes.

And you remained with them until you went on war
service, and you went back to working with
the company in 1945? --- At the end of 1945.

30 When you were discharged from the Services, and
you became shortly thereafter in 1946 the
General Manager for New South Wales, and in
1948 you became a Director? --- Director in
1946 actually, and Marketing Director in
1948.

And you remained Marketing Director until Septem-
ber 1951, when you were transferred to New
York - is that the position? --- Yes, that
is correct.

In the High
Court of
Australia

Appellant's
Evidence

No.3

Evidence given
at the hearing
before His
Honour Mr.
Justice Taylor
on 14th and
15th March 1961

No.3(a)

John David
Rogers
Examination
14th March 1961
continued

And you returned to Australia late in 1952? ---
Yes.

And subsequent to that you became Chairman of
Directors? --- Yes.

Perhaps you would tell his Honour what was the
general system adopted by your company, and
from your experience by other companies, in
the marketing of petroleum products pre-war,
leaving aside such people as industrial
customers and primary producers. You might 10
tell his Honour the position which your
company was then adopting and how the trade
was organised - first of all, pre-war? ---
The years in which I was actively involved in
this business can be conveniently divided in-
to four periods. The first period was from
the first introduction of bulk petrol market-
ing, 1925/26, until pre-war. The second
period would be the war period plus pool. 20
The third period would be the period immedi-
ately after the pool, in which we introduced
the complete merchandising plan referred to
by Counsel as the period of peaceful pene-
tration. The fourth period was the period
when solo outlets were introduced, and if I
may I will refer briefly to these four
periods.

HIS HONOUR: Do we have to go back to 1925, Mr.
Aickin?

MR. AICKIN: I think if we treat it as the pre- 30
war period ---

HIS HONOUR: It is a long way pre-war, you know.

MR. AICKIN: The only reason for regarding it as
useful is that it indicates what the situa-
tion was at the time the pool ended.

HIS HONOUR: It is interesting, but what is it
useful for in this case?

MR. AICKIN: It is useful to indicate that what
was done in 1951 was not something extra- 40
ordinary or unusual, but was merely a
development of the company's marketing
policy.

HIS HONOUR: I cannot see any connection between what happened in 1925 --- However, Mr. Menhennitt does not object to it so I suppose we should have it.

In the High
Court of
Australia

10 MR. AICKIN: Mr. Rogers, perhaps you can summarize very briefly what the beginning of the pump system was, and how it stood just pre-war? --- In the first days of course the pumps were all owned and installed - pumps and tanks owned and installed - by companies, and so any company as it came into the market and wished to improve its market position could do so either by increasing or installing pumps or by opening up new sites. That system operated until the war, with competition increasing tremendously.

Appellant's
Evidence

No.3

Evidence given
at the hearing
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Honour Mr.
Justice Taylor
on 14th and
15th March 1961

20 THE WITNESS: That generally was the system operating right up to the war, with competition increasing tremendously, and getting from a figure of just a few hundred up to 13,000 pumps which were installed. The situation was ludicrous. One station in Sydney, for example, had 45 pumps of all companies and the result was when all companies got on to these sites irregular practices took place. Price cutting took place, over deliveries were made, and in quite a number of cases, particularly at night time, tank wagons of other companies went round and delivered - we know - into our own
30 underground tanks. Therefore there was very little control that we had as to what was actually and ultimately used by the motorist. All of these things gave us great concern and even before the war there was some consideration as to what might be done in the way of a peaceful changeover from the other system of marketing to the solo outlets.

No.3(a)

John David
Rogers
Examination
14th March 1961
continued

40 Then came the war period, and I need not dwell on that because during that time the companies were selling under quotas. One important thing that happened in that period was that we lost the significance of what might be called brand consciousness amongst the motorists, because motorists through those years had learned that practically all the petrol was the same. That persisted for quite a while afterwards, which was one of the important and early points why,

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Australia

Appellant's
Evidence

No.3

Evidence given
at the hearing
before His
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on 14th and
15th March 1961

No.3(a)

John David
Rogers
Examination
14th March 1961
continued

from our point of view, something had to be done about it.

Now we come to the third period subsequent to the war and those few months in which the Government tied all the companies down to certain quotas, when free marketing came in again from then up until August 1951 when solo outlets came in. We felt that a plan had to be introduced quickly in order to achieve all the objects that the company could achieve by a merchandising plan. Therefore we got the whole of our automotive managers - that is, the managers who handled our petrol and lubricating oil in the automotive field - we got them together and worked out what our plan would be.

10

Two things were determined quite early in the conference. One was that we would avoid as far as possible any capital expenditure, and secondly, we would not purchase stations and own them ourselves. We also felt that if any plan were introduced that plan, to be successful, must be a plan which would bring benefits to the resellers themselves as well as to the company. That was the basis upon which the plan was used. The difficulties we had at that time, or rather the costs of doing business, could be enumerated as follows. The first was that we had very little control over the quality and quantity of the petrol that was marketed through service stations, due to these irregular practices that had been going on. The second thing was that it was costing us a tremendous sum in delivery to these multiple outlets. We got down at times to delivering as little as 100 gallons in a dump. Even up to the time I was actively involved, years after the solo outlets came in, the common practice was often to deliver as much as 3,000 gallons in one delivery.

20

30

40

MR. AICKIN: If I may stop you at this point, Mr. Rogers, you used the expression "as little as 100 gallons in one dump". That is the word which was used in the trade, or your company, to signify a delivery to a particular service station - one delivery to one person? --- Yes.

MR. AICKIN: You were speaking of the costs of distribution? — Yes. The third item which was of considerable cost to us was the number of salesmen that were involved in these numerous outlets; so there was a chance of reducing the number of men actually involved in selling, but of course placing them in some other parts of the company's operations. So that was the target we had to aim at, and by the merchandising plan which was then discussed at this conference we felt we could solve most of those problems. In other words, we had to show the resellers what were the benefits that would come to them through the whole of this plan. The benefits to them were that they would have very many fewer people to deal with. Instead of having to deal with six, seven or eight companies, they would deal with one company, which would simplify their accounting procedure, and they would have considerably less costs in doing business.

We were going to train firstly our own men as coaches, and then their own staff, so that they could encourage customers to come in and increase the number of customers coming to them, so increasing the money that they earned through these outlets. There was a tremendous amount to be done and the service given at that time was very poor for motorists. If a motorist came in they rarely looked at his tyres or his battery and the other things meant to be attended to by the service stations. It was quickly shown to them by the coaches that as motorists came along, if they attended to these things and gave service, they could quickly increase their gallonage.

HIS HONOUR: You do not have to sell this brand to me, Mr. Aickin. The company was quite entitled to carry on business any way it liked and I do not care if it was a good method of doing it or a bad method of doing it.

MR. AICKIN: The thing which is material is the company's business itself and the method it shows for achieving these results.

In the High
Court of
Australia

Appellant's
Evidence

No.3

Evidence given
at the hearing
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15th March 1961

No.3(a)

John David
Rogers
Examination
14th March 1961
continued

In the High Court of Australia

Appellant's Evidence

No. 3

Evidence given at the hearing before his Honour Mr. Justice Taylor on 14th and 15th March 1961

No.3(a)

John David Rogers Examination 14th March 1961 continued

HIS HONOUR: I would not have thought it had the slightest importance.

MR. AICKIN: It is our submission that it has, your Honour. The nature of the payment is best understood when viewed against the trading situation.

HIS HONOUR: We have got that, but this is not the trading situation. It all goes to show that it is a good thing, but I do not care if it is a good thing, a bad thing or an indiffer-ent thing. It was entirely the company's business how it carried it on. If the company thought it was a good thing to do, that is sufficient. If I think it is a bad thing to do that would have nothing to do with the case.

10

MR. AICKIN: I appreciate that, your Honour.

HIS HONOUR: It is not my business; it is the company's business.

MR. AICKIN: But the way we put it is this: The nature of the problem that the company encountered in its business operations is relevant to the nature of the expenditure. (To witness). Perhaps, Mr. Rogers, you would tell his Honour without detail the nature of the steps which the company took? You embarked on this training course in which you had your own employees as coaches; is that the position? Now where was this training done? --- I would think we established the first training course in City Road, South Melbourne. That was in a company building down there, and quite a considerable number, firstly of our own staff, and later of the staffs of the resellers were put through there. Then we established a similar clinic or training school in each of the capital cities by having some friendly reseller who was prepared to give us the space in which both our own coaches firstly, and later staffs not only from his station but from many stations in that capital City, could be trained.

20

30

40

MR. AICKIN: That was on the premises of one of

the Company's customers? --- Yes.

A friendly reseller? --- Yes.

In the High
Court of
Australia

Well now during this period 1946/48 to 1951,
what else was the company doing apart from
this training programme? --- They were im-
proving what we generally referred to as the
accessibility of the service stations and
also the visibility so that motorists could
quite easily pick up these places. The
accessibility was improved by improving the
driveways and removing unnecessary obstacles
that were quite often there. Very few of
the stations at that time could be described
as first class stations.

Appellant's
Evidence

No. 3

Evidence given
at the hearing
before His
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15th March 1961

MR. AICKIN: What was the significance of the
expression "white station" which was used
during that time? --- We felt as we had
gradually trained the staff of a station
and they were giving service according to
the lines upon which they had been trained
and we were reasonably satisfied that we
were obtaining something like 60% of their
throughput of petrol and 80% of their petrol
and oil, that we felt it was a reasonable
thing - and it was part of our step, we hoped,
gradually towards single brand outlets, to
paint them in colours that would be recognis-
ed as stations which gave first-class ser-
vice, and they were known as the white
stations.

No.3(a)

John David
Rogers
Examination
14th March 1961
continued

How many of those did you have by August 1951? -
To the best of my memory it was between 400
and 500.

In 1951 we had had this plan operating for a
couple of years, what was the position in the
two or three months prior to August 1951? ---
It was apparent to us that there were quite a
lot of things going on in the market, that
our system of peaceful penetration was not go-
ing to be successful. We knew that certain
companies were buying land and other compan-
ies had commenced to buy stations and we
came to the conclusion that the time was
pretty ripe, and it was not going to be very
long before single brand outlets would be on

In the High
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Appellant's
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John David
Rogers
Examination
14th March 1961
continued

their way. We called on all the managers of our branches to Melbourne in June 1951 and gave them what we considered was Vacuum's plan for the introduction of single brand outlets.

What was done at that time about the selection of sites? --- We worked on the basis that we wanted to hold about 25% of the market, and by making a survey of most of the sites throughout Australia we were able to determine how many of those we needed to acquire, or to have the agreements with the resellers, in order to hold that 25%. 10

Were lists drawn up of the desirable stations? - Lists were drawn up of all the service stations throughout Australia with concentration on the metropolitan areas, where most of the problem existed.

What was done in this listing about the white stations that had already been painted - were they included in the lists as desirable sites? --- Yes, they were the first ones included in the lists. 20

Then at that time did you do anything about preparing forms of agreement or anything of that sort? --- Yes, work was begun on the forms of agreement after the 1949 conference and they were ready in a form by the 1950 conference in June 1951, and were ready then and distributed to the branches. 30

In August 1951 the Shell Company made an announcement and I think your company received some notification the day before as to the position? --- Yes.

Would you look at this letter (produced to witness) and tell us whether that is the document received by your company? Mr. Rabeling is referred to amongst the individuals there? --- Yes.

MR. AICKIN: He is the Managing Director of the company, or was at the time? --- Yes. 40

I tender that.

HIS HONOUR: Have you any objection, Mr. Menhennitt?

In the High Court of Australia

MR. MENHENNITT: No, Your Honour.

MR. AICKIN (To witness): What step did your company then take? --- The following day a letter was sent, I believe by Mr. Rabeling, to all our branch managers saying that our own plan would be introduced.

Appellant's Evidence

No. 3

MR. MENHENNITT: I object to this, Your Honour.

Evidence given at the hearing before His Honour Mr. Justice Taylor on 14th and 15th March 1961

10 MR. AICKIN: I tender the letter, and I desire to establish first the fact that the letter was sent.

(To witness): Was anything done by the other companies? --- I am not ---

No.3(a)

Perhaps you could have a look at this document, which is the first letter you referred to, and which may assist your memory (handed to witness). Is that the letter you sent? --- That is the letter that was sent to our branch managers.

John David Rogers Examination 14th March 1961 continued

20

That has your initials on it? --- Yes, that letter was sent by me.

If you have a look at that, that refers to another letter? --- Yes, I do now recall that subsequently a letter was sent to all the other companies saying that we intended -

Perhaps if you have a look at the letter produced to you and tell us if that is the head office copy? --- Yes, I do recall that.

30 I will tender those two letters.

HIS HONOUR: I do not think we have seen yet the letter of the 15th August.

MR. AICKIN: I beg Your Honour's pardon; I thought it had been handed back to Your Honour's Associate to be marked.

HIS HONOUR: Perhaps the letters can all be marked as the one exhibit.

In the High Court of Australia

Appellant's Evidence

No. 3

Evidence given at the hearing before His Honour Mr. Justice Taylor on 14th and 15th March 1961

No.3(a)

John David Rogers Examination 14th March 1961 continued

MR. MENHENNITT (after perusing letters): I do not object to the letters.

HIS HONOUR: There is a memorandum dated 14th August from, I assume, the Shell Company. I notice in the second letter of the 15th that there is a reference to Mr. Avery's memorandum of the 14th August. I assume this is Mr. Avery's memorandum.

EXHIBIT: EXHIBIT B Document, and two letters of 15th August. 10

HIS HONOUR: There is an initial there, or it looks as if it might be an initial.

MR. AICKIN: I do not think anyone would be under any misapprehension as to where it came from.

(To witness): Were announcements made by other companies shortly after the 15th and 16th August 1951? --- Yes, I can remember at least two other companies made an announcement. Then there was a period before certain of the companies made up their minds, and in the meantime there was a considerable number of Press items on the whole movement. 20

MR. AICKIN: The two companies that made announcements were which? --- Neptune and Atlantic.

What did they state that they were doing? --- As I remember it, they said they felt the plan as suggested by Mr. Avery was a suitable one for them to adopt.

And in fact Caltex also embarked on the same policy shortly thereafter, is that the position? --- Yes, I know they were the next ones, and not very long after the others. 30

And if my learned friend does not mind me leading on this, C.O.R., H.C. Sleigh and Ampol announced opposition to it? --- They were very strongly opposed to the plan and took a number of steps to hinder it but eventually they came in.

That was afterwards? --- Yes.

MR. MENHENNITT: Do not lead on that. 40

MR. AICKIN: Immediately after 15th August, after you had gone abroad, they did announce a policy of so-called independent resellers and independent oil companies, is that the position? --- That is correct.

In the High Court of Australia

Appellant's Evidence

No. 3

10 You spoke of agreements having been prepared and issued to your branches. Would you look at this document and tell us whether this is the first form of agreement that you were referring to as having been issued to the branches? --- All I can say is that it is very similar to the one that I remember, but it is a long while ago.

Evidence given at the hearing before His Honour Mr. Justice Taylor on 14th and 15th March 1961

It was issued in a roneoed form originally, is that right? --- Yes.

No.3(a)

Was a printed form used before you had gone abroad? --- To the best of my recollection, no.

John David Rogers Examination 14th March 1961 continued

20 I don't think I need tender the roneoed portion of it as it does not differ.

(To witness): Were any other standard forms of agreement issued at that time while you were still director? --- I don't remember now that there were others.

30 This agreement provides, if you just look at clause 1(a) of the copy, this is folio 50, "Painting in the Company's colour scheme of the exterior of the service station, and also reimburse the operator for reasonable costs of minor alterations." What was the company's policy with regard to the extent of those items at the time of the launching of your C.M. plan in August 1951?

MR. MENHENNITT: This is after the 15th August?

MR. AICKIN: Yes.

40 THE WITNESS: At the time of the launching of the C.M. plan, the only concession that we agreed to include was the painting of a station to encourage a man to swing the business towards our way.

MR. AICKIN: Was anything done about payment for

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Evidence given at the hearing before His Honour Mr. Justice Taylor on 14th and 15th March 1961

No.3(a)

John David Rogers Examination 14th March 1961 continued

rearrangement of pumps and alterations to driveways? --- That did not take place immediately but it was soon evident to us that a great deal had to be done on most of these stations to put them into a reasonable position to give service and so in the end we were paying a certain sum for the improvement of the driveways to improve the accessibility, and another sum for the general rehabilitation of the station because a lot of them were in very bad shape; a sum for painting and a sum which would cover the purchase of a modern hoist which would enable the station to give proper lubrication service. In all, it was something over £500 which was agreed could be spent on a particular site.

10

MR. AICKIN: Would you have a look at this document. It is a copy of a letter addressed to all branches. It has not got your initials on it, perhaps you could tell us whose initials they are (handed to witness)? --- The initials H.C.S. which stands for Harold Corrie Smith.

20

He is also, I think, retired from the Company? --- Yes.

Were you aware of that letter being sent at the time? --- Yes.

And is that the result of the instruction given with regard to the figure you mentioned? --- Yes, on page 2 it gives the actual figures.

30

MR. MENHENNITT: Might I have an opportunity to examine this? It is rather lengthy and it might be convenient if we could adjourn now so that I could read it during the luncheon adjournment.

HIS HONOUR: What do you say, Mr. Aickin?

MR. AICKIN: That seems a reasonable request, your Honour.

40

HIS HONOUR: Very well, I will adjourn the Court until 2.30 p.m.

(Sitting suspended from 12.57 p.m. to
2.30 p.m.)

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UPON RESUMING AT 2.30 P.M. :

HIS HONOUR: Yes, Mr. Aickin?

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10

MR. AICKIN: Mr. Rogers, I was asking you about this memorandum of 29th August 1951, which you said bore Mr. Smith's initials but of which you were aware in your capacity as Director in charge of marketing. I think you said that that was the instruction which was issued to the branches with regard to the payments which you have described - is that correct? --- That is correct.

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I tender that, if your Honour pleases.

No.3(a)

MR. MENHENNITT: I do not object.

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Rogers
Examination
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continued

EXHIBIT. EXHIBIT C... Memorandum dated 29th
August 1951 from Vacuum
Oil Co. Head Office to
branches.

20

MR. AICKIN: Your Honour will see that that memorandum refers to the work necessary to be done and gives the allocation of the maximum £515 which the branches were authorised to spend without reference to Head Office, and there is then a reference to pump removals. Perhaps I might ask Mr. Rogers about that matter.

30

(To witness): I think you told us, Mr. Rogers, that the pumps and the tanks were owned by the Vacuum Oil Co.? --- Yes.

And there was a standard form of pump agreement with the reseller - is that the position? --
- Yes.

So far as you know, all the companies operated on that basis? --- Yes.

I think those agreements started off with a purely nominal charge to the re-seller? ---
Right at the beginning they did, yes.

And Vacuum's method of operation towards the end

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continued

Cross-
examination

of the multiple stations was what? What charge was made? --- No charge whatever was made. It had gone into disuse.

When the pumps were removed from the site what was done with regard to the tanks? For example, suppose the Shell Co. pumps were removed from a station which became a Vacuum station, what happened to the tanks? --- Up to the time I left for the States there was an arrangement between companies whereby if a company wished to take over the pumps from the company which was giving up the site it could do so at their depreciated value.

10

There was an agreed method of costing? --- Yes.

You mean tanks rather than pumps? --- Tanks, I mean, yes.

The tanks and the pipelines as distinct from the pumphead? --- Yes, that is correct.

MR. AICKIN: You left Australia I think on 5th September 1951 and for some time thereafter you were in New York, and on your return to Australia at the end of 1952 or early 1953 you were not directly associated with this matter - is that so? --- That is correct.

20

CROSS-EXAMINED BY MR. MENHENNITT:

MR. MENHENNITT: Mr. Rogers, you have made reference in your evidence to white, all white stations, as they existed before 15th August 1951. When was it that those stations commenced to be painted by your company? --- To the best of my knowledge, after the meeting in July 1949.

30

When you painted a station at that time in 1949 and 1950 and the first half of 1951, was any arrangement made with the garage proprietor in return for the painting? --- No. It was an encouragement to them of course to work with us in the plan that we were introducing, but not all of them paid at that time.

40

In other words, they were not committed by any

agreement to your company at that stage? ---
No.

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Court of
Australia

And having painted a station it would be open to a garage proprietor, if he wanted to, to sell any proportion of your petrol that he saw fit? --- Yes, but we did suggest in each case of course that we would build up gradually to 60 per cent.

Appellant's
Evidence

No. 3

10 That may have been to your mutual interest and advantage, but he was not legally bound to?
--- No, that is correct.

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HIS HONOUR: I did not follow that answer, Mr. Menhennitt. I thought this expenditure was not incurred until the 60 per cent mark was reached. If I am wrong, I should like to know.

No.3(a)

20 MR. MENHENNITT (to Witness): What was the answer to that, Mr. Rogers? Would this expenditure on painting the service station site be ever incurred before the garage proprietor was selling 60 per cent of his total as your product? --- Yes, it was occasionally.

John David
Rogers
Cross-
examination
14th March 1961
continued

HIS HONOUR: What was the general rule? --- It was rather haphazard, your Honour. Sometimes the man was very keen to have the station painted and it wanted a coat of paint anyway and he would do it himself. At other times we met the whole or sometimes part of the cost.

30 MR. MENHENNITT: At that stage from a legal point of view it was open to the garage proprietor, if he wanted to, to terminate his arrangement with you concerning the pump and ask you to remove it? --- That is correct.

What notice was involved in that - any? --- There was a pump agreement, of course, signed by all the resellers at that time. I am not quite sure just what that period was.

40 A relatively short period? --- Yes, a relatively short period.

And I take it, Mr. Rogers, that up to the 15th

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John David Rogers Cross-examination 14th March 1961 continued

August, 1951 your company had not entered into any agreement with any reseller by which he bound himself to sell only your products? --- That is correct.

And can you tell us how soon after the 15th August 1951 it was that the first trading agreements were signed, under which resellers bound themselves to sell only your products? --- Our letter went out to our branch managers on the 15th August. They were all ready to act and therefore I presume that on the 16th August they had to go and sign them up. 10

That was the first date - about the 16th August? --- Yes.

Am I correct in understanding this, Mr. Rogers - that the various steps you have described, namely, driveway alterations up to £150, painting up to £150, minor structural alterations up to £150 and a lubritorium up to £65 - those various payments were made by your company only in the case of resellers who signed trading agreements? --- The painting was done occasionally before any agreement was signed. To the best of my knowledge the others were all dependent upon the agreements being signed. 20

And when the agreement refers in paragraph (1) (a) to re-imbursing the operator for the reasonable cost of such minor alterations to the service station as will in the opinion of the company enable the service station to give better service to its customers, that is the expression that covers the driveway alterations up to £150, the minor structural alterations up to £150 and the lubritorium up to £65? --- The lubritorium - I would have thought that was outside that clause, because that was for purchase of a hoist. 30

You would agree? --- Yes, it would come within that range. 40

And the previous provision in (a) "The painting ... (reads)... as may be required" - that is the provision in the agreement under which the painting up to £150 was done? --- That is correct.

Am I correct in understanding this, Mr. Rogers, that what happened in substance was this - that about the time the agreement was signed discussions would take place with the reseller as to these alterations, the driveway and structural alterations? --- We had set up an architectural service, and the first job was for an architect to go to the station, look it over and say, "These are the things which have to be done."

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Appellant's Evidence

No. 3

10

MR. MENHENNITT: "And which we will pay for"? --- Which we will pay for up to those limits.

Evidence given at the hearing before His Honour Mr. Justice Taylor on 14th and 15th March 1961

Was that usually done before the trading agreement was signed or at the same time? --- At approximately the same time.

No.3(a)

Part of the whole negotiations? --- Yes.

John David Rogers Cross-examination 14th March 1961 continued

20

You would say, "We will make these driveway alterations, these structural alterations, do this painting, and put in the lubritorium if you sign the trading agreement"? --- That is correct.

And that type of occurrence occurred shortly after the 15th August - on about the 16th August? --- Yes.

And continued whilst you were still in Australia? --- That is correct, yes.

30

Do I understand, Mr. Rogers, that you have got no knowledge of the period subsequent to your return to Australia, as to what happened with these resellers and these agreements? Is that so; that that became outside the sphere of your knowledge? --- When I returned my main job was on the personnel side of the company, and whilst as a member of the Board I would hear these matters discussed, they were not essentially my own responsibility.

40

You have not got personal knowledge of what happened with resellers, say, after your return? --- No.

Can you tell us, Mr. Rogers, in the month of

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John David
Rogers
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examination
14th March 1961
continued

August 1951 approximately what proportion or percentage of your company's trading in Australia was represented by retail selling of petrol? --- It was between 60% and 70% and I think nearer to 70%.

And without going into detail, what other kinds of selling activities did you have? --- Well, there were the industrial accounts in which petrol is supplied through industrial pumps, and the other big one was trading in the country in which the business was very largely done with primary producers in drums.

10

Up to the 15th August 1951 did your company own any retailers sites which either were used or could be used for the retailing of petrol? --- To the best of my knowledge, none.

Up to the date when you left for New York in 1951 had your company commenced to purchase either sites which would be used for the reselling of petrol or for businesses as going concerns? --- No. From memory again, I would say no, we had not.

20

Up to that point? --- Up to that point.

Subsequently, however, your company did purchase land and sites in quite an extensive way, did it not? --- This is getting out of my particular sphere.

Would you not in your capacity as a director know that? Let me just assist you. Your company did have a subsidiary company called the Bass Trading Company Pty. Ltd., did it not? --- Yes.

30

MR. MENHENNITT: And was it not the company that as a Vacuum subsidiary did the buying of sites and businesses? --- Yes; again that is correct.

And by the time you returned from New York early in 1953, or late in 1952, by that stage had not that company purchased land quite extensively? --- Yes, it had.

40

And that practice continued thereafter, did it not? --- I am not in a position to

answer as to just exactly what was done by the Bass Trading Company after I returned.

MR. MENHENNITT: When did you leave the company?
 --- I left the company in 1959.

By that stage had the point arrived where your company was selling petrol to the retailer in a large number of sites owned by it?
 --- Yes.

10 Some of which had been purchased as vacant land and service stations erected on it? --- Yes, there must have been some.

Do I gather from your answer that most of them were actual purchases of the service stations as going concerns? --- This, again, is something I was really not concerned with directly.

20 MR. AICKIN: I object. My objection was to the nature of the question - there is a difference between buying the business and buying the land on which a service station is to be erected.

MR. MENHENNITT: What I want to put to you is, do I gather from your previous answer that what the company did was to buy businesses as going concerns and the sites on which they were being conducted? --- That is correct.

30 And did that much more extensively than buying vacant land? --- I would not know now at this moment how those two things would compare.

Can you tell us at the time you left, to what extent that practice had replaced contractual arrangements with resellers?

HIS HONOUR: At what stage?

MR. MENHENNITT: 1959.

40 (To witness): Can you tell us to what extent the company owned sites had replaced the system of having contracts with retailers?
 --- I would not know that figure offhand.

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No.3(a)

John David
Rogers
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continued

Do I take it that up to the time you left to go to New York the only form of agreement that was being used by the company was what is termed a trading agreement? --- To the best of my knowledge that is so.

The agreement that has been referred to as the S.S.l.B. agreement was not in use or in contemplation at that time? --- Again I would not swear to that.

You have no recollection of it? --- No.

10

Is it correct to say that it was Shell's announcement on the 15th August which resulted in your company putting in operation its plan for the employment of these trading agreements? --- I suppose the answer to that would be that it caused us to start on August 16th, but we were making all arrangements to go into solo outlets under these trading agreements whether or not Shell had done so.

Although you had not up to that stage done that? --- No.

20

In any event the fact that you went into it on the 16th August as distinct from any other date was due to Shell's announcement - would you agree with that? --- Yes.

MR. AICKIN: I have nothing to ask Mr. Rogers. May he be released?

HIS HONOUR: Yes.

(THE WITNESS WITHDREW)

MR. AICKIN: I call Mr. Edmund Angus Jones.

30

No.3(b)

NO.3 (b)

Edmund Angus
Jones
Examination
14th March 1961

EDMUND ANGUS JONES, sworn:

MR. AICKIN: Mr. Jones, your full name is Edmund Angus Jones? --- Correct

What is your home address? --- 4 Lascelles Avenue, Toorak.

You are the Managing Director of the Vacuum Oil Co? --- That is correct.

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You have been employed in various capacities by the company since 1928? --- That is correct.

Appellant's Evidence

And you have been a member of the Board of Directors since 1944? --- That is correct.

No. 3

And Managing Director since 1954? --- That is correct.

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10 Prior to 1944 you had been General Manager of the company in New Zealand, and you came to the head office in Melbourne in 1944? --- That is right.

No.3(b)

At that time you became a member of the Board, and was the Director in charge of postwar planning? --- Yes.

Edmund Angus Jones Examination 14th March 1961 continued

You held that position until 1947, which was the end of the pool period; is that the position? --- Yes.

20 After that you were Director in charge of sales? --- That is right.

Until August 1948? --- Yes.

From August 1948 until the end of August 1951 you were in New York? --- That is correct.

You came back to head office in Melbourne at the end of August 1951 and then became again the marketing director of the company? --- Yes.

You took over at that time from Mr. Rogers? --- Yes.

30 Who went to New York in your place? --- That is correct.

At the time of your return at the end of August 1951 the one brand policy had just been launched by your company and was also in the course of being operated by Shell, Atlantic and Caltex; is that the position? --- Yes.

You remained the Director in charge of marketing

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Jones
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continued

for some time after that? --- That is correct.

MR. AICKIN: You had the general responsibility for what was done in the implementing of the C.M. plan? --- That is correct.

When you came back the position was that the company had a form of trading agreement in use? --- Yes.

At the time of your return what was the operative policy in the company with regard to the inducements that were to be offered to resellers to persuade them to become exclusive purchasers of Vacuum products? --- We sold them on the advisability of selling only our Company's products, reduced inventories, less working capital, the support of our company in merchandising, training; minor alterations that were necessary at that time was limited to £515, painting in the company's colours and being participants with us in the solo marketing which meant better service to the public and, we estimated, better profits to the reseller.

10

20

For what period after your return did that position continue? --- It continued to the latter part of 1951; it started to deteriorate in the beginning of 1952 when there were price concessions and this handing out of large sums of money reared its head in the early part of 1952.

30

MR. AICKIN: You say that the position deteriorated, perhaps you would expand on that? --- By intensive competition of offering excessive concessions in the form of facilities, and then it got into payments of money - varying and increasing sums of money.

These were the reports you had from your Sales representatives in the field? --- Yes.

What progress had Vacuum been making in signing up the selected sites during these months of 1951? --- In the early stages we did fairly well although it varied in different areas, but we were happy with our progress

40

in the early few months. Before very long, however, the resellers got wise that they probably had something to sell and they held off and it slowed down; that is where we ran into the competition of these large sums of money.

In the High
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Appellant's
Evidence

No. 3

10 Perhaps you might tell us the position with re-
gard to these resellers' trade associations
in the period after your return? --- The
resellers' associations which had been
exceedingly powerful and wielded a very power-
ful influence over the industry, began to get
very worried as to just exactly what would be
the ultimate result from the resellers' point
of view and in some cases there were very
vigorous attacks from the organized reseller
industry against this solo system. That
varied in different parts of Australia but in
20 the main the attitude simmered down finally
to the point of the resellers' association
advising their members to try and sell out
to the highest bidder.

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Edmund Angus
Jones
Examination
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continued

30 Early in 1952 what was your Company doing in the
face of the reports of competition and
offers from other companies? --- We were very
concerned about it. We were opposed to the
idea of just handing over a large sum of
money. We had been opposed to the idea of a
concession at all other than what we did in
the service we offered and the £515 worth of
alterations. But we found that we just had
to do something about it. We were very
anxious to make sure that in meeting the
competition we got as good a protection of
our business as we possibly could. That was
our main concern, to try and hold the share
of the market in the face of this terrific-
ally fierce competition.

40 What in fact did your Company do to meet it? ---
We did not want to make a payment of money
over in a lump sum but we were faced with
this competition with the reseller wanting a
sum of money so we developed the policy of
making him a loan. This loan had to be re-
paid and the reseller entered into a con-
tract for a long period, which tied the
business up and we made him payments for the

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consideration of the tie and of what he was doing for us.

Can you tell us when this decision was reached?
--- Early in 1952. I just cannot recall the exact date but it was in the opening months of 1952.

Did you have a standard form of agreement drawn up? --- Yes, we developed the S.S.l.(B) to cover that transaction. We also developed the form S.S.l.(C) at the time, which did not involve the payment of a lump sum of money. We actually preferred to do our business without the payment of the lump sum of money but that was not possible in every case.

10

MR. AICKIN: Perhaps you might have a look at this copy of Exhibit A, containing photographic copies of various documents. If you look at folio 50, you might tell me if that is the trading agreement which was in use when you returned from New York? --- That is correct.

20

That is the first version of it, with nine clauses? --- Yes.

Would you look at folio 51, which is another trading agreement with 11 clauses, clauses 7 and 10 being new from the previous form. Can you tell us when that was introduced, approximately? --- I just cannot recall off-hand when that one was introduced. It was subsequent to the first one.

30

Would you look at folios 52 and 53? --- That is the form S.S.l.(B) which provides for the loan and the repayment.

Would you look at folios 54 and 55? --- That is form S.S.l.(C), without the loan.

Your Company had these standard forms prepared in early 1952, is that the position? --- Yes.

I notice that the form that we have in Exhibit A in clause 1 of S.S.l.(B) speaks of 6%

40

per annum interest on the loan. Can you tell us what the policy was with regard to interest? --- That was the bank rate of interest at the time and it was subject to alteration. It was altered later on.

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Appellant's
Evidence

No. 3

With regard to any particular transaction, it would be the bank rate then current? ---
Yes.

10 You introduced this form and this new policy in early 1952? --- Yes.

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What was the position with regard to the amounts of money which were involved that your Company was prepared to deal with under these forms? --- We sought to relate any amount
- - -

No.3(b)

MR. MENHENNITT: I object to this question which goes to the terms of the agreement.

Edmund Angus
Jones
Examination
14th March 1961
continued

HIS HONOUR: I did not think it was intended to go to that.

20 MR. AICKIN: It was not. The question was, what was the Company's policy with regard to the amounts of money that it was prepared to lend, or in terms of form S.S.l.(B)?

30 THE WITNESS: It was always related to gallonage and at a rate calculated per gallon. The general idea at that time was that it would cost round about .3 of a penny per gallon and if the volume of business was greater, well the sum of money was greater. But competition affected that very much. It was worse in different parts of the country - worse in Sydney than in Melbourne, they were asking for bigger sums as there were bigger sums being offered there. We sought to relate it to gallonage all the time.

MR. AICKIN: You were forced in this way to go beyond your .3 of a penny? --- Yes.

40 Up to what amount were you prepared to go in particular cases? --- We went as high as 1d. per gallon in some cases and I think probably before the thing was through we were

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running as high as 1½d. per gallon in some cases.

As well as entering into these agreements did you continue with the painting programme independently of this in relation to the sites that were signed up? --- If we could get a reseller to sign up just on the ordinary trading agreement we did so. We continued with that policy but of course that became less and less as the news got about and resellers told one another what was going on. 10

Stations which were the subject of these agreements were in fact, one way or another, painted in the standard colours? --- Yes, once the agreement was signed they were painted.

What happened during this period from the beginning of 1952 throughout the year 1952 with regard to the training programme that Mr. Rogers was speaking of - the training of the operators and their employees? --- We continued with that very vigorously and very intensively during the year. It became a fundamental part of our marketing strategy. 20

Where was that done? --- In Melbourne originally and it extended out to all capital cities.

On what premises? --- Originally we would have a clinic on our premises but we used resellers' premises and later we moved to where we had our own training stations, stations that we had built and that were established for training. 30

During this year 1953 you said that you found the amount per gallon was progressively going up.

HIS HONOUR: I have not quite understood the rate that has been spoken of, of one-third of a penny per gallon. Over what period is the gallonage taken?

MR. AICKIN: Perhaps I had better get the witness to explain that. (To witness): Can you tell us when you were making this calculation in your own office as to how much you were 40

prepared to go to on the basis of one-third of a penny per gallon, what period would you use for the calculation of gallonage. We worked it out on a monthly gallonage and this was then related to an annual gallonage. If a station was doing 10,000 gallons a month it would probably be worth so much; if it was doing 20,000 gallons per month it would be worth so much more.

10 MR. AICKIN: Did it make any difference to the figure you were prepared to go to whether the agreement was for 3 or 5 or 10 years? --- Yes; we would be prepared to pay a little more for a longer period of agreement, because that tied the business up to us for a longer term.

20 The amount of money which is referred to in the alterations to the assessment as periodical allowances - I take it that you are not familiar with the precise figures offhand, but what you in your books call periodical allowances are the amounts paid under S.S. 1(B) and S.S.1(C)? --- That is right.

Another witness can deal with the figures? --- Yes.

30 You have extracted, I think, from the company's books some figures relating to the company's percentage on the reseller market and the number of sites which the company was operating, and the number of pumps. Would you have a look at these three tables which I will pass to you - perhaps I might pass your Honour a copy before this is formally tendered. The first one of these, the one which has the notation J.3 - does that show in calendar years your company's estimate of the total sales to resellers? --- Yes.

40 And then your own sales and your percentage? --- Yes, that is correct, and that shows that our percentage of the total estimated reseller market gradually was on a decline during those years. That is our estimated sales to the best of our knowledge and ability, and those Vacuum sales are our actual sales.

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Take the next document, which is J.4, headed "Reseller Outlets". These are in calendar years again? --- That is right.

And the second column is your company's estimate of the total outlets or garages and service stations, including single pump establishments in country towns and so on? --- Yes; that is throughout the whole of the Commonwealth of Australia.

The next three columns together show the number of establishments at which your company has a pump or pumps installed? --- That is right. 10

At the end of the year 1950 you had 7276 pumps? --- We were represented at 7276 outlets. We did have more pumps than that.

You had pumps at those sites - one or more? --- That is right.

And I think that includes - the notation at the bottom shows that - approximately 400 small establishments where there was only one pump and it was selling your product? --- Yes, that is small hamlets and outback places. 20

And the last column shows the percentage of sites at which Vacuum was represented? --- Yes, that is right. We started at 66 per cent, and we were represented at 26 per cent of the sites in 1954.

That was the object of the plan? --- Yes - to be represented at fewer outlets but to have all the business of the individual outlets, or as many as possible. 30

MR. AICKIN: And this shows the number of seller outlets at the end of each of those years? --- Yes; we had 403 from August until the end of the year 1951, and then it went on from there.

And then there was another 500 added in 1953? --- That is correct. 40

And another 50 in 1954? --- 56 in 1954.

And at the same time you ceased to be represented at or to sell goods to some 5,000 - odd stations? --- That is correct.

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That is not quite accurate, is it? --- 3,500.

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So that you finish up with a total of 3,723? ---
That is right.

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10 Can you tell us in general terms the relationship between - take the end of the year 1953, you had 2002 solo outlets and 1935 multiple outlets - can you tell us whether you would be doing approximately the same volume of business through each of those 2,002? --- Approximately the same amount of business as we were before?

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20 I am sorry, I did not make myself clear. Can you tell us what the position was at the end of 1953, when you had 2,002 solo outlets and 1,935 multiple outlets? What was their respective importance at that time? --- The solo outlets were doing more individual business, much more individual business, naturally, than we were doing in the multiple ones, because at the multiples we were sharing the volume whereas at the solo ones we had all the business - all the gasoline business, I am referring to.

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30 If you look at the next document, J.5, that shows the number of your pumps in each of those years and your estimate of the number of pumps throughout Australia? --- That is correct.

40 And that shows some fall in the percentage of pumps which Vacuum had, but not as large a fall as in the percentage of sites at which you were represented? --- That is right. The whole solo service station move was calculated to reduce the number of pumps that were in operation so that we would not have stations with 40 pumps on them. It was reduced to the smallest possible number that was economic.

I will tender those tables, if your Honour pleases. I do not know whether your Honour

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would regard it as convenient to treat them as a single exhibit?

HIS HONOUR: I think they would be one exhibit. Have you any objection, Mr. Menhennitt?

MR. MENHENITT: No, your Honour.

EXHIBIT. EXHIBIT D --- Comparative tables, 1950 to 1954, in relation to sales, solo sites and pumps.

MR. AICKIN: Mr. Jones, I think you also had some figures extracted from the company's records which deal with the question of the drop or dump, as it is called, the average drop or pump. Perhaps you would have a look at this document and tell us what that shows in relation to the average size of the individual deliveries? --- That figure of 47,260,000 deliveries to metropolitan resellers is my recollection of the correct figure. That was in 1953. The average drop in 1950 was 262 gallons. The average drop in 1953 was 1491 gallons, and if we had had that 1950 drop of 262 gallons we would have had to make 180,000 deliveries to deliver that volume of business, whereas in 1953 we made 36,600 deliveries. Those figures are correct, and that shows the effect.

That is rounded off to hundreds? --- That is correct.

That was one of the objects of your policy? --- That is right - to make more economical distribution.

I will tender that, if your Honour pleases.

HIS HONOUR: I think that might become part of the last exhibit. It does tie up with it.

EXHIBIT. Part of

EXHIBIT D ... Average deliveries, 1950 and 1953.

MR. AICKIN: During this time, Mr. Jones, when

your company was concentrating its sales to a reduced number of resellers, what were you doing with regard to sites where the other companies signed up as solo or signed up as independent?

10 --- We received notice from the reseller of cancellation of the existing agreement, which was generally 30 days, and the pump-head was removed and we mostly sold our underground equipment to the incoming company.

20 During the calendar year 1953 what was happening with regard to the signing up of sites? Was the competition fierce throughout the year? --- Yes, in 1953 the competition was keen. It was at its worst early in 1952, and then the industry sort of decided that they would be a little less lavish and there was what we called a moratorium on certain practices, but that did not last, it broke down again, and that continued in the latter part of 1952 and during 1953, but not with the same intensity as in early 1952.

It did continue? --- It continued right through.

30 When would you say were the worst periods? --- The very worst period was early 1952. It calmed off, and then it broke out again in the second half of 1952. Those were the worst periods.

40 Throughout that period, in addition to making the S.S.1(B) and S.S.1.(C) agreements, did the company continue making other kinds of payments throughout those years in relation to painting or other matters of that kind? --- We were still endeavouring to negotiate agreements, and did negotiate agreements, ordinary trade agreements without - S.S. 1 trading agreements, but they were more of a smaller type.

We would help people with straight mortgages without any other tags on them at all, in return for which they signed a normal

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trading agreement which would entitle them to have painting done and also share in the effects of our merchandising training and the backing of our sales organization.

MR. AICKIN: You spoke of the smaller ones? What did you mean by that? --- They would be in smaller throughput, places in country towns, perhaps, or small places in the suburban areas where they probably did not have very much volume to offer.

10

CROSS-EXAMINED BY MR. MENHENNITT:

MR. MENHENNITT: Mr. Jones, I take it that your date of return to Australia in August 1951 was after the 15th? --- Yes; I arrived on 3rd September, if I recall.

And at that stage your company was engaged in the vigorous activity through its representatives, of trying to persuade retailers to sign up trading agreements in the S.S.1 form? --- Yes.

20

And for your part, according to the merchandising plan that you had worked out, you would never have gone beyond that, would you, if other people had not tried other forms of inducement? --- Yes, that was our policy.

And it was only the fact that other people started paying lump sum payments that caused you to resort to similar practices? --- That is right.

And you learned about the lump sum payments towards the end of 1951? --- That is right.

30

And were some of these lump sum payments being offered to proprietors of white stations who had not signed up trading agreements? --- I do not know. I cannot answer that categorically because I do not know of any cases where it was done. It could have been done.

But of course you were not confining your attempts to signing retailers up to white stations? You wanted a more extensive covering than that? --- Yes.

40

And I think you said in that situation you entered that competitive situation competing with the other companies, towards the end of 1951 and early 1952, for the good sites? --- That is right.

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It was your objective to obtain, I take it, in all important centres at least one site tied to you? ---- That was our objective, to have sites tied to us.

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10 In all country towns, for example, you wanted to have sites tied to you? --- Tied to us at all worthwhile points, according to our formula and the way we worked it out.

In that situation in order to get a good site you had to compete with the offers being made by other companies? --- That is right.

And eventually in that situation you were forced up to pay the price that attracted the reseller? --- That is right.

20 And do I gather that, in Sydney, for example, the competition for payments was much greater than in Melbourne? --- That is correct.

This figure you have mentioned, .3 of a penny per gallon, was the kind of basis upon which you decided to make your approach in the first instance? --- That was the way we worked it.

You started it there? --- Yes.

30 MR. MENHENNITT: But the competition commonly forced you up much higher than that figure? --- That is not quite correct. That is what we hoped to be able to get the reseller for, and sometimes we considered that we had a better story than the competitor salesman had. We thought we had something better to offer and if we got a reseller who was keen for us, he would come to us probably for less than what he would go to the other
40 competitors.

You did not naturally pay the price the other

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person was offering, but the competition did force you up quite commonly beyond that figure? --- That is right.

And when you worked out a figure you told his Honour in some cases it took you as high as 1½d. per gallon. That is just a subsequent calculation you made in order to reveal how high you went? --- Yes; that is matching.

Can you give his Honour at this stage any kind of picture as to the period of the S.S.l B. agreements in the year 1952? --- You mean the length of the term of them? 10

Yes? --- Well, we sought, where there was a fair amount of money involved, to get them for 10 years, if we could. They varied in time, but that was our objective - to try and get as long a term as we could.

And quite a number had a term as long as that? --- Yes. 20

And do I gather that the trading agreement did not necessarily correspond in period with the S.S.l.B. agreement? --- You mean our original trading agreement where we went out first with the trading agreement? The start off term was about three years.

Let me make it clearer, Mr. Jones. In a case where you signed a person up with an S.S.l. B. agreement in 1952 for the first time, one of the terms was that he would also sign your trading agreement? --- Yes. 30

Where you signed up a man first in 1952 with an S.S.l.B. agreement, did the period of the S.S.l.B. agreement correspond with the period of the trading agreement he then signed for the first time? --- The instructions were that that should be so.

And that was normally so? --- Yes.

Was that when you had a 10 year S.S.l.B. agreement and you normally had a 10 year trading agreement? --- Yes. 40

And can I take it that a big proportion was for 10 years? --- The objective was to get 10 years. I have not any figure in my mind as to the proportion, but I would say the majority of them were for long periods, and as many as we could possibly get were for 10 years.

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10 In that situation a large number of those agreements would not yet have expired? --- That is correct.

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In some cases you said they were not as long as that; some were only five years? --- There would be some that would be for shorter periods than ten, yes.

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MR. MENHENNITT: And some in between? --- I would expect so. I do not know. I have not reviewed all the agreements, but the policy was to get as long a term as possible.

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20 And do I take it that that means that you might have one man with a gallonage of a certain kind who might be paid a figure of, say, £1,200 for a five year agreement, and another man because the competition was not quite as fierce might, for the same sum and the same gallonage, sign a 10 year agreement? --- That is possible.

30 And the period of the agreement and the amount you paid was all governed by the competitive situation that was there? --- The competition was very very fierce at that time.

And that governed both the price you paid and the period of the agreement? --- Yes.

40 Mr. Jones, am I correct in understanding this, that what Mr. Rogers has told us as to what happened when the trading agreements only were signed in relation to alterations also happened in relation to trading agreements when they were signed in association with an S.S.I.B. agreement? Let me make it clearer Mr. Rogers told us that when a trading agreement was signed in 1951 - after August

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1951 - contemporaneously with that discussions took place about driveways and alterations to premises, and contemporaneously with the signing of the agreement the alterations to be done were discussed and agreed to, and then done as part of the signing up, in association with the signing of the agreement? --- That is right.

Am I correct in understanding that when in 1952 resellers signed both an S.S.I.B. agreement and a trading agreement, in the same way at that stage a discussion took place about driveways and alterations to premises? --- Yes, that is my understanding. 10

And did the limits that have been referred to in the memorandum of August 1951 continue to apply? --- The £515?

Yes? --- Not necessarily, because sometimes it went a little bit higher.

I appreciate that there was a discretion subject to consultation, to go higher? --- That is right. 20

That means that when you were signing up a man with an S.S.I.B agreement you would discuss alterations - the driveway alterations and the building alterations - and say, "Yes, we will do that if you will sign the agreements." He would say, "Yes, provided you pay me a sum of money as well." Is that the substance of it? --- Of course, at times it varied with the amount of money that we were lending him. He would spend that perhaps on some alterations; so it became all involved with the loan. 30

The two things you were offering to him were the lump sum of money and these alterations to premises, in return for which he would sign the two agreements? --- Yes. It would all be in the one package of course.

And it is right, is it not Mr. Jones, that the amount that he was to repay for principal and interest corresponded with the amount that you agreed to pay him under clause 6 of 40

the S.S.l.B. agreement? --- That is correct; the amount of loan we made him he had to repay.

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MR. MENHENNITT: The amount of loan he had to repay with interest equalled the amount you agreed to pay him under clause 6? --- That is right.

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10 And are you personally able to tell us when it was that the system of making book entries became general, or is there another witness who can tell us that? --- I cannot answer you on the exact date.

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20 Can you tell me this, Mr. Jones, as to the relevant year that we are concerned with here - that is, the financial year ended 30th June 1953 - can I take it that all the sums that are claimed by the company for alterations to premises and alterations to driveways and that kind of thing are all payments that were made contemporaneously with the signing of S.S.l.B. or S.S.l.C. agreements, plus trading agreements? --- That is my understanding.

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By that I mean the actual items were selected at the time the agreements were being entered into, and your company said, "We will do that if you will sign it."? --- They were expenses of holding our business and getting those contracts.

30 Is there a reference in one of the formal documents, Mr. Jones, - I am referring to folio 57 in Exhibit A - a reference first of all to alterations to and concreting of driveways? Have you a copy of these documents? --- No.

Would you look at the Court's formal documents? It is folio 57? --- Yes.

40 Now this refers to Sundry Sales Promotion Expenses, Solo Outlets, 30th June 1953; then Alterations to and Concreting of Driveway, and there it is stated "Payments made to contractors on behalf of resellers; payments made direct to resellers"? --- Yes.

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Now when your payment was made to a contractor, do I take it that the contract for the work to be done was always made between the reseller and the contractor? --- I cannot answer you on that specifically, but the policy was at that time for the contractor to be with the reseller. The position is this, that it was all associated with that loan we were making to him. He got the loan and sometimes it suited him for us to help him out in the job.

10

But your understanding is that in most cases the actual contract for the work was made by the reseller? --- That is right.

And you said, "Yes, we will pay this much of that cost"? --- Yes, and he would instruct the contractor to do the job.

And sometimes for convenience you paid the contractor with your cheque? --- Yes.

Sometimes, on the other hand, you made the payment to the reseller? --- That is right.

20

MR. MENHENNITT: That explains the split up in the two columns? --- Yes.

In the second item, the Structural Alterations and Repairs to Buildings, can you give His Honour any picture of the extent to which what was done to the buildings constituted alterations as distinct from repairs? --- It would be very difficult indeed to answer that question, because the structural alterations and repairs run together. Probably the structural alterations made it necessary to make a repair somewhere.

30

I take it you regarded both of those as coming within the expression, as I put it to Mr. Rogers, "Reimbursing the operator for the reasonable cost of such minor alterations to the service station as will in the opinion of the company enable the service station to give better service to its customers"? --- I believe that that is all in the expression.

40

Within the meaning of the trading agreement? --- Yes.

And do I take it that the third item, Purchase and Installation of Plant and Equipment, was mostly for the lubritorium? --- That would be so.

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And the other; do you know what the other is? --- No, I do not know.

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10 MR. MENHENNITT: When you said in your evidence-in-chief that sometimes you were prepared to pay a little more for a longer period for agreements, did you have agreements going beyond ten years? --- I cannot answer you on that, but I do not doubt that we did have some for longer than ten years.

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When that happened you paid a little more? --- Yes, that could be; after all, there were competitive offers for very long periods of twenty years.

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You did not always pay more? --- The best deal you could work out.

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Cross-examination continued

20 Mr. Rogers told us that up till the 15th August 1951 your company had not purchased sites for the resale of petrol at all. You agree with that, I take it? --- Vacuum Oil Co. as such ---

But subsequent to August 1951 you did commence the purchase of the sites? --- Vacuum Oil Co. has purchased a number of sites over the years.

30 It is not mostly done through the Bass Trading Co.? --- Originally purchases were made by the Bass Trading Co. but that did not go on for very long.

Had Vacuum or Bass Trading Co. purchased any sites at all before the end of the calendar year 1951? --- I think Bass Trading Co. had purchased one or two during the year 1951.

But not many? --- Not many.

40 Do I take it that once this competition commenced in the way you described of making payments, that was the time at which either

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Vacuum or Bass Trading started to buy sites?
--- That is not quite correct. Bass Trading Co. could have purchased some during 1951, one or two, but they were not allied - those two moves - the purchase of sites was in an entirely different category from these contracts, loans of money under S.S.I.B.

I suggest to you that whereas at the 30th June 1951 Bass Trading had spent only on behalf of your company - Bass Trading did nothing on behalf of your company except purchase land? --- Sites? 10

Yes, whereas to the 30th June 1951 it expended on behalf of Vacuum only £2,706, to the 30th June 1952 it had expended on behalf of Vacuum £232,221? --- That is quite possible but the purchase of sites was an entirely different category from this.

Will you agree with me that that occurred mostly from the beginning of 1952 onwards? --- I would like to see the dates. If I saw the dates I could answer that question correctly. The tempo of competition grew very very rapidly and there was purchasing of sites quite apart from anything else, and there were purchases of land by different companies and we had to be in on that, but that is an entirely different phase of the competition. 20

It is all part of the solo site battle? --- Part of the solo site development. 30

MR. MENHENNITT: Other companies started the development of buying land, buying sites, and your company met that situation by buying land, that is so, is it not? --- That is right.

To what extent as the years went by did your company do its retail selling through its own sites, sites it owned as distinct from sites which were occupied by retailers under agreement with your company? 40

HIS HONOUR: Of what period are you speaking now?

MR. MENHENNITT: I mean right up to the present

time. (To witness): I will put it to you again: As time went on, in the ten years after 1951 right through the 50's, your company went on buying more and more land? --- Part land and part stations.

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10 By about the end of, say, last year, to what extent were your retail sales being done on sites you owned as distinct from sites where you had an agreement? --- On the latest figures I think we have 580 company service stations - that is company owned and company leased service stations: we have some on lease - out of a total of 4000-odd solo service stations.

Does that mean in substance that by and large the agreements you made with the resellers in 1952 and the following years are still running? --- Most of them are, most of those long term agreements are still running.

20 The original agreements? --- The original agreements, or there may have been certain modifications or renewals in that time. Some of our earlier agreements expired and they were renewed for longer terms.

Has that happened most, or are they mostly original agreements? --- I just cannot answer you that question specifically whether it is mostly or otherwise: it is a continuing operation.

30 When an agreement expires you sign up a reseller with another trading agreement, is that right? --- If the agreement expires, we renew the trading agreement.

For a period of years? --- That is right.

40 Because by this stage it would be fair to say that the situation has settled down, that each of the companies has got its solo sites well established? --- I would not say it has settled down by any means: the oil industry is too competitive for that.

The intense competition of 1952 and 1953 is no longer present? --- The intense competition

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of the type that was existing in 1952 is not the major competition today.

What I am suggesting to you is once you got the man signed up in 1952/53, with all the other stations signing up their resellers too, he was more or less committed to you indefinitely? --- I would not say indefinitely.

HIS HONOUR: The contract will speak for itself.

MR. MENHENNITT: I mean from a business point of view, once you had made that contract, thereafter you expected him to remain tied to you from a business point of view, not a legal point of view? --- We hoped he remained tied to us, and we tried to keep him.

10

Beyond the period of the business - - - ? --- If we could hold his business for a long term we desired to do so.

With all the companies having their own individual sites you were fairly hopeful that would be so? --- Yes.

20

HIS HONOUR: Is it not a question of what the agreement amounts to, Mr. Menhennitt? What the company hoped for is not much ---

MR. MENHENNITT (To witness): That in fact has happened, when the agreement has expired you more or less have continued to supply a man without any further agreement? --- I would not say that; we do not work that way.

30

Thereafter what you have done is sign up for a further period with a trading agreement? --- Yes.

In the policy you adopted, about which you have told us, of having an agreement which took the form of the S.S.I.B. agreement - you know what I mean by the policy referred to? --- Yes.

Am I correct in suggesting that one of the things that influenced that form of

40

agreement was the possible taxation situation that the retailer might be in? --- The thing that influenced us very largely in it was the effect of price control at that particular time, where the Price Commissioners were exercising a very severe control over our prices and we were fearful that we might get an overall reduction in our prices. That was one of the major reasons.

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- 10 Am I correct in suggesting to you that one of the reasons for having this provision for repayment by the retailer of principal and interest and a payment by you corresponding to that, was to cover the situation that if the payment in the hands of the retailer happened to be liable to tax, it would spread any tax liability over a period of years? --- That would be natural, would it not? A price concession per gallon would
- 20 have the same effect, would it not?

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continued

Yes, I am putting it to you that the actual form of agreement you adopted was influenced by that very factor I put to you?

HIS HONOUR: That was the earlier one, was it not?

MR. MENHENNITT: No, I am referring to the S.S. l.B. agreement? --- That is right.

- I suggest to you that from commercial motives point of view with respect to taxation, the fundamentals of the S.S.l.B. agreement loan should be preserved, and I am referring to the policy, and you thought of ensuring that any payment that the retailer got would be spread over a period of years? --- That would be inevitable by the very nature of it.
- 30

- MR. MENHENNITT: That was one of the things in the company's mind, the Directors' minds, in deciding to do it that way and you were influenced by that consideration? --- That was given thought to at the time, there is no doubt about that.
- 40

Another consideration that influenced the company - and by "company" I mean the

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Edmund Angus
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Cross-
examination
continued

Directors - was the desirability of having an effective tie of the retailer to your company? --- That was very definitely there, to protect our business.

That was your prime objective, was it not? ---
Yes.

You had in mind that if you had an agreement with provision for payments to be made by the retailer and payments to be made by you that would enable you to sue for a specific sum if he broke his agreement? --- Yes.

10

That also influenced you very much in the form the agreement took? --- Yes.

As to the S.S.I.C. agreements, those two considerations I have mentioned were also very much in the company's mind in the provision for a periodical payment, an annual payment? --- In the annual payment that tied the business to us, certainly, for the period of the agreement.

20

Plus the provision for repayment of a certain amount on a monthly basis to be broken? --- Yes.

Likewise, from his point of view periodical payment would spread any tax liability, if there were any? --- Certainly that would be the result.

However, it is true that by and large the agreements you had executed were mostly S.S.I.B. agreements and not S.S.I.C. agreements in the relevant period? --- Yes.

30

Can you explain this, Mr. Jones? Would you turn to Exhibit A, Folio 23, please? If you look at that document you will see a breakup year by year, and we are concerned particularly with items H and I. Under Item H for the year ended 30th June 1952 there are no periodical allowances paid to resellers through advertising rights and their continuing to adhere to the trading agreements with the company? --- Yes.

40

MR. MENHENNITT: Although in the next year there

are £77,000 which is the figure we are concerned with, and £121,000. Does that mean there were no payments made in the year ended June 1952? --- That must be the case if it is not shown in there.

Although agreements were entered into early in 1952 and onwards? --- Yes, they were probably not taken off in our books at that time.

10 There were payments made, were there not? --- I cannot answer you on that, I can only accept that this statement here must be correct as it is a statement of our books.

You referred yourself to the fact that your Company did make outright loans to retailers, sometimes secured by mortgage? --- Yes.

20 I take it that whenever that happened, the retailer entered into an S.S.I agreement for a specified period? --- Yes.

Can you tell us whether in the financial year ended 30th June 1952 there were many such loans? --- There would not be many.

What about the financial year ended 30th June 1952? --- I would think not many either in that period, although it is quite possible there were some.

30 Have you any idea how much the total amount of the loans was in the year ended 30th June 1952? --- No, I have no knowledge of that.

RE-EXAMINED BY MR. AICKIN:

40 MR. AICKIN: You were asked a number of questions about the renewal of agreements which were for a period of less than 10 years and what took place on the expiration of the period where there was an agreement which had now expired, and my learned friend asked you if you renewed the trading agreement in those cases. Perhaps you could tell the Court what your Company did about obtaining renewals of trading agreements? -

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continued

-- The general experience was that the reseller was putting pressure on us for some sort of concession in some form or other, and in order to get renewals we had to make concessions of various types.

What sort of concessions were they? --- You get an S.S.1 and a loan and a repayment - that became the most used one. We would try also with an S.S.1.(C) on occasions but generally the reseller when his agreement expired would come and put a lot of pressure on us and if we did not accede to his request we stood in danger of losing his business.

10

Can you give us an indication of what proportion of renewals you had that experience with? --- The majority of renewals were accompanied by some concessions.

You were asked about the document which is folio 57 in Exhibit A, as to the nature of the expenditure that is here set out, and I want to ask you about that. The previous document, folio 56, shows that by the end of June 1953 you had a little under 300 forms S.S.1. (B) and S.S.1. (C) in all. If you look at the tables in Exhibit D, the second page of that document marked J.4, you will see that by the end of the calendar year 1952 you had 1,400 solo sites and I think you told my learned friend that they would all have been the subject of a trading agreement? --- That is right.

20

30

MR. AICKIN: I think you also told us that you did in fact sign up both in the early and the later stages quite a number of stations on the trading agreement alone, without the S.S.1. (B) or (C) forms? --- Yes.

I want to ask you whether you are able to allocate this expenditure set out on folio 57 as between service stations in those two categories - those which had merely a trading agreement and those which had also a form S.S.1. (B) or (C)? --- I cannot set that out here. I would like to answer a question like that after some study of it.

40

Are you able to say whether or not both categories of service station come into this figure? --- Yes, both categories would come into this total figure here.

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HIS HONOUR: By that I imagine you mean all three categories which you mentioned?

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MR. AICKIN: Yes, perhaps I had better make that clear. (To witness): Each of the three sub-headings? --- Yes, S.S.1., S.S.1.(B) and S.S.1.(C).

No. 3

10

And payments under each of the two sub-headings on folio 57 would be in respect of service stations which had only an S.S.1. and which had the two forms, an S.S.1. with an S.S.1.(B), and an S.S.1. with an S.S.1.(C)? --- Yes.

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All of them had a trading agreement but not necessarily also an S.S.1.(B) or (C)? --- That is correct.

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Edmund Angus Jones
Re-examination continued

20 Another witness is able to give my learned friend the loan figures if he wants them and I do not think I will trouble this witness with them.

(THE WITNESS WITHDREW)

No.3(c)

No.3(c)

WALTER DOUGLAS McCONAGHY, sworn:

Walter Douglas McConaghy
Examination
14th March 1961

MR. AICKIN: Your full name is Walter Douglas McConaghy? --- Yes.

30

And you live at 1 Cromer Road, Beaumaris? --- Yes.

You are the manager of what is called the Real Estate and Finance Department of the Vacuum Oil Company? --- Yes.

You have held that position since December 1951? --- That would be correct.

You have in fact been with the Company since 1930 in various capacities, in the Marketing

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continued

Department, Head Office or in the
Victorian Branch? --- Yes.

MR. AICKIN: Except during the period when you
were making a survey of the whole Common-
wealth marketing arrangements? --- Yes,
and a short period during the war.

In 1951 you spent some time in New York and re-
turned to Australia in December? --- That
is correct.

And the Real Estate and Finance Department of 10
which you are now the manager has come in-
to being and is responsible for carrying
out the Company's policy in regard to
expenditure on marketing the Company's pro-
ducts through service stations? --- That
would be correct.

MR. AICKIN: The department did not exist as
such, I think, until you came back or
shortly prior to you coming back, in Decem- 20
ber 1951? --- It was just sort of emerg-
ing at that time, and I came back to take
up that position.

All the commitments that the company enters
into to the service station operators are
dealt with through your department by
authorisation or the like? --- They all
have to be cleared through my department.

And that has been so ever since December 1951?
--- Yes, and still applies.

You have continued in that position since that 30
date, and you still hold the same position?
--- That is correct.

I think if I might begin by formally dealing
with the items that are in the book. If
you will take this copy of Exhibit A, and
first of all look at folio 56, the large
sheet.

(Document handed to witness.) The opening
entry is a compilation which you have had
prepared under your direction of the 40
periodical allowances arising in the year

ended 30th June 1953? --- That is correct.

And the total figure that is given of £57,265, does that represent the total, if I may put this non-contentiously, of the periodical allowances arising under the SSIB agreements in that year? --- Arising out of the SSIB agreements that had been signed prior to or during that year.

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10 HIS HONOUR: Paid or credited in that income year?

MR. AICKIN (To witness): Is that correct, paid or credited in that year? --- That would be correct.

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And the figure of £9,637 represents the total of the payments or credits in respect of SSIC agreements? --- Correct.

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Those make up the now identifiable amounts of the figure £77,000 first communicated to the department? --- That is correct.

Walter Douglas
McConaghy
Examination
14th March 1961
continued

20 If we now turn to folio 57, there are two categories here, the first column "Payments made to contractors on behalf of resellers" totalling £67,629. Does that represent amounts paid by the company to various contractors during the tax year, the year of income ended 30th June 1953? --- I believe that to be correct.

In respect of work done on re-sellers premises? --- That would be correct.

30 The next column totalling £53,307, represents payments made to resellers by the company in this year of income? --- That is rather a broad statement. It would probably not represent payments made to them. It is really more likely to be reimbursements of amounts they have spent. Either they contracted, or a contractor contracted, to do the job, and on receipt and presentation of bills we would probably meet the accounts.

40 You would either meet the accounts or reimburse them?

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HIS HONOUR: That was what I was interested in, that then, insofar as the whole of the sum, the amounts spent or the amounts specified, it either has been paid direct by the company or by dealers and reimbursed to them subsequently? --- In essence that is correct.

MR. AICKIN: And the small figure of £363 which you have not been able to reconcile from the detailed records with the first figure given to the department - - - ? --- These figures are a little hard to get at exactly because so many things have been extracted from them. First of all they were put into sales and expenses by my company, because that is where we believed they belonged. Subsequently, they were whittled down by little bits taken out by the Taxation Department. 10

But your company's records at the present time do not enable you to give a more elaborate breakdown than the one you have here? --- No. 20

HIS HONOUR: What do I do about the £363?

MR. AICKIN: We would be content not to succeed in respect of £363.

THE WITNESS: I still believe they are all identifiable expenses of the sales promotional type, if I may answer that.

MR. AICKIN: But we cannot now identify precisely what they were? --- No. 30

MR. AICKIN: Would you turn back to folio 28, which is the alteration sheet accompanying the assessment. These figures that we are here dealing with are there set out under the heading "Periodical Allowances to Resellers", and there is this £10,000 which we have not been able to reconcile, is that the position? --- That is correct, £77,593. 40

The figures you are looking at should be six totalling £66,000-odd representing part of

that figure? --- Yes, except for the small amount of £10,000.

Which has been the subject of correspondence?
--- That is correct.

The other figure on folio 57 represents the break-down of the next item, is that so?
--- That is correct.

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10 Perhaps you would turn now to the amended assessment which is at folios 35 and 36. On folio 36, which is the alteration sheet again, there are two new items added, and just so that it is formally in the evidence, the sum of £4,500 there is a figure which has been agreed upon between the company and the Commissioner as representing a fair figure for the legal expenses incurred by the company in this year of income in relation to the solo site programme, if I might call it that? --- I understand that is correct.
20

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And it does represent part of the monies paid out by the company? --- Yes.

HIS HONOUR: If you want me to do something about this amount of £4,500 - - -

MR. AICKIN: I think it is not possible for your Honour to give a ruling specifically on that.

HIS HONOUR: But there is an objection and an appeal.

30 MR. AICKIN: There is an objection and what I expect will be possible is that in the light of your Honour's decision about the other matters - - -

HIS HONOUR: Is not that appeal before me now?

40 MR. AICKIN: It is. What I was going to suggest to your Honour as a convenient mode of dealing with it would be either of two things: one, if your Honour accedes to our argument that all the expenditure referable to these agreements, the payments with which we are

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here concerned with the trading agreements
- - -

HIS HONOUR: It is simple enough if the £4,500
has been agreed upon as in effect expendi-
ture incidental to those particular items.

MR. AICKIN: That was my understanding of the
figure.

HIS HONOUR: But if that is not so, the way you
put it to Mr. McConaghy was that it has
been agreed upon as a reasonable figure
during the year for the company's legal
expenditure in relation to solo outlets.
But it is a bit wide and I would like to
know what the terms of the agreement are.

10

MR. AICKIN: I have not got the correspondence.
My learned friend suggests, and I am happy
to agree to this if your Honour would con-
sent to leave the matter to the adjournment
- - -

HIS HONOUR: Yes. In relation to that, there
is another possibility of course, that
these periodical payments - I am speaking
of possibilities, not that I have any
view - if one were to come to the conclu-
sion that the periodical payments represent
revenue expenditure, that these payments on
Folio 57 do not.

20

MR. AICKIN: That is plainly a possibility.

HIS HONOUR: There would have to be some other
agreement as to apportionment of these
amounts.

30

MR. AICKIN: If they relate to those also, I
agree, with respect, That is a matter
which I think my learned friend and I
might be able to work out in the light of
the terms of the arrangement.

HIS HONOUR: It is not a very big item, compara-
tively.

MR. AICKIN: It is only a small figure and of
no great consequence, and we would seek to

40

make some arrangement which would obviate your Honour's task being cluttered up, if I may so put it.

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HIS HONOUR: I do not mind it being cluttered up. I just do not like it being impossible.

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MR. AICKIN: I think we can sort that out in a manner which will facilitate your Honour's dealing with what is not a major item of dispute between the parties.

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10 HIS HONOUR: Do you want to go any further with Mr. McConaghy, now?

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MR. AICKIN: It might be possible to go a little further. I was coming to a new matter quite distinct from this, and perhaps this would be a convenient time.

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HIS HONOUR: Very well; we will adjourn until 10.30 a.m. tomorrow.

Walter Douglas
McConaghy
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continued

(THE WITNESS TEMPORARILY WITHDREW)

20 AT 4.30 P.M., THE FURTHER HEARING OF THIS MATTER WAS ADJOURNED UNTIL THE FOLLOWING DAY, WEDNESDAY, 15TH MARCH 1961, AT 10.30 A.M.

MR. AICKIN: Perhaps it may be convenient to begin with this item of £4,500 which was the subject of some discussion yesterday.

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HIS HONOUR: Yes.

30 MR. AICKIN: My learned friend and I have agreed that it should be dealt with in this way: it should be treated as incidental to the three types of expenditure which are now in question and as having been expended in three parts pro rata to the total expenditure.

HIS HONOUR: A proportion?

MR. AICKIN: Proportionately to the items in question, so that it will stand or fall either in whole or in part proportionately to the other items. We have not worked out

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what the arithmetical proportions are but that can be done if it subsequently turns out to be necessary.

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WALTER DOUGLAS McCONAGHY, continuing his evidence:

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MR. AICKIN: You told us yesterday that you came back to Australia after a period in New York in 1951 and you took charge of what became known as the Real Estate and Finance Department in December 1951? ---
That is correct.

10

At that time the Company had announced and commenced to put into operation the policy of one brand service stations? --- Yes.

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Walter Douglas
McConaghy
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continued

Perhaps if you would look at Exhibit A (handed to witness) and turn to folio 50, a reproduction of a printed form of the trading agreement. Can you tell us if that was the form of agreement which was in use by the Company at the time when you took over this activity in December --- that is, the 9-clause agreement? --- Yes, it appears to be. This is a photostat copy and - - -

20

It is a printed form? --- Yes, this is the one we did have in operation at that time.

Perhaps while you are looking at that document would you look at the next document, folio 51, which is a photostat copy of a printed form, is that so? --- Yes.

That is an 11-clause document. Can you tell us when that form was introduced? --- In June 1952.

30

And that remained in use for what period of time approximately? --- Without any substantial change right up to the present time. Each time it is reprinted there might be one little word or phrase altered or something of that nature, but there is no material change which has been made to that trading agreement since that date.

40

When you returned, the Company was engaged in

endeavouring to persuade selected resellers to sign the trading agreement. Is that the position? --- Yes.

And what was the inducement which the Company was offering at that time? --- The inducement of the normal benefits that we anticipated would accrue to the reseller from going over to a one-brand station.

10 What items would that include? --- Painting of the station in the Company's colour scheme, in other words, joining what we call the Vacuum brand of stations so that they would be identified with our nation-wide advertising scheme which was of benefit to them. We also did minor structural alterations which were really to allow the painting to conform. We had a series of architectural assistants employed at the time who looked at each station and drew on a tracing what would be necessary to enable us to paint the station correctly, mostly they were not substantial alterations but of a nature to allow us to paint it properly. The other alterations we did were to drive-

20 ways. In those days we had a large number of pumps, some of the premises had 20 or 30 or more; but the majority of them would have 20, with a similar number of 500-gallon tanks installed under the building and under the kerb. When we had to couple up

30 these tanks underneath, we would have to lift the footpath and part of the station and the concreting inside the showroom and we would then replace that. That is what we called "alterations to driveway and minor building alterations." They were mainly to satisfy the retailer that we had not made a mess of his property.

MR. AICKIN:

40 What was the policy at that time as to the amount which would be spent on these items --- The policy started off to be .3 of a penny per gallon or £515, whichever was the lesser based on a period of four years; so that the branches would not make a long period of years and multiply the amount out for small

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continued

gallonage stations, we set a limit of a 4-year period.

That was an instruction to the branches? ---
Yes. It was split up into three amounts
of £150 for painting, alterations to
driveway and minor building alterations
and £65 associated with the lubritorium,
which had continued on from the previous
period on "all white" stations.

These were maximum figures? --- Yes, and after 10
a little period they were merged, I think
about the time shortly after I came back.
There was a lot of correspondence from the
field indicating that it was embarrassing
to keep within the strict amounts. I
would like you to appreciate that the £515
was not reached as an actual cost. I took
out a summary at the end of 1952 and the
average was £370 for all stations through- 20
out Australia, but they were still finding
it difficult to live within £150 for the
painting so we gave them latitude to live
within the overall amount with some elasti-
city between the individual sections.

That would be the beginning of 1952 or there-
abouts? --- Yes, as far as I can recollect,
it was going on when I assumed control I
would say about the end of December and
probably the decision would be given about 30
early 1952.

MR. AICKIN: In the beginning of 1952, I think
we have been told by the end of 1951 some
400 stations had been signed up as solo
sites? --- I think my records show 403.
They would be apart from those that had
been solo sites prior to the one brand;
we had a similar number of small locations
in country towns which had only had the
pumps of the company.

They already had no pumps other than yours? --- 40
No, the 403 are those that signed our
trading agreement.

In the early months of 1952, what took place
with regard to this programme? --- We

continued our programme but there were reports coming in from the field that it was getting more and more difficult to sign people - the reseller associations had advised their members not to sign it without planning some more compensation from the companies in some form or other. That was the beginning of the slow-down of the signing up in the field. We had a number of accounts that were sort of held up - they were agreeable to sign if we would spend more than the .3 per penny per gallon on their station. That gradually changed into places where there were reports of actual cash payments being made although we were not involved in cash payments at this stage.

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I think Mr. Jones told us that a decision was made as to what was to be done to meet this form of competition? --- I remember at the time we had an investigation made. I made some field trips and an investigation was made by calling the sales managers, the people concerned with this, into the office. We discussed it and it was very difficult to find a pattern. There were a terrific lot of rumours going around but we found it hard to substantiate exactly what was going on. It was a very difficult period for us to know whether anything we decided to do may not have been more rumour than exactness, and I personally believe we were a little dilatory in taking action, but only by being over cautious in that regard. We could not find an exact pattern for a period in order to combat it, so in the meantime we continued on with our process, but we were in that intervening period authorising higher amounts than £515 for actual station conversion. It was probably a little more to satisfy the reseller in that regard. Then, when it became evident that some form of cash payment would be demanded by a number of the resellers, we decided that some action would have to be taken by our company.

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Walter Douglas
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continued

The kind of action which was taken was, what? --
- We determined the broad policy ourselves and then we felt it would be essential to take action very carefully, so we sought

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Walter Douglas McConaghy Examination 15th March 1961 continued

counsel opinion and over a period, culminating on the 28th March, we got a firm decision from counsel. That was in relation to the form of documents? --- That was suggested; it was suggested we should meet the competition by loaning the resellers a loan we were prepared to lend them which was really an advance against price concessions the company was prepared to make.

10

MR. MENHENNITT: I object to this.

MR. AICKIN: I do not press that particular point.

(To witness): If you tell us what you were doing without expressing an opinion as to the significance of the amounts which you paid. You were telling us, I think, that you decided on a policy of lending amounts to resellers. We will come to how you dealt with the amounts in a moment. You had a number of discussions with your legal advisers about the form of the documents? --- Yes.

20

What is your recollection as to when the form which is now known as S.S.I.B. was first used? --- The form was prepared during these several discussions with counsel, I would say over a period probably from February, March, in 1952 and we were sort of forced in the intervening period to use some of the draft form, but I doubt whether there was any substantial change - they were tidied up in the final processes. Most branches were told to hold off the accounts until these forms were through. They were finally issued to the field, from memory, straight after that conference in - - -

30

HIS HONOUR: You have not given me the numbers and the months when they were entered into.

40

MR. AICKIN: I will be tendering the table of these forms, just to get the picture of the early stages of the use of these forms.

HIS HONOUR: You gave me those numbers yourself. They are not in evidence, but you will establish your tables?

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MR. AICKIN: Yes.

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HIS HONOUR: That will probably be better than Mr. McConaghy's recollection; it will be more precise.

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MR. AICKIN: The table will show the actual dates.

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10 HIS HONOUR: Yes.

MR. AICKIN: (To witness): The general policy having been determined, and the forms drawn up and finally settled, will you tell us the manner in which this policy was implemented, the instructions which were issued and the policy which was adopted in head office in the administration of this policy? --- The policy of the company, as I stated earlier, was that the company was prepared to sign people by a trading agreement of .3 per penny per gallon or £515 whichever was the lowest, based on a period of years. When we started to extend that in the intervening period, we still left the .3 per penny per gallon for the larger gallonage accounts or for a longer period. That was the first relief we gave the branches. We liked it to be four or five or six or seven years, and anything over and above £515 had to be referred to head office and they came through into my department for final clearance. We extended that to a halfpenny per gallon, and later, as competition in the period went on, this went to 1- $\frac{1}{2}$ d. and some went beyond 1- $\frac{1}{2}$ d. per gallon, but usually we hesitated going beyond 1- $\frac{1}{2}$ d. per gallon. However, we were prepared to look at a longer period of years to reduce the cost per gallon, but perhaps increase the minimum advance to be made available to the reseller. In other words, if the reseller had been offered £3000 by another company and, say, a halfpenny a gallon, that for a four year period would be only equal to £2000, and we were then prepared to look at,

20

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continued

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say, a seven or eight year agreement which might bring it back to .3 pence per gallon, but would give him an amount of £3000 by way of advance. Our company was never prepared to make cash payments. That was the very strict policy in our Company and I believe it was the policy of our shareholders that we would not make cash payments to resellers because we felt in the first place it was wrong in principle because the cost per gallon was something which a marketing organisation always lives by because it depends on the gallons we sell whether we can make - - -

10

MR. MENHENNITT: I submit this goes beyond policy.

HIS HONOUR: I do not think we were discussing the agreement; I do not think it is of very much importance anyhow.

MR. MENHENNITT: I was not quite clear as to whether it was going to be a discussion about the agreement.

20

HIS HONOUR: I do not know whether Mr. McConaghy is going any further than saying, "We had an ultimate basis, a gallonage rate, but we had to reduce that because we were buying on a competitive market." Is that the position? --- Yes, every proposition that came to me I was to control on a gallonage basis. I cannot answer the question without touching on that point because it was the whole basis of my instructions to operators.

30

You had touched on it but you were speaking about the general proposition that an oil company lives by its margin and on the gallonage. You can tell us what you did, but we do not want all the reasons why it was done.

MR. AICKIN: (To witness): I think you told us of the amounts involved which caused the £515 to come back to your department for authority? --- Yes.

40

Would all the S.S.l.B. forms, or virtually all of them, come back to your department for authority? --- They would all come back for authority, unless they happened to be within £515. Then they would come back for clearing but not necessarily for authority - they would be tabled by us.

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10 In the cases where you had trading agreements signed in the early period, say from August to December, what happened with regard to those once you had introduced or revised your policy to meet the competition? --- Reports from the field indicated that a number of the resellers were quite restive and competition from one or two companies, particularly in New South Wales, gave us quite some serious problems. We were having those agreements challenged by the solicitors from some of those more competitive

20 companies and we ran into some actual cases where we lost the accounts, although they were signed by the trading agreements - they found some means of breaching the agreement. I do not know whether we need go into the particulars.

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30 THE WITNESS: We found it necessary to re-approach the important resellers and try and firm the trading agreement period entirely. We went back over a number of them and actually entered into S.S.l.(B) agreements. The manner in which we would do that would be to go to the resellers and encourage them to do something further to their property. Particularly at that stage the drive-in station had started to become more important. We encouraged them to improve the property alongside the station and extend their drive-ways. We were prepared to give them an advance, as an offset for the loan, if they

40 behaved themselves and executed the covenants of the agreement.

MR. AICKIN: Roughly, about how much of those would there have been where you had a further arrangement? --- I am afraid I find it difficult to give you an estimate.

It would not have been in every case? --- Not at

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all in every case, but gradually over the period there would be a very substantial number of them. I find it very difficult to differentiate between the reasons for doing it. A lot of the reasons would be our own reasons. For example, the one I gave - the reseller had signed but he was a little restive. We did not look like breaking the agreement but still found it desirable to give an S.S.1.(B) to enable him to expand and develop his business. We were prepared to give some concession towards the expansion of his business and in order to benefit our business. It was a gradual process and I find it hard to say how many would break with us and how many would be through the natural evolution of our business.

10

You have had prepared a list of these operators who entered into the S.S.1.(B) and S.S.1.(C) clause, and this is an extension of the document that is in Exhibit A. Perhaps if you would look at this list, it is a list of the persons who entered into those agreements up to the 30th June 1953, whose payments came into account in the tax year ended 30th June 1953, is that the position? --- That is the list, yes.

20

I tender this list, if your Honour pleases. Perhaps your Honour might have the original and I will pass a copy to the witness.

30

HIS HONOUR: Have you seen it, Mr. Menhennitt?

MR. MENHENNITT: I have seen it this morning, your Honour. I have no objection.

EXHIBIT. EXHIBIT E List of operators who entered into S.S.1.(B) and S.S.1.(C) agreements up to 30th June 1953.

THE WITNESS: There are a few dates missing. I found it extremely difficult at this late period to get the original dates. Where there are dates missing it is not intentional; if the trading agreement expired

40

and the new one was entered into, the old one was destroyed, I am afraid, and no longer had any purpose. That is the reason for them being missing.

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MR. AICKIN: Perhaps you will tell us about each of these columns. You have the name and address. The first column is the Trading Agreement I take it? --- Yes.

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10 What does that signify? --- That is the date he signed up the S.S.I. trading agreement with the operator.

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Is that, so far as the records are now available, the earliest trading agreement with each operator? --- The trading agreement that was then operative. Some of these go into the period when the June 1952 agreement would be in operation and in some cases, where we signed them on the first agreement, counsel suggested to us that it would be advisable, as protection against these trading companies in New South Wales, in particular, and for our future protection, that we get them re-signed. They were actually technically transferring the title of the operator's station over to another name and then destroying the agreement. We tried to get them re-signed on to the June 1952 agreement. Some of them would sign and some not.

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20 Which date would this be - the date of the trading agreement or when you re-signed? --- As far as I have been able to get them, those are the dates of the original signing of the trading agreements.

30 Where there are blanks, that is where the records no longer exist? --- Yes, we still have a trading agreement with those persons but I did not want to confuse the import of this case to show a later trading agreement.

40 The next column is the date of the S.S.I. (B) loan agreement, is that the position? --- Yes.

The next column is the amount of the loan? ---

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That is right.

The period of the loans is the next column. Stop there for a moment. You have, I think, been through these and noted how many are for each period. Perhaps you might give us those figures - how many for five years and how many for 10 years.

HIS HONOUR: Does it matter? It is all here. I would not have thought so.

MR. AICKIN: If your Honour pleases. 10

(To witness): I think the majority are in fact for five years? --- Approximately about one-third for five years, one-third under five, and one-third for 10 years, very roughly.

I think there are two instances of 15 years, are there not - or is it one? --- I have only got them recorded as five over 10 years.

The next column represents the rate of interest that is expressed in the S.S.l.(B) agreement? --- Yes, the current rate of bank interest operating at the time the agreements were entered into. It started at 4½%; when the banks increased it to 5%, we did, later to 6%, and now it is 7%. 20

The variations here are due to the fact that you moved your rate with the bank rate? --- We moved it with the bank overdraft rate. 30

MR. AICKIN: Then we have the amount of principal, the amount which was repaid or deemed to have been repaid in this year ending 30th June 1953? --- That is the amount that has been recorded in the books of the company as being repaid in that period.

The next column is the amount of interest, and finally there is the total of the allowances.

HIS HONOUR: It is equal to the amount of 40

interest in the two preceding columns? ---
Not in every case.

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MR. AICKIN: Your Honour will see that there is a discrepancy between the totals, and I was going to ask Mr. McConaghy about that. It is not very large; in this year it is in the neighbourhood of £500, not precisely that.

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10 (To witness): Perhaps you could tell us how the discrepancy between the total principal and interest and the total periodical allowances does arise? --- There was no necessity for the two to coincide. In the early period quite a number of them did but as we went on to later years there became quite a marked variation between the amounts due under those agreements, under the two parts of the agreement, and particularly where we stipulated it on a
20 gallonage basis. During this period some of them were stipulated on a gallonage basis.

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MR. MENHENNITT: I object, your Honour. I think the evidence should be confined to this year.

HIS HONOUR: It is hardly an answer to your question, Mr. Aickin, is it?.

MR. AICKIN: (To witness): There are some cases listed here where the amounts are not
30 identical, and one in particular where there is a substantial difference? --- There is one in Queensland where we paid £500 a year over and above the amount that was due for repayment of the loan - Nicholas, of Cooper's Plains.

Yes, J.C. Nicholas - that is the only major example in this year of tax, the year of income? --- The year of tax. It is
40 correct for the year of tax. There are some of the variations in the S.S.l.(B) which do provide alternative methods of payment on the gallonage basis in this tax year.

The bottom of the form on page 4 records the

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same information - the date, where available, on the first trading agreement and the date of the S.S.l. (C) agreement, and the payments made under the S.S.l.(C) agreement? --- That is correct. The majority of those have expired and I found it difficult to trace the original agreements. The original agreements are in force but the only one relevant to this hearing is the original agreement at that period. In my own copy I have some of the intervening periods. I think all of those have expired.

10

All of them have expired by now? --- There would be S.S.l.(B) or S.S.l.(C) agreements in their place.

MR. AICKIN: The reason is that you have not been able to complete it at the period of years? --- At the period of years.

With regard to the manner in which these payments were actually made would you turn to page 58 of Exhibit A. Perhaps you could tell us what this document is and who signed it? It is noted as a copy having come to you. Perhaps you could tell us what it is? --- Do you mind if I just refresh my memory on it?

20

Yes? --- (Witness examines document).

THE WITNESS: That document sets out the accounting instructions regarding re-payment of the loan, and entries that would be made in the various books for payment under clause 6 of the S.S.l.(B) agreement to the operator.

30

MR. MENHENNITT: I object.

HIS HONOUR: It is here in the document.

MR. AICKIN: This instruction was issued on the 4th July 1952, and can you tell us what in fact was done with regard to the method of payment, and for how long the method of payment by cheques or exchange of cheques continued? --- To the best of my

40

recollection it continued throughout this taxation year. It may have changed at the very end of that taxation year, but I would say until about June 1953, the early part of 1953, we had quite a lot of problems regarding our accounting department trying to reduce the amount of work in that department. This exchange of cheques and picking up, or countersigning our cheques, over the whole of Australia led to a number of cheques being held up for periods, and our accounting department was getting behind in their balances with cheques floating around.

10

We had a number of talks about it and wanted to carry the system on, but the accounting department found it was too cumbersome. Then we made arrangements with the individual dealers - we notified the individual dealers - and with those who were satisfied we made journal entries in our books and recorded it in our books. We made it quite clear to them though that it still did not relieve them of any responsibility for payment if they did not perform the task.

20

This new system that you spoke of was then introduced at or about the end of this year of income, 30th June 1952? --- Yes, about the middle of June 1953, from memory.

30

Substantially thereafter it was dealt with by journal entry, is that the position for the S.S.1(B)'s, or was it not uniform throughout Australia?

HIS HONOUR: You are speaking after the income year with which we are concerned, are you?

MR. AICKIN: Yes. I think it was right at the end of the year - perhaps I need not pursue it.

40

THE WITNESS: In essence that is what occurred. There would be some we would pay by cheque and receive cheques, and in some of the States where the amount of work was not so large, I would imagine it went on for a

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longer period than some of the other States.

MR. AICKIN: So far as the S.S.l(C)'s were concerned, how was that dealt with? --- They were paid by cheque excepting where the man owed us too much money, and then the cheque may have been held to contra against his current account.

MR. AICKIN: You say if a man owed you too much money, that would be on current trading? --- On current trading, yes. To make the position quite clear, some of these S.S.l.(B)'s are not to the operators of service stations; some of them are to the owners of property or to the owners who had leased and, therefore the two payments may not always, while they coincide, may not always be to the same individual. In most cases, of course, we would collect the cheque from the person who owed the money and pay the lessor. In that period there are not many of those.

10

20

I just wanted to give the impression that every one of those is not to the operator of the service station, is not to the runner of the business.

I see that on the first page of Exhibit E, there is one noted as "not being a reseller". There is a notation "not reseller" - that would be an instance of that, would it? --- That would be an instance of that, or another type of account. We did not confine concessions only to resellers, but to other types of trading, transport accounts, aviation accounts, fuel oil accounts. It is not unique to the re-seller section of our organization nor is it unique to this period.

30

HIS HONOUR: How did the owner who was not in the business sign the trading agreements?

40

MR. AICKIN: Perhaps Mr. McConaghy could tell us what was done about that? --- The trading agreement had an added advantage

over and above the mere signing of an operator. The trading agreement was also a protection in the case of some who were intending to go into business. If we signed the trading agreement, the trading agreement was a protection. I do not know how far it would go legally, but if you have a trading agreement signed by someone else, you could probably persuade ---

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10 HIS HONOUR: What I had in mind, Mr. McConaghy, is this: if you have a landlord who has a benefit in running the business, who signed the trading agreement? --- Both parties, your Honour, would sign.

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Would sign a single agreement? --- No, would sign a trading agreement with the owner, and a trading agreement with the operator.

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20 There would be two agreements? --- Yes. The operator may go out of the station and we could still fall back on the trading agreement with the owner. I might say a number of owners or previous owners of these stations probably sub-let them to someone else around or about this period.

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What did the operator get out of it, what inducement did he get? --- All type of inducement.

30 He did not get any periodic payment, did he? --- A number got an allowance or what we call a straight price concessional allowance paid to him.

HIS HONOUR: They are not included on the Schedule? --- They are not part of this agreement, this schedule.

40 MR. AICKIN; Perhaps you might look at Exhibit A again, Mr. McConaghy, if you would and just identify the document which appeared at folios 52 and 54. Is that the finally settled version, folio 52, of S.S.1 (B)'s subject to what you may say about the possibility that is referred to in clause 1. Perhaps you might tell us about that.

HIS HONOUR: I have not followed quite what the

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question is. To people in carrying on the business in relation to S.S.l.(B) it does not seem an appropriate form of agreement to be signed by any person who is not conducting the business.

MR. AICKIN: That may well be so, but whether appropriate or not there are a number of cases in which the company did use this.

HIS HONOUR: I wanted to be clear about the fact; that is the fact? 10

MR. AICKIN: Is that the position? --- It is not quite as inappropriate as it may seem, because it obligated the owner of the property in the sub-lease to the operator who probably insisted on him signing an agreement with us in order to carry out the terms of his obligation to us.

HIS HONOUR: I think, Mr. McConaghy, it contemplates the agreement being made with a person who is conducting a business of a garage or service station on the premises, and the agreement does oblige them to remain in occupation of the premises. That would not, of course, be at all true of any of the landlord owners? --- In those cases, we would probably give a letter telling him that provided he let it in accordance with the terms of the agreement, it would be satisfactory. 20

MR. AICKIN: Perhaps you could tell us, Mr. McConaghy, approximately just as far as your recollection goes, how many such instances would have been in the early stages of 1952 and 1953? --- I do not think there would be a great number in the early stages, but a lot of dealers changed hands at this particular period. We had quite a job to protect our business from the various methods adopted by re-sellers attempting to get out of these agreements, after they signed up under a S.S.l.(B) to us. There would be numerous instances of attempts being made to break that, and get a sum of money from another company. Those things were going on, and if it appears that we 30 40

used these agreements in a slightly irregular form, I can assure you that everything we did was necessary.

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HIS HONOUR: This, Mr. Aickin, is not permissible. I am concerned with the fact, with what happened.

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10 MR. AICKIN: Perhaps you might like to confine it solely to the facts. There were some instances in this year, a number of which you cannot now recall? --- Yes.

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MR. AICKIN: In which this agreement was signed by owners rather than operators? --- Yes, they would be owners who would probably ---

But the number would not be very large at this period? --- No.

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20 I was asking you to look at the form in Exhibit A, folios 52 and 53? --- Yes, in essence that is the agreement that was drawn up with the aid of counsel in March 1952. This one has the 6 per cent interest which was put in later.

This would have been reproduced on further versions being roneoed, is that the position, Mr. McConaghy? --- That would be correct.

This was at all times a roneoed form, and not a printed form? --- Yes, it is still a roneoed form.

30 And S.S.1.(C), is that also a form which was introduced in the period March 1952 - - - ?
- - - That is correct.

And that also was always used as a roneoed form, was it? --- That is correct.

40 Perhaps you might tell us this, Mr. McConaghy. From the time when you came back until the end of this financial year, 30th June 1953, what was the general picture so far as the signing of agreements was concerned, were there any fluctuations? We see fluctuations on the S.S.1.(B)'s in this form, which show that they tailed off a bit in the last

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few months of 1953, up to June 1953, but remained fairly constant throughout the calendar year 1952. What would the position during that year have been with regard to cases where you had trading agreements only, and not associated with S.S.l.(B)'s? --- We would still be signing trading agreements in the smaller sites. We were still quite successful with trading agreements right throughout that period, but the emphasis, of course, is on the more important accounts. We were still signing - I think in one of the exhibits there, but I have the figures on some notes if they are required. It will be obvious from the number of S.S.l.(B)'s and (C)'s we signed in that period and from the agreements, that there was still a good amount of trading agreements being signed.

10

Are you able to tell us whether that ran right through this period up to the 30th June 1953? --- Yes, it would run right through that period. It would slacken off, but it depends whether I am talking about the important accounts or the smaller accounts. I would say the smaller accounts did continue, and we went further afield over the period, first of all in the metropolitan areas where 50 per cent of the gallonage was at stake, and then later we moved out to the country areas. Many of those were signed up for much smaller amounts.

20

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Cross-
examination
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CROSS-EXAMINED BY MR. MENHENNITT:

MR. MENHENNITT: Do I take it from your last answer that throughout this period up to June 1953 some operators were prepared to sign trading agreements without being paid any sums of money at all? --- Any advance sums of money, yes, without receiving any cash at all.

40

On the other hand, some were prepared to sign an S.S.l. (B) agreement for a quite small sum of money? --- Yes, that would be correct.

Again, on the better sites some only signed up

in return for a payment of a very substantial sum? --- Yes. There are all types of resellers, some of the big motor houses were resellers of ours, so that you can appreciate that the sum of £1,000 or £2,000 would not mean so much to a big General Motors Holdens' agent as to a man - - - in some instances the earning capacity of a reseller - - -

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10 Would you just answer my question please. What I asked you was, in some cases resellers did demand and were paid very substantial amounts? --- Yes.

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20 Do I take it that every person whose name appears on Exhibit E on the first three pages and on the fourth page down to the name "J.S.Wilson" halfway down the page, signed an agreement in the form of the S. S.l.(B), that is, subject to a variation in the interest rate in the form shown on folios 52 and 53 of Exhibit A? --- There would be minor variations agreed to in individual instances.

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But substantially would you agree that in the vast majority of cases the agreements were signed exactly in the form of S.S.l.(B) on folios 52 and 53? --- That was the Company's policy.

That is in fact what happened? --- Yes.

30 But in a few instances there were some minor variations, is that right? --- Yes.

40 Can you be a little more particular about the number of persons who were not actually operating garages of the names which appear on this list in Exhibit E. Would you say there would be as many as 10? --- I would like to answer you but I feel I cannot properly because I find it had to segregate that period in my mind from a period of 10 years of very intense trading on this basis.

Would it be a very small proportion? --- I suppose if I had to make a guess I would say something like a dozen.

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HIS HONOUR: A guess is not much good to you, Mr. Menhennitt. If you want the information Mr. McConaghy can get it for you.

MR. MENHENNITT: (To witness): Is it your recollection that the number would not be more than in the order of about a dozen? --- I don't think I should answer because the information that came to me from the field would not necessarily indicate the relationship between the parties. There are periods when the son and the father and the wife all tried to trick us and I think it would be improper for me to give you an answer.

10

MR. MENHENNITT: You would not be prepared to swear there were as many as a dozen on this list who were not operating? --- I think I still find it awkward to answer you.

Is there some record which enables you to establish the date at which the practice of making sundry book entries in respect of these payments came into use? --- There would be some instructions in the Company.

20

Have you looked to see what date those instructions were given? --- I have not looked recently.

Then your recollection that it is the end of the financial year 1953 is based upon throwing your mind back eight years, is it? --- Not quite. I have had the opportunity of checking with one branch this morning but I would not like to say it is universal.

30

It could have been earlier than June 1953? --- As far as I know it was definitely not earlier.

Can you tell us this, in the letter of instruction of 4th July 1952, two alternatives were to be offered, (I am referring to folio 59, paragraph 3(c)) either the operator would draw a cheque and your Company would draw a cheque or alternatively the operator might not wish to draw his own cheque but would be agreeable to endorsing your cheque

40

back to you. I take it that that method of you drawing the cheque and having it endorsed back to you was used in that period?
 --- Yes.

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Can you tell me whether that method was predominately used in that period? --- I would not have the knowledge. The only complaint I would have would be if the Accounting Department was not getting satisfaction in one or other method.

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I take it that in practically every case the method adopted was for you to draw a cheque and have it endorsed back to you?
 --- I could not answer. I have no idea at all.

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HIS HONOUR: I would not have thought it mattered very much how it was done. You have this preference on the part of the Company as to how it should be done but the Company did not really mind how it was done.

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MR. MENHENNITT: That may be, but I do not know what my learned friend puts about this.

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(To witness): I refer you to paragraph (d) of that instruction, "Should the operator insist ... (reads) ... under the agreement." Do I take it that in the financial year ended 30th June 1953 that method was also in operation? --- It would be in operation.

30

Can you tell his Honour to what extent that method was applied? --- No, as far as we are concerned this was an accounting instruction and provided it was lived within, I would not get any record back. I would think so far as we are concerned it did not matter which basis it was done on.

40

MR. MENHENNITT: Either (c) or (d)? --- I think our preference is expressed that in each instance we would prefer an exchange of cheques.

HIS HONOUR: And you would not hear about it unless something went wrong? --- No, so far

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as I was advised in our counsel's opinion
the alternative was given.

MR. MENHENNITT: When you said that there
were some people on this list who were not
retailers, for example I think you said
aviation accounts - would a person selling
aviation petrol appear on this list? ---
No, I think I said the principle of giving
concessions and advancing money was not
unique to this class of business.

10

But you do agree with what Mr. Jones told us
yesterday, don't you, that prior to 15th
August 1951 your Company had not entered
into with retailers agreements in the form
of S.S.l.(B)? --- That is correct. S.S.l.
(B) did not come into operation until
early 1952.

And further do you agree with what Mr. Jones
said that prior to 15th August 1951 your
Company had not entered into trading
agreements with retailers, that is, the
S.S.l. agreement? --- That is correct.

20

Did I understand you correctly when you talked
about trading agreements entered into in
1951 to this effect, that subject to the
maximum limit of £150 for alterations to
buildings, the thing that determined the
amount you would spend was the physical
necessity of making the buildings suitable
as a reselling site when repainted? ---
That is sort of put in reverse. Actually
we determined ourselves whether we would
take the account, what it was worth to us,
and within those limits. They did not
dictate to us that we would have to have
so much done. The vast number of these,
in my experience, were turned down because
the amounts were in excess of the amounts
I was authorized on a gallonage basis to
agree to.

30

Let me take the trading agreement where you
did in fact enter into a trading agreement
and you made an alteration to the premises.
Am I correct in understanding that, subject
to the limit of £150 for that, in the first

40

instance the thing that determined whether or not you did spend that amount was the alterations which you considered necessary or desirable to be done to the premises?

--- In line with our trading agreement commitment.

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10 Yes. Then you would look at the premises, decide whether or not you would enter into an agreement, the operator would decide whether or not he would enter into an agreement and, as Mr. Jones told us yesterday, you or your architect would decide what alterations were necessary for the purposes of making the premises suitable? --- Yes, we would back away from a lot of them.

If you thought the amount was too great? --- Yes.

20 MR. MENHENNITT: But subject to that, if the amount did not exceed £150, the figure you agreed to pay was determined by the cost of making the necessary alterations? --- Within authorized limits.

Yes, and the same is true of the driveway? ---
Again, within authorized limits, yes, provided the total did not exceed - -

£150? --- As I explained, I think the total cost up to the end of 1952 was £327 on an average of all stations, so you can see we were living within that limit. It has not been easy to take a figure out beyond 1952.

30 Do I gather there was some elasticity as between £150 for the building and £150 for the driveway? --- Some of them would need a lot more painting. With big workshops it might cost £300 and there would be no structural alterations necessary and no driveway alterations.

That would come within the limit? --- Yes.

40 And is the same true of the £65 for the lubricatorium? --- I would think there would be latitude and if we did not allow the latitude it probably would be taken.

Yes, depending on the alterations that were

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physically necessary? --- Yes, in those days lubritorium were not what they are now. It would probably be a barn and we would have to erect some sort of segregation so that the lubritorium could be painted in our colour scheme.

And even that £515 limit was not a fixed one and could be exceeded by reference to you in particular cases? --- It was only a matter of enabling our branches to operate without having to come back in the first instance to us on every case. You can appreciate the amount of work that was going on at that time. 10

But if it was exceeded you would look at the alterations recommended? --- The branch would make a recommendation to us - I have looked at hundreds of these recommendations and every one from the field, almost without exception, sets out the gallonage now carried, the gallonage that will be carried, puts the amount in pence per gallon and extends it out and writes to us and says "We want authority to spend £1,200 on this account, which is .45 of a penny per gallon". 20

MR. MENHENNITT: It would exceed .3 pence per gallon? --- Yes, because of certain factors.

The factors being the location of the site and the importance of it, whatever it might be? --- Yes. 30

In those days you went considerably above your .3 per penny per gallon objective? --- I think considerably below on average.

But in some instances you went above to .45 a penny? --- If you are getting into this S.S.I.B. time ---

Before that? --- The 327 would come out at about .15 or .2 of a penny in the majority of cases. It is hard to generalise. I want to give the impression that the branches were instructed to convert these over on a persuasion basis. We set a 40

limit in order that the branches could operate within that authority and they obviously tried to get it as low as they could.

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10 Of course they did. Mr. Jones told us yesterday, as I understood him, that when you were using the S.S.l.B. agreement in early 1952 and onwards, in every case the operator, the person who signed the S.S.l.B. agreement also signed the trading agreement? --- That was an instruction; the trading agreement may have been signed prior to that.

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But where it had not been signed prior to that, the trading agreement was signed more or less contemporaneously with the S.S.l.B. agreement? --- The two were signed at the same time.

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20 They would be signed at the one time, and is it not a fact in those instances wherever a trading agreement was signed some money was spent on the premises in the form of alteration to buildings, alterations to the driveway, or painting? --- I think I could answer in every case yes.

In every case you through your architects would inspect the sites and decide what would be spent? --- Yes.

30 Those sums were apart from the payments that were made - the lump sum payment, I use a neutral expression - to him under the S.S.l.B. agreement? --- Yes, the key words - it is not proper to answer with a straight yes - were if the dealer - can I give you an illustration?

40 Answer my question. It is not a fact that one payment was made for alteration to premises? --- I would say in every case one payment was made for painting - no, that is not correct. With little shops that had pumps outside we might not spend a penny. You could not paint the place and no alterations would be made and many of them signed for no cost at all.

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Some people signed the S.S.l.B. form and also signed the trading agreement and nothing was spent on altering the premises? --- There would be very few S.S.l.B. forms signed where you would not spend money. In the case of the S.S.l.C. we may have stopped at painting only.

HIS HONOUR: Whenever an operator signed an S.S. l.B. agreement he signed a trading agreement - he was bound to?

10

MR. MENHENNITT: Yes.

(To witness): When that happened in the vast majority of cases some money was spent by your company on alterations to the building or driveway? --- I would like to leave out the alterations to buildings and driveways and confine it to painting because in many instances where we made loans to the operator, he did the alterations himself. If the alterations were beyond what we called normal expenditure we refused to touch it - a loan would be made for him to do it himself.

20

I am concerned with the £121,000 which is being claimed in this year.

HIS HONOUR: I think you might get some clue if you asked Mr. McConaghy what was normal expenditure. He did say before that they only did such structural alterations as enabled them to open the place - I did not quite understand that - and that sometimes there were structural alterations because of the necessity of linking up tanks and making good the driveway after that? --- In this intervening period in the early part of 1952 the operators were not so much asking so far as our company was concerned for cash payments, they were asking for more things to be done. They were asking for maybe a workshop to be put up or something of that nature which we considered far beyond what would be normal expenditure associated with altering the station to have it look like a Mobilgas station, a Vacuum station.

30

40

HIS HONOUR: Would this be right: if the garage or service station was very much substandard you would not be interested in it at all unless it happened to be a particularly good site? --- A little more than that. If he wanted to do something of a major nature which could not be classified as conversion expenditure, we would not do that.

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10 I follow that. The stations you took over you were prepared to spend on structural alterations money to bring them up to at least the minimum standard of your requirements? --- If they required a lot of altering and it was beyond what we considered was our responsibility, in those cases we would not spend a penny on the alteration. If he wanted £3000 on the alteration, it was no use spending £150, but we would give him an S.S.l.B. perhaps to cover the whole of the alterations.

20

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I suppose some of the alterations would be made to cover the accessibility by which it was hoped the reseller would increase his turnover? --- There were 1850 conversions in this period up to June 1953 and I think there were 1850 trading agreements and S.S.l.B. agreements. Everything happened in that period.

30 MR. MENHENNITT: I want you to eliminate expenditure on painting. There is a sum of £121,000 which is in issue in this case which your company is claiming. Mr. Jones told us yesterday, as I understood him, that that amount represented monies that were paid by your company pursuant to the trading agreements, being minor alterations referred to. You agree with that? --- That is correct.

40 Are you telling His Honour now that there were some cases where a person signed an S.S.l.B. agreement and also signed a trading agreement when nothing was paid to him pursuant to the trading agreement for minor alterations? --- There would be instances of that.

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MR. MENHENNITT: They would be few? --- I would think there would be relatively few in that period.

In the vast majority of cases pursuant to the trading agreement your company examined the premises and decided what amount you would contribute to the cost of any item of minor alterations to the buildings and the driveway? --- Yes, I think that would be fair.

10

And on the lubritorium? --- Yes.

And on painting? --- Yes.

Those are the sums that make up the £121,000? --- Except the painting.

HIS HONOUR: When you speak of the lubritorium, does expenditure there include expenditure on plant such as a hoist to enable lubrication to be done? I do not want you to guess about it - tell us if you do not know.

MR. MENHENNITT: My recollection is that that is what Mr. Jones said yesterday.

20

HIS HONOUR: That is what I understood, that in a number of cases the expenditure there was the provision of a hoist. If that is not so, I would like to know? --- We would naturally try to work the lubritorium up to a standard and it would be compensation for the dealer for having installed a hoist.

MR. MENHENNITT: You are not disagreeing with Mr. Jones' evidence on that? --- No.

30

This whole discussion about the amount you spent on the premises in this way was all part of a discussion which took place contemporaneously with the signing of the two agreements, the S.S.l.B. agreement and the trading agreement? --- I am sorry ---

When you were discussing with the operator whether or not he would sign the S.S.l.B. agreement and the trading agreement, one of the things you discussed with him was the

40

amount of the alterations in respect of which you would be prepared to pay the cost? --- Yes.

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HIS HONOUR: What Mr. Menhennitt is asking you is, it was all part of the deal? --- Yes.

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It does not matter as a matter of law - these things were discussed with service stations? --- There was discussion.

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10 MR. MENHENNITT: As part of the deal? --- Yes, and outside the deal.

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With a view to inducing him? --- To do the things that were necessary.

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One of the things you held out to him to try to induce him to sign the agreement was that you would contribute to the cost of these alterations? --- Yes, but there are other means of getting the alterations done. For instance - - -

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20 MR. MENHENNITT: In the case where you did say you would do it, is it not a fact that was one of the inducements you held out to him? --- Yes.

HIS HONOUR: I thought that was perfectly clear, it was the only one.

MR. MENHENNITT: Yes.

30 (To witness): Coming to the S.S.I.B. agreements, do I take it that your evidence amounts to this: that you found that the objective of .3 a penny per gallon which you were applying at the time you were signing trading agreements ceased to be effective by the beginning of 1952? --- For the more important resellers.

For the more important resellers throughout 1952 and 1953, up to the 30th June 1953 you were forced above that figure? --- That is correct.

It is possible to translate any figure that you paid by a process of arithmetic into a

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gallonage figure, is it not? --- The answer must be yes.

If you like to take a period and estimate the gallonage, no matter what figure you take you can always turn it into a gallonage? --- I am not suggesting that is what we did in this case.

That is quite possible? --- Yes. We are used to this game. We have been giving concessions in price for years. We might give an authority to the branches to make a concession of a halfpenny a gallon, but every day we have to break it.

10

In this case, the thing that determined the price you paid was the competitive situation and the value of the site? --- If it went beyond our gallonage limit we would not agree to it.

The gallonage limit - - -? - - - Yes, we lost hundreds of accounts because we would not change it.

20

At one moment it was .3? --- Naturally you have to set your price according to the competitive position.

It went up eventually to 1- ½d.? --- Yes.

Did it have various other intermediate figures over the period of months? --- Yes, it is fair to say it must have had.

As you saw the competitive situation get higher your gallonage estimates got higher and higher? --- Not on a day to day basis.

30

But month to month? --- It was a matter of considerable discussion in the higher levels in our company as to whether - - -

Do I take it that in some instances you went over this estimate of 1- ½d. per gallon? --- There would be periods just before the moratorium when we went as high as 2d. a gallon.

Depending on the amount the operator demanded and what your competitors were offering?---

40

That would be fair.

MR. MENHENNITT: Over and above that there were amounts you were paying, you told me a moment ago, under the trading agreements for the alterations? --- At least for the painting and in many instances for the minor alterations, yes.

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10 Are you in a position to tell us whether during this relevant period, that is the calendar year 1952 and the first six months of the calendar year 1953, your company also made what I call loans pursuant to an S.S.l.B. agreement to operators? --- Yes, we did.

MR. MENHENNITT: Loans actually repayable with interest? --- They were all repayable with interest.

20 Yes, but without signing an S.S.l.(B) agreement? --- In many instances they would be part of the loan represented by the S.S.l.(B) agreement.

Otherwise it would be a loan outside the S.S.l.(B) group? --- Yes.

30 You actually loaned sums of money outside the agreement? --- In many instances we made concessional payments to the operators. We might loan £10,000 to an operator to alter his business and we might have agreed on the basis of $\frac{1}{2}$ d. or 1d. a gallon, the payment operating at the time. We might have worked out that we were prepared to make concessional allowances up to £2,000 over the period on the gallonage estimate.

You have not answered my question. Did you in fact make loans to persons outside the S.S.l.(B) agreement? --- Yes, we did.

40 HIS HONOUR: I think he has answered that. What he is telling you is that there are people who sign agreements and who get loans pursuant to the agreements, and an additional sum to the agreement. What you are asking is were there loans to persons who did not sign an agreement at all?

MR. MENHENNITT: I did intend to come to the

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matter, your Honour.

HIS HONOUR: He has already answered the first part of that question.

MR. MENHENNITT (To witness): Did you in fact make loans to persons outside the S.S.l.(B) agreement? --- I would imagine most of the ones who got loans would be the better type operators, who would insist on a S.S. l. (B) agreement, insist on some concession from us associated with us.

10

Those loans were eventually repaid? --- Yes.

And secured over the premises? --- Yes, many of these are secured over the premises, too.

Can you give us any idea of the amount of the loans in this relevant period which were not covered by S.S.l. (B) agreements by your company for repayment? --- I have some notes in my pocket. It would be better than relying on my memory.

I should be glad if you would consult them, please? --- (Witness examines notes)
Which period?

20

Perhaps you would tell us first of all from the 15th August 1951 to 30th June 1952. Have you that period? --- The only figures I have here are the amounts outstanding at the end of 1952 and 1953.

The amount outstanding at the 30th June 1952 - what was that? --- At the end of 30th June 1952 it was approximately £842,000 which incorporates the loans under the S.S.l.(B) as well.

30

Can you tell us what the amount is apart from the S.S.l.(B)? --- They are not separate in our records.

MR. MENHENNITT: You cannot tell us what they are? --- The long term receivables.

That would include what? --- Sums that have been advanced at the time and not repaid -

the outstanding balance.

You cannot give us separately those covered by the S.S.l.(B)? --- No, Sir.

Can you give us that figure separately for the year ended 30th June 1953? --- Yes, for that year I can give it; it is £1,289,250 in round figures for the loans, and £447,000 for the loans under S.S.l.(B).

10 HIS HONOUR: And S.S.l.(C)? --- There are no loans under S.S.l. (C), your Honour.

No, of course not.

MR. MENHENITT: Can you tell us whether most of that amount was advanced to operators subsequent to 15th August 1951? --- I would think practically all. Those sub-totals - the figures recorded on our sheet at £1,736,000; that sub-division may be a little approximate.

20 It is accurate enough for my purposes. Mr. Jones told us yesterday in relation to these agreements referred to in Exhibit E that in some of them the periods have expired - for example, where it is five years the period has expired. He said that where that happened there had been in some instances renewals of the agreement? --- That is correct.

Can you tell us to what extent they had expired and there had been renewals?

30 HIS HONOUR: What is the relevance of it, if there is a renewal some years later?

MR. MENHENITT: The question might arise, Your Honour, as to whether these were payments made once and for all or whether they were periodical payments. I am desirous of obtaining the relevant facts in relation to that aspect.

40 HIS HONOUR: I should not have thought it mattered. If you desire to do so, you may.

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MR. MENHENITT: I do not desire to waste the court's time but I would like to have more information from the witness in regard to Mr. Jones' answers.

(To witness): Can you tell us whether as a general rule the agreements were renewed?
--- We have renewed a substantial number of them.

Do I take it that involved in that answer is that quite a large number of the agreements have expired and there has not been any renewal? --- The business may have been sold, the operator may have gone out of business. Where the operator has been worthwhile we have always tried to renew it, and the renewal has been more costly than the original sale. 10

Can I take it that you have renewed it without an S.S.l. (B) agreement? --- I cannot recall a case where the original one has expired - unless it were a sweet shop out in the country - where there is a worthwhile operator, without a renewal of the S.S.l.(B) or a concession in kind, or a loan with an off-setting concession. 20

MR. MENHENITT: That is what I wanted to ask. Mr. Jones said there are different sorts of concessions? --- If I can quote ---

Would you answer the question? You said loans as one kind of concession; what other kinds of concessions have you given on renewal? --- The majority have been S.S.l. (B) agreements, or S.S.l.(C)'s. 30

But not the form entered into in 1952 or 1953? --- Yes, that form was still operating. In 1959 we gave 567 renewals of S.S.l.(B)'s and loans, as late as that. That would be the period you are asking me about, the renewals. In other cases we paid £1,180,000 in 1959 to renew those agreements with those operators. 40

Would you tell us what kind of concessions; you mentioned loans. What else? --- Where

we can try to avoid the advance of capital and we try to show what is the equivalent of an S.S.l.(C) agreement. As you are aware, our agreements have gradually changed, on a gallonage basis. They were all made available at the time.

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10 That is what I am suggesting, that the form of agreement signed is not the form of S.S.l. (B), and that as years have passed it has taken on a different form.

HIS HONOUR: That is not what he said.

20 MR. MENHENNITT: Is not that what you said a moment ago, that as the years have passed the form of agreement has changed, that the form of agreement you now commonly sign is not now in the form of the S.S.l. (B)? --- When we relapsed from price control, we always wanted a gallonage basis. As I said, in 1952 we were prohibited from putting it on the gallonage basis by internal policy.

Will you answer my question; is it not a fact that as the agreements have come to be renewed in later years they have not been on the same forms as the S.S.l.(B)'s appearing on pages 52 and 53 of Exhibit A? --- The answer must be "yes".

30 The department which you came to manage when you returned at the end of 1951 is called the Real Estate and Finance Department? --- That is correct.

The term "real estate" is a reference to the fact that your same department also from time to time conducts purchases of land? --- That is so, basically occupying some of our overseas titles, as used by our overseas affiliates, but in essence that would be the reason.

40 When was it that your company started. The purchase of land for reselling? --- We had started to purchase, either directly or indirectly through the Bass Trading Company, when I returned from the States.

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MR. MENHENNITT: Yes, and thereafter in the calendar year 1952 you purchased land quite extensively? --- The Bass Trading Company was purely nominal. On my return I tried to avoid Bass Trading because it was initially only brought in for a purpose; the purpose was not then necessary. All they did was to go through the formalities for us. We bought the properties and told them what to buy.

10

Most of the land was purchased in the name of Vacuum Oil? --- That would not be correct. In the early stages there would be purchases in the name of Bass Trading, I would say up to 40 or 50.

In the calendar year from the beginning of 1952 to 30th June 1953, did either the Vacuum Company or Bass Trading, as its subsidiary, purchase on its behalf a large quantity of land? --- No, Sir. I am drawing on my memory here but it will be fairly accurate. I doubt if we purchased any land at all prior to 1953. We did buy --- -- -- What we bought were the operating stations only.

20

Is it correct that between the beginning of 1952 and 30th June 1953 Vacuum, or Bass on its behalf, bought a large number of properties on which retail petrol selling businesses were being conducted as going concerns? --- I am sorry. I would not call it a large number. The number was 53 by the 30th June 1953.

30

What was the amount involved in the purchases? --- According to my records it was £866,678.

Was most of that subsequent to the 1st January 1952? --- I think all but about seven, probably.

And it was all part of the steps you took with a view to introducing or establishing your solo site policy? --- Initially it was based on a programme of trading stations but after that it was associated with our programme.

40

These were properties which your Company conducted as solo sites? --- Not all of them.

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MR. MENHENNITT (Continuing): Most of them?
--- Yes.

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10 Were you forced into this by the fact that your competitors, like Shell, were doing that kind of thing? --- I do not know whether you call it "forced". It was not an important part - it was less than 4% of our total volume. So that the fact of these stations, even at that stage --- I would not say it was major. Our people overseas, our principals, were against - we had declared we would not buy properties. The only properties we purchased - there was some extraneous reason associated with it.

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20 Was it influenced by the fact that your competitors were purchasing petrol stations?
--- No, I do not think it was.

30 Not at all? --- I would not think that was - - - You mean taking that into consideration at that time? That particular factor into consideration? We determined we could get this programme by peaceful penetration than by some expensive allowance cost. Our programme at that stage --- not until I subsequently went to New York many years later, did we ever get any money for the purchase of stations - substantially.

Would you tell me why it was you bought this property? --- 1953?

Yes? --- We bought it for a training programme. We bought stations in order to establish and train our own staff.

40 Apart from that, what were the other reasons which caused you to buy them? --- There were stations we considered were important
- - -

Important for what reason? --- From a gallonage point of view; Where they were likely to be

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taken over for some other purpose - taken over for factories or converted; where they would be lost as service stations forever, and we thought the property had a value.

Or taken over by competitors? --- There must have been some, yes, but I would not like you to get the impression that that was an important consideration.

Would you tell me, in respect of folio 23, Exhibit A - the second column of figures, Item H - why there is no figure shown in respect of the year ending 30th June, 1952? Opposite Item H? --- Yes. The reason there is no figure shown is because most of the vast majority of, the agreements were entered into around about the end of the first tax year.

10

Let me remind you that, according to the figures Mr. Aicken gave us, up until the 30th June 1952, there were S.S.I.(B) agreements entered into: one in January, 5 in February, 10 in March, 27 in April, 31 in May, 29 in June. I think that would total something of the order of 80 or so? --- That is correct, but that is the date of signing the agreement, not necessarily that the work was carried out or payments necessarily were incurred at the time the agreement was signed. These are loans to the operators, and you will appreciate that we would not advance money, even though the agreement was dated, until he performed the work.

20

30

MR. MENHENNITT: What kind of work? --- May be he had to build, partly rebuild, the station, or something of that nature. We would not advance him - - - we advanced money progressively against the work being done.

Are you swearing that no money was advanced under that agreement before 30th June? --- No. I said I wanted to make a correction: not all of them would be paid out. The reason there is no money appearing in that column is because our company, in working out the accounting procedure for this programme, had

40

not issued the instruction until, I think, a date early in July.

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HIS HONOUR: 4th July.

MR. MENHENNITT: After that instruction came out, no payments were made, either by cheques passed - - - ? - - - I would not say that. They would probably be held in a suspense account. They would not be properly segregated in the company's records.

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- 10 Are you able to swear whether or not any cheques passed before the 30th June, 1952?
--- I am not in a position to swear that, but I do know - - -

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HIS HONOUR: Just answer the questions.

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- 20 MR. MENHENNITT: Can you tell us, in respect of Exhibit E, whether, as a general rule, the period of the trading agreements was the same as the period of the S.S.l.(B) agreements? --- The period of those shown on this sheet would not necessarily be. I think I answered before that the initial trading agreement we might have got for trading occurring subsequently. You will notice that there is a big period of lag in some of these before the S.S.l.(B) was signed.

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continued

Is the figure shown in the fourth column the period of years shown in the S.S.l.(B) agreement? --- Yes.

- 30 Can you tell me, in the case where the trading agreement was signed contemporaneously with the S.S.l.(B) agreement, whether the period shown in the trading agreement was the same as the period shown in the S.S.l.(B) agreement? --- Yes.

- 40 As to the S.S.l.(C) agreements, you have told us that they have all expired. Have you any recollection as to the normal period of them? --- They would vary from one year to five or six or seven years.

There were a number which were only for one

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year, were there? --- The periods of ones I was able to get here are 4 $\frac{1}{2}$, 6, 5, 10, 5, 2, 7-10/12ths. That would be based on when the lease expired, and things of that nature, which would determine those periods.

There are no periods shown in that S.S.1.(C)?

--- No, I was not able to find ---

Can I take it that there were some for only one year? --- I think they would be the minority. It could be, for that period
- - - I would say they would probably vary round about three, five or seven years.

10

MR. MENHENNITT: You did say that, in very few cases, there were variations in the S.S.1. (B) agreements. Would it be correct that, in every case where there was such a variation, the amount of the periodical allowance would exceed the amount of payment under the loan? --- I have to answer in regard to this period?

20

Yes, this period? --- I do not think I could answer. I do not think they were relevant. They were not important.

The variations are not important? --- No. I would be inclined to think that they could probably be less than the amount - - -

You cannot actually recall the form of any particular variation? --- Subsequently, I could but I cannot for that period.

HIS HONOUR: We have been told about one -
Nicholas.

30

MR. MENHENNITT: The one about which I asked. Is that the only one in which you can recall the details of the variation? --- It is the only one I can recall that the amount differs in that period. ---

It is the only form of variation you can recall in this S.S.1.(B) agreement?

HIS HONOUR: They are all here, if it is of importance. Have you anything in reply Mr. Aickin?

40

MR. AICKIN: Yes, Sir.

RE-EXAMINED BY MR. AICKIN:

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MR. AICKIN: Mr. McConaghy, you were asked about what had taken place on renewal of these agreements. My learned friend asked you whether the form was exactly the same at the time of renewal. You told him that the answer to that question was, "No, not exactly the same." Perhaps you can tell us in what way it differed? --- It differed -
10 the clauses. I do not know whether you have in evidence the clauses; they have been made allowable to the Department of Taxation. They varied on the basis that they were brought into effect - the original calculation basis on which I was working
- - -

MR. MENHENNITT: I object.

HIS HONOUR: Why?

MR. MENHENNITT: I suggest he should tell the
20 Court what the form of the variation was.

HIS HONOUR: He was about to do so.

MR. MENHENNITT: There is an agreement.

HIS HONOUR: We are talking about the form of agreement. You got these out yourself.

MR. MENHENNITT: Yes. I am suggesting, with respect, that, if there is an actual form of agreement, the witness should tell us what the form of agreement is, not the basis.

HIS HONOUR: I think I shall allow the evidence.
30 You can resume your cross-examination on this.

MR. AICKIN: You were telling us what the variations were? --- The variations were to bring into effect the policy we had been pursuing; in other words, setting down the amount per gallon representative of the amount we were prepared to advance over a period of years, and setting it down on a gallonage basis, either a full gallonage basis or a fixed basis. We determined
40 whether we were prepared, by way of concession, to grant a man, say, £2,000 over a

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10 year period; a ratio of 1d. a gallon.
We might stipulate that as being the actual
amount. We would amplify it in the agree-
ment 1d. a gallon on so many gallons.

HIS HONOUR: If this is of any importance to
your case, the documents ought to be pro-
duced.

MR. AICKIN: I appreciate that.

HIS HONOUR: I do not see the importance of
this. If you want to rely on it, I think 10
you should do that.

MR. AICKIN: I think it is desirable that the
matter should be cleared up. I was going
to produce the pro-forma document, but I
want to have the oral evidence concerning
what was done before I put in the pro-forma.
I shall be doing that.

(To witness): That was the position in re-
gard to the S.S.l.(B).s and the S.S.l(C).s,
too? --- Both. There would be two 20
alternative clauses made available to insert
in place of the clause which stipulates a
flat amount. The clauses set out - the
first one, I cannot remember the actual
words, but it set out that - - -

MR. MENHENNITT: I submit that the witness hav-
ing referred to the document, it is not
proper that he should refer - - -

HIS HONOUR: There is not any particular docu-
ment. You are speaking about alteration in 30
the general form?

MR. MENHENNITT: Yes.

HIS HONOUR: You have heard what Mr. Aickin has
said. These documents will be produced.

MR. MENHENNITT: I submit that it is not for the
witness, in those circumstances, to para-
phrase the document.

HIS HONOUR: I should not have thought that this
evidence was relevant. If any objection

was taken to cross-examination, I would have rejected it, but, now that we have gone so far, we might as well have the rest of it from the witness.

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10 MR. AICKIN: I intend to put in the documents. It might be convenient to do it at this stage. I have not available a large number of copies of them, but they are, in fact, the documents which are referred to in one of the letters in Exhibit A. The witness could perhaps identify them. (To witness): Perhaps you would look at these four documents and tell us what they are, and the date as at which they, or the equivalent of them, were first introduced. (Produced). Would you take the first of those? What kind of form is that? When was it used? --- You refer to attachment six, I presume?

20 MR. AICKIN: Yes, the one which is attachment six. It is referred to in the letter of 2nd March in Exhibit A? --- It is the modern version of the S.S.l.(B) agreement. This particular one was issued in September, 1959.

30 Perhaps you would have a look at Clause 6 or the items in Clause 6 in the original document. I think there is a notation on the top of that page which relates to the date of use? --- The object of that agreement
- - -

HIS HONOUR: We have the document. He has said it is the modern version which came into operation in September, 1959. Do you want anything more?

40 MR. AICKIN: I think he said that this print, or this particular document concerned, came into use in 1959. I just wanted to ascertain whether a document in such a form was used? --- The second page amendment was 1956. That was an important variation in the amendment page in 1956, which provided for payment equal to the sum of so much for each gallon of motor fuel purchased.

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HIS HONOUR: The document will speak for itself.

MR. AICKIN: I do not know whether Your Honour would like them tendered together or as single exhibits. I think they could all go in as one exhibit.

HIS HONOUR: What is the next one?

MR. AICKIN: The first one is what you call the "fixed gallonage" S.S.1.(B) agreement, with a repayment based on a fixed gallonage? --- What we call gallonage qualifications, qualified by the number of gallons.

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To a maximum? --- That is correct.

And the second document is an S.S.1.(B) - - - ? --- F.P., full period it means, with the concession per gallon going on for the full period of the agreement whether he sells more or less.

What is the date when the S.S.1.(B) F.P., came into operation? --- They came into force simultaneously - October 1956 this one was issued.

20

The next one is S.S.1.(C) as amended in 1956, is that correct? --- They would all be issued at the same time. The wording was prepared and issued altogether to the branches.

The fourth one is S.S.1.(C) for the full period, is that the position? --- That is correct.

I think if you look at them you will find the date appearing on the top righthand corner of the first page differs from the date appearing on the top righthand corner of the second page. --- Is that true of them all? --- On these specimens it does not appear to be, but the original variation of that would be issued to the field by letter and would have been before this time.

30

What was the date of the first change? Would that be October 1956 that you spoke of? --- We introduced it considerably before then but the documents were not automatically changed from our head office. These would be re-roneoed and issued to the branches from our head office but before that we would have written to the branches telling them to vary them in specific instances by instructions.

40

And the general form with these gallonage figures came into use at what time, in substantially the form of these four documents? --- At least as early as October 1956, the whole four. The fact that the second copies do not bear that impression is probably because the two pages were roneoed off together.

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I tender those documents.

10 HIS HONOUR: Have you any objection, Mr. Menhennitt?

MR. MENHENNITT: I do object to them.

HIS HONOUR: On what grounds?

MR. MENHENNITT: On the basis that the particularity of the documents themselves is not relevant to this case. The fact that the agreements were on a different basis is, in our submission, the only relevant matter.

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Walter Douglas McConaghy Re-examination 15th March 1961 continued

20 HIS HONOUR: But you yourself cross-examined on this.

MR. MENHENNITT: I did, your Honour.

HIS HONOUR: Surely it must then become relevant, unless the whole topic is irrelevant. If you are prepared to accept that view, I will exclude it, but if you maintain that your cross-examination is relevant of course the documents must be relevant. If you want to make an issue of it I think Mr. Aickin is quite entitled to have the evidence deleted.

30 MR. MENHENNITT: The matter might arise on some aspects of the case and in regard to the evidence of Mr. Jones I wanted to have the whole facts before the Court rather than leave it in a vague state.

HIS HONOUR: I will admit the documents.

40 EXHIBIT EXHIBIT F ... Four forms of agreement, modern version of S.S.1.(B) fixed gallonage and F.P. and S.S.1.(C) fixed gallonage and F.P.

(THE WITNESS WITHDREW)

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NO. 4

REASONS FOR JUDGMENT OF HIS HONOURMR. JUSTICE TAYLOR

No.4

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As in B.P. Australia Limited v. The Commissioner of Taxation of the Commonwealth of Australia the appellant is a company engaged in the business of selling and distributing motor spirit and allied products throughout the Commonwealth and, also as in the case of B.P. Australia Limited, towards the end of 1951 the appellant found it necessary, by reason of circumstances which need not be repeated here, to take steps in an endeavour to maintain its then existing trade through that type of reselling outlets which have been referred to in the evidence as service stations. Indeed, even prior to 1951, it had, after the disestablishment of the war-time marketing pool and the abandonment of price fixing, adopted a merchandising plan which involved it in the establishment of a training course for resellers, the improvement of facilities at selected service stations and, in cases where the appellant was reasonably satisfied that a particular station was giving first class service and that the operator's turnover comprised a substantial part of its products, in the expenditure necessary to paint the particular station in standard colours to convert it to what was called a "White Station". Then, in August 1951, it received a copy of the notification from the Shell Company of Australia Limited which has been referred to in the earlier case. Thereupon it accelerated the tentative plans which it had previously made for the introduction of solo site trading so far as its products were concerned. The matter now in question is whether the respondent has wrongly disallowed as a deduction from the appellant's assessable income for the year ended 30th June 1953 the sum of £192,701, that being the aggregate of amounts claimed as deductions during the relevant year which were said to have been expended in or in connection with its efforts to secure sites for the exclusive sale of its products.

For a proper understanding of the case it is necessary to make a dissection of this aggregate

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sum and to assign portions of it to separate appropriate categories. The first general category comprises amounts said to have been paid during the relevant year directly to service station operators pursuant to contracts (SSLB and SSLC) entered into with them. These amounts totalled £66,902 and of this sum £57,265 was said to have been paid pursuant to the form of contract styled SSLB and £9,637 pursuant to form SSLC. I have used the expression "said to have been paid" because, as will appear, the respondent's argument denies that in the circumstances of the case the appellant incurred any obligation to make the payments said to have been made pursuant to contracts in form SSLB and also that what happened pursuant to those contracts, in fact, amounted to payment. The second category is described in the various notices of objection as "Sundry sales promotion expenses at solo outlets" and into this category there falls the sum of £121,299. The residual sum of £4,500 was expended in legal costs in relation to the introduction of the solo site trading plan and it has been agreed between the parties that this amount should be treated as expended proportionately on the other items in question so that if some part of the aggregate sum should be found to be revenue expenditure and some part capital expenditure the like proportions of the sum of £4,500 are to be appropriated accordingly. The brief description "Sundry sales promotion expenses at solo outlets" affords no real indication of the character of the expenditure assigned to that category. Nor, for that matter, is it possible to glean much from what has been said concerning the character of the expenditure which falls into the first category. It is therefore of some importance to see precisely the course which the appellant followed in the introduction of its plan and the manner in which the payments were made or said to have been made. When it became apparent, as it did early in 1952, that it would be necessary for the appellant to provide substantial financial inducements in order to obtain trading ties at selected sites the appellant's approach to service station operators involved an offer of dual benefits. To each there was an offer of a cash payment the

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precise nature of which it will be necessary to consider and there was an offer to expend a sum of money in minor structural improvements and additions, in driveway alterations, in painting and, in appropriate cases, the provision of a "lubratorium". The "objective" of the appellant as far as expenditure of the latter character was concerned was "to spend sufficient money to attain a standard of appearance, accessibility and manoeuvrability on the station which will make an obvious appeal to the resellers and his customers". The "individual average amounts per station" which branches were permitted to expend without reference to the head office of the company totalled £515 made up as follows:

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Driveway alterations £150	
Painting£150	
Minor structural alterations£150	
Lubratorium	.....£ 65	20

The amounts expended under these headings were attributed to "Sundry sales promotion at solo outlets" and, as already appears, they totalled £121,299. This sum was made up as follows :-

Alterations to concreting of driveways	.....£29,558	
Structural alterations and repairs to buildings	.....£78,239	
Purchase and installation of plant and equipment	.....£ 4,900	30
Other miscellaneous expenditure	.....£ 8,602	

Of the total sum £67,629 was paid directly to contractors who carried out the work and £53,307 was paid to service station operators by way of reimbursement for work which had been decided upon and for which the operators had themselves paid or incurred a liability in the first instance. A residual sum of £363 is not accounted for.

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The other form of benefit offered to service station operators was a direct payment to each operator and provision was made for these

payments by the form of contract employed. Payments were made pursuant to two types of agreement during the relevant period (SSLB and SSLC). A condition of each of these forms of contract was that the operator should "execute the Company's form of Trading Agreement for a period ofyears from the date hereof and during that period he shall comply with the terms and conditions thereof in all respects so long as he continues to occupy the said garage or service station". There were also two forms of Trading Agreements the first of which was the current form prior to June 1952 whilst the second came into general use about that time. The later form of agreement contained some additional clauses but they are not significant for present purposes. When the appellant commenced to implement its solo site trading plan the dual offer made to each operator at a selected site was, of course, conditional upon the execution of both a Trading Agreement and an agreement either in form SSLB or SSLC and it is, therefore, of importance that some attention should be paid to these forms. The main features of form SSLB were:

- (1) an undertaking by the operator to execute the Company's form of Trading Agreement for a fixed period of years;
- (2) a covenant against the operator selling or disposing of the premises or of his business without first offering it to the appellant on the terms and conditions of any proposed sale;
- (3) a covenant that, in the event of the rejection of any offer made to the company under the preceding covenant, the operator would not sell or dispose of the premises or of the business unless the appellant should approve of the proposed purchaser and unless that person should execute the company's form of Trading Agreement for a period of not less than the unexpired portion of the period currently fixed;
- (4) a covenant that unless and until he should have disposed of the premises or

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business in conformity with the agreement the operator would remain personally in occupation of the premises;

- (5) a covenant granting the appellant the sole and exclusive advertising rights in relation to all parts of the garage or service station for the fixed period.

Unlike the agreement in the case of B.P.Australia Ltd. the SS1B form of contract did not provide for the unconditional payment to the operator of a single lump sum as the consideration for the operator's covenants. It did, however, provide for the advance by the appellant of a sum of money and for its repayment by the operator. By cl.1 it was provided that:

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"In consideration of the sum of £..... paid by the Company on or before the execution hereof to the Borrower ... the Borrower for himself his executors and administrators doth hereby covenant with the Company its successors and assigns to repay to the Company the sum of £..... together with interest thereon or on so much thereof as shall for the time being remain unpaid at the rate of £6. 0. 0. per centum per annum computed from the day of 19... by monthly payments of £..... on the 1st day of each month commencing on the 1st day of 19... until the whole of the Principal sum and Interest thereon as aforesaid has been paid."

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But by cl.6 of the agreement the appellant undertook:

"During the period ending on the day of 19... so long as the Borrower remains personally in occupation of the said Garage or Service Station and continues to observe the provisions of this Agreement the Company shall pay to the Borrower the sum of £..... per month commencing on the day of 195... and payment of such sums shall at the option of the Company be

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sufficiently made in terms of this Agreement if credited by the Company to the account of the Borrower in the books of the Company."

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10 It was made clear by the evidence that with the exception of one particular case the periodical payments for which cl. 6 provided were ascertained by reference to the liability of the operator to make payments of principal and interest pursuant to cl. 1 so that the monthly payments pursuant to cl. 6 were sufficient, no more and no less, to offset the liability of the operator to make payments under cl. 1. The amounts which are in question here, of course, are the amounts said to have been paid by the company pursuant to cl. 6 and during the relevant period they amounted, as already mentioned to £57,265. The reciprocal payments were, in fact, made either by an exchange of
20 cheques for identical amounts or, in some cases, merely by entries in the appellant's books by which the amounts payable pursuant to cl. 6 were offset against the operator's liability under cl. 1. In all, some hundreds of agreements in form SSLB were current during the relevant income year.

30 The SSLC form of contract differed in one material respect. It contained substantially similar covenants on the part of the operator but it did not make any provision for a contemporaneous advance of any sum of money to the operator. The sole monetary consideration provided to him was that specified in cl. 5:

40 "During the period aforesaid Vacuum shall pay to the Operator the sum of £..... in respect of each period of twelve months during which the Operator has remained personally in occupation of the said Service Station or Garage and observed the provisions of this Agreement."

There were approximately 30 SSLC agreements which are in question in the case and the amount paid pursuant thereto during the relevant period was £9,637.15.9.

As far as the forms of trading agreements are

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concerned it is sufficient for present purposes to refer to that which came into general operation about June 1952. By it the company agreed to provide the operator with marketing and merchandising services free of charge such service to include the following:

- "1.(a) the painting in the Company's colour scheme of the exterior of the service station proper subject to such approvals and authorities as may be required; 10
- (b) reimbursing the Operator for the reasonable cost of such minor alterations to the service station as will in the opinion of the Company enable the service station to give better service to its customers;
- (c) assisting the Operator to obtain loans at a reasonable rate of interest if he requires finance for the purpose of his business; 20
- (d) provision of architectural advice and preliminary plans for alterations or additions to or reconstruction of the service station which the Operator and the Company mutually deem desirable;
- (e) assistance in the training of the Operator and his staff in modern merchandising methods; 30
- (f) the provision of a simplified accounting procedure for the Operator's use;
- (g) assistance and advice to the Operator in the advertising of his products and service in neighbourhood solicitation and business reminders to his customers."
- By cl. 3 the operator covenanted that he would purchase from the appellant at the ruling market price all motor fuels intended by him 40

for resale at the service station and that he would not purchase otherwise than from the appellant any motor fuels intended by him for resale nor offer for sale or sell at the service station any motor fuels except as should have been bona fide purchased by him from the company. The agreement specified a fixed period for its duration and provided that it should continue in force thereafter until determined by six months prior notice. The period for which these trading agreements were made varied; a great many of them were for periods of five years, some were for three years and there were also a great many for periods exceeding five years including several for ten years and a few for as long as fifteen years. The first contention of the appellant was in a somewhat general form. As in the earlier case of B.P. Australia Limited v. The Commissioner of Taxation of the Commonwealth of Australia it was asserted with some emphasis that the circumstances of the trade in which the appellant was engaged became such as to make the payments under consideration ordinary incidents of the appellant's business. They constituted, it was said, ordinary marketing costs which were properly attributable to the appellant's trading account. But I am satisfied that, as in the earlier case, the problem cannot be resolved without closer examination of the character of the payments which were made.

Enough has been said concerning the nature of the payments in question and the circumstances in which they were made to indicate a close parallel to the earlier case. Indeed the facts of the case are such that if it were concerned merely with lump sum payments made once and for all in each particular case it would be sufficient to say that for the reasons given in the earlier case the appeals should be dismissed. But that was not the fact and some attention must be given to the circumstances that expenditure was incurred by the appellant:

- (1) in the improvement of service stations by driveway alterations, painting, minor structural alterations and the provision of some plant and equipment;
- (2) in making periodical payments under

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contracts in form SSLB where each payment was equal in amount to the operator's periodical obligation to make payments on account of outstanding principal and interest; and

- (3) in making periodical payments under contracts in form SSLC where there had not been any contemporaneous advance to the operator.

It is, I think, convenient to deal first of all with payments of the kind mentioned in (2) above. In form there was in each case an advance of a specified sum of money accompanied by an obligation to make monthly repayments with interest. The relevant form of agreement also created a right in the operator to receive an equivalent monthly payment. This circumstance encouraged counsel for the Commissioner to say that no payments were in fact made to operators who had executed this form of agreement; at the most, it was said, all that happened was that from month to month the appellant forgave each operator part of the loan which had been made. But the respondent went somewhat further and asserted that the legal effect of the agreement viewed as a whole was to vest in the operator a right to receive a lump sum, and, conditionally upon his performance of the agreement, to retain it for his own use. Upon this view of the agreement periodic payments did not become payable and were not, in fact, made. That this approximated the net practical result of the arrangement is, no doubt, true but the form of agreement was not attacked as a sham and the fact remains that there was in each case a loan, an obligation to repay the amount of the loan with interest, a right in the operator to the payments for which cl. 6 provided, a corresponding obligation on the appellant to make these payments of which in some cases there was actual payment by cheque and, in other cases, payment in the form provided by the agreement itself. I refer to the provision of cl. 6 which specified that "such sums shall at the option of the Company be sufficiently made in terms of this Agreement if credited by the Company to the account of the Borrower in the books of the Company". During the course of the argument

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reference was made to the cases of Price v. Parsons (54 C.L.R. 332) and Boydell & Others v. James and Another (36 S.R. (N.S.W.) 620) but the decisions in those cases do not in my opinion either require or justify the conclusion in this case that the legal effect of the arrangement evidenced by contracts in form SSLB was that for which the respondent contends. But this view by no means concludes the matter for when the facts are examined it is seen clearly enough that what each agreement provided for was the payment of a lump sum by instalments. First of all it is beyond doubt that the amount of the advance in each case was not in any way measured by the operator's desire to borrow a specified sum of money. He was not in the market to borrow money nor was the appellant, so far as he was concerned, in the market to lend. What the appellant wished to do was to secure trading ties for fixed periods and in the circumstances of the trade as it existed at the relevant time it became necessary to expend large sums of money to secure these advantages. What it was necessary from time to time to pay to secure these advantages was determined by the degree of competition for each site. And the amount of the advance in each case was determined not by the operator's need for some specified amount of borrowed capital but solely by the "price" which competition made it necessary for the appellant to pay for the advantages which it wished to secure. But for reasons which, no doubt, seemed proper to the appellant it was not prepared to pay in advance and unconditionally a lump sum for a trade tie extending over a period of years. It was, however, prepared to pay that sum by instalments spread over the relevant period and in the meantime to make available to the operator an amount equal to the lump sum involved. In substance, therefore, the "price" was agreed upon, the contract provided for the payment of this "price" by instalments and in order to secure to the operator the advantage of the present enjoyment of a sum equal to the "price" an advance of an equivalent amount was made. I should add that the amounts payable by virtue of cl.6 were in no way related to or dependent upon the quantity of petrol which might be purchased by any operator. Further, in spite of the fact that I have consistently

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No. 4

Reasons for
Judgment of
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8th May 1961
continued

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Reasons for
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continued

referred to agreements made between the company and service station operators, there seems to have been quite a number of cases in which operators were the tenants of the premises upon which they carried on business and in those cases an agreement in the relevant form was made between the company and the landlord. In such cases the owner of the premises was provided with a letter excusing him from the obligation of remaining in possession of the premises.

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It was suggested, however, both in evidence and in argument that the amounts paid in individual cases were based upon a "gallongage" factor. But it is beyond doubt that this factor played no part in determining the amount to be paid in any case. In fact the appellant, when it wished to secure access to any particular site, was "forced to pay the price that attracted the reseller".

There were, no doubt, many instances when the "price" asked was too high and no transaction took place. But when a "deal" took place the "price" was determined by the degree of competition for the site in question. I have no doubt, of course, that the potential "gallongage" of any particular station was always an important business consideration. But the evidence shows clearly enough that it did not determine the "price" to be paid though it was of importance in considering whether the "price" which competition made necessary for any particular site might economically be expended. There was some evidence that the policy of the appellant originally was "to sign people by a trading agreement of .3 per penny per gallon" but this was extended "to one half-penny per gallon and later, as competition in the period went on, this went to 1½d. and some went beyond 1½d." . But this does not mean that when an agreement was signed any such rate was specified or mentioned or that there was any prevailing rate by which the "price" in any particular case was to be determined. It appeared clearly enough what was meant was that as competition increased it was possible by a series of ex post facto calculations to relate the "prices" demanded and agreed upon to a rate per gallon which varied from .3 per penny per gallon to over 1½d. per

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gallon. But at no time did the "gallonage" factor determine what should be paid. That was determined by the degree of competition for any particular site and any subsequently ascertained "gallonage" rate would vary accordingly. And as I have already said the relation of the "price" to gallonage was the subject of consideration merely for the purpose of determining whether the proposal in any particular case was economically sound.

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It was said to be the policy of the appellant to avoid the advance of capital in its dealings with service station operators wherever possible and in cases where the operator did not insist upon the provision of an immediate lump sum payment contracts in form SS1C were employed. But these cases were relatively few. As already mentioned, agreements in this form called for the making of an annual payment to the operator in respect of each period of twelve months during which he should remain personally in occupation of the service station. The agreement also provided that the operator should execute the form of trading agreement and the trading agreement itself was specified to continue for at least a fixed period of years. An attempt was made to distinguish this class of agreement from the contracts in the form SS1B but it is, I think, again clear from the evidence that the periodical payments for which this class of agreement provided was simply an appropriate annual part of a lump sum agreed upon as the "price" of the trading advantages which is secured to the appellant. That being so I can see no real distinction between moneys paid under that form of contract and moneys paid under contracts in the form SS1B.

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In the result the only distinction which I am able to see between the payments made pursuant to these two forms of contract and those under consideration in B.P. Australia Limited v. The Commissioner of Taxation of the Commonwealth of Australia is that in the present case the "price" was payable by instalments and in the earlier case by the outlay of a lump sum. To my mind this is a distinction which for present purposes is without significance (see Coalville

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No. 4

Reasons for
Judgment of
His Honour
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8th May 1961
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In the High
Court of
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No. 4

Reasons for
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8th May 1961
continued

Urban District Council v. Boyce (18 Tax Cases 655)) and, in the result, I am of the opinion that the amounts paid out were not deductible for the purposes of ascertaining the appellant's taxable income.

In my view the same conclusion must be reached with respect to the sum of £121,299 which was expended in converting the many service stations to conform to the minimum requirements of the appellant. The evidence showed that expenditure of this character was undertaken as "part of the deal" made with operators who became parties to SSLB and SSLC agreements. It was, in fact, one of the inducements held out to operators to join in the solo marketing scheme and, as far as can be seen from the evidence, the expenditure was incurred in paying for improvements by way of alterations and additions to selected stations and the provision and installation of additional plant. Such expenditure must, in my opinion, be regarded as expenditure of a capital nature. If, contrary to what has been said, the aggregate sum comprised some minor items of expenditure properly attributable to revenue account this does not appear. Nor was it suggested that it was possible to make any further dissection of the aggregate sum which would show this to be so. The residual item of £4,500 which was expended in legal costs must, of course, share the same fate as the other items with which the case is concerned and that being so I am of the opinion that the appeals should be dismissed.

No.5

Order
(Assessment)
8th May 1961

NO.5

ORDER (ASSESSMENT)

THIS APPEAL pursuant to Section 187 of the Income Tax and Social Services Contribution Assessment Act 1936-1953 from the decision of the Commissioner of Taxation (hereinafter called "the Respondent") whereby he disallowed in part the objection of the abovenamed Appellant, against an assessment to income tax and social services contribution in respect of income derived during the year ended the 30th day of June 1953 notice of which decision was given to the Appellant on the 10th day of April 1959 COMING ON FOR HEARING

before this Court at Melbourne on the 7th, 14th, 15th and 16th days of March 1961 UPON READING the notice of objection dated the 1st day of July 1955 and the documents forwarded to the Court by the Respondent on the 28th day of September 1960 pursuant to Order 65 of the High Court Rules and the exhibits tendered and put in evidence on behalf of the Appellant AND UPON HEARING the oral evidence of John David Rogers, Edmund Angus Jones and Walter Douglas McConaghy called on behalf of the Appellant AND UPON HEARING Mr. Aickin of Queen's Counsel and Mr. Stephen of Counsel for the Appellant and Mr. Menhennitt of Queen's Counsel and Mr. Newton of Counsel for the Respondent THIS COURT DID ORDER on the said 16th day of March 1961 that this appeal should stand for judgment and the same standing for judgment this day accordingly at Sydney THIS COURT DOTH ORDER that this appeal be and the same is hereby dismissed AND THIS COURT DOTH FURTHER ORDER that the costs of the Respondent of this appeal be taxed by the proper officer of this Court and when so taxed and allowed be paid by the Appellant to the Respondent.

In the High
Court of
Australia

No. 5

Order
(Assessment)
8th May 1961
continued

BY THE COURT

L.S.

(Signed) M. DOHERTY

PRINCIPAL REGISTRAR

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NO.6

ORDER - AMENDED ASSESSMENT.

THIS APPEAL pursuant to Section 187 of the Income Tax and Social Services Contribution Assessment Act 1936-1953 from the decision of the Commissioner of Taxation (hereinafter called "the Respondent") whereby he disallowed the objection of the abovenamed Appellant against an amended assessment to income tax and social services contribution in respect of income derived during the year ended the 30th day of June 1953, notice of which decision was given to the Appellant on

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No.6

Order -
Amended
Assessment
8th May 1961

In the High
Court of
Australia

No. 6

Order -
Amended
Assessment
8th May 1961
continued

the 2nd day of September 1959 COMING ON FOR HEARING before this Court at Melbourne on the 7th, 14th, 15th and 16th days of March 1961 UPON READING the notice of objection dated the 4th day of June 1959 and the documents forwarded to the Court by the Respondent on the 28th day of September 1960 pursuant to Order 65 of the High Court Rules and the exhibits tendered and put in evidence on behalf of the Appellant AND UPON HEARING the oral evidence of John David Rogers, Edmund Angus Jones and Walter Douglas McConaghy called on behalf of the Appellant AND UPON HEARING Mr. Aickin of Queen's Counsel and Mr. Stephen of Counsel for the Appellant and Mr. Menhennitt of Queen's Counsel and Mr. Newton of Counsel for the Respondent THIS COURT DID ORDER on the said 16th day of March 1961 that this appeal should stand for judgment and the same standing for judgment this day accordingly at Sydney THIS COURT DOTH ORDER that this appeal be and the same is hereby dismissed AND THIS COURT DOTH FURTHER ORDER that the costs of the Respondent of this appeal be taxed by the proper officer of this Court and when so taxed and allowed be paid by the Appellant to the Respondent.

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BY THE COURT

L.S.

(Signed) M. DOHERTY

PRINCIPAL REGISTRAR

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In the Full
Court of the
High Court
of Australia

No. 7

Notice of
Appeal
26th May 1961

NO.7

NOTICE OF APPEAL

TAKE NOTICE that the Full Court of the High Court of Australia will be moved by way of appeal on behalf of the abovenamed Appellant at the first sittings of the said High Court in its appellate jurisdiction appointed to be heard at Melbourne in the State of Victoria after the expiration of six weeks from the institution of this appeal or so soon thereafter as Counsel can be heard FOR AN ORDER that the whole of the Judgment of His Honour Mr. Justice Taylor

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delivered on the 8th day of May 1961 whereby the Appellant's two appeals against an assessment and amended assessment to income tax in respect of the year of income ended on the 30th day of June 1953 were each dismissed with costs be reversed and set aside and that in lieu thereof the said two appeals be allowed with costs AND FURTHER TAKE NOTICE that the grounds upon which the Appellant intends to rely in support of this appeal are as follows :-

In the Full
Court of the
High Court
of Australia

No. 7

Notice of
Appeal
26th May 1961
continued

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1. THAT the said Judgment was wrong in law and in fact.

2. THAT upon the evidence the learned Judge should have allowed each of the said appeals.

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3. THAT the learned Judge was wrong in finding that the forms of agreement known as SS1B and SS1C Agreements and entered into between the Appellant and numerous service station operators provided for the payment of a lump sum by instalments.

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4. THAT the learned Judge was wrong in finding that the amounts paid to service station operators by the Appellant pursuant to such agreements and pursuant to agreements known as SS1C agreements were determined solely by the degree of competition existing between various petroleum marketing companies in relation to the securing of the service station operated by each such operator as one at which only a particular company's petroleum products would be sold.

5. THAT the learned Judge was wrong in holding that the amounts payable by the Appellant to service station operators pursuant to the said agreements were in no way related to or dependent upon the quantity of petrol which might be purchased from the Appellant by such operator.

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6. THAT the learned Judge should have held that the amounts so payable were based in whole or alternatively substantially upon the existing and estimated gallonage of petrol sold and which would during the currency of such agreement be sold to the operator of the service station in question and that the amounts payable

In the Full
Court of the
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No. 7

Notice of
Appeal
26th May 1961
continued

pursuant to such agreements were in each case determined by such considerations.

7. THAT the learned Judge was wrong in fact in holding that the only distinction between payments made by the Appellant to service station operators pursuant to SSLB and SSLC agreements and payments made by B.P. Australia Limited in an earlier case referred to by the learned Judge in his Judgment was that the Appellant paid a "price" by instalments whereas the said B.P. Australia Limited paid by means of a lump sum and that he was wrong in law in holding that the distinction between the facts in the two cases was without legal significance.

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8. THAT the learned Judge was wrong in holding that the obtaining of agreements in the said forms or the obtaining of trade ties by means of the "Trading Agreements" associated therewith involved the acquisition or creation of any asset or advantage of an enduring nature or for the enduring benefit of the Appellant's trade or any asset or advantage of a capital nature.

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9. THAT the learned Judge was wrong in holding that amounts paid pursuant to the said SSLB and SSLC agreements were not allowable deductions for the purpose of ascertaining the Appellant's taxable income and should have held that such amounts were wholly deductible pursuant to Section 51(1) of the Income Tax and Social Services Contribution Assessment Act 1936-1953.

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10. THAT the learned Judge was wrong in holding that the sum of £121,299 expended by the Appellant and referred to as "sundry sales promotion at solo outlets" and the sum of £4,500 expended in legal costs in relation to the introduction of the solo site trading plan were not allowable deductions as aforesaid and should have held that each of such amounts were wholly deductible pursuant to the said Section 51(1).

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11. THAT the learned Judge should have held that the amounts paid to service station operators pursuant to SSLB and SSLC agreements and also the sums of £121,299 and £4,500 above

referred to were all necessarily incurred in carrying on the Appellant's business for the purpose of gaining assessable income and represented a cost to the Appellant of marketing its products which was an ordinary recurring expense and was not an outgoing of capital or of a capital nature.

In the Full Court of the High Court of Australia

No. 7

DATED the 26th day of May 1961.

Notice of Appeal
26th May 1961
continued

(Signed) ARTHUR ROBINSON & CO.

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Solicitors for the Appellant.

TO -

The Respondent,
The Commissioner of Taxation of the Commonwealth of Australia

AND TO -

The Crown Solicitor for the Commonwealth,
440 Little Collins Street, MELBOURNE.

NO. 8

No. 8

REASONS FOR JUDGMENT OF HIS HONOUR THE

CHIEF JUSTICE SIR OWEN DIXON

Reasons for Judgment of His Honour the Chief Justice Sir Owen Dixon
25th February 1964

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This appeal is in a case treated as parallel to the case of BP Australia Ltd. v. The Commissioner of Taxation the judgment in which is delivered now. In many ways it is parallel but in a broad way there is a marked distinction. Vacuum Oil Co. Pty. Ltd. decided on its own account to follow Shell Oil Company in pursuing an immediate policy of attempting to sell petrol from sites confined in their operation to the Vacuum Oil Company's products. But there was no attempt, immediate or otherwise, to combine with other small companies in selling their own products exclusively from definite sites. Another distinction is perhaps in the year of income to which reference is made. As said in the judgment appealed from, the matter now in question is whether the respondent has wrongly disallowed as a deduction from

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In the Full
Court of the
High Court
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No. 8

Reasons for
Judgment of
His Honour
the Chief
Justice Sir
Owen Dixon
25th February
1964
continued

the appellant's assessable income of the year ended 30th June 1953 the sum of £192,701, that being the aggregate of the amounts claimed as deductions during the relevant year which were said to have been expended in or in connexion with its efforts to secure sites for the exclusive sale of its products. Then there are certain forms of contract which are described in the judgment appealed from. The whole matter, however, is governed by the same considerations as govern the appeal of BP Australia Ltd. and in my opinion there is no sufficient reason for treating the expenditure as made on capital account. It appears to me clearly expenditure incurred in the process of marketing the commodity and to be expenditure which is not made once for all but is likely to be repeated, and not to be sufficiently identified as outside the ordinary conduct of business.

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I therefore think that for the reasons more fully given in the judgment of BP Australia Ltd. v. The Commissioner of Taxation the appeal should be allowed.

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No. 9

Reasons for
Judgment of
His Honour
Mr. Justice
McTiernan
25th February
1964

NO. 9

REASONS FOR JUDGMENT OF HIS HONOUR
MR. JUSTICE McTIERNAN

I have arrived at the conclusion that the judgment of Taylor J. is right. I think that His Honour's findings of fact are fully supported by the evidence and cover all the material issues of fact in the case. Further, His Honour correctly applied the criteria laid down in the authoritative decisions for distinguishing between payments on income and capital accounts respectively. In my opinion, having regard to his findings of fact and the whole of the evidence he was correct in rejecting the contention of the appellant that the payments in question are allowable deductions under sec. 51 of the Income Tax and Social Services Contribution Assessment Act 1936-1953. The appeal should be dismissed.

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NO.10
REASONS FOR JUDGMENT OF HIS HONOUR
MR. JUSTICE KITTO

In the Full
 Court of the
 High Court
 of Australia

No.10

Reasons for
 Judgment of
 His Honour
 Mr. Justice
 Kitto
 25th February
 1964

The reasons I have given for my conclusion in the case of BP Australia Limited apply in substance in the present case also. There are only two additions that I wish to make, each tending to reinforce the conclusion.

10 In the first place, the evidence in this case is even more specific than in the other as to the necessity inherent in the "solo" system of constantly obtaining new and renewed restrictive agreements with resellers. The manager of the appellant's Real Estate and Finance Department, Mr. W.D. McConaghy, testified that the Company's restrictive agreements continued in use even up to the time of the hearing of the case. By way of illustration he said that in 1959 the appellant paid £1,180,000

20 to renew agreements with operators. Mr. E.A. Jones, the appellant's Managing Director, described the obtaining of such agreements as "a continuing operation". Asked what his company did about obtaining renewals, he said that the reseller was "putting pressure on us for some sort of concession, in some form or other, and in order to get renewals we had to make concessions of various types ... if we did not accede to his request we stood in danger of

30 losing his business". The giving of the concessions, therefore, was part of the process of getting the business - of selling the goods - under the newly-accepted method of trading. Surely the cost of the concessions must be taken into account in ascertaining the profit from the business.

40 In the second place, it seems to me that each of the amounts paid periodically by the appellant to operators, monthly under the SSLB agreement and yearly under the SSLC agreement, was not an instalment of a principal sum, but was a reward separately related to the operator's due performance of his agreement during the relevant month or year; in other words, it was expended by the appellant for recurring

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continued

periods of enjoyment of the benefits of the agreement. But whether one considers the month's or year's orders for the obtaining of which each payment under a particular agreement was made, or considers the whole of the orders for the obtaining of which during the entire term of the agreement the total sum was paid, the case is the same in essence. The appellant had embarked upon a course of securing orders by making payments to its customers and every payment that it made must necessarily, it seems to me, be regarded as having diminished the profit from the orders obtained.

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In my opinion the outgoings in question were not of a capital nature and should have been treated as allowable deductions in the assessment of the appellant's tax. I therefore would allow the appeal.

No.11

Reasons for
Judgment of
His Honour
Mr. Justice
Windeyer
25th February
1964

NO.11

REASONS FOR JUDGMENT OF HIS HONOUR
MR. JUSTICE WINDEYER

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I think that the conclusion of Taylor J. in this case was correct. The relevant facts are fully set out in his judgment, and the legal transactions are examined in detail in the judgment to be delivered by Owen J. which I have had the advantage of reading. I need not analyse the somewhat ingenious method which the appellant adopted for obtaining the advantage it gained by the expenditure of the moneys in question. In a business sense, and using the language of "merchandising", it seems to me that, in each case, it obtained for a period, and in a selected locality, an assured "outlet" to consumers for its products. Having regard to the competitive character of the trade in which it was engaged and to the whole of the circumstances, I think that the expenditure was of a capital nature. The case differs little, in what I regard as essentials, from the case of BP Australia Ltd. v. The Commissioner of Taxation and I shall not repeat what I said there. The distinction between capital expenditures and outgoings on revenue account

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is no doubt an accounting concept. But for income tax purposes, analysis of a particular expenditure may, I think, sometimes produce a different result from that which could properly appear in accounts prepared for the ascertainment of a distributable annual profit.

I would dismiss the appeal.

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Court of the
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No.11

Reasons for
Judgment of
His Honour
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Windeyer
25th February
1964
continued

NO.12

REASONS FOR JUDGMENT OF HIS HONOUR

MR. JUSTICE OWEN

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The question arising in these appeals is whether certain sums totalling £192,701 are allowable as deductions from the appellant Company's assessable income for the year ended 30th June 1953. The Commissioner of Taxation disallowed the appellant's claim and appeals by it against that disallowance were dismissed by Taylor J.

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At all material times the major part of the appellant's business consisted of selling petrol and petroleum products to service station operators in competition with other wholesale suppliers of similar products. Prior to 1951 the majority of service stations were what were called "multi-pump" stations at which were installed tanks and pumps belonging to different oil companies and to which petrol was supplied by each of the companies whose tanks and pumps were installed at the particular station. One

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result of this system of marketing, which was then the trade practice, was to increase the costs of delivery. A service station at which the tanks and pumps of a number of oil companies were installed would sell less of any particular brand of petrol than would have been the case if that particular brand had been the only one sold at that station. Deliveries were required to be made by the wholesaler over a greater area

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continued

and to a larger number of delivery points and in smaller quantities to any one point than would have been required if a system of what came to be called "solo site" stations, each selling only one brand of petrol and petroleum products, could be brought into being. The "multi-pump" system involved also the employment of a larger staff of salesmen than would be required under the "solo site" system. It was known to suppliers also that undesirable practices had occurred on occasions at "multi-pump" stations when a tank waggon belonging to one wholesaler might fill up all the tanks at that station regardless of the ownership of the tanks or the brand of petrol which each was supposed to contain. In consequence of these matters the appellant in June 1951 prepared plans to alter its selling system and adopt a "solo site" scheme, the idea being to induce selected service station operators to purchase and resell only its brand of petrol and petroleum products. The inducement then intended to be held out to the service station operator was that the appellant, at its own expense, would paint the station from time to time in colours associated with its name and products and, if thought desirable, would make alterations to the structure and lay-out of the station with a view to improving its appearance and efficiency - for example, by providing or altering driveways. Before this plan was put into operation, however, the Shell Company of Australia Ltd., a competitor of the appellant, announced its intention in August 1951 to introduce immediately a "solo site" system for its products and this move decided the appellant to put into immediate operation its plans for a similar kind of system. As might be expected in a highly competitive trade, other wholesalers of petrol acted at or about the same time in various ways to obtain exclusive outlets for their products and during 1952 and in 1953 the setting up of "solo site" stations became a feature of the trade. Broadly speaking, the scheme which the appellant developed and which was operating during the income tax year in question took three forms. A certain number of stations were purchased and operated by the appellant. With these cases we are not concerned in the present proceedings. In the

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majority of cases the appellant and a service station operator, who was prepared to conduct his retail business as a "solo site" station selling only the appellant's products, executed a deed which was described as the SSL-B Agreement. This recited that the operator had requested the appellant to lend him a specified sum of money and that the appellant had agreed to do so upon the terms set forth in the deed. The operator covenanted to repay the amount of the loan together with interest at six per cent per annum by equal monthly instalments comprising both principal and interest and to execute the appellant's form of "Trading Agreement" and comply with its terms and conditions. The operator further covenanted that during the term of the "Trading Agreement" he would not dispose of his interest in the service station without first offering to sell it to the appellant, on specified terms and conditions. If such offer to sell was not accepted by the appellant, the operator undertook not to dispose of the premises otherwise than by sale unless the appellant approved of the person to whom the operator proposed to dispose of the station and unless that person executed the appellant's form of "Trading Agreement" to run for a term not less than the unexpired term of the original operator's "Trading Agreement". The deed provided also that unless and until the operator should have disposed of the station he would, during the term of the "Trading Agreement", continue to remain personally in occupation of it. It contained a further covenant by the operator granting the appellant the sole and exclusive advertising rights on the station. By Clause 6 of the deed the appellant covenanted to pay the operator a specified sum of money each month, a payment which, at the option of the appellant, might be made by crediting the operator in the appellant's books with the amount payable to him. These payments were covenanted to be made so long as the operator remained personally in occupation of the premises and provided he continued to observe the provisions of the deed. In fact the amount of these monthly payments to be made by the appellant to the operator was calculated so as to coincide with the amount of the monthly payments of principal and interest which the operator had covenanted to

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continued

make in repayment of the loan made to him. Finally, Clause 7 of the deed provided that in the event of any breach by the operator of any of the covenants contained in it, the whole of the principal money or so much thereof as was then owing to the company together with interest thereon should become immediately payable to the appellant.

During the period under consideration the appellant had two forms of "Trading Agreement" but for present purposes their relevant terms are the same. Each provided, inter alia, for the painting of the service station and the making of alterations to it at the appellant's expense. The appellant undertook to supply the operator with all motor fuels required by him, and the operator undertook to purchase from the appellant all motor fuels intended for resale and not to purchase or sell or offer for sale motor fuels other than those purchased from the appellant. The form of agreement provided for a specified period for its duration and that it should continue to run from the expiry of that period until determined by six months' notice in writing. In fact the specified periods for the duration of these agreements varied from 3 to 15 years. 10 20

A minority of the operators who entered into "solo site" arrangements with the appellant executed not the SS1-B form of deed but one described as the SS1-C Agreement. It differed from the SS1-B document in that it contained no provision for the loan of money by the appellant to the operator nor did it provide for monthly payments by the appellant to the operator. Instead it made provision for an annual payment of a specified sum in respect of each period of twelve months during which the operator remained personally in occupation of the station and observed the provisions of the agreement. Otherwise the two forms of deed were in all material respects the same. 30 40

In the SS1-B transactions the amount advanced by the appellant to the operator varied from station to station and the monthly payment covenanted to be paid by the appellant varied in the same way since, as I have said, its

amount was calculated so as to coincide with the amount of the monthly loan repayments. Similarly the annual payment covenanted to be paid by the appellant in the case of the SSL-C transactions varied from station to station. It was the appellant's original intention to determine the amount of the loan to be made under the SSL-B Agreements and the amount of the annual payment to be made under the SSL-C Agreements by estimating the probable number of gallons of its petrol likely to be resold by the particular operator over a period and multiplying that number by .3 of a penny, but as competition for "solo site" grew, as it did, operators soon realized that there was a "seller's" market and, as a result, the amount required to be lent by the appellant and the monthly or annual payments required to be made by it had to be increased in order to induce operators to tie their stations to the appellant rather than to rival wholesalers, with the result that the figure of .3 of a penny per gallon on the estimated "gallonage" increased in some cases to as much as 1½d. per gallon according to the extent of the competition for a tie over the particular station. At no time, however, during the relevant period, did the appellant's arrangements with operators provide for a rebate or discount on the price of petrol supplied. Taylor J. was of opinion, and I agree with him, that the estimated "gallonage" demand by a particular station was no more than a factor - and no doubt an important factor - in deciding what sum it would be economically sound to lend or pay to the particular operator.

The total amount of £192,701, which the appellant claims to be an allowable deduction for income tax purposes, falls under four heads and neither party has suggested that any further dissection is required to be made. In respect of each of them the appellant contends that the amount represents an outgoing properly chargeable against revenue, while the Commissioner contends that whatever outgoing there was is to be regarded as an outgoing of capital or of a capital nature and is therefore not deductible under s.51(1) of the Income Tax and Social Services Contribution Act. The first item, amounting to £121,199, represents moneys expended by

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No.12

Reasons for
Judgment of
His Honour
Mr. Justice
Owen
15th February
1964
continued

the appellant on alterations and improvements to "solo site" service stations pursuant either to the SSL-B or the SSL-C Agreement. It is not questioned that the appellant expended these moneys, sometimes by direct payment to the service station operator concerned, sometimes by payment to the contractor who did the work at the particular station, and no suggestion is made that any distinction should be drawn between the two kinds of payments. The next item, amounting to £57,265, represents the amount of monthly payments made by the appellant to operators or credited to them in the appellant's books under the SSL-B type of agreement. It appears that in the early stages of the operation of the SSL-B Agreements the practice with regard to these payments was for the appellant and the operator to exchange cheques each month, the former's cheque representing the monthly payment required to be made to the operator and the latter's cheque representing the monthly repayment of principal and interest on the loan made to him. Later the general practice was for cross entries to be made in the appellant's books and in all cases the appellant included as income in its tax returns so much of these loan repayments as represented interest. The third item, amounting to £9,637, represents the amount of the annual payments made by the appellant to operators under the SSL-C type of agreement. The fourth item, amounting to £4,500, consisted of legal costs incurred by the appellant in introducing its "solo site" system. The parties agree that this last amount is to be treated as having been expended proportionately to the first three items of expenditure and that it should follow their fate.

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Before dealing with what appear to me to be the substantial questions for decision, it is convenient to mention two submissions made on behalf of the Commissioner. One was that the SSL-B and SSL-C Agreements should be treated as shams. What result would happen if this was done I did not follow. It is sufficient to say, however, that not only is there not a tittle of evidence on which to base such a finding, but all the evidence points to the opposite conclusion. The arrangements were,

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without question, real transactions intended to be and in fact carried out according to the terms of the documents. The second of these submissions was that in the case of SSL-B Agreements so much of the total amount of the monthly payments made by the appellant to the operator as was represented merely by book entries crediting the operator with the monthly sum was not to be treated as outgoing at all. If this is correct, I do not know how much of the item of £57,265 would be affected and, as I pointed out earlier, the parties agreed that no further dissection of the various items was required. But in any case I do not agree with the submission. The SSL-B form of agreement provided, as I have said earlier, for these monthly payments to be made by entries to the credit of the operator in his account in the appellant's books. The result of such a transaction was dealt with in Spargo's Case (8 Ch. App. 407 at p.414) in a passage from the judgment of Mellish L.J. which was quoted by Knox C.J. and Dixon J. (as he then was) in The Commissioner of Stamp Duties (N.S.W.) v. Perpetual Trustee Co. Ltd. (43 C.L.R. 247 at p.263). His Lordship said:

"Nothing is clearer than that if parties account with each other, and sums are stated to be due on one side, and sums to an equal amount due on the other side of that account, and those accounts are settled by both parties, it is exactly the same thing as if the sums due on both sides had been paid. Indeed, it is a general rule of law, that in every case where a transaction resolves itself into paying money by A to B, and then handing it back again by B to A, if the parties meet together and agree to set one demand against the other, they need not go through the form and ceremony of handing the money backwards and forwards."

That is exactly what happened in these instances. With the assent of the operator the monthly loan repayment by the operator and the monthly payment by the appellant to the operator were set off against one another in the appellant's books.

In the Full
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No.12

Reasons for
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In the Full
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No.12

Reasons for
Judgment of
His Honour
Mr. Justice
Owen
15th February
1964
continued

For the appellant it was submitted that during the income year in question the introduction and development of the "solo site" system had become a feature or incident of the wholesale and retail trade in petrol and petroleum products. In these circumstances, it was said, the expenditure with which the case is concerned was part of the cost of marketing petrol and that each of the amounts was an outgoing incurred in gaining or producing the appellant's assessable income or necessarily incurred by it in carrying on its business for the purpose of gaining or producing its income. Undoubtedly the appellant was compelled to join in the race for exclusive outlets for its products in order to preserve and maintain its business but it does not follow that all expenditure made for such purposes is chargeable for income tax purposes against revenue. One way in which a "solo site" system might be established would be by the purchase by the wholesaler of service stations, and an outlay for this purpose would obviously be of a capital nature. To take another example: if the inducement held out to an operator to tie his station to a wholesaler took the form of a rebate of portion of the price charged to him for petrol by his supplier the outlay might be regarded as chargeable against revenue, as Danckwerts J. decided in Boland v. Regent Oil Co. Ltd. (37 Tax Cases 56). 10 20 30

The difficulty in deciding whether a payment is to be treated for income tax purposes as an outgoing of a capital nature or one made on revenue account is due to the fact that no definite criterion has been or can be laid down which would enable that question to be answered with certainty in all circumstances. A number of tests have been suggested, no one of which can be treated as conclusive. They are no more than indications, in particular circumstances, of the category into which a particular outgoing should be placed. For example, Dixon J. (as he then was) pointed out in the Sun Newspaper Case (61 C.L.R. 337 at pp. 359-363) that the fact that the expenditure is of a "recurrent, repeated or continual" nature as against an expenditure which is "final or once for all" tends to suggest an 40

outgoing of a revenue and not of a capital nature. Again, as His Honour said, if the "result or purpose of the expenditure is to bring into existence or procure some asset or advantage of a lasting character which will enure for the benefit of the organisation or system" that fact points rather to the expenditure being of a capital nature. And in considering matters such as these, questions of degree inevitably arise. One important consideration is, as His Honour said in the Sun Newspaper Case "the character of the advantage sought, and in this its lasting qualities may play a part."

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It can fairly be said, I think, that all the types of outgoings involved in the present case were of a recurring nature. It is true that as to the moneys expended to improve the layout and structure of stations, expenditure on one particular site would not be likely to recur in connection with that site since the improvements were of a lasting character. But I think that would be to take too narrow a view. Regard should rather be had to the whole picture and in that case the expenditure was recurrent. It was expenditure on sites and not on a site. In the case of the monthly or yearly payments to operators under the SSL-B and SSL-C arrangements, they were unquestionably recurrent whether one has regard to the single operator or to the many operators concerned in these transactions. To that extent it may be said that the expenditure bears a resemblance to an outgoing on revenue account. But when an examination is made of the character or nature of the advantage gained by the appellant by the making of all these payments, the balance seems to me to tilt in favour of the view that the outgoings were of a capital nature. The expenditure on structural and the like improvements to service stations was made in return for the operator's undertakings to deal exclusively in the appellant's products and give it exclusive advertising rights on the station site for a substantial period of time. The monthly payments under the SSL-B Agreements and the annual payments under the SSL-C Agreements were made in return for the carrying into effect of those undertakings in respect of

In the Full
Court of the
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No.12

Reasons for
Judgment of
His Honour
Mr. Justice
Owen
15th February
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continued

In the Full
Court of the
High Court
of Australia

No.12

Reasons for
Judgment of
His Honour
Mr. Justice
Owen
25th February
1964
continued

the periods for which those payments were made. The advantages thus obtained were of a continuing and not of a transient nature. The purpose or effect of the expenditure seems to me to have been to add valuable, even if intangible, assets of a lasting character to the appellant's profit earning organization.

In the result therefore I am of opinion that Taylor J. rightly held that the amounts in question were outgoings of a capital nature and therefore not deductible for income tax purposes. In these circumstances it is unnecessary to consider a further point raised by the respondent Commissioner based upon s.260 of the Act.

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The appeals should be dismissed with costs.

No.13

Order dis-
missing Appeal
25th February
1964

NO.13

ORDER DISMISSING APPEAL

THIS APPEAL pursuant to section 200 of the Income Tax and Social Services Contribution Assessment Act 1936-1953 and section 34 of the Judiciary Act 1903-1960 from the order made the 8th day of May 1961 by His Honour Mr. Justice Taylor whereby he dismissed the appeals of the abovenamed Appellant pursuant to section 187 of the first mentioned Act against the assessment and an amended assessment both made under that Act in respect of income derived by the Appellant during the year ended the 30th day of June 1953 COMING ON FOR HEARING before this Court at Melbourne on the 5th, 6th, 7th and 8th days of March 1962 UPON READING the transcript record of proceedings herein AND UPON HEARING Mr. Aickin of Queen's Counsel and Mr. Stephen of Counsel for the Appellant and Mr. Menhennitt of Queen's Counsel and Mr. Newton of Counsel for the Respondent THIS COURT DID ORDER on the 8th day of March 1962 that this appeal should stand for judgment and the same standing for judgment this day accordingly at Melbourne THIS COURT DOTH ORDER that

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this appeal be and the same is hereby dismissed AND THIS COURT DOETH FURTHER ORDER that the costs of the Respondent of this appeal be taxed by the proper officer of this Court and when so taxed and allowed be paid by the Appellant to the Respondent.

In the Full Court of the High Court of Australia

No.13

Order dismissing Appeal 25th February 1964 continued

BY THE COURT

L.S. (Signed) P.D. Ahearne

DEPUTY REGISTRAR

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NO.14

In the Privy Council

ORDER IN COUNCIL GRANTING LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

No.14

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 23rd day of June 1964 in the words following viz:-

Order in Council Granting Leave to Appeal to Her Majesty in Council 3rd July 1964

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"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Mobil Oil Australia Limited in the matter of an Appeal from the High Court of Australia between the Petitioner (Appellant) and The Commissioner of Taxation of the Commonwealth of Australia (Respondent) setting forth that the Petitioner (which was formerly called Vacuum Oil Company Proprietary Limited) desires to obtain special leave to appeal to Your Majesty in Council from an Order of the Full Court of the High Court of Australia made on the 25th day of February 1964 dismissing the Petitioner's Appeal from the Order of the High Court of Australia made on the 8th day of May 1961 wherein the Petitioner's Appeal from the Decision of the Respondent the Commissioner of Taxation disallowing its objection against an amended assessment to income tax and social services contribution in respect of the year ended on the 30th June 1953 was dismissed: And humbly praying Your Majesty

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In the
Privy Council

No.14

Order in
Council Grant-
ing Leave to
Appeal to Her
Majesty in
Council
3rd July 1964

in Council to order that the Petitioner shall have special leave to appeal from the said Order of the Full Court of the High Court of Australia dated the 25th day of February 1964 and for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute its Appeal against the Order of the Full Court of the High Court of Australia dated the 25th day of February 1964 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

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"And Their Lordships do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

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HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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Whereof the Governor-General or Officer administering the Government of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

(Signed) W.G. AGNEW.

137.

PART II

EXHIBITS TENDERED IN EVIDENCE BEFORE
HIS HONOUR MR. JUSTICE TAYLOR

EXHIBIT A

Copies of documents forwarded to High Court of
Australia by the Commissioner of Taxation
comprising:

<p>FORM C</p> <p>COMMONWEALTH OF AUSTRALIA</p> <p>INCOME TAX AND SOCIAL SERVICES CONTRIBUTION</p>	<p>CENTRAL OFFICE</p> <p>COMPANY RETURN</p> <p>RETURN OF INCOME derived from all Sources in and out of Australia during the twelve months from 1st July, 1952 to 30th June, 1953</p> <p>OR _____ to _____</p> <p><small>If approval has been obtained to submit return for any other period, specify the period. ● This Return should be lodged with the Deputy Commissioner of Taxation (Central Office), Box 769 G, G.P.O., Melbourne, C.1, by 31st August, 1953. A company having its head office within the Australian Capital Territory is required to lodge its return with the Commissioner of Taxation, Canberra, A.C.T.</small></p>	<p>File No. _____</p> <p style="text-align: right;">For Office Use Only</p>
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Name of Company VACUUM OIL CO. PTY. LTD.

Postal Address for Service of Notices Port Authority Building, 29 Market St. MELBOURNE.

State whether a "Private Company" NO. (Definition of Private Company—see Page 4)

Name in full of Public Officer HERBERT JOHN PRICE (see Page 4)

Nature of Business OIL & GREASE MERCHANTS
Note.—When stating nature of business, state what kind of manufacturer, wholesaler, retailer, &c.

Place of Incorporation VICTORIA Date of Incorporation ____/____/____

Principal Place of Business in Australia MELBOURNE

States in which Business is carried on ALL STATES.

STATEMENT OF TAXABLE INCOME			
NET PROFIT—as per Profit and Loss Account attached	£		
ADD—Income not included in Profit and Loss Account (attach statement)	£		
Depreciation charged in Accounts	£		
Items not allowable as deductions:—			
Capital Expenditure (attach statement)	£		
Provisions and Reserves (attach statement)	£		
Income Taxes	£		
Donations	£		
Legal Expenses	£		
Other Items:—	£		
_____	£		
_____	£		
TOTAL	£		
DEDUCT—Net exempt income (being gross exempt income less interest and other expenses incurred in respect thereof—attach statement)	£		
Depreciation allowable (attach statement)	£		
Other Items:—	£		
_____	£		
_____	£		
TAXABLE INCOME	£	As per attached statements	3,529,626

DECLARATION.

I, being the duly appointed Public Officer of the above Company, declare that the particulars shown in this return, and also those stated in the Accounts, Balance-sheets, Documents, and Lists herewith, are true and correct in every particular, and disclose without reservation or exception a full and complete statement of the total income derived from all sources both in and out of Australia by VACUUM OIL CO. PTY. LTD. during the year ended 30th June, 1953

Dated this 26th day of November 1953. Usual Signature of Public Officer (Sgd.) H. J. PRICE

This Declaration and all attached sheets must be signed by the Public Officer.

PARTICULARS RELATING TO SOURCES OF INFORMATION.

To be given by—A. Any person who charges directly or indirectly any fee for preparing, or assisting to prepare, this return. } Cross out whichever does not apply.
 B. Every company carrying on business which does not furnish with its return an agent's certificate.

Question.	Answer.
(1) What books of account, if any, are kept by or on behalf of the taxpayer?	<u>Proper books of account</u>
(2) By whom are those books of account kept? (State name and address) ..	<u>Staff</u>
(3) Are those books of account audited each year? If so, by whom? ..	<u>yes. Cook Tomlins & Mirams, Chartered Accountants</u>
(4) Is the return in accordance with those books?	<u>yes</u>
(5) If the return is not in accordance with those books, on what basis and upon what information has the return been prepared?	
(6) Have you satisfied yourself and, if so, how, that the books of account, or other sources of information upon which the return is based, are correct and disclose the whole of the taxpayer's income from all sources? ..	

N.B.—No. (6) to be answered only by the person mentioned in "A" above.

Certificate by Agent. I, _____, having charged the taxpayer a fee for preparing or assisting in the preparation of this return, hereby certify that the answers set forth above in the second column in this statement, opposite to the questions set forth in the first column thereof, are true and correct in every particular.

Date _____ * (Signature of Agent) _____

* Where the agent is a partnership or a company, this certificate must be signed in the name of the partnership or company, as the case requires, by a person who is registered as a nominee of that partnership or company, and that person's name must also be appended.

Agent's Registered No. _____

EXHIBIT "A"(ii)Appellants
ExhibitsA(ii)BALANCE SHEET AS AT 30TH JUNE 1953

<u>LIABILITIES</u>		<u>ASSETS</u>	
Bank Overdraft	£ 2,908,004	Cash on Hand	£ 178,786
Accounts Payable	17,221,563	Accounts Receivable	7,526,870
Reserve for Taxes	2,698,702	Merchandise On Hand & In Transit	13,407,846
Insurance Reserve	851,710	Investments in Other Companies	4,634,848
Profit & Loss Appropriation A/c	4,475,506	Prepaid Charges	1,226,742
Capital	7,500,000	Land, Plant and Buildings	4,534,170
		Plant Appropriation A/c	1,124,416
		Office Furniture	118,285
		Motor and Floating Equipment	817,174
		Rail Tank Cars and Heavy Drums	2,086,348
	<hr/>		<hr/>
	£35,655,485		£35,655,485
	<hr/> <hr/>		<hr/> <hr/>

EXHIBIT "A"(iii)TRADING & PROFIT & LOSS A/CS AND APPROPRIATION STATEMENT - AUSTRALASIATWELVE MONTHS ENDED 30th JUNE, 1953Appellants
Exhibits
A(iii)

TRADING A/C	6 months ended 31 Dec. 1952	6 months ended 30 June 1953	TOTAL		6 months ended 31 Dec. 1952	6 months ended 30 June 1953	TOTAL
To Stock on Hand	14,917,358.18. 2	13,125,096. 0. 0	14,917,358.18. 2	By Sales	28,048,035.18. 4	25,929,782.12.10	53,977,818.11. 2
" Purchases	20,441,142. 1. 9	17,297,876. 2. 1	37,739,018. 3.10	" Stock on Hand	13,125,096. 0. 0	10,814,347. 0. 0	10,814,347. 0. 0
" Gross Profit	<u>5,814,630.18. 5</u>	<u>6,321,157.10. 9</u>	<u>12,135,788. 9. 2</u>				
			<u>£64,792,165.11. 2</u>				<u>£64,792,165.11. 2</u>

PROFIT & LOSS A/c

To Branch Expenses & P & L Chgs.	4,252,229.15. 6	3,578,891. 7. 4	7,831,121. 2.10	By Gross	5,814,630.18. 5	6,321,157.10. 9	12,135,788. 9. 2
To H.O. Exes. & P & L Charges	1,093,159.18. 0	1,406,673. 0.10	2,499,832.18.10				
To Net Profit	<u>469,241. 4.11</u>	<u>1,335,593. 2. 7</u>	<u>1,804,834. 7. 6</u>				
	<u>£5,814,630.18. 5</u>	<u>6,321,157.10. 9</u>	<u>12,135,788. 9. 2</u>		<u>£5,814,630.18. 5</u>	<u>6,321,157.10. 9</u>	<u>12,135,788. 9. 2</u>

PROFIT & LOSS APPROPRIATION A/C - AUSTRALASIA:

	<u>Aust.</u>	<u>New Hebrides</u>	<u>Ex Australia</u>	<u>Total</u>		<u>Australia</u>	<u>New Hebrides</u>	<u>Ex Australia</u>	<u>Total</u>
- To Dividend					1/7/52 Balance	1,387,259. 0. 6	11,399. 6. 2	105,943.18.8	1,504,602. 5. 4
30th June Balance	£3,388,741.15.10	13,632.18.10	1,073,131.0.1	4,475,505.14.9	Profit sale refinery & N.Z.Branch 31 Dec.1952	109,752.16. 2	-	777,221.18.1	667,469. 1.11
					By P.& L.A/c 30 June Chgs.Defd.	380,951. 8. 7	790. 4. 8	87,490.11.8	469,241. 4.11
					30 June P & L	498,600. 0. 0	-	-	498,600. 0. 0
						<u>1,231,684. 2.11</u>	<u>1,434. 8. 0</u>	<u>102,474.11.8</u>	<u>1,335,593. 2. 7</u>
	<u>£3,388,741.15.10</u>	<u>13,632.18.10</u>	<u>1,073,131.0.1</u>	<u>4,475,505.14.9</u>		<u>£3,388,741.15.10</u>	<u>£13,632.18.10</u>	<u>£1,073,131. 0.1</u>	<u>£4,475,505.14. 9</u>

EXHIBIT "A"(iv)TRADING & PROFIT & LOSS ACCOUNTS - AUSTRALIATWELVE MONTHS ENDED JUNE 30th, 1953TRADING ACCOUNT

	<u>6 months ended</u> <u>31/12/52</u>	<u>6 months ended</u> <u>30/5/53</u>	<u>TOTAL</u>		<u>6 months ended</u> <u>31/12/52</u>	<u>6 months ended</u> <u>30/6/53</u>	<u>TOTAL</u>
To Stock on Hand 1/7/52	12,630,610. 6. 4	12,579,446. 0. 0	12,630,610. 6. 4	By Sales	24,599,533.15. 1	25,140,161.15.11	49,739,695.11. 0
" Purchases	19,357,182. 5.11	16,816,451.10. 2	36,173,633.16. 1	" Stock on Hand at end period	12,579,446. 0. 0	10,350,767. 0. 0	10,350,767. 0. 0
" Gross Profit	5,191,187. 2.10	6,095,031. 5. 9	11,286,218. 8. 7				
			<u>£60,090,462.11. 0</u>				<u>£60,090,462.11. 0</u>

PROFIT & LOSS ACCOUNT

To Branch Exes & P & L Charges	3,728,947. 7. 1	3,465,665. 2. 0	7,194,612. 9. 1	By Gross Profit	5,191,187. 2.10	6,095,031. 5. 9	11,286,218. 8. 7
" Proportion A/asian Exes & P & L Chgs	413,173. 7. 2	365,635. 0.10	778,808. 8. 0				
" Federal Income Tax	668,115. 0. 0	1,032,047. 0. 0	1,700,162. 0. 0				
" Net Profit	380,951. 8. 7	1,231,684. 2.11	1,612,635.11. 6				
	<u>£5,191,187. 2.10</u>	<u>£6,095,031. 5. 9</u>	<u>£11,286,218. 8. 7</u>		<u>£5,191,187. 2.10</u>	<u>£6,095,031. 5. 9</u>	<u>£11,286,218. 8. 7</u>

Appellants
ExhibitsA(iv)

EXHIBIT "A"(v)TRADING & PROFIT & LOSS ACCOUNTS NEW HEBRIDESTWELVE MONTHS ENDED JUNE 30th, 1953TRADING ACCOUNT

	<u>6 mths ended</u> <u>31/12/52</u>	<u>6 mths ended</u> <u>30/6/53</u>	<u>TOTAL</u>		<u>6 mths ended</u> <u>31/12/52</u>	<u>6 mths ended</u> <u>30/6/53</u>	<u>TOTAL</u>
To Stock on Hand	92,479. 0. 0	78,120. 0. 0	92,479. 0. 0	By Sales	61,795.15.11	73,707. 4. 2	135,503. 0. 1
" Purchases	35,981. 7. 2	38,879.16. 5	74,861. 3. 7	" Stock on Hand at end of period	78,120. 0. 0	60,686. 0. 0	60,686. 0. 0
" Gross Profit	<u>11,455. 8. 9</u>	<u>17,393. 7. 9</u>	<u>28,848.16. 6</u>				
			<u>£196,189. 0. 1</u>				<u>£196,189. 0. 1</u>

PROFIT AND LOSS ACCOUNT

To Branch Expenses and P & L Charges	8,740.14. 6	14,333.19. 9	23,074.14. 3	By Gross Profit	11,455. 8. 9	17,393. 7. 9	28,848.16. 6
" Proportion A/asian Exes. & P. & L. Charges	415. 9. 7	426. 0. 0	841. 9. 7				
" Federal Income Tax	1,500. 0. 0	1,199. 0. 0	2,699. 0. 0				
" Net Profit	<u>799. 4. 8</u>	<u>1,434. 8. 0</u>	<u>2,233.12. 8</u>				
	<u>£11,455. 8. 9</u>	<u>£17,393. 7. 9</u>	<u>£28,848.16. 6</u>		<u>£11,455. 8. 9</u>	<u>£17,393. 7. 9</u>	<u>£28,848.16. 6</u>

Appellants
ExhibitsA(v)

EXHIBIT "A"(vi):RECONCILIATION OF TRADING AND PROFIT & LOSS
STATEMENTTWELVE MONTHS ENDED JUNE 30TH, 1953:Appellants
ExhibitsA(vi)

Total Debits to Profit & Loss Account	(	£7,194,612. 9. 1
Australia	(	778,808. 8. 0
as per Trading and Profit & Loss	(	1,700,162. 0. 0
Statement "C"	(	23,074.14. 3
New Hebrides	(	841. 9. 7
	(	<u>2,699. 0. 0</u>
		<u>£9,700,198. 0.11</u>

Amount Claimed as Deductible:

Australian Branches as per Statement "E"	£6,796,198. 5. 2
Australian Proportion of Australasia as per Statement "C"	776,264.19.11

Amount Not Deductible as Expense but Capitalized:

Australian Branches as per Statement "F1"	238,484. 0. 0
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Items Non-Deductible:

Australian Branches as per Statement "F"	183,004.18. 2
Australian Proportion of Australasia as per Statement "H"	<u>1,706,245.17. 8</u>
	<u>£9,700,198. 0.11</u>

	<u>6 months ended</u> <u>31/12/52</u>	<u>6 months ended</u> <u>30/6/53</u>	Appellants Exhibits
<u>LESS CREDITS TAXABLE</u>			<u>A(vii)</u> continued
Gain on sale of assets- Schedules E3 & E4			
Shipping agency fees	2,794.14. 2	4,533. 1. 2	
Wharfage Earnings	1,657.17. 7	1,136.19.11	
Wages Unclaimed	229.14. 8	-	
Interest	4,550.17. 7	-	
	<hr/>	<hr/>	
10	£9,233. 4. 0	£5,670. 1. 1	
	<hr/>	<hr/>	
	£3,413,691. 5. 9	£3,382,506.19. 5	
	<hr/>	<hr/>	
<u>NET GRAND TOTAL:</u>	£6,796,198. 5. 2	<hr/> <hr/>	

Appellants
Exhibits

A(viii)

EXHIBIT "A"(viii): LIST OF ITEMS CHARGED TO AUSTRALIAN
BRANCHES & NEW HEBRIDES PROFIT AND LOSS - NOT
ALLOWABLE AS DEDUCTIONS.

	<u>6 months ended</u> <u>31/12/52</u>	<u>6 months ended</u> <u>30/6/53</u>	
Alterations, Additions & Capital Expenditure	£82,755.15.11	£70,226. 6. 5	
Donations & Subscriptions	102. 2. 0	88.12. 0	
Excess Depreciation	16,324. 0. 3	9,679.12.11	
Self Insurance	19,943. 4. 4	-	10
Legal Expenses	763.10. 6	5,692. 6. 7	
Adjustment sale of assets	5,726. 1. 1	25,858.11. 9	
New Tools	1,713. 0. 0	1,421. 0. 0	
Trademarks & Renewals	170.17. 9	124. 3.10	
Advertising - charged back from deferred		2,496. 0. 0	
	<u>£127,498.11.10</u>	<u>£96,227. 7. 8</u>	

LESS CREDITS NON TAXABLE

Gain on Sale of Assets - not subject to Depreciation	2,578.16. 0	399. 5. 4	20
Alterations - Additions & Capital Expenditure Deferred		37,743. 0. 0	

	<u>First Half.</u>	<u>Second Half</u>
Charged	270,797.10.0	320,925. 0. 0
Allowed	<u>254,473. 9.9</u>	<u>330,604.12.11</u>
	<u>£16,324. 0.3</u>	<u>9,679.12.11</u>

<u>£2,578.16. 0</u>	<u>£38,142. 5. 4</u>
---------------------	----------------------

Sale of Assets

Book Loss	20,364. 2.10	39,704.18. 0	
Ded. "	14,638. 1. 9	13,846. 6. 3	
	<u>£5,726. 1. 1</u>	<u>£25,858.11. 9</u>	30

<u>£124,919.15.10</u>	<u>£58,085. 2. 4</u>
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NET GRAND TOTAL:	<u>£183,004.18. 2</u>
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EXHIBIT "A"(ix): ITEMS CHARGED TO AUSTRALIAN
BRANCHES
PROFIT AND LOSS - NOT ALLOWABLE AS EXPENSE
DEDUCTIONS BUT BROUGHT INTO DEPRECIATION SCHEDULE
IN SUBSEQUENT HALF YEAR. - TWELVE MONTHS ENDED
30th JUNE 1953.

Appellants
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A(ix)

	<u>6 mths ended</u> <u>31/12/52</u>	<u>6 mths ended</u> <u>30/6/53</u>
Enamel Signs and Hoardings	£ 4,657	£ 6,410
10 Kerb Pump Installation Charges	£194,420	£145,015 £151,425
Less Kerb Pump Installation Charges Deferred		£112,018
	<u>£199,077</u>	<u>£ 39,407</u>

NET TOTAL £238,484

Appellants
Exhibits

A(x)

EXHIBIT "A"(x): AUSTRALIAN & NEW HEBRIDES PROPORTION
OF AUSTRALASIAN ITEMS CHARGED TO PROFIT & LOSS -
ALLOWABLE AS DEDUCTIONS - TWELVE MONTHS ENDED JUNE
30TH, 1953.

	<u>6 mths ended</u> <u>31/12/52</u>	<u>6 mths ended</u> <u>30/6/53</u>	
Advertising	13,826.19.4	8,672. 0. 0	
Donations and Subscriptions		550.10. 0	
Exchange, Bank Charges, Discounts and Allowances	893. 0. 7	114. 0. 0	10
Legal Costs - Debt Collection, Agreements, etc.	3,360. 3.2	939. 0. 0	
Rents, Rates, General Taxes, Insurance premiums (not including Income or Land Taxes)	5,216.19.7	6,610. 0. 0	
Repairs and Maintenance	1,155. 7. 1	638. 0. 0	
Salaries, bonuses, salesmen's expenses, travelling expenses and commission	247,065. 5.1	233,865.10. 0	
Warehouse and office expenses - including lighting and power, office cleaning, stationery, stamps, telegrams, cables, telephone, daily papers and sundry incidental office and warehouse requisites, <u>not</u> <u>including</u> items of capital expenditure, donations, sub- scriptions, income or land taxes.	42,462. 4.3	27,980. 0.10	30
Annuity and Insurance	<u>97,099. 0.0</u>	<u>85,817. 0. 0</u>	
	<u>£411,078.19.1</u>	<u>365,186. 0.10</u>	
Less Credits Taxable	-		
	<u>£411,078.19.1</u>	<u>365,186. 0.10</u>	
<u>NET GRAND TOTAL:</u>		<u>£776,264.19.11</u>	

For detailed disposition of Australiasian items over states, please refer Statements "J" and "J.1."

EXHIBIT "A"(xi): AUSTRALIAN & NEW HEBRIDES PROPOR- Appellants
ION OF AUSTRALASIAN ITEMS CHARGED TO PROFIT AND LOSS- Exhibits
NOT ALLOWABLE AS DEDUCTIONS. - TWELVE MONTHS ENDED
30th JUNE, 1953. A(xi)

	<u>6 mths ended</u> <u>31/12/52</u>	<u>6 mths ended</u> <u>30/6/53</u>
(a) Alterations & Additions	£1,542.16. 2	-
Legal Costs - Other than Debt Collection	917. 9. 3	£ 875. 0. 0
10 Self Insurance	49.12. 3	-
	<u>£2,509.17. 8</u>	<u>£ 875. 0. 0</u>
Net Grand Total	£3,384.17. 8	
(b) Federal Income Tax	£669,615. 0. 0	£1,033,246. 0. 0
Net Grand Total		£1,702,861. 0. 0
Less Credits Not taxable		-
<u>NET GRAND TOTAL</u>		<u>£1,706,245.17. 8</u>

For detailed disposition of Australasian Items
over States, please refer Statements "J" and
"J.1."

EXHIBIT "A"(xii): STATEMENT SHOWING DEPRECIATION CLAIMED AS DEDUCTIBLE FOR THE HALF YEAR ENDED
31st DECEMBER 1952

Appellants
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	Depreciated Value as at 1.7.52	Half year ended June 1952		Deductions		Amount for Depreciation	Rate of Depreci- ation	Amount of Depreciation for Half Year.
		Additions	Marketing	Refinery				
Pipe Lines - Underground	51,178.11.11	1,630. 0. 0	-	30,439.12. 4		22,368.19. 7	6%	671. 1. 4
Pumps Pipe Lines Motors	443,388. 6. 4	74,028. 0. 0	468.19. 2	171,787.16. 4		345,159.10.10	5%	8,628.19.10
Tanks Containing Other Oils	538,225. 1. 9	81,311. 0. 0	112.18. 3	71,643. 0.11		547,780. 2. 7	5%	13,694.10. 1
Tanks Underground	55,689. 1. 5	-	-	-		55,689. 1. 5	7½%	2,088. 6.10
Motor Cars, Cycles and Waggon	503,542.13.11	162,377.16. 4	2,127. 5. 6	5,683. 1. 9		658,110. 3. 0	15%	49,358. 5. 3
Kerb Pumps and Tanks	739,922.11. 9	82,479.11. 5	6,585.18. 3	96. 6. 3		815,719.18. 8	10%	40,785.19.11
Punts and Lighters	17,752. 8. 1	13,969. 0. 0	-	-		31,721. 8. 1	5%	793. 0. 8
Rail Tank Cars	378,498.14. 3	83,225. 0. 0	-	-		461,723.14. 3	5%	11,543. 1.10
Wharves	24,665.19.11	-	-	184. 1. 2		24,481.18. 9	2½%	306. 0. 6
Laboratory Equipment	7,348. 8. 8	914.10. 0	-	1,975.15. 7		6,287. 3. 1	5%	157. 3. 7
Drums	363,743. 4.10	247,467. 6. 4	4,307. 1. 3	-		606,903. 9.11	25%	75,862.18. 9
Trade Utensils	96,357. 7. 0	12,626. 0. 0	121.13. 1	-		108,861.13.11	7½%	4,082. 6. 3
Typewriters & Office Machines	59,152.16. 6	11,300. 0. 0	588.14.11	1,236.19. 7		68,627. 2. 0	10%	3,431. 7. 1
Furniture & Fittings	25,026. 0. 7	4,466. 2. 7	57.14. 8	2,461.14. 8		26,972.13.10	5%	674. 6. 4
Plant and Machinery	205,092.17. 3	55,595.10.10	138. 2. 7	3,105. 2.10		257,445. 2. 8	7½%	9,654. 3.10
Pump Installations	346,646. 8.10	173,389. 0. 0	9,392.10. 2	-		510,642.18. 8	10%	25,532. 2.11
Enamel Signs and Hoardings	39,447.18. 3	45,618.16. 6	-	-		85,066.14. 9	10%	4,253. 6. 9
Staff Amenities	13,699.12. 5	7,748. 0. 4	7. 9	3,708.16.11		17,738. 8. 1	33-1/3%	2,956. 8. 0
Tanks Containing Crude Oils	46,682.17. 8	-	-	46,682.17. 8		-	6%	-
Refinery Plant	262,893.14. 3	2,970. 1. 3	-	265.863.15. 6		-	10%	-
	<u>£4,218,954.15. 7</u>	<u>1,061,115.15. 7</u>	<u>23,901. 5. 7</u>	<u>604,869. 1. 6</u>		<u>4,651,300. 4. 1</u>		<u>254,473. 9. 9</u>

A(xii)

EXHIBIT "A"(xiii): STATEMENT SHOWING DEPRECIATION CLAIMED AS DEDUCTIBLE FOR THE HALF YEAR
ENDED 30TH JUNE 1953

Appellants
Exhibits

A(xiii)

	Depreciated Value as at 1.1.53	Half Year ended Dec. 52		Amount for Depreciation	Rate of Depreciation per annum	Amount of Depreciation for Half Year.
		Additions	Deductions			
Pipe Lines - Underground	21,697.18. 3	165. 0. 0	-	21,862.18. 3	6%	655.17. 9
Pumps Pipe Lines Motors	336,530.11. 0	161,867. 0. 0	478. 7. 3	497,919. 3. 9	5%	12,447.19. 7
Tanks containing Other Oils	534,085.12. 6	199,993. 0. 0	626. 3. 2	733,452. 9. 4	5%	18,336. 6. 3
Tanks Underground	53,600.14. 7	-	-	53,600.14. 7	7½%	2,010. 0. 7
Motor Cars, Cycles & Waggons	608,751.17. 9	282,961. 0. 0	2,786. 1.10	888,926.15.11	15%	66,669.10. 2
Kerb Pumps & Tanks	774,933.18. 9	143,477.15.11	10,884.18. 4	907,526.16. 4	10%	45,376. 6.10
Punts and Lighters	30,928. 7. 5	91. 0. 0	-	31,019. 7. 5	5%	775. 9. 8
Rail Tank Cars	450,180.12. 5	93,277. 0. 0	-	543,457.12. 5	5%	13,586. 8.10
Wharves	24,175.18. 3	288. 0. 0	-	24,463.18. 3	2½%	305,15.11
Laboratory Equipment	6,129.19. 6	873. 0. 0	-	7,002.19. 6	5%	175. 1. 6
Drums	531,040.11. 2	337,578. 0. 0	3,885.14. 0	864,732.17. 2	25%	108,091.12. 2
Trade Utensils	104,779. 7. 8	14,787. 0. 0	194. 0. 4	119,372. 7. 4	7½%	4,476. 9. 3
Typewriters & Office Machines	65,195.14.11	11,758.10. 0	326. 8. 7	76,627.16. 4	10%	3,831. 7.10
Furniture & Fittings	26,298. 7. 6	6,661.10. 0	50. 0. 0	32,909.17. 6	5%	822.14.11
Plant & Machinery	247,790.18.10	94,823. 0. 0	571. 0. 9	342,042.18. 1	7½%	12,826.12. 2
Pump Installations	485,110.15. 9	194,420. 0. 0	17,828. 7. 2	661,702. 8. 7	10%	33,085. 2. 5
Enamel Signs & Hoardings	80,813. 8. 0	4,657. 0. 0	-	85,470. 8. 0	10%	4,273.10. 5
Staff Amenities	14,782. 0. 1	2,368. 0. 0	-	17,150. 0. 1	33-1/3%	2,858. 6. 8
	£4,396,826.14. 4	1,550,045.15.11	37,631. 1. 5	5,909,241. 8.10		330,604.12.11

Appellants
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EXHIBIT "A"(xiv): RECONCILIATION OF NET PROFITS AND
TAXABLE INCOME FOR THE YEAR ENDED 30TH JUNE, 1953.

A(xiv)

Net Profits as per Statement "C" Australia	£1,612,635.11. 6	
Net Profits as per Statement "C1" New Hebrides	2,233.12. 8	
	<u>£1,614,869. 4. 2</u>	

Less Depreciation on Buildings erected under covenant on leased lands as per Statement 1. £221. 4. 8		10
---	--	----

Less Deductions claimed for premiums on leases as per Schedule "P" 6,926. 4. 8		
--	--	--

Less Charges against Insurance Reserve as per Schedule "N" 26,130. 1. 7	<u>33,277.10.11</u>	
	£1,581,591.13. 3	

ADD: Items charged against profits - <u>Not allowable as deductions</u>		20
--	--	----

Australian Branches - Statement "F"	183,004.18. 2	
--	---------------	--

Australian Branches - Statement "F1"	238,484. 0. 0	
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Australian proportion of Australasia - Statement "H"	<u>1,706,245.17. 8</u>	
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	£3,709,326. 9. 1	
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Less 1/3 of Calls paid to Oil Prospecting Companies Statement "O"	<u>179,700. 0. 0</u>	30
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NET TAXABLE INCOME	<u><u>£3,529,626. 9. 1</u></u>	
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EXHIBIT A(xv): LETTER FROM RESPONDENT TO APPELLANTAppellants
Exhibits

A(xv)

29th April, 1954

Vacuum Oil Co. Pty. Ltd.,
29 Market Street,
MELBOURNE. C.1.

Dear Sirs,

INCOME TAX

10 With reference to your returns of income for the years ended 30th June, 1951, 1952 and 1953, would you please advise whether any expenditure has been incurred in connection with the policy known as one brand service stations, sole sites etc. If so, please forward particulars thereof and state under which headings the amounts have been included in the accounts furnished.

Yours faithfully,

(D.L.Canavan)
DEPUTY COMMISSIONER OF TAXATION.EXHIBIT "A"(xvi): LETTER FROM APPELLANT TO RESPONDENT

A(xvi)

20

17th May, 1954

Deputy Commissioner of Taxation,
London Stores Building,
152 Elizabeth Street,
MELBOURNE. C.1.

Dear Sir,

Income Tax - Reference C.1718.

30 In response to your letter of 29th April, 1954, we would advise that the undermentioned expenditure has been incurred in connection with the policy known as one brand service stations, sole sites, etc., and included in the figures shown on our income tax returns for the year ended 30th June, 1952 and 30th June, 1953. We did not incur any expenditure of this nature during the 12 months ended 30th June, 1951.

Appellants Exhibits	<u>12 mths ended</u> <u>June 1952</u>	<u>12 mths ended</u> <u>June 1953</u>
A(xvi) continued	Kerb Pump Installation Charges	£182,852
	Less Deferred	<u>74,471</u>
		<u>£137,830</u>
	Advertising	Nil
	Legal Expenses (non deductible)	£2,633. 1. 2
		£323,741
		£8,258. 6. 4

In further elaboration of these figures we would 10
advise as follows:

(a) Kerb Pump Installation Charges:

The figures shown above represent portion of the normal kerb pump installation charges which are listed on Schedule F1 as "Not allowable as expense deductions but brought into Depreciation Schedule in subsequent half year".

(b) Advertising:

This figure represents portion of the amount listed under advertising classification on Schedule 20 E as an allowable deduction and more specifically comprises the cost of painting the company's standard advertising color scheme at solo retail outlets, periodical allowances paid to resellers for such advertising rights and for their continuing to adhere to their trading agreements with the company, and sundry sales promotional expenses at these solo outlets.

(c) Legal Expenses:

In the development of our solo outlet program, 30
legal expenses have been incurred and, whilst we have claimed as a deduction any expense incurred in the consummation of leases, etc., in those instances where expense has been incurred in the acquisition of freehold and projects that have been abandoned, we have treated such expenditure as capital or non-deductible.

We have also incurred capital expenditure in the purchase of land and buildings and have made loans

to resellers but, as we understand your enquiry is related to revenue items, we have not detailed any information relating to such capital expenditure.

Appellants
Exhibits

A(xvi)
continued

Yours very truly,

VACUUM OIL COMPANY PTY. LTD.

(Sgd.) H. J. PRICE.

Public Officer.

EXHIBIT "A"(xvii): LETTER FROM RESPONDENT TO APPELLANT.

A(xvii)

10

19th May, 1954

Vacuum Oil Co. Pty. Ltd.,
29 Market Street,
MELBOURNE. C.1.

Dear Sirs,

INCOME TAX.

Examination of returns of income lodged for the years ended 30th June 1951-1953 disclose claims made in respect of the following items of expenditure:-

	<u>Year Ended 30th June</u>	<u>1951</u>	<u>1952</u>	<u>1953</u>
20	Advertising	189,919	590,919	744,672
	Repairs and Maintenance	522,355	880,344	1,075,222

Would you please furnish a dissection of these items, under appropriate headings, for the above three years and furnish an explanation for the considerable increase in expenditure for the 1952 and 1953 years, compared with that incurred in prior years.

30 With reference to the amount, £323,741, expended in connection with one brand service stations for the year ended 30th June 1953 as advised in your letter of 17th May, 1954, would you please furnish a dissection of this amount under the headings set out in your letter, with a short explanation of each type of expenditure.

Also please furnish two copies of the trade agreements between the company and resellers.

Yours faithfully,

(D.L.Canavan)
DEPUTY COMMISSIONER OF TAXATION.

Appellants
Exhibits

EXHIBIT "A"(xviii): LETTER FROM RESPONDENT TO APPELLANT

A(xviii)

1st July, 1954

Vacuum Oil Co. Pty. Ltd.,
Port Authority Building,
29, Market Street,
MELBOURNE. C.l.

Dear Sirs,

INCOME TAX.
(In reply quote C. 1718.)

I refer to Statement P. - "Details of deductions claimed for premiums on Leases" - which accompanied your return of income for the year ended the 30th June, 1953 and should be glad if you would forward to this office for perusal and return, copies of the Lease Agreements. 10

Kindly state whether any provisions have been made in respect of Sick Pay, Holiday Pay and Long Service Leave. If so, a copy of each Provision Account from its inception to date, together with advice as to where it appears in the Company's accounts is required. 20

An early reply would be appreciated.

Yours faithfully,

(D.L.Canavan)
DEPUTY COMMISSIONER OF TAXATION.

A(xix)

EXHIBIT "A"(xix): LETTER FROM APPELLANT TO RESPONDENT WITH ATTACHMENT "A" (ADVERTISING EXPENSES) AND ATTACHMENT "B" (REPAIRS AND MAINTENANCE)

12th July, 1954

Deputy Commissioner of Taxation,
London Stores Buildings,
Elizabeth Street,
MELBOURNE. C.l.

30

Dear Sir,

Reference: C.1718.

In response to your communication of 19th May seeking further details of expenditure claimed under the captions of Advertising and Repairs & Maintenance

for the years ended 30th June, 1951, 1952, 1953,
we enclose herewith Attachments A and B showing a
breakdown of the figures quoted in your communication.

Appellants
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For your assistance in reviewing these figures
we would add further comments on our method of
dissection and on special features affecting the
figures in the respective periods.

A(xix)
continued

Attachment 'A' - Advertising:

10 This attachment shows the breakdown of advertis-
ing expense for the respective income tax years, and
items (g) (h) and (i) incorporated therein constitute
the breakdown of the amount of £323,741 in connection
with one brand stations for year ended 30th June 1953
and specifically referred to in your communication.

20 In further explanations we would mention that
the sharp increase under item (a) for the year
ended 30th June 1953 was caused by the intensified
newspaper and radio advertising campaign conducted
at the time we introduced "Wear Fighting Mobiloil",
and the increase under item (b) was caused by an
intensified program of providing over a wider field,
printed sales material, change oil tags, etc.
allied with increased production costs.

30 In further elaboration of item (i) we would
state that this figure represents expenditure such
as the cost of altering driveways consequent upon
re-arrangement of pumps and the cost of erecting or
altering fascia, lattice work, etc. to facilitate
the approach to and improve the appearance of service
stations and so as to enable them to give better
service and improve sales. The degree and type of
expenditure would vary according to respective
locations. We will be pleased to outline any
additional aspect on which you desire details.

Attachment 'B' - Repairs and Maintenance:

40 As previously intimated, whilst we have not
recorded type of repair work, our records provide
details primarily on a location basis and type of
plant, e.g. segregating main overseas terminals from
inland depots, kerbside pumps and delivery equipment.

The low figure showing against terminal repair
and maintenance for the year ended June 1951 is
primarily accounted for by the fact that the Common-
wealth Government finalised payment of an outstanding
claim of £36,068 representing recovery of the cost

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A(xix)
continued

of air raid precautions work which we carried out during the war period in protecting bulk tanks and pump houses at terminals. This credit was offset against terminal repair and maintenance costs.

The increase under kerbside pump and tank classifications is accounted for by the steep rises in wages and cost of materials in the respective periods, further accentuated by the fact that in the course of implementing our solo outlet plan in order to ensure maximum efficiency and service, it was found necessary in practically all instances, to make a complete overhaul of pumps. During this transition period, whilst we have purchased some new tanks, we have not made any appreciable purchases of new pumps but have pursued a program of intensified maintenance of existing pumps. 10

In providing additional background to these figures, we would mention that, under company accounting procedures where company owned transport equipment is utilised in transferring products between stocking points, such work is treated as transport equipment earnings and transport equipment costs are credited at the operating cost per gallon for previous six months. The offsetting debit is treated as costs of goods. 20

Prior to 1st January 1952 before our subsidiary marketing expense records were closed out, we absorbed these earnings (credits) against the various categories of transport equipment expenses, such as wages, repairs and maintenance, fuel, etc. 30

However, as from 1st January 1952 these credits retained their identity and we offset such credit against cartage and delivery expense - therefore in any review some cognisance should be taken of the relative figures under cartage caption in the respective period. We have accordingly shown, as a notation on our schedule, the cartage figures with an adjusted built up figure if the credit earning figure had not been incorporated. It will of course be appreciated that the adjustment reflects in other headings such as wages, fuel, etc. 40

We would also point out that when company personnel are engaged on repairs and maintenance work, their wages are dissected against this caption and therefore our salaries and wages figure is automatically reduced. It will accordingly be appreciated that not only the increased cost of materials but wage increases are factors to take into

consideration in comparing our repairs and maintenance figures for the period under review.

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: : : :

A(xix)
continued

As requested, we are attaching two copies of our trading agreement between the company and resellers.

Yours very truly,
VACUUM OIL COMPANY PTY. LTD.

(Sgd.) H. J. Price.

10

Public Officer.

ATTACHMENT A

ADVERTISING EXPENSE
Breakdown over half years

	<u>6 Mths</u> <u>Dec/51</u>	<u>6 Mths</u> <u>June/52</u>	<u>12 Mths</u> <u>June/52</u>	<u>6 Mths</u> <u>Dec/52</u>	<u>6 Mths</u> <u>June/53</u>	<u>12 Mths</u> <u>June/53</u>
Book ends, } cabinets, } tray- } mobiles. }	£6,219	£22,053	£28,272	£24,491	£5,178	£29,669
20 Flying Red } Horse & } Mobilgas } Signs. }	£6,897	£16,508	£23,405	£17,345	£5,885	£23,230

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A(xix) continued	<u>ADVERTISING EXPENSE</u>			
	<u>Year ended 30th June 1951</u>	<u>Year ended 30th June 1952</u>	<u>Year ended 30th June 1953</u>	
(a) Advertising in newspapers, magazines, bus and tram displays, radio, road maps	117,879	144,887	226,968	10
(b) Demonstrations, instruction books, recommendation plates, company theatrettes, production of "Mobil Reseller" insertions in trade directories, change oil tags, overprinting Mobilubrication material direct mail costs on sales materials, lubsell bottles, pourers, dust caps.	72,040	180,575	103,865	20
(c) Dealer sales aids - gratis and 50/50 plan (key rings, overalls etc.)	-	25,164	33,133	
(d) Book ends, cabinets, - traymobiles.	-	28,272	29,669	30
(e) Flying Red Horse and - Mobilgas signs - enamel	-	23,405	23,230	
(f) Cost of operating - Merchandising School	-	4,999	4,066	
(g) Painting company's - standard advertising colour scheme at solo retail outlets	-	90,037	124,849	
(h) Periodical allowances - paid to resellers for advertising rights and their continuing to adhere to trading agreements with company	-	-	77,593	40
(i) Sundry sales promotional expense at solo outlets	-	93,580	121,299	
	<u>189,919</u>	<u>590,919</u>	<u>744,672</u>	

ATTACHMENT B.REPAIRS AND MAINTENANCE

	<u>Year ended</u> <u>30th June</u> <u>1951</u>	<u>Year ended</u> <u>30th June</u> <u>1952</u>	<u>Year ended</u> <u>30th June</u> <u>1953</u>	<u>Appellants</u> <u>Exhibits</u>
Main Terminals	£ 70,668	£162,066	£220,095	A(xix) continued
Inland ("A") Depots	33,394	35,467	40,447	
Kerbside pumps and tanks	132,164	214,075	366,593	
10 Delivery equipment including tyres	144,835	227,258	247,082	
Drum Maintenance	116,954	185,535	142,755	
New Guinea, Papua, Darwin	13,050	27,848	34,112	
Aviation Servicing Points	6,745	12,020	10,444	
Sundry	4,545	16,075	13,694	
	<u>£522,355</u>	<u>£880,344</u>	<u>£1,075,222</u>	
<u>NOTATION CARTAGE</u>				
20 Figure as shown on tax return	686,281	586,689	300,074	
Transport equipment earnings credit included		164,189	474,586	
Adjusted figure:	<u>£686,281</u>	<u>£750,878</u>	<u>£774,660</u>	

Appellants
Exhibits

EXHIBIT "A"(xx): LETTER FROM APPELLANT TO RESPONDENT

14th July, 1954

A(xx)

Deputy Commissioner of Taxation,
London Stores Building,
152 Elizabeth Street,
MELBOURNE. C.1.

Dear Sir,

Reference C. 1718

In reference to your enquiry of 1st July 1954, we enclose herewith copies of lease agreements supporting details of deductions (items 7-12) claimed for premiums on leases as set out on Schedule P of our income tax return for year ended 30th June 1953, which we presume will cover your enquiry as lease agreements covering items (1-6) were supplied in support of our income tax return for year ended 30th June, 1952. 10

We would advise that the amount of £1,732,209.8.4. for half year ended 30th June 1953 appearing on Schedule E of our income tax return under the caption of Salaries, Bonuses, Salesmen's Expenses, Travelling Expenses, etc. included therein an amount of £92,517. 2. 0 covering provisions for holiday pay and long service leave. 20

A provision for holiday pay and long service leave was initiated and established in the company books for the first time in the half year ended 30th June 1953. When the High Court decision was announced disallowing any such provision as a deductible item for income tax purposes, we closed out our provision, and accordingly a credit for an equivalent amount will appear on our income tax return now being progressed for year ended 30th June 1954. 30

Yours very truly,

VACUUM OIL COMPANY PTY. LTD.

(Sgd.) H. J. Price.

Public Officer.

Exhibit "A" (xxi)

NOTICE OF ASSESSMENT

(BASED ON INCOME DERIVED DURING YEAR ENDED 30 / 6 / 1953)

Appellants
Exhibits

A(xxi)

To
VACUUM OIL CO. PTY. LTD.
Port Authority Building,
29 Market Street,
MELBOURNE. C.I.

In accordance with the provisions of the *Income Tax and Social Services Contribution Assessment Act 1936-1953* the Income Tax and Social Services Contribution payable by you for the financial year ended 30th June, 1954, has been assessed as under.

Taxable Income	Rate (Pence per £)	Tax and Contribution
£ 5000	72	£ 1500. 0. 0
£ 3987842	84	£ 1395744.14. 0
£		£
£ 3992842		£

Gross Tax and Contribution .. £ 1397244.14. 0

DEDUCT Rebates—

Section 46 .. on £ = £
Section 160AB .. on £ = £
C.L.I. (30/31 Rate) on £ = £
Section on £ = £

Net Tax and Contribution .. £ 1397244.14. 0

Additional Tax { for Late or No Return £
 { for understatement of Taxable Income of £ £

Total £ 1397244.14. 0

DEDUCT Credit under double tax agreement £

Date 12/5/55

AMOUNT PAYABLE .. £ 1397244.14. 0

IMPORTANT
 Please forward this notice
 with payment. Receipt will
 be printed by cash register
 in space above.

Hours for Payment:
 (At Address hereon)
 9.30 a.m. to 3 p.m.
 (Monday to Friday)

This amount
 is due and payable on 15/6/55
 After that date additional tax shall be due and payable at the rate
 of ten per centum per annum on the amount unpaid.

Fourth Floor, London Stores Building,
 152 Elizabeth Street, Melbourne, C.I

D. L. CANAVAN,
 Deputy Commissioner of Taxation

Objection may be lodged against this assessment within SIXTY DAYS after service of this notice; but notwithstanding any objection or appeal, the full amount of the tax and contribution must be paid within the time stated above. When making payment please observe instructions on back hereof.

EXHIBIT "A" (xxi): NOTICE OF ASSESSMENT OF 12.5.55

EXHIBIT "A"(xxii): ALTERATION SHEET ACCOMPANYING
NOTICE OF ASSESSMENT DATED 12TH MAY 1955.

Appellants
Exhibits

1953-1954

NAME Vacuum Oil Coy. Pty. Ltd. File No. C 1718
Alterations made in Return of Income derived during
year ended 30.6.53

A(xxii)

	Description of Alterations	£	£
	<u>Taxable Income as returned</u>		3,529,626
10	<u>Add Patents, Copyrights, search fees disallowed</u>		
	6 months ended 31.12.52 £ 27. 4.6		
	6 months ended 30.6.53 £129.19.0	157. 3.6	157
	<u>Add Provisions for holiday pay & long service leave (actual payments are allowed when made)</u>	92,517.2r	92,517
	<u>Add Expenditure on "one brand service stations":</u>		
	Bookends, cabinets, traymobiles	29,669	
20	Flying Red Horses & Mobilgas signs	23,230	52,899
	<u>Less additional depreciation allowable</u>	6,098	46,801
	<u>Add Painting Company's standard advertising color scheme at solo retail outlets</u>		124,849
30	<u>Add Periodical allowances paid to resellers for advertising rights and their continuing to adhere to trading agreements with Company</u>		77,593
	<u>Add Sundry sales promotion expenses at solo outlets</u>		121,299
	<u>Taxable Income as shown in attached Notice</u>	£	£3,992,842

Appellants
ExhibitsA(xxii)
continued

<u>Item</u>	<u>Depre- ciated value</u>	<u>Addit- ions for yr.to</u>	<u>Amount for Depre- ciation</u>	<u>Rate of Depre- ciation</u>	<u>Depre- ciation for year</u>
Signs & Hoardings	6,552	16,508	23,060	10%	1,153
Trade Utensils	5,986	22,053	28,039	7½%	1,052
	<u>Depre- ciated value</u>	<u>Addit- ions - year</u>			<u>Depre- ciation for year</u>
	<u>1.1.53</u>	<u>31.12.52</u>			
Signs & Hoardings	21,907	17,345	39,252	10%	1,963
Trade Utensils	26,987	24,491	51,478	7½%	1,930
Additional Depreciation allowable				∅	6,098

10

A(xxiii)

EXHIBIT A(xxiii): NOTICE OF OBJECTION TO ASSESSMENT
DATED 12TH MAY 1955.

20

VACUUM OIL COMPANY PROPRIETARY LIMITED HEREBY OBJECTS
against the assessment of Income Tax based on income
derived during the year ended 30th June 1953 and
issued to it by Notice of Assessment dated 12th May
1955 and claims that the assessment should be reduced
by -

- (a) Reducing the amount on which Income Tax and
Social Services Contribution has been assessed
by £463,216 and £3,992,842 to £3,529,626 or
alternatively by reducing such amount by some
part of the said sum of £463,216;
- (b) reducing the tax and contribution payable by
the amount of tax and contribution assessed on
or by reason of the inclusion in the sum on
which tax and contribution has been assessed
of the sum of £463,216 or alternatively on
some part of the said sum of £463,216.

30

THE GROUNDS on which the Company relies are -

1. The Return lodged by the Company was true and accurate and the amount of £3,529,626 shown therein as its taxable income was the actual taxable income of the Company which arose from its business during the financial year ended 30th June 1953.
2. The said assessment is erroneous in that it does not treat each of the following items (or alternatively some of such items or some part of each or some of such items) as being allowable deductions from the Company's assessable income namely:-
- Amounts charged in the Company's accounts as follows:-
- | | |
|---|---------------------|
| (a) Patents, copyrights,
search fees | £157 |
| (b) Provisions for holiday
pay and long service
leave | £92,517 |
| (c) Expenditure on "one brand
service stations" | |
| Bookends, cabinets,
traymobiles | £29,669 |
| Flying Red Horse and
Mobilgas signs | <u>23,230</u> |
| | £52,899 |
| Less | |
| Additional depreci-
ation allowed | <u>6,098</u> 46,801 |
| (d) Painting Company's standard
advertising colour scheme
at Solo retail outlets | 124,849 |
| (e) Periodical allowances paid
to resellers for advert-
ising rights and their
continuing to adhere to
trading agreements with
the company | 77,593 |
| (f) Sundry sales promotion
expenses at Solo outlets | 121,299 |
3. The said sums specified in sub-paragraphs (a), (b), (c), (d), (e) and (f) of paragraph 2 and each of them and each item constituting each

Appellants
Exhibits
A(xxiii)
continued

Appellants
Exhibits

A(xxiii)
continued

of them was a loss or out-going incurred by the Company in gaining or producing its assessable income and is an allowable deduction under Section 51 of the Income Tax and Social Services Contribution Assessment Act 1936-1953.

4. Alternatively to paragraph 3, the said sums specified in sub-paragraphs (a), (b), (c), (d), (e), and (f) of paragraph 2 hereof and each of them and each item constituting each of them was a loss or outgoing necessarily incurred in carrying on the Company's business for the purpose of gaining or producing its assessable income and is an allowable deduction under Section 51 of the said Act. 10
5. The said sums specified in sub-paragraphs (a), (b), (c), (d), (e) and (f) of paragraph 2 hereof are not and none of them is and no item included in any such sum is a loss or outgoing of capital or of a capital, private or domestic nature nor are the said sums or any of them or any part of any of them a loss or outgoing incurred in relation to the gaining or producing of exempt income. 20
6. The said assessment is contrary to the provisions of the said Act, is excessive and is wrong in law.

D A T E D this FIRST day of JULY 1955.

VACUUM OIL COMPANY
PROPRIETARY LIMITED

(sgd.) H. J. Price 30

Public Officer.

EXHIBIT "A"(xxiv): LETTER FROM RESPONDENT TO
APPELLANTAppellants
Exhibits

9th July, 1958.

A(xxiv)

The Vacuum Oil Company Pty. Ltd.,
29 Market Street,
MELBOURNE. C.1.

Dear Sirs,

INCOME TAX

10 Further to the recent discussions between your
Mr. Tipping and an officer of this Department in
connection with the company's assessments based on
income derived during the years ended 30th June, 1953
et seq., kindly advise the additional information
sought hereunder:-

1. Repairs

Whether any repairs (other than painting)
have been carried out by the company at either
company-owned or leased service stations, and if so:-

- 20 (i) the headings under which the deductions in
respect thereof have been claimed;
- (ii) amount of the deductions claimed for each
year
- (iii) the amount of repairs included in (ii)
above, the need for which arose prior to
date of purchase or lease.

2. Loans to Resellers

30 Whether deductions have been claimed in respect
of incidental expenditure incurred in connection
with loans made to resellers, in particular any
amounts included under the headings of:-

- (i) legal expenses - debt collection:
(ii) " " - other.

3. Other One Brand Expenditure

Particulars of deductions claimed in respect
of any expenditure relating to the one brand
marketing scheme, other than those mentioned
above and in the company's letters dated 17th May,
1954 and 12th July, 1954.

Appellants
Exhibits

A(xxiv)
continued

An early reply would be appreciated.

Yours faithfully,

(O.B.Hughes)

Acting Deputy Commissioner of Taxation

A(xxv)

EXHIBIT "A"(xxv): LETTER FROM APPELLANT TO RESPONDENT

18th August, 1958

Deputy Commissioner of Taxation,
London Stores Building,
Elizabeth Street,
Melbourne. C.I.

10

Attention: Mr. R. Harbison

Dear Sir,

In reply to your communication of 9th July we advise as follows:-

1. Repairs.

Repairs, other than painting, have been carried out at Company owned or leased service stations and claimed as allowable deductions under the heading of "Repairs and Maintenance" on Statement E of our tax returns in the following amounts:

20

Year ended 30 June	1953	£1,458
	1954	4,781
	1955	8,814
	1956	18,725

These amounts do not include repairs and maintenance relating to kerb pumps and tanks at Company owned or leased stations, which expenditure was claimed under the same general heading of "Repairs and Maintenance".

Since the financial year commencing 1st January 1957 our accounts have not segregated repairs and maintenance to kerb pumps and tanks, and we are therefore not in a position to provide a figure for this type of expenditure at service stations exclusive of that relative to kerb pumps and tanks for the second half of the tax year ended 30th June 1957.

30

For six months ended 31st December 1956 the amount appropriate to the figures quoted above was £10,050.

Appellants
Exhibits

Any expenditure on additions to company owned buildings (and this includes service stations) where the dimensions of the original building were increased, or if the dimensions were not changed but a new permanent improvement resulted, was capitalized.

A(xxv)
continued

10 In the case of leased service stations, such expenditure was charged to expense but included on Schedule F of our tax returns as non-deductible expense under the heading of "Alterations and Additions". Also included in this latter non-deductible item would be alterations, improvements and additions of a minor nature at both company owned and leased stations.

20 In answer to enquiry 1(iii) we believe that any repairs of the type envisaged are included either as non-deductible expense on Schedule F as "Alterations and Additions" or as "Advertising" on Schedule E and that they are not included in the figures set out in paragraph 1 of this letter. In regard to those included in Schedule E, the repairs or alterations would have been made by service station operators, out of advances granted to them by us for this specific purpose, and subsequently advised to the Department as being Sales Promotion Expense.

2. Loans to Resellers:

30 Deductions have been claimed in respect of incidental expenditure incurred in connection with loans made to resellers but it has not been possible, from our records, to determine the amount. In the belief that any such expenditure was incurred in gaining or producing assessable income, interest from these loans is included in our income - no provision was made to specifically account for such expenditure. It has not been our practice, however, to claim as deductible any legal expense of a capital nature.

3. One Brand Expenditure:

40 Apart from bad debts, of which you have been advised in separate correspondence, we do not know of any other expense claimed in connection with one brand marketing scheme which has not been covered,

Appellants
Exhibits

A(xxv)
continued

either in this reply, or in our letters of 17th May
1954 and 12th July 1954.

Yours very truly,

VACUUM OIL CO.PTY.LTD.

(Sgd.) H. W. Satchell.

Public Officer.

EXHIBIT "A" (xxvi)

Appellants
Exhibits**NOTICE OF AMENDED ASSESSMENT**

(BASED ON INCOME DERIVED DURING YEAR ENDED 30 / 6 / 1953)

A(xxvi)

To VACUUM OIL COY. PTY. LTD.
29 Market Street,
MELBOURNE. C.I.

In accordance with the provisions of the *Income Tax and Social Services Contribution Assessment Act, 1936-1953*, the Assessment for the financial year ended 30th June, 1954, notified to you on 12/5/1955 has been amended as under:

			TAXABLE INCOME
Taxable Income previously assessed .. .. .	..	..	£3,992,842
Amended on account of— Adjustments as per attached alteration sheet		DEDUCT	119,048
Amended Taxable Income	£ 5,000	£ 3,868,794	£3,873,794
Rate (pence per £)	72d	84d	Tax and Contribution
Amended Tax and Contribution	£1500. 0.-	£1354077.18.-	£ 1,355,577.18.-
DEDUCT Rebates—			
Section 46 .. on £.....	= £.....	:	
Section 160AB .. on £.....	= £.....	:	
C.L.I. (30/31 Rate) on £.....	= £.....	:	
Section..... .. on £.....	= £.....	:	
Net Tax and Contribution ..			£1,355,577.18.-
Additional Tax {	for Late or No Return.. .. .	..	£
	for understatement of Taxable Income of £.....	..	£
TOTAL ..			£
DEDUCT Credit			£
Amount Payable			£1,355,577.18.-
Amount previously paid			£1,284,000. 0.-
Date 10/4/1959			BALANCE DUE £ 71,577.18.-

IMPORTANT
Please forward this notice with payment. Receipt will be printed by cash register in space above.
Hours for Payment: (at address hereon)
9.30 a.m. to 3 p.m.
(Monday to Friday)

This amount ^{V.B.B.} is due and payable on 15/6/1955.
After that date additional tax shall be due and payable at the rate of ten per centum per annum on the amount unpaid.

Fourth Floor, London Stores Building,
152 Elizabeth Street, Melbourne, C.I.

O. B. HUGHES
Deputy Commissioner of Taxation.

Objection may be lodged within 60 days after service of this Notice against the imposition of a fresh liability in respect of any particular or the increase of an existing liability in respect of any particular caused by this assessment; but, notwithstanding any such objection, the full amount of the Tax and Contribution must be paid on or before the date of payment specified hereon.

EXHIBIT "A"(xxvii): ALTERATION SHEET ACCOMPANYING
NOTICE OF AMENDED ASSESSMENT DATED 10TH APRIL 1959.

Appellants
Exhibits

VACUUM OIL COY.PTY. LTD.

A(xxvii)

Year ended 30th June,1953

Taxable Income as previously assessed 3,992,842. 0. 0

ADD

Repairs at Service Stations regarded as capital expenditure	1,458. 0. 0
Legal expenses regarded as capital expenditure	<u>4,500. 0. 0</u>
	3,998,800. 0. 0

10

LESS

Painting at Service Stations	124,849	
Patent and Copyrights	<u>157</u>	<u>125,006. 0. 0</u>

Amended Taxable Income as per attached Notice of Amended Assessment	<u><u>3,873,794. 0. 0</u></u>
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EXHIBIT "A"(xxviii): NOTICE OF DETERMINATION OF
OBJECTION DATED 1ST JULY 1955.

A(xxviii)

20

10th April, 1959

Vacuum Oil Coy. Pty. Ltd.,
29 Market Street,
MELBOURNE. C.1.

INCOME TAX AND SOCIAL SERVICES CONTRIBUTION
ASSESSMENT ACT 1936 - 1953

Dear Sirs,

30

I desire to inform you that your objection, dated 1/7/1955 to the assessment, notice of which issued on 12/5/1955 in respect of income derived during the year ended 30/6/1953 has been considered and has been allowed to the extent indicated in the Notice of Amended Assessment attached.

If the assessment as amended is not acceptable it is now competent for you to request that the decision be referred to a Board of Review for review,

Appellants
Exhibits

A(xxviii)
continued

or to request that your objection be treated as an appeal and forwarded either to the High Court or to the Supreme Court of a State. However, in accordance with Section 187 of the Act it is necessary that you make your request in writing within sixty days after the service by post or otherwise of this notification. Also it is necessary that a fee of £1 accompany the request in accordance with the provisions of Section 188 of the Act.

Sections 187 and 188 are quoted on the back hereof. 10

Yours faithfully,

(O. B. HUGHES)

Deputy Commissioner of Taxation.

A(xxix)

EXHIBIT "A"(xxix): REQUEST BY APPELLANT TO TREAT ITS OBJECTION AS AN APPEAL AND TO FORWARD IT TO THE HIGH COURT.

29 Market Street,
Melbourne. C.1.

4th June, 1959. 20

The Deputy Commissioner of Taxation,
London Stores Building,
152 Elizabeth Street,
Melbourne. C.1

Dear Sir,

Reference No. C.1718

With reference to your communication dated 10th April 1959 wherein notice is given that the Company's objection lodged against assessment of income tax and social services contribution in respect of the income 30 year ended 30th June 1953 has been allowed to the extent indicated in the Notice of Amended Assessment attached thereto, Vacuum Oil Company Proprietary Limited hereby gives you notice that it is dissatisfied with your decision on the objection and requests you to treat its objection as an appeal and to forward it to the High Court of Australia.

A cheque for £1, being deposit on such request, is enclosed herewith.

Yours faithfully, 40
VACUUM OIL COMPANY PROPRIETARY LTD.

(Sgd) H. W. Satchell
Public Officer.

EXHIBIT "A"(xxx): NOTICE OF OBJECTION TO AMENDED
ASSESSMENT DATED 10TH APRIL 1959.

Appellants
Exhibits

VACUUM OIL COMPANY PROPRIETARY LIMITED HEREBY
OBJECTS against the amended assessment of income tax based on income derived during the year ended 30th June 1953 and issued to it by Notice of Amended Assessment dated 10th April 1959 and claims that the assessment should be reduced -

A(xxx)

- 10 (a) by reducing the amount on which income tax and social services contribution has been assessed by £344,168 from £3,873,794 to £3,529,626 or alternatively by reducing such amount by some part of the said sum of £344,168;
- (b) by reducing the tax and contribution payable by the amount of tax and contribution assessed on or by reason of the inclusion in the sum on which tax and contribution has been assessed of the sum of £344,168, or alternatively on some part of the said sum of £344,168.

20 THE GROUNDS on which the Company relies are:-

1. The Return lodged by the Company was true and accurate and the amount of £3,529,626 shown therein as its taxable income was the actual taxable income of the Company which arose from its business during the financial year ended 30th June 1953.
2. Insofar as the said amended assessment does not allow the Company's objection dated 1st July 1955 against the assessment dated 12th May 1955 in respect of the income derived in the year ended 30th June 1953, the Company relies upon and refers to and repeats the grounds of objection contained in its Notice of Objection dated 1st July 1955, i.e. in relation to the Commissioner's failure to allow each of the following items (or alternatively some of such items or some part of each or some of such items) as being allowable deductions from the Company's assessable income, viz. - amounts charged in the Company's accounts as follows:-

40

(a) Provisions for holiday pay and long service leave	£92,517
(b) Expenditure on "one brand service stations" -	-
Bookends, Cabinets,	
Traymobiles	£29,669
Flying Red Horse and	
Mobilgas signs	23,230
	<u>£52,899</u>

Appellants Exhibits	Brought forward	£52,899	£ 92,517	
A(xxx) continued	Less additional depreciation allowed	<u>6,098</u>	46,801	
	(c) Periodical allowances paid to resellers for advertising rights and their continuing to adhere to Trading Agreements with the Company		77,593	
	(d) Sundry sales promotion expenses at solo outlets		121,299	
	3.(a) By an assessment (hereinafter called "the original assessment") notified to the Company on the 12th day of May 1955 the Company was assessed to tax and contribution in respect of income derived during the year ended 30th June 1953 and the tax and contribution so assessed became due and payable under such assessment on the 15th day of June 1955.			10
	(b) Prior to the making of the original assessment the Company had made to the Commissioner a full and true disclosure of all the material facts necessary for its assessment.			20
	(c) By the said Amended Assessment the Commissioner has purported to amend the original assessment so as to increase the liability of the Company in certain particulars notwithstanding the expiration of three years from the date upon which the tax became due and payable under the original assess- ment in that the Commissioner has purported to include in the Company's taxable income the sums of £1,458 and £4,500 referred to in the Alteration Sheet accompanying the said Amended Assessment.			30
	(d) The said Amended Assessment in so far as it purports to include the said two sums in the taxable income of the Company and to assess tax thereon is not authorized by Section 170 of the said Act and in purporting to include such sums as aforesaid and to assess tax thereon the Commissioner has acted contrary to law and the said Amended Assessment is to that extent contrary to the provisions of the said Act and excessive and wrong in law.			40
	4.(a) Alternatively to paragraph 3 the said Amended Assessment in so far as it purports by way of amendment to include in the Company's taxable			

income the said sums of £1,458 and £4,500 is not made to correct any error in calculation or any mistake of fact and is not authorized by Section 170.

Appellants
Exhibits

A(xxx)
continued

(b) Prior to the making of the original assessment the Company had made to the Commissioner a full and true disclosure of all the material facts necessary for its assessment.

10 (c) The said Amended Assessment is, to the extent that it purports by way of amendment to include the said two sums in the Company's taxable income and to assess tax thereon, not authorized by Section 170 of the said Act and in purporting to make the same the Commissioner has acted contrary to law and the said Amended Assessment is to that extent contrary to the provisions of the said Act and excessive and wrong in law.

20 5. The said Amended Assessment is erroneous in that it does not treat each of the following items referred to in the said Alteration Sheet (or alternatively one of such items or some part of each or one of such items) as being allowable deductions from the Company's assessable income, viz.-

(a) Repairs at Service Stations	£1,458
(b) Legal Expenses	£4,500

30 6. The said sums specified in sub-paragraphs (a) and (b) of paragraph 5 and each of them and each item constituting each of them was a loss or outgoing incurred by the Company in gaining or producing its assessable income and is an allowable deduction under Section 51 of the Income Tax and Social Services Contribution Assessment Act 1936-1953.

40 7. Alternatively to paragraph 6, the said sums specified in sub-paragraphs (a) and (b) of paragraph 5 hereof and each of them and each item constituting each of them was a loss or outgoing necessarily incurred in carrying on the Company's business for the purpose of gaining or producing its assessable income and is an allowable deduction under Section 51 of the said Act.

8. The said sums specified in sub-paragraphs (a) and (b) of paragraph 5 hereof are not and none of them is and no item included in any such sum is a loss or outgoing of capital or of a capital private or

Appellants
Exhibits

A(xxx)
continued

domestic nature nor are the said sums or any of them or any part of any of them a loss or outgoing incurred in relation to the gaining or producing of exempt income.

9. The said sum specified in sub-paragraph (a) of paragraph 5 hereof was an expenditure incurred by the Company in the year of income for repairs to premises or part of premises occupied or used by the Company for the purpose of producing assessable income and is an allowable deduction under Section 53 of the said Act. 10
10. Alternatively to paragraph 9, the said sum specified in sub-paragraph (a) of paragraph 5 hereof was an expenditure incurred by the Company in the year of income for repairs to premises or part of premises occupied or used by the Company in carrying on a business for the purpose of producing assessable income and is an allowable deduction under Section 53 of the said Act.
11. The said amended assessment is contrary to the provisions of the said Act, is excessive and is wrong in law. 20

DATED this 4th day of June 1959

VACUUM OIL COMPANY PROPRIETARY
LIMITED

(Sgd) H. W. Satchell
Public Officer.

A(xxxi)

EXHIBIT "A"(xxxi): NOTICE OF DISALLOWANCE OF
OBJECTION DATED 4TH JUNE 1959 TO AMENDED ASSESSMENT

2nd September, 1959. 30

Vacuum Oil Company Pty. Ltd.
29 Market Street,
MELBOURNE. C.1.

INCOME TAX AND SOCIAL SERVICES CONTRIBUTION
ASSESSMENT ACT 1936-1953.

Dear Sirs,

I desire to inform you that your objection, dated 4.6.1959 to the amended assessment, notice of

which issued on 10.4.1959 in respect of income derived during the year ended 30.6.1953 has been considered and has been disallowed.

Appellants
Exhibits

A(xxxi)
continued

10 It is now competent for you to request that the decision be referred to a Board of Review for review, or to request that your objection be treated as an appeal and forwarded either to the High Court or to the Supreme Court of a State. However, in accordance with Section 187 of the Act it is necessary that you make your request in writing within sixty days after the service by post or otherwise of this notification. Also it is necessary that a fee of £1 accompany the request in accordance with the provisions of Section 188 of the Act.

Sections 187 and 188 are quoted on the back hereof.

Yours faithfully,

(O. B. HUGHES)

Deputy Commissioner of Taxation.

20 EXHIBIT "A"(xxxii): REQUEST BY APPELLANT TO TREAT ITS OBJECTION TO THE AMENDED ASSESSMENT AS AN APPEAL AND TO FORWARD IT TO THE HIGH COURT. A(xxxii)

29 Market Street,
Melbourne. C.1.

Sept. 15, 1959.

The Deputy Commissioner of Taxation,
London Stores Building,
152 Elizabeth Street,
MELBOURNE. C.1.

30 Dear Sir, Reference No. C.1718.

40 With reference to your communication dated 2nd September 1959 wherein notice is given that the Company's objection lodged against the amended assessment of income tax and social services contribution in respect of the income year ended 30th June 1953 has been disallowed, Vacuum Oil Company Proprietary Limited hereby gives you notice that it is dissatisfied with your decision on the objection and requests you to treat its objection as an appeal and to forward it to the High Court of Australia.

Appellants
Exhibits

A(xxxii)
continued

A cheque for £1, being deposit on such request
is enclosed herewith.

Yours faithfully,

VACUUM OIL COMPANY PROPRIETARY LIMITED.

(Sgd) H. W. Satchell

Public Officer.

A(xxxiii)

EXHIBIT "A"(xxxiii): LETTER FROM RESPONDENT TO
APPELLANT

13th October, 1959

Vacuum Oil Co. Pty. Ltd.,
29 Market Street,
MELBOURNE. C.I.

10

Dear Sirs,

INCOME TAX: APPEAL TO HIGH COURT
INCOME YEAR ENDED 30TH JUNE, 1953

Reference is invited to your communications dated
4th June 1959 and 15th September, 1959, requesting
that your objections to the assessment and amended
assessment, respectively, in respect of the year of
income ended 30th June 1953 be treated as appeals and 20
forwarded to the High Court of Australia.

In connection with your claim for deductions
totalling £245,693 (other than painting) in respect
of "one brand service stations", would you please
furnish information as to how the various amounts
comprising this total sum are made up, and the
basis of computation of each payment. Also please
supply the names of each recipient, and state the
type of agreement relevant to each payment. Seven
copies of each type of agreement are desired.

30

Yours faithfully,

(O. B. HUGHES)

DEPUTY COMMISSIONER OF TAXATION.

EXHIBIT "A"(xxxiv): LETTER FROM APPELLANT TO
RESPONDENTAppellants
Exhibits

2nd March, 1960

A(xxxiv)

Deputy Commissioner of Taxation,
London Stores Building,
Elizabeth Street,
Melbourne. C.1.

Dear Sir,

10

Income Tax Appeal to High Court
Year ended 30 June, 1953

Following receipt of your letter of Oct. 13th,
and subsequent amplification of your requirements
in discussions with officers of your legal department
Oct. 15, we are forwarding seven copies of the
following documents:

- Attachment (1) Memorandum and Articles of Association
- " (2) Trading Agreement - Form SS1(9 clause)
- " (3) Trading Agreement - Form SS1 (11 clause)
introduced June, 1952
- 20 " (4) Trading Agreement - Form SS1 (15 clause)
introduced Jan. 1959
- " (5) SS1B Agreement predominantly used
during relevant period.
- " (6) SS1B (GQ) Agreement as amended in 1956 -
Payments based on fixed gallonage
- " (7) SS1B (FP) Agreement as amended in 1956 -
payments so much per gallon for a fixed
period.
- " (8) SS1C Agreement predominantly used during
relevant period.
- 30 " (9) SS1C (GQ) Agreement as amended in 1956 -
Payments based on fixed gallonage
- " (10) SS1C (FP) Agreement as amended in 1956 -
Payments so much per gallon for a fixed
period.
- " (11) Statement of periodical allowances to
resellers during the relevant period.
- " (12) Breakdown of Sundry Sales Promotion
Expense at Solo Outlets.
- " (13) Accounting Instructinn dated 4th July
1952 on the subject of SS1B loans.

Appellants
Exhibits

A(xxxiv)
continued

Also enclosed are three typical correspondence files indicating the nature of negotiations with dealers to whom loans and allowances under SS1B Agreements, allowances under SS1C Agreements, and advances for sales promotional expense, were made. The files relate to Commercial Motors Pty. Ltd. Prahran, Kew Junction Service Station, Kew, and J.D.Byrne, Annandale, N.S.W.

In connection with Item (2) above, we would like to add the following comments,

10

Trading Agreement: Although there were may different printings of this Form SS1 during the relevant period, all fall into one or the other of two forms of the agreement - approximately half of each being used during the tax year in question. Seven copies of both are provided - one is a nine Clause agreement (Attachment 2) and the other, which succeeded it in June 1952, has 11 clauses (Attachment 3). The latter form continued in use until January 1959 when it was replaced by the 15 clause agreement (Attachment 4).

20

SS1B and SS1C Agreement - Approximately 85% of these agreements were in the form identical with attachments (5) and (8). The remainder had a variety of minor variations, but were substantially the same type of agreements.

The analysis of periodical allowances provides a representative 10% sample of allowances detailed under individual dealers with the remainder shown as a "Sundry dealers" figure to make up the total. You will notice that this statement gives a summarized indication of the lease position as between our company and the dealers to whom periodical allowances were made, as was suggested in the discussion referred to earlier. It also shows the date the SS1B or SS1C was signed, period of loan, rate of interest, amount of interest and amount of principal repaid and the periodical allowances to dealers charged to expense during the tax year in question.

30

It will be observed that the total of periodical allowances under both SS1B and SS1C agreements is only £66,902, or £10,691 less than the amount previously advised to the Department. You will appreciate that, believing such allowances to be deductible expenses, we had not at that time made specific accounting arrangements to record them in a

40

particular sub-division of our expense account. They were debited to sales promotion expense, a sub-item of our expense account which included a variety of items of an advertising or sales promotional nature, and claimed as deductible expenditure in our tax return under the heading "Advertising".

Appellants
Exhibits

A(xxxiv)
continued

10 The amount of £77,593 originally advised to the Department was accumulated from individual notational advices on expense dissection returns received from branches. Our recent investigations in connection with this appeal to the High Court have revealed that in several States inaccuracies occurred due to a misinterpretation of instructions with a resultant overstatement to the Department of the amount actually allowed to dealers as periodical allowances. We are satisfied that the statement now enclosed discloses the correct figure and that
20 the difference previously overstated was expenditure of the same class as that normally claimed in our returns, and allowed by the Department, under the heading "Advertising".

In the circumstances we respectfully request that it be mutually agreed, before we go to Court, that the amount in dispute under this heading be reduced from £77,593 to £66,902.

30 In explanation of our accounting procedure, we have attached copies of the accounting instructions to branches dated 4th July 1952 - Attachment (13). Summarized, the loan was treated as a receivable, the interest as assessable income and an additional receivable, the repayments as a reduction of the receivable and the periodical allowance as a charge to expense which was claimed in our return as deductible as "Advertising".

40 The amount of the monthly allowance under SS1B agreements was, generally speaking, the amount necessary to redeem the loan plus interest by equal monthly instalments over the currency of the loan. But primarily the amount of the loan was determined by the estimated gallonage which could be expected from the dealer and viewed in the light of what concession per gallon we could afford to offer at a particular station, and at the same time provide the operator with necessary working capital.

Appellants
Exhibits
A(xxxiv)
continued

In the case of allowances under SSIC agreements, no loan was involved but again, the usual procedure was to base the payment on estimated gallonage over the period of the agreement.

With regard to "Sundry Sales Promotion Expense at Solo Outlets" payments were too numerous and working papers at branches inadequate to provide a fully detailed schedule of payments made to or on behalf of each individual dealer. We have, however, been able to analyze debits to the appropriate sub-code of expense to which this type of expenditure was charged, and to break it down into broad categories. This breakdown is primarily as between payments made directly to contractors on behalf of resellers, and payments made directly to resellers; and then secondly payments under each of those categories split as follows: 10

- (a) Alterations to and concreting of driveways
- (b) Structural alterations and repairs to buildings
- (c) Purchase and installation of plant and equipment
- (d) Other 20

Attachment (12) summarizes the amounts expended under the above categories. These payments, made to promote sales of our products, were charged to expense and also claimed as deductible under the heading of "Advertising" in our return.

Payments of this nature were not covered by any particular agreement with the dealer other than the normal Trading Agreement. Branch offices had authority to spend up to £515 on a station to bring it more into line with the standard Mobilgas station design and provide greater accessibility to promote the sale of our products. Expenditure in excess of £515 required Head Office approval, and you will observe from the breakdown of this type of expenditure, that the major part of the money spent was paid directly to outside contractors to ensure that this merchandising expenditure was carried out to suit our requirements. 30

It will be noted that the analysis done by our own branches offices for the purpose of our appeal to the Court, produces a total which is £363 less than the amount of £121,299 originally advised to the Department. In view of the small discrepancy, it is not suggested that any adjustment be made to the amount in dispute. 40

We accept the disallowance in your amended assessment of the following items and accordingly withdraw the relevant grounds of objection.

Appellants
Exhibits

(a) Provision for holiday pay and long service leave	£92,517
(b) Expenditure on Book Ends, Cabinets, Traymobiles, etc. - net of depreciation allowed	£46,801
(c) Repairs capitalized	£ 1,458

A(xxxiv)
continued

10 With regard to the disallowance of £4,500 legal expenses, we suggest there should be mutual agreement that this should stand or fall by the Court's decision on periodical allowances.

We trust the foregoing information and attached documents will meet your requirements. If not, we will make our best endeavours to provide whatever additional data may be necessary.

Yours very truly,
VACUUM OIL CO. PTY. LTD.

20

(Sgd.) H. W. Satchell.

/TMB
Attach.

Public Officer

EXHIBIT "A"(xxxiv)(b): TRADING AGREEMENT
(9 CLAUSE)

A(xxxiv)(b)

Form SS1 Cancelled
 1/-
 Stamp Duty

30

AN AGREEMENT made the 21st day of April 1952
BETWEEN VACUUM OIL COMPANY PROPRIETARY LIMITED of
58 MARGARET ST., SYDNEY in the State of NEW SOUTH WALES
(hereinafter called "the Company") of the one part and
Gordon Sperry Phipps of Clearview Garage, Chatswood
in the said State (hereinafter called "the Operator")
of the other part

WHEREAS the Operator carries on business as a garage
and service station operator at Corner 283 Mowbray
Rd. and Devonshire St. (hereinafter called "the
service station")

AND WHEREAS the Company is desirous of assisting the

Appellants
Exhibits

A(xxxiv)(b)
continued

Operator to increase his business and of providing him with adequate supplies of petroleum products for that purpose NOW THIS AGREEMENT WITNESSETH

1. THE Company agrees to provide the Operator with marketing and merchandising services free of charge such services to include the following:-

- (a) the painting in the Company's colour scheme of the exterior of the service station proper subject to such approvals and authorities as may be required; 10
- (b) reimbursing the Operator for the reasonable cost of such minor alterations to the service station as will in the opinion of the Company enable the service station to give better service to its customers;
- (c) assisting the Operator to obtain loans at a reasonable rate of interest if he requires finance for the purpose of his business;
- (d) provision of architectural advice and preliminary plans for alterations or additions to or reconstruction of the service station which the Operator and the Company mutually deem desirable; 20
- (e) assistance in the training of the Operator and his staff in modern merchandising methods;
- (f) the provision of a simplified accounting procedure for the Operator's use;
- (g) assistance and advice to the Operator in the advertising of his products and service in neighbourhood solicitation and business reminders to his customers. 30

2. THE Company agrees to provide and pay half the cost of advertising aids approved by the Company from time to time for use by the Operator on the service station.

3. THE Company shall sell to the Operator at the ruling market price and deliver to the service station all motor fuels which the Operator may from time to time require for resale at the service station. 40

4. IN consideration of the foregoing the Operator covenants that he will purchase from the Company at

the ruling market price all motor fuels intended by him for resale at the service station and will not purchase otherwise than from the Company any motor fuels intended by him for resale as aforesaid nor offer for sale or sell at the service station any motor fuels except as shall have been bona fide purchased by him from the Company.

Appellants
Exhibits
———
A(xxxiv)(b)
continued

10 5. IF at any time or times (otherwise than by reason
of the failure of the Operator to pay for goods
supplied) the Company is unable to supply quantities
of motor fuels in sufficient quantities to meet the
Operator's requirements for resale at the service
station the Operator may notwithstanding clause 4
during such period as the Company is unable to supply
as aforesaid supply himself from other sources with
such quantities of such motor fuels which the Company
is unable to supply as are required to carry on the
20 Operator's business at the service station but no
failure on the part of the Company shall release the
Operator from future liability to perform and observe
the provisions of clause 4.

30 6. NOTWITHSTANDING the provisions of clause 3 the
Company shall not be liable for any failure to sell
and deliver any motor fuels if such failure in the
opinion of the Company is due to any cause beyond
its control or to the failure of the Operator to
pay for goods supplied or other conduct by the
operator in the course of carrying on his business
as a garage and service station operator which in
the Company's opinion constitutes improper trading
practice.

7. THIS agreement shall commence on the 21st day
of April 1952 and continue for five years and there-
after until determined by six months' prior notice
in writing given by either party to the other so as
to determine at the end of a calendar month

40 PROVIDED THAT this agreement may be determined at
any time without notice

- (a) by either party if the other party commits a breach hereof;
- (b) by the Company if the Operator ceases to carry on business as a garage and service station

Appellants
Exhibits

A(xxxiv)(b)
continued

operator at the service station or becomes bankrupt or (being a company) goes into liquidation (other than for the purpose of reconstruction or amalgamation) or makes any arrangement or composition with or assignment for the benefit of creditors or suffers any execution or distress to be levied upon his goods.

8. NOTHING herein contained shall prevent the Operator from selling at the service station motor fuels other than those purchased from the Company which have been purchased by the Operator in the ordinary course of his trading before the commencement of this agreement. 10

9. IN this Agreement words importing the singular number shall include the plural and the masculine gender shall include the feminine or neuter.

IN WITNESS whereof the parties hereto have executed these presents the day and year first hereinbefore written.

EXECUTED on behalf of Vacuum Oil Company Proprietary Limited by (Sgd) being signed by the officer whose signature appears opposite hereto. Authorised Officer 20

EXECUTED by the Operator in the presence of : Clearview Garage Operator G. W. Phipps.

WITNESS: Dallas Hodgins

ADDRESS: Eddy Rd. Chatswood.

A(xxxiv)(c)

EXHIBIT A(xxxiv)(c): TRADING AGREEMENT (11-CLAUSE) 30

Form SS1

AN AGREEMENT made the _____ day of _____ 195
BETWEEN VACUUM OIL COMPANY PROPRIETARY LIMITED of _____
in the State of _____ (hereinafter called "the Company") of the one part and
_____ of
in the said State (hereinafter called "the Operator")

of the other part

Appellants
Exhibits

WHEREAS the Operator carries on business as a garage and service station operator at (hereinafter called "the service station")

A(xxxiv)(c)
continued

AND WHEREAS the Company is desirous of assisting the Operator to increase his business and of providing him with adequate supplies of petroleum products for that purpose NOW THIS AGREEMENT WITNESSETH

- 10 1. THE Company agrees to provide the Operator with marketing and merchandising services free of charge such services to include the following:-
- (a) the painting in the Company's colour scheme of the exterior of the service station proper subject to such approvals and authorities as may be required;
 - (b) reimbursing the Operator for the reasonable cost of such minor alterations to the service station as will in the opinion of the Company enable the service station to give better service to its customers;
 - 20 (c) assisting the Operator to obtain loans at a reasonable rate of interest if he requires finance for the purpose of his business;
 - (d) provision of architectural advice and preliminary plans for alterations or additions to or reconstruction of the service station which the Operator and the Company mutually deem desirable;
 - 30 (e) assistance in the training of the Operator and his staff in modern merchandising methods;
 - (f) the provision of a simplified accounting procedure for the Operator's use;
 - (g) assistance and advice to the Operator in the advertising of his products and service in neighbourhood solicitation and business reminders to his customers.
- 40 2. THE Company agrees to provide and pay half the cost of advertising aids approved by the Company from time to time for use by the Operator on the service station.

Appellants
Exhibits

—
A(xxxiv)(c)
continued

3. IN consideration of the foregoing the Operator covenants that he will purchase from the Company at the ruling market price all motor fuels intended by him for resale at the service station and will not purchase otherwise than from the Company any motor fuels intended by him for resale as aforesaid nor offer for sale or sell at the service station any motor fuels except as shall have been bona fide purchased by him from the Company.

4. THE Company shall sell to the Operator at the ruling market price and deliver to the service station all motor fuels which the Operator may from time to time require for resale at the service station. 10

5. IF at any time or times (otherwise than by reason of the failure of the Operator to pay for goods supplied) the Company is unable to supply quantities of motor fuels in sufficient quantities to meet the Operator's requirements for resale at the service station the Operator may notwithstanding clause 3 during such period as the Company is unable to supply as aforesaid supply himself from other sources with such quantities of such motor fuels which the Company is unable to supply as are required to carry on the Operator's business at the service station but no failure on the part of the Company shall release the Operator from future liability to perform and observe the provisions of clause 3. 20

6. NOTWITHSTANDING the provisions of clause 4 the Company shall not be liable for any failure to sell and deliver any motor fuels if such failure in the opinion of the Company is due in any substantial part to any cause beyond its control or to the failure of the Operator to pay for goods supplied. 30

7. THE Operator shall permit the Company at any time and from time to time to paint write or place on or affix to the Operator's premises any sign hoarding or other medium for advertising the Company's products and to paint or otherwise colour the exterior of the Operator's premises in the Company's colour scheme and to repaint alter or remove any of the same. The Operator shall maintain the Company's brand names and trade marks on products supplied by the Company and all facilities in which they are handled as the Company shall from time to time require. The Operator shall not damage, paint over, cover, remove, obstruct from view of alter any 40

such brand names, trade marks, sign, hoarding or other advertising medium or painting as aforesaid nor shall the Operator display any advertisement (including colour scheme) on the Operator's premises that shall not have been approved by the Company other than brand names or trade marks appearing on products held by the Operator for sale in the course of the Operator's business pursuant to this Agreement.

Appellants
Exhibits
A(xxxiv)(c)
continued

10 8. THIS agreement shall commence on the _____ day
of _____ 195_____ and continue for _____ years
and thereafter until determined by six months' prior
notice in writing given by either party to the other
so as to determine at the end of a calendar month
PROVIDED THAT this agreement may be determined at any
time without notice

(a) by either party if the other party commits a
breach hereof;

20 (b) by the Company if the Operator ceases to carry
on business as a garage and service station
operator at the service station or becomes
bankrupt or (being a company) goes into
liquidation (other than for the purpose of
reconstruction or amalgamation) or makes any
arrangement or composition with or assignment
for the benefit of creditors or suffers any
execution or distress to be levied upon his
goods.

30 9. NOTHING herein contained shall prevent the
Operator from selling at the service station motor
fuels other than those purchased from the Company
which have been purchased by the Operator in the
ordinary course of his trading before the
commencement of this agreement.

40 10. THIS Agreement shall be binding upon the
Operator his executors administrators and assigns.
The Operator shall not sell lease assign or otherwise
dispose of the whole or any part of his estate or
interest in the service station or any part thereof
or in the garage and service station business carried
on by him thereon unless the Company approves in
writing of the person to whom the Operator proposes
to dispose thereof and such person executes the
Company's form of Trading Agreement for a period not
being less than the then unexpired portion of the
period referred to in Clause 8 hereof PROVIDED

Appellants Exhibits

A(xxxiv)(c) continued

however that the Company's approval shall not be unreasonably withheld in the case of a person willing to execute such form of Trading Agreement as aforesaid.

11. IN this Agreement words importing the singular number shall include the plural and the masculine gender shall include the feminine or neuter.

IN WITNESS whereof the parties hereto have executed these presents the day and year first hereinbefore written.

EXECUTED on behalf of Vacuum Oil Company Proprietary Limited by being signed by the officer whose signature appears opposite hereto. Authorised Officer 10

EXECUTED by the Operator in the presence of: Operator

WITNESS

ADDRESS

A(xxxiv)(d)

EXHIBIT "A"(xxxiv)(d): SSL-B AGREEMENT (10th April 1952) PREDOMINANTLY USED DURING RELEVANT PERIOD. 20

THIS DEED made the day of One thousand nine hundred and fifty BETWEEN of in the State of Motor Garage Proprietor (hereinafter called "the Borrower") of the one part and VACUUM OIL COMPANY PROPRIETARY LIMITED of in the said State (hereinafter called "the Company") of the other part WHEREAS the Borrower is conducting the business of a Motor Garage or Service Station Proprietor on certain premises known as 30

(hereinafter called "the said premises") AND WHEREAS the Borrower has requested the Company to lend him the sum of £ which the Company has agreed to do subject to the covenants on the part of the Borrower and the stipulations and conditions hereinafter contained NOW THIS DEED WITNESSETH as follows:

1. In consideration of the sum of £ paid by

the Company on or before the execution hereof to the Borrower (the receipt whereof is hereby acknowledged) the Borrower for himself his executors and administrators doth hereby covenant with the Company its successors and assigns to repay to the Company the said sum of £ (hereinafter called "the principal sum") together with interest thereon or on so much thereof as shall for the time being remain unpaid at the rate of £6.0.0. per centum per annum computed from the day of 19 by monthly payments of £ on the 1st day of each month commencing on the 1st day of 195 until the whole of the Principal sum and Interest thereon as aforesaid has been paid. The said monthly payments when received by the Company shall be applied by the Company firstly in payment of interest as aforesaid and secondly in reduction of the principal sum.

Appellants
Exhibits
A(xxxiv)(d)
continued

2. The Borrower shall execute the Company's form of Trading Agreement for a period of years from the date hereof and during that period he shall comply with the terms and conditions thereof in all respects so long as he continues to occupy the said Garage or Service Station.

3. THE Borrower HEREBY COVENANTS with the Company that during the period referred to in Clause 2 hereof

(a) he will not sell transfer assign or otherwise dispose of the whole or any part of his estate or interest in the said premises or any part thereof or in the garage and service station business carried on by him thereon unless --

(i) in case he is proposing to sell the same he shall have first offered the same in writing for acquisition by the Company on the same terms and conditions and at the same price as those on and at which he bona fide proposes to sell the same to any other person or company and the Company shall have rejected the same or shall have failed to accept the same within fourteen days after receipt of such offer, and

(ii) in case he is proposing to sell the same and the Company has rejected or failed to accept his offer, or in case he is proposing to dispose of the same otherwise than by

Appellants
ExhibitsA(xxxiv)(d)
continued

sale the Company approves of the person or company to whom the Borrower proposes to dispose thereof and such person or company executes the Company's form of Trading Agreement for a period not being less than the then unexpired portion of the period referred to in Clause 2 hereof and undertakes to the satisfaction of the Company to assume and carry out the obligations and liability of the Borrower under this Agreement for the said unexpired portion of the said period provided however that the Company's approval shall not be unreasonably withheld in the case of a person or company willing to execute such form of Trading Agreement as aforesaid; 10

(b) unless and until he shall have disposed of the same in conformity with the provisions of paragraph (a) hereof he will during the said period continue to remain personally in occupation of the said premises and will not vacate or part with the possession of the same or any part thereof in favour of any other person or company. 20

4. THE Borrower hereby grants to the Company the sole and exclusive advertising rights in relation to all parts of the said Garage or Service Station for the period ending on the day of 19

5. DURING the continuance of the Trading Agreement referred to in Clause 2 hereof the Company shall have the right from time to time to enter the said Garage or Service Station together with its servants and agents and trainee service station and garage operators undergoing training by the Company (hereinafter called "trainees") and conduct thereon training courses in service station and garage operation PROVIDED THAT the Company shall only enter as aforesaid at such times as are convenient to the Borrower. Whenever such training course is being held at the said Garage or Service Station the Company's servants and agents and the trainees shall have the unrestricted right to attend to the refuelling lubrication and general servicing of the vehicles of the customers of the Borrower and for that purpose to use the Borrower's refuelling lubrication and servicing facilities plant equipment tools utensils and stock-in-trade and to have the use of the Borrower's sanitary and washroom facilities. 40

Appellants
Exhibits
A(xxxiv)(d)
continued

6. DURING the period ending on the _____ day
of 19____ so long as the Borrower remains
personally in occupation of the said Garage or
Service Station and continues to observe the
provisions of this Agreement the Company shall pay
to the Borrower the sum of £ _____
per month
commencing on the _____ day of _____ 195____
and payment of such sums shall at the option of the
Company be sufficiently made in terms of this Agree-
ment if credited by the Company to the account of the
Borrower in the books of the Company.

7. PROVIDED ALWAYS AND IT IS HEREBY AGREED AND
DECLARED that upon the commission by the Borrower
his executors administrators assigns lessees mort-
gagees or encumbrancers or any of them or any breach
of the covenants or provisions herein contained and
on the part of the Borrower to be observed and
performed or upon the commission as aforesaid of any
act of bankruptcy or insolvency the whole of the
principal sum or so much thereof as is then owing
to the Company together with interest accrued thereon
to the date of payment of the same shall become
immediately payable to the Company.

8. THIS Deed shall enure to the benefit of and be
binding upon the successors and assigns of the
Company and the executors administrators and assigns
of the Borrower.

9. IN this Deed words importing the singular
number shall include the plural and the masculine
gender shall include the feminine and neuter.

IN WITNESS whereof the parties hereto have executed
these presents the day and year first hereinbefore
written.

EXECUTED on behalf of VACUUM OIL COMPANY
PROPRIETARY LIMITED by being signed by
the Officer whose signature appears
opposite hereto

SIGNED SEALED AND DELIVERED by the
Borrower in the presence ofSeal
Borrower

Witness

Address

dispose of the whole or any part of his estate or interest in the said premises or any part thereof or in the Service Station or Garage business carried on by him thereon unless -

Appellants
Exhibits

A(xxxiv)(e)
continued

- 10 (i) in case he is proposing to sell the same he shall have first offered the same in writing for acquisition by Vacuum on the same terms and conditions and at the same price as those on and at which he bona fide proposes to sell the same to any other person or company and Vacuum shall have rejected the same or shall have failed to accept the same within fourteen days after receipt of such offer, and
- 20 (ii) in case he is proposing to sell the same and Vacuum has rejected or failed to accept his offer, or in case he is proposing to dispose of the same otherwise than by sale Vacuum approves of the person or company to whom the Operator proposes to dispose thereof and such person or company executes Vacuum's form of Trading Agreement for a period not being less than the then unexpired portion of the period referred to in Clause 3 hereof and undertakes to the satisfaction of Vacuum to assume and carry out the obligations and liability of the Operator under this Agreement for the said unexpired portion of the said period provided however that
- 30 Vacuum's approval shall not be unreasonably withheld in the case of a person or company willing to execute such form of Trading Agreement as aforesaid;
- (b) unless and until he shall have disposed of the same in conformity with the provisions of paragraph (a) hereof he will during the said period continue to remain personally in occupation of the said premises and will not vacate or part with the possession of the same or any part thereof in favour of any other person or company.
- 40

5. DURING the period aforesaid Vacuum shall pay to the Operator the sum of £ in respect of each period of twelve months during which the Operator has remained personally in occupation of the said Service Station or Garage and observed the provisions of this agreement.

Appellants
Exhibits

A(xxxiv)(e)
continued

6. IF the Operator shall commit any breach of this Agreement and if the said sum of £ has been advanced to him in respect of the then current period of twelve months, he shall repay such sum to Vacuum less one-twelfth thereof for each complete month that has expired in that period of twelve months up to the date of such breach and such sum shall be payable on the first day of the month following the month in which such breach occurred and in default thereof interest shall accrue thereon at the rate of 6 per centum per annum calculated as from such last-mentioned date.

10

7. THIS Agreement shall be binding upon the Operator and his legal personal representatives.

IN WITNESS whereof the parties hereto have executed these presents the day and year first above written.

SIGNED SEALED AND DELIVERED)
by the said Operator in the)
presence of:-

20

EXECUTED on behalf of Vacuum)
Oil Company Proprietary)
Limited by being signed by)
the officer whose signature)
appears opposite hereto

.....
Authorized Officer.

EXHIBIT "A"(xxxiv)(f): STATEMENT OF PERIODICAL ALLOWANCES OF RESELLERS UNDER SSL-B AGREEMENTS

Year of Income 1.7.52 - 30.6.53

Appellants
Exhibits
A(xxxiv)(f)

Name	Address	Date SSLB Signed	Amount of loan	Period of Loan	Rate of Interest	Amount of Repayment Principal	Interest	Periodical Allowance
Allsop Bros.	St. Georges Rd., Northcote	1.12.52	750	5 yrs.	4½%	73.15. 3	16. 3. 9	89.19. 0
Anderson, E.M.	Sandford, Vic.	13.11.52	500	5 yrs.	5%	43. 5. 5	13. 7. 7	56.13. -
Anderson, S.W.	415 High St., Prahran	15. 5.52	2000	10 yrs.	4½%	179.15. 5	89.17. 5	269.12.10
Aitken E.V.	188 River St., Ballina, N.S.W.	19. 6.52	1100	10 yrs.	4½%	81.12. 9	43.17. 1	125. 9.10
Alexander W.M.	Nanango, Queensland	2. 5.52	300	10 yrs.	4½%	26.10. 6	14. -1.11	40.11. 5
10 Allison & Kilmore	Strathpine, Queensland	16. 2.53	750	5 yrs.	5%	44.13. 1	11.18.11	56.12. -
Anderson Mrs. L.R.	Cressy, Tasmania	15.11.52	300	3 yrs.	5%	8. 1. 5	54.18. 7	63. - . -
Broadbent K.L.	Metrop. Garage, Adelaide	9. 4.52	3000	10 yrs.	4½%	417. 9. 6	115.18. 6	533. 8. -
Boyd D.A.	Green Dragon S.S. Adelaide	14. 5.52	1000	15 yrs.	4½%	55.19. 1	51. 2.11	107. 2. -
Brigade Motors Ltd.	Wakefield St., Adelaide	8. 4.52	1000	8 yrs.	5%	77.14. 2	36. 4. 4	113.18. 6
Bennett W.H.	Engadine, N.S.W.	31.10.52	2150	10 yrs.	4½%	159. 9.11	85.14. 3	245. 4. 2
Betan M.	104 Elswick St., Leichhardt	7. 1.53	500	5 yrs.	4½%	44.12. 3	12. - . 9	56.13. -
Booth L.R.	Rogans Hill N.S.W.	3.12.52	1500	5 yrs.	5%	111.14. 3	29.16. 7	141.10.10
Booth E.J. & W.A.	Gosford N.S.W.	6. 5.52	1250	10 yrs.	4½%	109. 8. 4	58.10. -	167.18. 4
Balmain Bros.(Bega) Pty. Ltd.	Bega, N.S.W.	26. 2.53	4500	10 yrs.	4½%	302.14.11	163.13. 5	466. 8. 4
20 Boatwright S.E.	Moga, N.S.W.	27. 4.53	500	5 yrs.	5%	22. 3. 5	6. 3. 1	28. 6. 6
Butlers W.L.	Nambucca Heads, N.S.W.	3. 7.52	135	3 yrs.	4½%	37. 5.10	4.17. 6	42. 3. 4
Bendle F.H.C.	Ferntree Gully, Vic.	7.10.52	1000	9 yrs.	4½%	63. 1. 3	28. 7. 5	91. 8. 8
Blades N.F.	Elsternwick, Vic.	26. 5.52	900	5 yrs.	4½%	163.11. 3	37.15. 9	201. 7. -
Blake H.R.	Rockbank, Vic.	26. 5.52	5000	10 yrs.	4½%	401.11. 2	220. 5.10	621.17. -
Boort Engineering	Boort, Vic.	1.11.52	300	5 yrs.	5%	31. 3.10	8.10. 1	39.13.11
Brewster D.G.	Mont Albert, Vic.	1. 7.52	3000	5 yrs.	4½%	500.11. 9	114.12. 8	615. 4. 5
Bryce H.M.	Footscray, Vic.	12.12.52	1000	6 yrs.	5%	61.15.10	18.15. -	80.10.10
Boon H.E.	Westbury, Tas.	20.11.52	1000	5 yrs	5%	104. 5. 9	27.17. 4	132. 3. 1
Bache E.J.	Northgate, Queensland	10.12.52	1000	5 yrs.	5%	90.18.11	24. 1. 1	115. - . -
30	Further 232 individual cases					38,305.14. 9	14,002. 9. 3	52,763. 4. -
						41,519. - . -	15,291. - . -	57,265. - . -

EXHIBIT "A"(xxxiv)(f) (Contd.): STATEMENT OF PERIODICAL ALLOWANCES TO RESELLERS UNDER SS1C AGREEMENTS

Year of Income 1.7.52 - 30.6.53

Appellants
Exhibits
A(xxxiv)(f)
continued

Name	Address	Date SS1C Signed	Amount of Loan	Period of Loan	Rate of Interest	Amount of Repayment Principal	Repayment Interest	Periodical Allowance
Brown M.J.	Croydon, Vic.	25.	8.52					340. - ¹ -
Byrne J.D.	Annandale, N.S.W.	9.	4.52					750. -. -
Bishop W.M.	Bexley, N.S.W.	14.	5.52					300. -. -
Davis G.	Kent St., Sydney	21.	4.52					600. -. -
Foster J.A. & H.M.	Paddington, Brisbane	12.	5.52					170. 5. -
10	Further 24 individual cases							7,476.15. -
								9,637. -. -
	Total SS1B & SS1C							£41,519. -. - £15,291.-- £66,902. -. -

Of the above 286 SS1B and SS1C agreements, in only 24 instances was there a leasing arrangement involving the company and the dealer - of these 13 were two party leases and 11 were 3 party leases.

HMT:TMB

Feb. 12, 1960

EXHIBIT "A"(xxxiv)(g): BREAKDOWN OF SUNDRY SALES
PROMOTION EXPENSE AT SOLO OUTLETS - TAX YEAR ENDED
30th JUNE 1953

Appellants
Exhibits

A(xxxiv)(g)

	<u>Payment made to Contractors on behalf of Resellers</u>	<u>Payment made Direct to Resellers</u>	<u>TOTAL</u>
10 Alterations to and concreting of driveways	16,446	13,112	29,558
Structural Alterations and repairs to buildings	44,973	33,266	78,239
Purchase and instal- lation of plant and equipment	714	4,186	4,900
Other	<u>5,496</u>	<u>2,743</u>	<u>8,239</u>
	67,629	53,307	£120,936
20 Unaccounted in figures supplied by branches			<u>363</u>
Amount advised to Taxation Department and now in dispute			<u>£121,299</u>

EXHIBIT "A"(xxxiv)(h): ACCOUNTING INSTRUCTIONS
DATED 4th JULY 1952

A(xxxiv)(h)

Melbourne. H.O.,
4th July, 1952.

SYDNEY: MELBOURNE B: BRISBANE: ADELAIDE: PERTH:
TOWNSVILLE: HOBART:

(Attention: Branch Manager). (Cc. Office Manager(2).)

30 (Cc. Messrs. H.W. Satchell; W.J.N.Henry; W.W.Boanas(2);
J.Kronk; J.K.Aitken; W.D.McConaghy).

8. Instructions - C.M. Plan.

1. At present, in accordance with our 'ARJ' of 29th

Appellants
Exhibits
A(xxxiv)(h)
continued

April, 1952, we are debiting to Account 487 - Accounts and Loans Receivable Deferred, payments made to or on behalf of service station operators who sign Agreement S.S.1-B or a similar type of Agreement. Such payments are segregated in Section 2 of the subsidiary ledger for Account 487.

2. To avoid any possibility of misunderstanding, we stress that the "similar type of agreement" mentioned above must be a properly drawn legal document or documents (in some cases an Agreement is supported by a Corollary Agreement) embodying, as does the S.S.1.-B, the following provisions;- 10

- (a) The Company loaning the operator a sum of money.
- (b) The operator repaying that loan by means of instalments over a period.
- (c) The Company paying the borrower a certain amount periodically for advertising rights and otherwise duly fulfilling his terms of the agreement.

If the Agreement does not fulfil these conditions, the amount involved in this form of loan shall not be debited to Account 487 but direct to Account 30. You shall investigate each transaction you have already debited to Account 487 - Section 2 and if any do not comply with provisions above, the amount concerned must be transferred to Account 30. (expense). 20

3. To record and discharge the Company's liability under properly drawn Agreements and to provide for repayment of those loans, which are correctly debited to Account 487 and segregated in Section 2 of the subsidiary ledger, the following accounting procedure will be introduced:- 30

- (a) In accordance with our 'DBB' of 29th May under "8. Instructions - C.M. Plan - Record of Fixed Charges 633-1-AV" you will already have set up forms 633-1-AV, showing terms of repayment for loans in this category - refer Incomings - sub-section (c) - and it will now be necessary to set up, as Outgoings for advertising rights etc., additional forms 633-1-AV to record the Company's liability under the Agreement. 40
- (b) From these Outgoing Records of Fixed Charges, at the beginning of each month, Cash Disbursement Vouchers will be prepared in favour of each operator for services rendered and for a sum

which will coincide with the amount of instalment and interest due to us in that month in repayment of the loan. The debit will be to Account 30 - 50/6 - 29/17.

Appellants
Exhibits

A(xxxiv)(h)
continued

- 10 (c) In each instance we would prefer that an exchange of cheques be made to clear the respective liability of the operator and the company, and if this is acceptable to the operator, our cheque will be drawn and handed to the District Manager or Salesman, who will receive the operator's cheque in exchange. Alternatively, the operator may not wish to draw his own cheque but would be agreeable to endorsing our cheque back to us. In either case, when the cheque is paid in to our account, Account 487 will be credited with the amount of instalment and Account 66 - Interest Earned - with the amount of interest.
- 20 (d) Should the operator insist that we do not draw a cheque, the cash disbursement voucher shall be contra'd crediting Accounts 487 and 66 with the portions applicable and the usual Contra Credit Note (93-9-AV) will be prepared in duplicate. The original of the Contra Credit Note will be mailed to the operator in order that he may be aware that we have credited his Loan Account with the amount due to him under the Agreement.
- 30 (e) The relevant Incoming Records of Fixed Charges will be noted as instalments are credited to Account 487 whether by cheque or contra.
- Where cheques are issued for exchange or endorsement, a constant follow-up must be maintained to ensure that the cheque or replacement is received within a matter of days.
- 40 (f) To enable a decision to be reached as to which method of payment shall be adopted in each case, a senior sales officer should discuss the matter with each operator who has signed an Agreement S.S.1-B or similar type of Agreement, bearing in mind that our decided preference is for an exchange of cheques or, failing this, an endorsement of our cheque back to us. The Branch Office Manager will be advised of the decision reached in each instance so that he may implement the method applicable.

Appellants
Exhibits

A(xxxiv)(h)
continued

4. It must be noted that if there is breach of Agreement by the Operator, the Company's liability under the Agreement ceases, which means that there will be no offset against the instalments and interest due in repayment of the loan. Should the circumstances of the breach indicate that any repayment of the loan is unlikely, Head Office shall be advised full details as if the amount is uncollectible, Head Office authority will be necessary to charge off the balance in Account 487 to Account 30. 10

5. Prior to receipt of our 'ARJ' of 29th April, the full amount of loans in the category under discussion was debited to Account 30. Should the Agreements covering these Loans satisfy the provisions stated in paragraph 2, a reversal entry will be prepared, crediting Account 30 and debiting Account 487. Any loans transferred will be included in Section 2 of the subsidiary Ledger and be subject to the procedure already outlined.

6. When preparing vouchers in accord with paragraph 3 for the first time you will incorporate any retrospective amounts applicable to prior months, including also any involved in reversal entries as per paragraph 5. 10

H. W. SACHELL.

B(i)

EXHIBIT "B"(i): MEMORANDUM FROM SHELL COMPANY OF AUSTRALIA TO OIL COMPANIES (SHELL DEALER PLAN)

MELBOURNE: 14th August, 1951.

MEMORANDUM: Messrs. H.Rabling, K.Washington Gray, W.E.Field, J.D.Jacobs, H.M.Sleigh, P.J.Adams, E.M.Bland, W.G.Walkley, W.L.Clarke, and A.A.Swan. 30

SHELL DEALER PLAN

My Company has decided to introduce a Dealer Plan with the object of confining its trade to stations which are prepared to become solo outlets, on similar lines to the plan existing in the U.S.A. and as recently introduced in the U.K. I regret that it has not been possible in a move of this nature to discuss such a plan in advance, but it will be clear that we could not risk giving our competitors unlimited time in which to frustrate our plans should they not be in 40

agreement. What we propose to do involves risks, but if successful promises to provide substantial economies owing to our intending to trade in future through a reduced number of outlets.

Appellants
Exhibits

B(i)
continued

It is a settled feature of our plan:-

- 10 (a) We shall trade under the existing outlet policy unless the action of Reseller Associations or other Companies compels us to do otherwise.
- (b) We shall trade under the existing dealers, and without any Company personnel as operators.
- (c) We shall adhere to existing inter-company marketing and prices policies as before providing others do so, including the undertaking regarding Motor Spirit quality limitation.
- (d) We are prepared to make reasonable mutual arrangements regarding superfluous tanks and pumps with other Companies.
- 20 (e) We have left plenty of room for other Companies if they wish to follow the same pattern as our approach is to dealers who are predominantly favouring our brands.

I would ask other Companies to consider the matter carefully in the light of the trends in almost all countries overseas; as to the interest of the Industry as a whole long term; and as to the economy in delivery cost, pump maintenance, representation, accounting, etc.

(Initialled)

(Shell)

30 EXHIBIT "B"(ii): MEMORANDUM FROM APPELLANT TO OIL COMPANIES.

B(ii)

MELBOURNE.

15th August, 1951.

MEMORANDUM: Messrs. E.N.Avery, K.Washington Gray, W.E.Field, J.D.Jacobs, H.M.Sleigh, P.J.Adams, E.M.Bland, W.G.Walkley, W.L.Clarke, A.A.Swan.

SHELL DEALER PLAN

My Company considers that the Dealer Plan outlined in Mr. Avery's memorandum of 14th August has a

Appellants
Exhibits

B(ii)
continued

lot to commend it. With our gross margin of profit pegged and with distribution costs extremely high and still increasing, we consider it essential that every possible step should be taken to effect economies in our marketing, and it appears to us that, if dealers should elect to retail the products of one Company only, then we should do everything to foster such a plan because it will reduce very considerably our costs of distribution, of pumps, of equipment and of representation, and it will enable us to assist dealers to give a better service to the motoring public. 10

In adopting this plan, it is not our intention or desire to control or operate service stations, nor would we wish to vary our existing policies in regard to restriction of outlets, prices, quality and brands.

(V.O. Co.)

B(iii)

EXHIBIT "B"(iii): MEMORANDUM FROM APPELLANT TO ITS
BRANCH MANAGERS (C M PLAN)

MELBOURNE.
15th August, 1951 20

Confidential

Mr. M.T.Cowles, Sydney	Mr. N.H.McNeil, Adelaide
Mr. C.R.Richards, Melbourne	Mr. J.G.Tuohy, Perth
Mr. T.McKay, Brisbane.	Mr. J.A.Hennessy, Hobart

C M PLAN

Attached are copies of -

1. A letter delivered by the Shell Company to all other Companies at 11 a.m. on the 15th instant.
2. Our letter being posted to all Companies on the evening of the 15th instant. 30

Our letter indicates that our C M Plan is launched; we will be advising all Branch Managers by telephone today that they should have the whole of their teams on the job from the morning of the 16th instant and that they should arrange for our story to be told to the Reseller Associations, along the lines suggested in Mr. Rabling's letter of the 13th instant, during the morning of the 16th instant.

EXHIBIT "C": MEMORANDUM FROM APPELLANT TO ITS
BRANCH MANAGERS

Appellants
Exhibits

MELBOURNE. H/O
29th August, 1951.

C

Mr. M.T.Cowles, Sydney: Mr. N.H.McNeil, Adelaide;
Mr. C.R.Richards, Melbourne: Mr. J.G.Tuohy, Perth;
Mr. T.McKay, Brisbane: Mr. J.A.Hennessy, Hobart:

C.M.Plan - Expediting Single-Brand Operation

10 Over Australia we now have a total of over 250
signatures from resellers who are ready to operate
single-brand Vacuum service stations. The respective
numbers of signed agreements in the Metropolitan
areas and in the country vary in each State. In the
larger States of Victoria and New South Wales, the
country signatures are approximately two to one in
the Metropolitan area, but in the other States the
predominating number is in the Metropolitan areas.

20 It is believed that all the Branches agree with
the view that we should do everything possible to
establish signed accounts as single-brand stations at
the earliest possible date. This involves two
problems:-

- 30 (1) Physical alteration to the station, including
removal of competitive pumps and signs, the re-
positioning of Vacuum pumps, inter-connection
of tanks and possible driveway alterations.
Certain structural alterations and additions
may also be necessary in individual cases;
likewise, painting of premises. In some cases,
improvement and/or establishment of lubritorium
may also be necessary.
- (2) Intensive merchandising assistance to the re-
seller, including local canvassing by our own
sales staff to ensure that the reseller at least
maintains and, if possible, improves his
gallonage under single-brand operation.

 We have no doubt that you have been giving the
foregoing quite a lot of thought, as is evidenced by
discussions this morning with our Victorian Branch.

40 Dealing with the physical aspect, as per para-
graph No.1, we have been allocated certain funds by
New York to care for painting, minor structural
alterations, and alterations to driveways. The funds

Appellants
Exhibits

C(continued)

available are to cover the complete programme, i.e. in anticipation that we will secure the total number of selected accounts provided for in our over-all plan, and the individual amounts per service station are not over large.

Our objective should be to spend sufficient money to attain a standard of appearance, accessibility and manoeuvrability on the station, which will make an obvious appeal to the reseller and his customers. On the other hand, we cannot afford to be extravagant, 10 bearing in mind that all such expenditures will be a charge against our marketing expenses.

Individual average amounts as per station which you are permitted to spend without prior reference to us must not exceed the following:-

Driveway alterations	£150
Painting	£150
Minor structural alterations	£150
Lubritorium	£ 65

The allowable figure for lubritorium expenditure 20 is in accordance with present policy.

In our estimates of over-all expenditure, we have taken into consideration that quite a number of stations have already been painted and rehabilitated under our merchandising programme, hence it will be unnecessary for the total as above to be spent on every station. Each one will be an individual problem and will have to be considered as such.

The next point for consideration is the procedure you should adopt for securing prompt action on convert-30 ing signed accounts to single-brand operation and appearance. We have already told you to send into competitive companies promptly all notifications from signed accounts to competitors seeking the removal of pumps. You will not have any problem as regards removal of Shell or Atlantic pumps, and the existing policy with other competitors should be continued, i.e., after the removal notices have been received by the competitors, you should communicate with them and seek their co-operation in the removal of their pumps 40 and signs, and in the purchase of their underground tanks. If they are agreeable to your undertaking removal on their behalf, you can inform them that we will charge them on the basis of Gilbert & Barker Schedule rates. In this connection, we are arranging

Appellants
Exhibits

C(continued)

10 for these rates to be made available to West
Australia and Tasmania, who are not operating at
present under a Gilbert & Barker contract. Small
competitive signs will be removed at our expense,
but we will expect competitors to undertake as
their responsibility and at their expense the removal
of any Neon signs or signs which are an integral part
of the reseller's premises. In dealing with competi-
tors other than the Shell and Atlantic, you can
indicate that we will reciprocate with them in
connection with any equipment which we are asked to
remove by resellers from premises which they may be
taking over under the single-brand programme.

20 To deal with the question of minor structural
alterations and painting, it will be necessary for
your sales staff to deal individually with each
account, and determine with the reseller concerned,
assisted by your architectural adviser, the details
of any alterations necessary, this including any alter-
ation to driveways. Your sales staff should submit
these individual recommendations to your Management
and prompt decision should be given whenever possible
so that the work can be put in hand forthwith. In the
case of any station where the limits outlined above
will be exceeded, please submit the individual
proposal to Head Office, when we can assure you that
it will be dealt with expeditiously. In Victorian
Branch, salesmen and district managers have been
issued with a circular and questionnaire to deal
30 with this problem of alterations and painting, and
we attach copies for your information. You may
already have adopted a somewhat similar procedure,
and if you have any good suggestions to offer on
this problem, we should be glad to have them for the
benefit of other Branches.

40 Dealing with the second point in our letter,
namely, merchandising, you will have to so organize
your staff that merchandising training and assistance
can be given to your single-brand stations at the
earliest possible date. We realise that this may
present difficulties, but it must be faced, because
we cannot afford to allow the gallonage to decline of
any selected reseller who has signed an agreement
with us, after competitive pumps have been removed
and he is selling only PLUME Motor Spirit.

On the receipt of this letter, we would like you
to give your full consideration to this problem and
to advise us just how you plan to tackle this problem
and whether you will need any additional staff to

Appellants
Exhibits

C(Continued)

intensify your merchandising activities. We are planning at Head Office to have merchandising teams visit your Branch as early as possible to intensify the training of Vacuum personnel, particularly general salesmen in country territories, many of whom have not, as yet, had the advantage of any merchandising training. However, this will take some time to develop, and meanwhile you will have to plan your own organisation to meet the present situation.

D(i)

EXHIBIT D(i): COMPARATIVE TABLE OF SALES 1950 - 1954 10
J.3

MOTOR GASOLINE - TOTAL AUSTRALIA

VACUUM OIL CO. PTY. LTD. SALES TO RESELLERS AND
ESTIMATED % OF TOTAL RESELLER MARKET

<u>Year</u>	<u>Estimated Total Industry Sales to Resellers 000 Imp. Gallons</u>	<u>Vacuum Sales to Resellers 000 Imp.Glns.</u>	<u>Estimated Vacuum % of Reseller Market</u>
1950	342,000	80,955	23.7
1951	400,440	88,742	22.2
1952	430,512	93,740	21.8
1953	465,314	94,521	20.3
1954	529,700	100,566	19.0

20

WDM/MRW

Melbourne, March 10, 1961.

D(ii)

EXHIBIT D(ii): COMPARATIVE TABLE OF RESELLER OUTLETS
1950 - 1954

RESELLER OUTLETS - MOTOR GASOLINE- AUSTRALIA

<u>Year ending 31st Decr.</u>	<u>Total Industry Outlets (esti- mated)</u>	<u>Reseller Outlets at which Vacuum Represented</u>			<u>Percentage of total Industry outlets at which Vacuum represented</u>
		<u>Solo Outlets</u>	<u>Multiple Outlets</u>	<u>Total Outlets</u>	
1950	11,070	*	7276	*7276	66%
1951	11,400	403	5683	6086	53%
1952	11,459	1456	2800	4526	37%
1953	13,205	2002	1935	3937	30%
1954	14,525	2058	1665	3723	26%

30

*Prior to August 1951 there were included in the total of 7276 outlets approximately 400 small volume dealer outlets marketing only Vacuum brands of gasoline. Unless signed up on a trading agreement after August 1951 these have not been included in the total number of solo outlets.

Appellants Exhibits

 D(ii)
 continued

WDM/MRW
 Melbourne, March 10, 1961.

10 EXHIBIT "D"(iii): COMPARATIVE TABLE OF RESELLER PUMPS 1950 - 1954 D(iii)

J.5

ESTIMATED NUMBER OF RESELLER PUMPS (HOSES)*
MOTOR GASOLINE - TOTAL AUSTRALIA

VACUUM OIL CO. PTY. LTD. AND TOTAL INDUSTRY

Year (Dec.31)	Total Number of Reseller Pumps Installed (estimated)	Number of Vacuum Pumps Installed	Vacuum % of Total
20 1950	50,600	11,936	23.6
1951	53,500	12,016	22.5
1952	46,000	9,854	21.4
1953	42,700	9,010	21.1
1954	42,900	8,827	20.6

*Dual pumps represent (2) two hoses.

WDM/MRW
 Melbourne, March 10, 1961.

Appellants
Exhibits

EXHIBIT "D"(iv): COMPARATIVE TABLE OF AVERAGE
DELIVERIES 1950 AND 1953.

D(iv)

VACUUM OIL CO. PTY. LTD.

Deliveries to Metropolitan resellers in calendar year 1953	47,260,000 gallons
--	--------------------

Average drop (i.e. delivery) in 1950.	262 gallons
--	-------------

Average drop in 1953	1,491 gallons
----------------------	---------------

No. of deliveries at 1950 rate required for 1953 gallonage	180,000
--	---------

10

No. of deliveries made in 1953	35,600
-----------------------------------	--------

EXHIBIT "E": LIST OF OPERATORS ENTERING INTO SSL-B AND SSL-C AGREEMENTS UP TO 30TH JUNE 1953
PERIODICAL ALLOWANCES TO RESELLERS - TAX YEAR ENDED JUNE 30, 1953 UNDER SSLB AGREEMENT

Appellants
Exhibits

E

T	Name	Address	Date T/A Signed	Date SSLB Signed	Amount of Loan	Period of Loan (Years)	Rate of Interest	Amount of Repayment		Periodical Allowance
								Principal	Interest	
	Smith Pty. Ltd.	451, Princes H'way, Artarmon		2. 7.52	200	15	4½%	8.14. 8	8. 1. 9	16.16. 5
	Keogh, Noel	Gibson Av. & C'bury Rd., Bankstown	10. 4.52	28. 7.52	10,000	10	4½%	672.12.10	363.14. 8	1,036. 7. 6
	Logan, E.R.	86, Stoney Creek Rd., Bexley	13. 5.52	13. 5.52	1,125	5	4½%	105. 6. 6	146. 8. 6	251.15. 0
10	Garden Garage Pty. Ltd.	164 Bondi Rd. Bondi		23. 6.52	6,000	10	4½%	444.17.10	239. 4. 4	684. 2. 2
	Rodden, F. & M.I.B.	Argyle St., Camden	1. 6.52	1. 6.52	1,750	10	4½%	141. 2. 3	75.17. 9	217. 0. 0
	J.F.Diamond	308 Queen St., Campbelltown	6. 3.52	23. 5.52	800	10	4½%	64.10. 4	34.13. 8	99. 4. 0
	Cannon, L.	Beamish St., Campsie		22. 4.52	2,750	10	4½%	241.18. 8	128.13. 6	370.12. 2
	G.A.Phipps	283 Mowbray Rd., Chatswood	21. 4.52	1. 5.52	1,500	5	4½%	297. 2. 6	66. 9.11	363.12. 5
	Hill, R.R. & Rozea, N.H.	201 Pittwater Rd., Collaroy	8. 7.52	21. 7.52	3,150	7	4½%	492.12. 5	32.19. 7	525.12. 0
	Cullen E.D.	Concord & P'matta Rd., Concord	18. 7.52	18. 7.52	9,000	10	4½%	664. 2. 2	358.17.10	1,023. 0. 0
	Moreton, N.M.	33 Major Bay Rd., Concord	17.12.52	17.12.52	1,500	4.8/12	5%	71.16. 3	18. 9. 0	90. 5. 3
	Combes, N.A.	260 Coogee Bay Rd., Coogee	29.10.52	5.12.52	2,000	5	5%	148. 6. 2	40. 8.10	188.15. 0
	Hodge H.A.	158 Malabar Rd., Coogee South	4. 4.52	3.11.52	2,000	10	4½%	100. 2. 6	24. 5. 0	124. 7. 6
	Weekes Pty. Ltd.	25 Cronulla St., Cronulla	1. 3.53	17. 4.53	3,500	10	5%	97. 0. 7	62. 1.11	159. 2. 6
	Logan Bros.	Don's Garage, 102 Lyons Rd. Drummoyne	27. 8.52	27. 8.52	1,091	10	4½%	96.14.10	52.10.11	149. 5. 9
	Bennet, W.H.	Engadine Garage, Princes Hwy., Engadine	16. 4.52	31.10.52	2,150	10	4½%	159. 9.11	85.14. 3	245. 4. 2
	Woods, W.	Fairfield S.S., Fairfield Rd., Fairfield	13. 6.52	13. 6.52	2,500	6	4½%	339.15. 4	96.16.10	436.12. 2
	Daines, G.E.	Roseville Rd. Frenches Forest	8. 7.52	1. 9.52	1,000	10	4½%	67. 6. 8	36. 7. 6	103.14. 2
	Quickfresh Foods Pty. Ltd.	304 Bridge Rd., Glebe	21. 4.52	21. 4.52	1,500	6	4½%	782.13. 7	217.10. 1	1,000. 3. 8
	Lansell, E.V.	115 P'matta Rd., Granville	22. 4.52	24. 4.52	7,500	10	4½%	659.11. 4	350.18. 3	1,010. 9. 7
	Coote, E.S.	Hurstville Auto Service, Hurstville	8. 4.52	3. 8.52	6,500	10	4½%	437. 5.11	236. 8. 3	673.14. 2
	Vaughan & Lane Pty. Ltd.	41 Tracey St., Hurstville	9. 1.53	8. 5.53	625	5	5%	46. 7. 9	12.12. 3	59. 0. 0
	Muir, H.C. & J.N.	Bathurst St., Katoomba	21. 4.52	13. 5.52	5,500	10	4½%	443.11. 6	238. 8. 6	682. 0. 0
	McKnight W.G.	44 Princes H'way, Kogarah	8. 7.52	30. 8.52	5,000	12	4½%	239.18. 0	165. 3. 6	405. 1. 6
	Perkins, K. & Murphy, G.	Great Western H'way, Lawson	29. 2.52	20.11.52	2,250	10	4½%	151. 3.10	58.14. 8	209.18. 6
	Deehan, J.P.	124 Marion St., Leichhardt	21. 4.52	21. 4.52	2,000	12	4½%	201. 2. 7	14.19. 5	216. 2. 0
	Deehan, J.P.	Marion & Edith Sts.	18.12.52	18.12.52	2,000	12	5%	51. 4. 4	41. 5. 8	92.10. 0
	Betar, M.	104, Elswick St., Leichhardt	Not Reseller	7. 1.53	500	5	5%	44.12. 3	12. 0. 9	56.13. 0
	Bocking, N.M.	Hume H'way, Liverpool	4. 9.51	14.12.52	2,000	10	4½%	66.12.11	37. 0. 0	103.12.11
	McGrath, A.C.	141 Macquarie St., Liverpool	13.12.52	30.12.52	2,000	5	5%	148. 7. 1	40. 7.11	188.15. 0
	Etheridge, Mrs. E.	Flint St., Matraville	24.10.52	15.12.52	2,000	5	5%	148. 7. 1	40. 7.11	188.15. 0

PERIODICAL ALLOWANCES TO RESELLERS - TAX YEAR ENDED JUNE 30, 1953 UNDER SS1B AGREEMENT.

Appellants
Exhibits

E(continued)

Name	Address	Date T/A Signed	Date SS1B Signed	Amount of Loan	Period of Loan (Years)	Rate of Interest	Amount of Repayment Principal	Interest	Periodical Allowance
Hart, E.L.	81 Wilson St., Newtown	1. 4.53	17. 4.53	450	5	5%	13. 5. 2	3.14. 6	16.19. 8
Hurst, M.D.	18 Letitia St., Oatley		29. 2.52	1,250	5	4½%	250. 0. 0	- *	250. 0. 0
Tate, G.L.	18 Letitia St., Oatley	2. 3.53	2. 3.53	1,000	5	5%	44. 6. 5	12. 6. 4	56.12. 9
Roslyn Trading Co.Pty.Ltd.	425 Church St., Parramatta	27.11.51	3. 7.52	3,000	10	4½%	222. 9. 9	119.12. 3	342. 2. 0
Snowden, H.	951 Pacific H'way, Pymble		23. 5.52	3,500	10	4½%	283.15. 9	115. 5. 8	399. 1. 5
10 Nicholls, W.R.	Garfield St., Riverstone		1. 6.52	1,350	10	4½%	108.17. 6	48.10. 6	157. 8. 0
Booth, L.R.	Old North Rd., Rogans Hill	3. 12.52	3.12.52	1,500	5	5%	111.14. 3	29.16. 7	141.10.10
Pope Bros.	Old South Head Rd., Rose Bay	21. 4.52	2. 7.52	4,000	10	4½%	322.12. 0	173. 8. 0	496. 0. 0
Englert & Co.	2 Blaxland Rd., Ryde	2. 9.52	2. 9.52	3,000	10	4½%	160.18. 0	87.18. 0	248.16. 0
Chant Bros. Pty. Ltd.	84 Princes H'way	30. 4.53	30. 4.53	2,000	10	5%	12.18.10	8. 5. 7	21. 4. 5
Money, S.F.	277 Smithfield Rd., Smithfield	16. 5.52	16. 5.52	2,100	10	4½%	169. 7. 4	90. 0. 8	259. 8. 0
Pinferi, Tullo & Alice	Salisbury Rd. & Percival St. Stanmore	8. 4.52	13. 5.52	9,000	10	4½%	853.15. 6	452. 2. 8	1,305.18. 2
Spencer L.J.	103 Railway Rd., Sydenham		1. 3.52	260	5	4½%	47. 9. 3	10.14. 9	58. 4. 0
Hand, J. & Fountain, J.L.	27 Park St., Sydney		16. 5.52	1,000	5	4½%	150.14.11	35. 0. 1	185.15. 0
20 Hughes, D.K. & Gorm, H.	170, Phillip St., Sydney		27. 8.52	1,007	10	4½%	81.13. 0	44. 7. 0	126. 0. 0
Seaman, F.T.	26a Campbell St., Sydney		31. 5.52	2,500	5	4½%	456. 2. 8	103. 3. 4	559. 6. 0.
Hastings Deering Ser.Ltd.	William St.(Lidcombe), Sydney	5. 1.53	13. 3.53	5,625	5	5%	501. 9. 6	135. 8. 6	636.18. 0
Larke Heave & Carter Ltd.	117 William St.(Camperdown)Sydney	1. 1.53	2. 1.53	8,250	5	5%	611.13.11	166.16. 1	778.10. 0
Dobson, J.H.	62 McPherson St., Waverley		15. 1.53	4,000	10	5%	103.13.11	66. 0. 5	169.14. 4
Aitken, E.V.	188 River St., Ballina	9. 4.52	19. 6.52	1,100	10	4½%	81.12. 9	43.17. 1	125. 9.10
Edwards,C.M. & McGrath,J.	Havannah & Lambert Sts.,Bathurst	15. 5.52	15. 5.52	1,500	10	4½%	150. 0. 0	*	150. 0. 0
Sargent E.W.	45 William St., Bathurst		9. 4.52	3,000	10	4½%	241.19. 2	130. 0.10	372. 0. 0
Ipkendanz, H.	Wee Waa St., Boggabri	8. 1.53	8. 1.53	750	5	5%	52.12. 1	18. 3. 4	70.15. 5
Davey, S.H. & Olsen, O.A.	Dowling St., Dungog	26. 9.52	26. 9.52	1,000	10	5%	52. 5. 9	32.12. 7	84.18. 4
30 Ryan, N.J. & J.B.	Flint & Bathurst Sts., Forbes	12. 1.53	10. 2.53	2,250	7½	5%	83. 2. 4	36.19. 8	120. 2. 0
Booth, E.J. & W.A.	253 Mann St., Gosford	13.11.51	6. 5.52	1,250	10	4½%	109. 8. 4	58.10. 0	167.18. 4
Parker, J.	Sydney Rd., Goulburn	13. 8.51	28. 2.53	301	3½	5%	43.19. 2	8. 1. 2	52. 0. 4
Munns, A.G.	Skinner St., Sth. Grafton	15. 7.52	15. 7.52	1,000	10	4½%	74. 3. 2	39.17. 6	114. 0. 8
Kelly, D.R.	Yambil St., Griffith	27.10.52	1.12.52	1,500	5	4½%	158. 3. 9	37.12. 2	195.15.11
Stone, E.C.	Chandos St., Gunnedah	29. 8.52	29. 8.52	1,200	10	4½%	72.11. 2	39. 8. 4	111.19. 6
Morgan J.E.	Morgan Bros., Hartley	23. 3.52	21. 4.53	1,250	10	5%	16. 2. 8	10. 7. 8	26.10. 4
Wilmart, E.L.	Jervis Bay	9. 1.53	17. 4.53	100	5	5%	5.18. 9	1.12. 7	7.11. 4
Smith, L.G.	Lachlan St., Kempsey Sth.	31. 3.52	17. 6.52	2,600	10	4½%	192.15. 9	103.13. 3	296. 9. 0
Maisey, W.G. & Lang, L.J.	Maisie's Ser.Stn., Lauriston	31.10.52	31.10.52	1,000	9	5%	44.11.10	24.10. 8	69. 2. 6
George, L.M.	Dawson & Zadock Sts., Lismore	12. 9.52	31.10.52	1,250	10	4½%	75.11. 3	41. 1. 5	116.12. 8

*Interest adjusted subsequent year

PERIODICAL ALLOWANCES TO RESELLERS - TAX YEAR ENDED JUNE 30, 1953 UNDER SS1B AGREEMENT.

Appellants
Exhibits

E(continued)

Name	Address	Date T/A Signed	Date SS1B Signed	Amount of Loan	Period of Loan (Years)	Rate of Interest	Amount of Repayment		Periodical Allowance
							Principal	Interest	
Munro Bros. Pty. Ltd.	Bridge St., Uralla	13. 5.52	30. 5.52	1,250	7	4½%	155. 8. 8	53. 1. 4	208.10. 0
Jones, D.	Edwards & Baylis Sts., Wagga	13. 8.52	8.12.52	500	4	5%	47.11. 7	10. 0. 6	57.12. 1
Porters Servicentre P/L	High & Carrington Sts., Wauchope	18. 6.52	18. 6.52	1,600	10	4½%	118.14. 5	63.15. 9	182.10. 2
W.Wallsend & Co-op Soc.	Withers St., W.Wallsend	1.11.52	5.12.52	2,000	5	4½%	150. 1. 8	36. 7. 6	186. 9. 2
Graham, A.S.	Crown St., West Wollongong	20. 4.52	20. 4.52	2,500	10	4½%	218.17. 0	116.19. 8	335.16. 8
10 Kleem, C.L. & O'Brien	Main & Short Sts., Young		10. 2.52	3,000	7	5%	150.16.10	61. 4. 0	212. 0.10
Balmain Bros.(Bega) P/L.	The Motor House, Carp St.,Bega	24. 4.52	26. 5.53	4,500	10	4½%	302.14.11	163.13. 5	466. 8. 4
Brain, S.C.	John St., Coonabarabran	21. 4.52	10. 9.52	1,500	10	4½%	83. 7. 1	43.18. 3	127. 5. 4
Else, I.M. & Est.Late F.J.	F.W. Else Ser.Stn. Cundletown	29. 8.52	24.11.52	1,000	10	4½%	80. 3. 3	44. 4. 3	124. 7. 6
Garner, C.A.	Frederickton	12.11.52	12.11.52	1,500	5	5%	133.14. 8	36. 2. 4	169.17. 0
McBean, C.W.	Ford St., Beechworth	25. 3.52	5. 9.52	2,000	10	4½%	121.19. 9	64.11. 6	186.11. 3
McDonald, S.L.	Echuca	24.12.51	6. 6.52	1,100	10	4½%	90. 2. 7	46.15. 5	136.18. 0
McDonald, N.L.	Wallan	11.11.52	3. 2.53	225	3	4½%	16. 18.0	3. 3. 6	20. 1. 6
Michie, C.B.	Bell St., Heidelberg	23. 8.51	1.10.52	500	10	4½%	26.17. 8	14.13. 0	41.10. 8
Milner, C.E.	Warburton Motors, Warburton	9. 4.52	20. 6.52	1,000	5	4½%	185. 3. 4	38.12. 8	223.16. 0
20 Mitchell, W.J.	32 Burwood Rd., Hawthorn	17. 3.52	1. 4.52	3,500	10	4½%	332. 7. 9	175.10. 5	507.18. 2
Murray Valley Eng. Co.	Curlewis St., Swan Hill	5.11.52	18.12.52	1,600	8	4½%	66.13.11	32. 4. 0	98.17.11
Natham, H.J.	405 Victoria St., Abbotsford	7. 4.52	18. 4.52	1,100	10	4½%	102.11. 2	57. 3. 2	159.14. 4
Newcombe, F.W.	Meredith	16. 3.53	16. 3.53	900	5	5%	24.14. 7	9. 5. 1	33.19. 8
Newlands, A.W.	High St., Kew	13. 2.52	13. 2.52	2,600	8	4½%	375.16. 2	141. 2. 6	516.18. 8
O'Brien, J.D.	Murphy St., Wangaratta	28. 9.51	21.10.52	850	10	4½%	38.17. 1	22.17.10	61.14.11
Orbost Motor Works	Orbost	14.11.52	18.12.52	1,200	8	5%	49. 3. 1	26.16.11	76. 0. 0
Orman, W.	Shepparton	8.10.51	20.11.52	1,500	5	5%	131. 4.10	38.12. 2	169.17. 0
Parish C. Pty. Ltd.	42 Lit.Collins St., Melbourne	22. 4.52	10. 7.52	450	5	4½%	73. 8. 9	16.13. 5	90. 2. 2
Pearce, W.M.C.	Ser. Stn. Queenscliff	12. 1.53	12. 1.53	700	5	4½%	40.10. 3	11.14. 5	52. 4. 8
30 Peterson Bros.	Bacchus Marsh	6.10.52	31.10.52	1,500	10	4½%	66.18. 9	41.18. 3	108.17. 0
Portsea Passenger Ser.	Station St., Frankston	1. 2.52	1. 2.52	1,100	5	4½%	64. 2. 0	17.18. 8	82. 0. 8
Pratt & Osborne Motors	233 Moorabool St., Geelong	13.11.52	13.11.52	350	5	5%	30. 6. 1	9. 6.11	39.13. 0
Pritchard, C.E.	57 Cubilt St., Richmond	21. 4.52	30.10.52	600	5	4½%	63. 6. 1	15. 0. 9	78. 6.10
Raboy, A.	114 Dandenong Rd., Oakleigh	1. 2.52	30. 5.52	1,000	3	4½%	318.10. 6	38. 9. 6	357. 0. 0
Raglan Motors	Warrnambool	17. 4.52	1. 8.52	1,000	5	4½%	151.10. 8	34.19. 4	186.10. 0
Riversdale Motor Ser.	96 Riversdale Rd., Hawthorn	21.12.51	24.12.51	460	9	4½%	67. 6.10	21. 1. 2	88. 8. 0
Rose, J.H.	Gipps St., Richmond	16. 8.51	20. 6.52	1,300	10	4½%	107.12. 1	52.18.11	160.11. 0
Rufus, R.H.	2a Highett St., W.Richmond	22. 4.52	16. 7.52	700	5	4½%	115. 9. 6	28. 3. 4	143.12.10
Sanders, F.L.	Canterbury Rd., Heathmont	10. 4.52	8. 7.52	500	5	4½%	83.19. 2	18.13. 3	102.12. 5
40 Saunders, J.A.	Wimmera Tyre Ser., Horsham	4.12.52	15.12.52	5,000	7	4½%	245. 6. 6	102. 4. 4	347.10.10

PERIODICAL ALLOWANCES TO RESELLERS . TAX YEAR ENDED JUNE 30, 1953 UNDER SSLB AGREEMENT.

Appellants
Exhibits

E(continued)

Name	Address	Date T/A Signed	Date SSLB Signed	Amount of Loan	Period of Loan (Years)	Rate of Interest	Amount of Principal	Repayment Interest	Periodical Allowance
Schramm, R.	Bell St., Penshurst	21. 4.52	31.10.52	800	8	4½%	49. 1. 7	20.10. 3	69.11.10
Sharpe, H.	442 High St., Northcote	22. 4.52	22. 4.52	750	5	4½%	159. 9. 2	36. 8. 6	195.17. 8
Skinner, E.R.	125 Melville Rd., W.Brunswick	19. 6.52	19. 6.52	3,000	10	4½%	250.12.11	122.11. 1	373. 4. 0
Slade, J.E.	Bittern	13.11.52	3. 2.53	650	10	4½%	17.15. 1	9. 4. 3	26.19. 4
Small, A.L.	73 Kooyong Rd., Caulfield	18. 4.52	24. 4.52	1,350	5	4½%	292.11. 4	59.16. 6	352. 7.10
10 Smith, L.R.	High St., Epping	12.11.52	1.12.52	2,500	8	4½%	131. 6. 5	55. 0. 7	186. 7. 0
Smith, J.W.	Geelong West	7. 2.52	16. 4.52	2,500	6	4½%	439.18. 7	115.15. 1	555.13. 8
Spicer, W.C.	27 Peel St., W.Melbourne	18. 3.52	1. 4.52	2,000	5	4½%	427. 7. 1	94.13. 5	522. 0. 6
Sterck, K.W.	120 Commercial Rd., Prahran	28.10.52	1.11.52	6,000	10	4½%	280.19.10	154. 7. 0	435. 6.10
Stevenson, E.J.	68 Errol St., Nth. Melbourne	22. 4.52	2. 7.52	260	5	4½%	43. 7. 4	9.17.10	53. 5. 2
Stewart, R.	Burwood Rd., E. Burwood	3.12.52	3.12.53	900	5	5%	63. 5. 3	21.13.11	84.19. 2
Stirling J.	Malmsbury	13.11.52	12.11.52	900	6	5%	62.17. 6	24. 2. 6	87. 0. 0
Strange, N.C.	Pascoe Vale Rd. & Woodlands St. P.Vale	26. 2.52	30. 9.52	1,750	6	4½%	171.19. 6	50. 5. 2	222. 4. 8
Thompson, J.	78 Beach Rd., Sandringham	21. 4.52	3. 6.52	1,350	5	4½%	246.14. 9	55. 6. 3	302. 1. 0
20 Transport Parks Pty. Ltd.	20 Acre Ser. Stn., Wodonga	25. 2.52	1.10.52	1,000	10	4½%	53.13. 4	29. 6. 0	82.19. 4
Trigg, W.A.	179 Mt.Alexander Rd., Flemington	23. 8.51	1.12.52	2,000	10	4½%	80. 2. 6	44. 5. 0	124. 7. 6
Vincent, O.	1 Beach Rd., Hampton	21. 4.52	21. 4.52	1,500	5	4½%	324.10.10	67. 1. 0	391.11.10
Whitemans Garage P/L	Seymour	20. 8.51	8. 9.52	1,000	5	4½%	136. 1. 5	29.15. 7	165.17. 0
Williams, A.	Lancefield	13.11.52	13.11.52	425	5	5%	37. 0.11	11. 1. 7	48. 2. 6
Wilkinson & Sibley	Heywood	22. 4.52	8. 8.52	1,200	5	4½%	182.18. 4	40.17. 6	223.15.10
Wilmots Auto Ser.	131 Ormond Rd., Elwood	21. 4.52	14. 5.52	1,200	6	4½%	195. 7. 9	52. 5. 3	247.13. 0
Woodlands L.W. & K.H.	Rochester	1. 4.52	17. 6.52	850	10	4½%	70.18. 7	34.18. 5	105.17. 0
Wright, E.A.	Warrnambool	17. 4.52	1. 8.52	1,000	5	4½%	151.10. 8	34.19. 4	186.10. 0
Woodman, J.R.	446 High St., Bendigo	23.10.51	23.10.51	1,000	10	4½%	129. 2. 9	67.18. 2	197. 0.11
30 Young A.J. & T.J.	Coleraine	19. 4.52	30.10.52	1,000	8	4½%	62.19. 9	25.12. 5	88.12. 2
Trewin L.V. & L.W.	North Adelaide	17. 3.52	17. 3.52	4,000	10	4½%	407. 9. 6	214. 8. 0	621.17. 6
Lock H.G.	Magill Rd., St. Morris	17. 3.52	17. 3.52	2,500	5	4½%	573. 8. 1	125.14. 5	699. 2. 6
Treloar J.V. & C.S.	Treloar Motors Marryatville	18. 3.52	18. 3.52	2,500	5	4½%	573. 8. 1	125.14. 5	699. 2. 6.
Oakes W.E.	Welland Sales & Ser., Welland	24. 3.52	24. 3.52	2,000	7	4½%	269.18. 5	91. 9. 7	361. 8. 0
Hoskin G.H.	Taylor's Rd., Thebarton	13. 3.52	31. 3.52	2,000	10	4½%	203.10.10	107. 4. 2	310.15. 0
Sommer R.W. & D.M.	Bridgewater	11. 3.52	31. 3.52	2,500	10	4½%	254.11. 2	134. 0. 1	388.11. 3
Hill H.C.	Crafers	12. 3.52	31. 3.52	2,500	10	4½%	254.12. 5	134. 0. 1	388.12. 6
Rosewarne F.W.	Kadina	8. 4.52	8. 4.52	550	10	4½%	44.11. 2	23.16.10	68. 8. 0
Broadbent K.L.	Metropolitan Garage, Adelaide	3. 4.52	3. 4.52	2,400	6	4½%	417. 9. 6	115.18. 6	533. 8. 0
40 Matters T.B.	Cremorne Gdn. Stn. Unley	9. 4.52	9. 4.52	3,000	10	4½%	263.18. 9	140. 7. 3	404. 6. 0

PERIODICAL ALLOWANCES TO RESELLERS - TAX YEAR ENDED JUNE 30, 1953 UNDER SSLB AGREEMENT.

Appellants
Exhibits

E(continued)

Name	Address	Date T/A Signed	Date SSLB Signed	Amount of Loan	Period of Loan (Years)	Rate of Interest	Amount of Repayment Principal	Interest	Periodical Allowance
Boyd D.A.	Green Dragon Ser.Stn.Adelaide	3. 4.52	14. 5.52	1,000	15	4½%	55.19. 1	51. 2.11	107. 2. 0
Maison Ser. Stn. Ltd.	Durham St., Glenelg	22. 8.52	22. 8.52	1,500	10	5%	98.10. 1	60.13. 3	159. 3. 4
Brigade Motors Ltd.	Wakefield St., Adelaide	8. 4.52	10. 9.52	1,000	8	5%	77.14. 2	36. 4. 4	113.18. 6
Hooper H.H.	Broken Hill		24.10.52	1,200	5	5%	125. 1. 5	33. 9. 7	158.11. 0
Winnall J. & Son	Keith	10.11.52	19.12.52	600	5	5%	44.10. 5	12. 2. 6	56.12.11
10 Smith E.	Commercial Ser.Stn.Broken Hill	6.11.52	19. 1.53	2,500	10	5%	64.16. 5	41. 5. 3	106. 1. 8
Smith F.H.	Smith's Ser.Stn. Broken Hill	6.11.52	19. 1.53	3,500	10	5%	90.15. 0	57.15. 4	148.10. 4
Creed A.W.G.	Glenburnie via Mt.Gambier	11.11.52	2. 2.53	500	9	5%	11. 1. 5	6. 4. 1	17. 5. 6
City Motors Pty. Ltd.	Port Lincoln	5.11.52	2. 2.53	1,000	5	5%	44. 6. 5	12. 6. 4	56.12. 9
Hughes B.J. & Sons Ltd.	Quorn	14.11.52	2. 2.53	400	5	5%	17.14. 6	4.18. 6	22.13. 0
Hood W.A.	Woods Ser.Stn. Broken Hill	26. 2.52	9. 2.53	1,000	9	5%	22. 3. 1	12. 8. 2	34.11. 3
Radio Motors	Geraldton		22.12.52	875	5	5%	64.17. 6	17.13. 9	82.11. 3
Griffith A.F.	Union & Ballina St., Lismore	1. 5.52	30. 7.52	2,000	10	4½%	161. 6. 2	86.14. 6	248. 0. 8
Evans A.	Main St., Lithgow	22. 4.52	16. 5.52	1,250	10	4½%	100.16. 2	54. 3.10	155. 0. 0
Carmody D.J.	242 High St., Maitland		31. 5.52	3,500	10	4½%	259.10. 7	139.10.10	399. 1. 5
20 Johnson L.C.	Marulan Motors, Marulan	9. 1.53	17. 4.53	1,500	5	5%	88.15. 8	24. 9. 0	113. 4. 8
Morgan-Jones T.	410 Maitland Rd., Mayfield		23. 9.52)	660	3	4½%			
"	" " "		6. 3.53)	600	9	5%	192.12.11	39. 8. 5	232. 1. 4
Boatwright S.E.	Moga	24. 2.53	17. 4.53	500	5	5%	22. 3. 5	6. 3. 1	28. 6. 6
Crane, N.J.	Gwydir Motors, Bale St., Moree	18. 4.52	31. 7.52	1,350	10	4½%	100. 3. 5	53.16. 7	154. 0. 0
Ritter, G.H.	107 Heber St., Moree		17. 4.53	1,000	10	5%	32. 9. 7	20.11. 3	53. 0.10
Butters, W.L.	Central Motors, Nambucca Heads		2. 7.52	135	3	4½%	37. 5.10	4.17. 6	42. 3. 4
Logan, J.T. & D.M.	Maitland St. Narrabri	1. 8.52	8. 5.53	900	5	5%	134.18. 5	34.19.11	169.18. 4
Curton Tyre Co.Pty.Ltd.	218 Hunter & Merewether Sts. Newcastle	29.12.52	17. 4.53	1,500	5	5%	111. 4. 3	30. 6. 7	141.10.10
30 Truscott L.S.	Scott & Telford Sts., Newcastle	7. 1.52	15. 5.52	500	10	4½%	50. 0. 0	*	50. 0. 0
Connor B.	134 Bathurst St., Orange	22. 4.52	22. 4.52	1,200	10	4½%	105. 0.10	56. 3. 2	161. 4. 0
Hope, D.E.	Bland Motors, Quandialla		12.11.52	375	5	5%	27.17. 7	7.10. 9	35. 8. 4
Herbert, J.W.	115 George St., Singleton	27. 2.52	13. 6.52	3,500	10	4½%	259.11. 6	139.10.10	399. 2. 4
Jurd, C.C.	Manning Motors Co.,Manning St., Taree	22. 4.52	8. 7.52	1,000	10	4½%	74. 4. 1	50. 4.11	124. 9. 0
Trigg, C.A.	46 Victory Pde., Toronto	12.11.52	12.11.52	500	5	4½%	45. 2.11	10.16. 7	55.19. 6
Spencer C.T.	Toukley	16. 5.52	16. 5.52	935	5	4½%	170.11. 3	38.11. 9	209. 3. 0
Taylor, A.C.	Princes Highway, Turlinjah	12.11.52	17. 4.53	200	5	5%	14.17. 1	4. 0.10	18.17.11
Allsop Bros.	Cnr. Arthurton & St.Georges Rd., Northcote	19.11.52	1.12.52	750	5	4½%	73.15. 3	16. 3. 9	89.19. 0
40 Anderson, E.M.	Gen. Store, Sandford	13.11.52	13.11.52	500	5	5%	43. 5. 5	13. 7. 7	56.13. 0
Anderson, J.W.	Mt.Erica Gar.415 High St.Prahran.	9. 4.52	15. 5.52	2,000	10	4½%	179.15. 5	89.17. 5	269.12.10

*Interest adjusted subsequent year

PERIODICAL ALLOWANCES TO RESELLERS - TAX YEAR ENDED JUNE 30, 1953 UNDER SS1B AGREEMENT.

Appellants
Exhibits

E(continued)

Name	Address	Date T/A Signed	Date SS1B Signed	Amount of Loan	Period of Loan (Years)	Rate of Interest	Amount of Repayment Principal	Interest	Periodical Allowance
Bendle, F.H.C.	Main Rd., Ferntree Gully	25. 2.52	7.10.52	1,000	9	4½%	63. 1. 3	28. 7. 5	91. 8. 8
Blades, N.F.	220, Glenhuntly Rd., Elsternwick	21. 4.52	26. 5.52	900	5	4½%	163.11. 3	37.15. 9	201. 7. 0
Blake, H.R.	Rockbank	2. 4.52	26. 5.52	5,000	10	4½%	401.11. 2	220. 5.10	621.17. 0
Boort Engineering	Boort	1.11.52	1.11.52	300	5	5%	31. 3.10	8.10. 1	39.13.11
Brewster D.G.	486 Whitehorse Rd., Mont Albert	21. 4.52	1. 7.52	3,000	5	4½%	500.11. 9	114.12. 8	615. 4. 5
10 Broadfoot's Welding Ser.	363 Douglas Pde., Newport	12.12.52	12.12.52	1,000	6	5%	61.15.10	18.15. 0	80.10.10
Bryce H.M.	1 Droop St., Footscray	18. 2.52	1. 4.52	1,600	10	4½%	153. 9. 5	78.16. 3	232. 5. 8
Carpenter A.L.	85 Ferguson St., Williamstown	22. 4.52	2. 7.52	2,750	5	4½%	459.10.10	104. 8. 9	563.19. 7
Chitts W.A.	232 Hawthorn Rd., Caulfield	7. 3.52	26. 5.52	900	10	4½%	72.11. 7	39. 8. 5	112. 0. 0
William Christian & Co.	Mortlake	24.11.52	12. 1.52	2,800	10	4½%	68.17. 3	47. 7. 5	116. 4. 8
Cordner, W.J.	Garage, Dimboola	21. 4.52	4. 8.52	1,450	7	4½%	155.10.11	51. 3. 3	206.14. 2
Cowley, J.A.	Jacob St., Geelong	18. 4.52	18. 4.52	700	3	4½%	240.15. 7	30. 0. 0	270.15. 7
Davey, H.R.	Lake Boga Garage, Lake Boga	31.10.52	1.12.52	875	7	4½%	53.17.10	19. 3. 8	73. 1. 6
Detroit Motors Pty. Ltd.	123 Beach Rd., Sandringham	10.10.51	14. 5.52	785	3	4½%	303.16. 5	34.11. 2	338. 7. 7
Dew & Miles Pty. Ltd.	Cooper St.& Keilor Rd., N.Essendon	4. 4.52	16. 4.52	1,600	10	4½%	155. 2.10	77. 2.10	232. 5. 8
20 Don S/S	Whelan T., Canterbury Rd., Box Hill	22.4.52	6. 6.52	2,000	10	4½%	163.14. 0	85. 1. 0	248.15. 0
Dousset P.	Research Motors, Research	28. 3.52	9. 6.53	1,000	10	4½%	89.15.11	45. 0. 8	134.16. 7
Drouin Motors	Drouin	26. 2.52	21. 5.52	1,000	6	4½%	163.17. 4	42.11. 3	206. 8. 7
Dwyer, J.J.	Bairnsdale	21. 4.52	1.12.52	1,500	3	4½%	236. 4. 6	31.11. 0	267.15. 6
East Melb.Motors	132 Wellington Pde. E.Melbourne	22. 4.52	5. 9.52	500	5	4½%	66. 7. 1	17.12. 2	83.19. 3
Ebbage S.C.	Montrose Motors, Montrose	18. 3.52	6. 6.52	700	7	4½%	87.13. 4	29. 4. 8	116.18. 0
Edwards C.F. & S.	240 High St., Prahran	21. 4.52	21. 4.52	1,200	5	4½%	260. 5. 0	53. 1. 2	313. 6. 2
Fitzpatrick, F.M.	View Point, Eaglehawk	25. 3.52	27. 6.52	2,000	10	4½%	168.17. 2	79.17.10	248.15. 0
Five Roads S/S	Cnr.Barkley & Rathdown St.Carlton	10.4.52	6. 2.53	7,000	5	4½%	289. 3.11	102. 6. 7	391.10. 6
Geelong S/S Pty. Ltd.	Mercer St., Geelong	2. 4.52	2. 4.52	3,500	10	4½%	332.16. 8	175. 1. 6	507.18. 2
30 Geelong Western Mtrs.P/L	250 Moorabiol St. Geelong	20.11.52	20.11.52	550	10	4½%	21. 8. 5	12.18. 1	34. 6. 6
Goring L.J.	800 Sydney Rd., Brunswick	31. 7.52	30. 3.53	1,000	5	5%	29. 9. 9	8. 5. 5	37.15. 2
Gray, W.H.	Garage Chiltern	12.11.52	12.11.52	2,000	8	5%	71.16. 9	54.15. 4	126.12. 1
Green C.	Cnr. Bulla & Broadmeadows Rd. Tullamarine	22. 4.52	22. 4.52	700	5	4½%	137.17. 3	31.17.11	169.15. 2
Grunden W.A.	944-950 Mt.Alexander Rd., N.Essendon	17.10.51	30. 9.52	700	3	4½%	147. 9. 3	19. 3. 5	166.12. 8
Gurton, W.H.	21 Doveton St., Nth. Ballarat	21. 4.52	1.10.52	1,500	5	4½%	181. 2. 8	42.12. 8	223.15. 4
Hamill S/S Pty. Ltd.	Wharf Rd., Melbourne	11. 4.52	1.12.52	400	15	4½%	9. 8. 9	8.18. 3	18. 7. 0
Harding W.B. & R.J.	322 Dandenong Rd., East St.Kilda	21. 4.52	6. 6.52	2,000	5	4½%	366.12. 4	80.17. 8	447.10. 0
40 Hicks A.J. & McIntosh F.S.	Yackan Dandah Motors, Yackandandah	20. 1.53	20. 1.53	250	5	5%	14. 9.10	4. 7.10	18.17. 8

PERIODICAL ALLOWANCES TO RESELLERS - TAX YEAR ENDED JUNE 30, 1953 UNDER SS1B AGREEMENT

Appellants
Exhibits

Name	Address	Date	Date	Amount of Loan	Period of Loan (Years)	Rate of Interest	Amount of Repayment		Periodical Allowance	E(continued)
		T/A Signed	SS1B Signed				Principal	Interest		
Highglen Motors Pty. Ltd.	309-312 Glenferrie Rd., Malvern	31. 3.52	2. 7.52	2,000	15	4½%	87.15.11	80.10. 1	168. 6. 0	
Hilder O.H.	Rushworth	29.10.52	18.12.52	800	5	5%	56.13.11	17.18. 2	74.12. 1	
Holroyd J.	152 Mitchell St., Northcote	17. 3.52	17. 3.52	2,400	10	4½%	223.11. 9	124.14. 5	348. 6. 2	
Hooper C.	474 Pascoe Vale Rd., Glenroy	18. 2.52	24. 7.52	700	5	4½%	105. 7. 0	25. 4. 8	130.11. 8	
Hopcroft J.V.	Flinders	26.11.52	3. 2.53	2,000	8	4½%	71. 2.10	28. 5. 2	99. 8. 0	
10 Hudson A.	Cnr. Kangaroo & Poath Rd. Hughesdale	4. 2.52	26. 4.52	2,500	10	4½%	244.15. 6	117.18.10	362.14. 4	
Hynes T.B.	Merrigum	12.11.52	18.12.52	400	8	4½%	16.16. 1	8. 1. 0	24.17. 1	
Inglis D.P.	382 Dandenong Rd. Caulfield	18. 1.52	26. 5.52	1,200	5	4½%	218. 6. 8	50. 4. 4	268.11. 0	
Ivalda Motors Pty. Ltd.	52 Ir. Heidelberg Rd. Ivanhoe	27. 3.52	28. 5.52	2,250	10	4½%	181.13. 8	98. 5. 4	279.19. 0	
Jago, R.W.	21 Cox St. Pt. Fairy	18. 8.51	15. 9.52	500	5	4½%	69. 1. 6	14.17. 9	83.19. 3	
Kellett K.C.	Lake Wallace Motors, Edenhope	18.10.52	29.10.52	1,000	7	4½%	71.14.10	25.12. 4	97. 7. 2	
Kelly Bros. Motors	199-203 Princes Highway, Morwell	29. 2.52	3. 2.53	600	9	4½%	18.11. 9	8. 9.11	27. 1. 8	
Kennedy K.W. Pty. Ltd.	Mornington	24. 8.51	20. 6.52	1,000	8	4½%	108.18. 0	40. 5. 0	149. 3. 0	
King, L.J.	370 Hawthorn Rd., Caulfield	21. 4.52	15. 5.52	1,750	5	4½%	336.11. 1	74.12. 6	411. 3. 7	
Lardner Bros.	232 Barkley St. Ararat	5.12.52	18.12.52	425	5	4½%	38. 4. 5	8. 7. 8	46.12. 1	
20 Lee J.E.	Lee's Store, Pearcedale	30.10.52	30.10.52	150	5	4½%	15. 8. 1	4. 3.11	19.12. 0	
Lennan, T.J.	Store, Dartmoor		3.11.52	250	3	5%	38. 3. 9	6.16. 3	45. 0. 0	
H. Lewis & Sons	Store, Cavendish	24.11.52	24.11.52	300	3	5%	46.17. 5	7. 2. 7	54. 0. 0	
Little, W.G.	Store, Portarlington	3.11.52	3.11.52	225	3	5%	34. 5. 5	6. 4. 7	40.10. 0	
Lobb, M.A.	354 Mont Albert Rd., Mont Albert	22. 4.52	18. 8.52	1,000	3	4½%	266.13. 3	30.16. 9	297.10. 0	
Lunt, C.N.	Maryborough	8. 4.52	30. 6.52	1,200	7	4½%	121. 1. 0	47. 5. 0	168. 6. 0	
Lynch M. & Sons	487 Ballarat Rd., Sunshine	25. 5.52	25. 5.52	1,600	5	4½%	357.13.11	90.14.10	448. 8. 9	
Gierke J.	Manly Garage, Brisbane	5. 3.52	5. 8.52	700	5	4½%	130. 1. 1	28.16.11	158.18. 0	
Alexander W.M.	Nanango	5. 3.52	2. 5.52	300	10	4½%	26.10. 6	14. 0.11	40.11. 5	
Allison & Kilmore	Strathpine	13. 1.53	16. 2.53	750	5	5%	44.13. 1	11.18.11	56.12. 0	
30 Bache E.J.	Northgate	1. 9.52	10.12.52	1,000	4	5%	90.18.11	24. 1. 1	115. 0. 0	
Coomber Bros.	Milton, Brisbane	19. 6.52	19. 6.52	3,000	10	4½%	244. 5. 1	129.19.11	374. 5. 0	
Flanagan K.S.	Albion, Brisbane	1.12.52	1.12.52	2,000	4	5%	186.14.10	43. 5. 2	230. 0. 0	
Bell & Walker	Southport	13.12.51	5. 3.53	1,750	4	5%	159. 3. 0	42. 2. 0	201. 5. 0	
Ivey H.H.	Hydro Ser. Stn. Hamilton		7. 1.53	400	1	5%	98.10. 5	8.19. 7	107.10. 0	
Leach E.	Windsor	10. 4.52	22. 4.52	3,500	8	4½%	440.13. 3	173. 2. 5	613.15. 8	
Nicholas J.C.	Coopers Plains	15. 8.52	15. 8.52	2,500	9	4½%	188. 9.10	90.11.10	733.12. 6	
Stephens J.H. & L.H.	Greenslopes	1. 5.52	1. 5.52	2,000	10	4½%	176.14. 7	93.11. 3	270. 5.10	
Heineman & Dunstan	Charleville	2. 2.52	25. 2.53	500	5	5%	30. 3. 9	8. 2.11	38. 6. 8	
Young F.R.	Southport	4.11.52	4.11.52	985	6	5%	138.15. 8	38. 0.10	176.16. 6	

PERIODICAL ALLOWANCES TO RESELLERS - TAX YEAR ENDED JUNE 30, 1953 UNDER SSLB AGREEMENT.

Appellants
Exhibits

E(continued)

Name	Address	Date	Date	Amount of Loan	Period of Loan (Years)	Rate of Interest	Amount of Repayment		Periodical Allowance
		T/A Signed	SSLB Signed				Principal	Interest	
Jackson H.E.A.	Eagle Farm	24. 8.51	30. 1.53	1,125	4	5%	67.18. 6	18. 6. 6	86. 5. 0
Hayes & Son Pty. Ltd.	Murwillumbah		26. 2.53	1,125	5	5%	66.11.10	18. 6. 6	84.18. 8
Yates R.A.	Tweed Heads	5. 3.53	5. 3.53	400	5	5%	18. 1. 6	4.18. 6	23. 0. 0
Millett A.R. & Co.	Townsville	1. 1.53	7. 7.53	3,000	5	5%	201.10. 6	60.16. 7	262. 7. 1
Bartons Ser. Stn.	Home Hill		19. 3.53	875	5	5%	66. 3. 6	17.13. 7	83.17. 1
10 Campbell A.R.	Campbells Ser.Stn.Wellington	19. 9.52	19.11.52	2,400	6	5%	204. 3. 1	66. 9. 8	270.12. 9
Lyell H'way Motors	New Norfolk	8. 4.52	8. 4.52	1,200	6	4½%	224. 0. 4	61.14. 8	285.15. 0
Anderson Mrs. L.R.	Cressy	15.11.52	15.11.52	300	3	5%	54.18. 7	8. 1. 5	63. 0. 0
Boon H.E.	Westbury	14.11.52	20.11.52	1,000	5	5%	104. 5. 9	27.17. 4	132. 3. 1
Gangell Mrs. M.	Mangalore	23.10.52	7.11.52	300	3	5%	54.18. 9	8. 1. 3	63. 0. 0
King F.	Crescent Ser. Stn. W.Hobart	11. 2.52	17. 7.52	300	5	4½%	73.12.10	15.19. 2	89.12. 0
Moore C.C.	Ulverstone	2.12.52	2.12.52	2,500	5	5%	260.12. 1	69.13. 7	330. 5. 8
Rule Bros.	Kingston	21. 4.52	9. 9.52	750	5	4½%	105. 1. 3	20.18. 9	126. 0. 0
Smith A.J.L.	St. Marys	31.10.52	1.12.52	400	3	5%	73. 4.10	10.15. 2	84. 0. 0
Smith & Dunn Pty. Ltd.	Burnie	15. 7.52	22. 8.52	1,000	5	4½%	159. 1. 2	27. 8.10	186.10. 0
20 Thurston Bros.	Bellerive	14. 3.52	13. 8.52	300	10	5%	5.17. 0	3.14. 6	9.11. 6
Warne F.T.	Augusta Rd. Ser. Stn. Hobart	16. 4.52	24. 4.52	2,500	5 3/12	4½%	542. 4. 5	126.13. 1	668.17. 6
Wilson J.S.	Bathurst & Argyle Sts. Hobart	6. 4.52	27. 3.53	2,000	6	5%	471. 2.11	140.17.10	612. 0. 9
							41,518. 9.11	15,291.13. 2	57,264.13.11

*Interest adjusted subsequent year

PERIODICAL ALLOWANCES TO RESELLERS - TAX YEAR ENDED JUNE 30, 1953 UNDER SSLC AGREEMENTS

Appellants
Exhibits

E(continued)

Name	Address	Date T/A Signed	Date SSLC Signed	Amount of Loan	Period of Loan (Years)	Rate of Interest	Amount of Repayment Principal	Interest	Periodical Allowance
Byrne J.D.	103 P'matta Rd., Annandale	9. 4.52	9. 4.52						750. 0. 0
Bishop W.	560 Forest Rd., Bexley		15. 4.52						300. 0. 0
Holme L.K.	244 New South Head Rd., Edgecliffe	22.4.52	31. 5.52						300. 0. 0
Howard L.F.	Wardell Rd., Marrickville	9. 4.52	10. 4.52						367. 0. 0
Mandell H.	Kingsway & Pt.Hacking Rd.Miranda	8. 4.52	4. 5.52						500. 0. 0
10 Hellyer C.A.	357 Victoria Rd. Rydalmere	12. 1.53	26. 6.53						340. 0. 0
Davis O.	433 Kent St., Sydney	21. 4.52	21. 4.52						600. 0. 0
Ross-Kelly	Princes H'way, Waterfall	21. 3.52	14. 5.52						157. 6. 8
Hawkins R.C.	62 McPherson St., Waverley	8. 7.52	8. 7.52						500. 0. 0
Wykes C.I.	155 Price St., Grafton	6. 1.53	6. 1.53						400. 0. 0
Russon G.I.	Parry & Tudor Sts., Hamilton	21. 5.52	13. 6.52						1,800. 0. 0
Donnelly K.	Hexham		18. 6.52						52. 0. 0
Tom E.A.	Manildra	8. 4.52	14. 5.52						120. 0. 0
Hawthorne G.W.	20 Dalby St., Newcastle	10.12.52	16.12.52						156. 0. 0
Bartop & Son	43 John St., Singleton	8. 7.52	31. 7.52						100. 0. 0
20 Brown M.J.	Croydon	18. 4.52	25. 8.52						340. 0. 0
Massey W.H. & S.Pty.Ltd.	Williamstown Rd., Yarraville	7. 3.52	14. 3.53 (about)						360. 0. 0
Tyne Motors Pty. Ltd.	Lorimer & Ferras Sts. S.Melbourne	21.4.52	21. 4.52						500. 0. 0
Wool Exch. Ser. Stn.	142 King St., Melbourne	22. 4.52	22. 4.52						40. 0. 0
Central Park Gge.	219 Heidelberg Rd., Fairfield	22. 4.52	22. 4.52						350. 0. 0
Foster J.H. & H.M.	Ballingers Ser.Stn.Paddington, Queensland	3.10.51	12. 5.52						170. 5. 0
Flannagan K.S.	Albion, Brisbane	1.12.52	1.12.52						125. 0. 0
Killinger C.C.	Southend Ser.Stn. Toowoomba, Qld.	31.10.52	31.10.52						104. 0. 0
Scriven V.R. & L.M.	Highway Ser.Stn. Brighton, Qld.	6.11.52	6.11.52						142. 0. 0
30 Peppin L.G. & F.E.	Hydro Ser.Stn.Hamilton, Qld.(Adv.agr.Oct.52)	1.10.52							106. 4. 1
Conley M.J.	Glenorchy Ser.Stn., Glenorchy	11. 2.52	30. 3.52						106. 0. 0
Rouse L.M.	Sth.Hobart Ser.Stn. Hobart	1.12.52	18.12.52						312. 0. 0
Mitchell H.R.	Bellerive Gge., Bellerive	1. 4.52	16. 4.52						240. 0. 0
Grubb E.J.	Main Rd. & Maxwell St. Moonah		14. 6.52						300. 0. 0

9,637.15. 9

Total SSLB & SSLC

41,518. 9.11 15,291.13. 2 66,902. 9. 8

HMT/AOB/MRW
10.3.61

Appellants
Exhibits

F(i)
continued

3. THE Borrower HEREBY COVENANTS with the Company that during the period referred to in Clause 2 hereof

(a) he will not sell transfer assign or otherwise dispose of the whole or any part of his estate or interest in the said premises or any part thereof or in the garage and service station business carried on by him thereon unless -

(i) in case he is proposing to sell the same he shall have first offered the same in writing for the acquisition by the company on the same terms and conditions and at the same price as those on and at which he bona fide proposes to sell the same to any other person or company and the Company shall have rejected the same or shall have failed to accept the same within twenty eight days after receipt of such offer, and 10

(ii) in case he is proposing to sell the same and the Company has rejected or failed to accept his offer, or in case he is proposing to dispose of the same otherwise than by sale the Company approves of the person or company to whom the Borrower proposes to dispose thereof and such person or company executes the Company's form of Trading Agreement for a period not being less than the then unexpired portion of the period referred to in Clause 2 hereof and undertakes to the satisfaction of the Company to assume and carry out the obligations and liability of the Borrower under this Agreement for the said unexpired portion of the said period provided however that the Company's approval shall not be unreasonably withheld in the case of a person or company willing to execute such form of Trading Agreement as aforesaid; 20 30

(b) unless and until he shall have disposed of the same in conformity with the provisions of paragraph (a) hereof he will during the said period continue to remain personally in occupation of the said premises and will not vacate or part with the possession of the same or any part thereof in favour of any other person or company. 40

4. THE Borrower hereby grants to the Company the sole and exclusive advertising rights in relation to all

parts of the said Garage or Service Station for the Appellants
 period ending on the day of 19 . Exhibits

5. DURING the continuance of the Trading Agreement F(i)
 referred to in Clause 2 hereof the Company shall continued
 have the right from time to time to enter the said
 Garage or Service Station together with its servants
 and agents and trainee service station and garage
 operators undergoing training by the Company (here-
 inafter called "trainees") and conduct thereon
 10 training courses in service station and garage
 operation PROVIDED THAT the Company shall only
 enter as aforesaid at such times as are convenient
 to the Borrower. Whenever such training course is
 being held at the said Garage or Service Station
 the Company's servants and agents and the trainees
 shall have the unrestricted right to attend to the
 refuelling lubrication and general servicing of
 the vehicles of the customers of the Borrower and
 for that purpose to use the Borrower's refuelling
 20 lubrication and servicing facilities plant equipment
 tools utensils and stock-in-trade and to have the
 use of the Borrower's sanitary and washroom facilities.

6. DURING the period ending on the day
 of One thousand nine hundred and
 provided that the Borrower remains personally in occupa-
 tion of the said Garage or Service Station and continues
 to observe the provisions of this Agreement, the
 Company shall on or as soon as practicable after the
 first day of each month (commencing as on the first
 30 day of One thousand nine hundred and
) pay to the Borrower a sum equal to
 for each gallon of motor fuels purchased by the Borrower
 from the Company for resale at the said Garage or
 Service Station during the immediately preceding month
 until the Borrower shall have purchased as aforesaid
 from the Company a total of gallons of motor
 fuels after which no further payment to the Borrower
 shall be made by the Company; provided that if by
 the end of the said period the Borrower shall not have
 40 purchased from the Company a total of gallons
 of motor fuels as aforesaid the Company shall if the
 Borrower continues to observe the provisions of the
 said Trading Agreement continue to pay the said sums
 to the Borrower on the basis aforesaid until the
 Borrower shall have purchased as aforesaid from the
 Company a total of gallons of motor fuels and
 payment of any of the said sums shall at the option
 of the Company be sufficiently made in terms of this

Appellants
Exhibits

F(i)
continued

Agreement if credited by the Company to the account of the Borrower in the books of the Company.

7. PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED that upon the commission by the Borrower his executors administrators assigns lessees mortgagees or encumbrancers or any of them of any breach of the covenants or provisions herein contained and on the part of the Borrower to be observed and performed or upon the commission as aforesaid of any act of bankruptcy or insolvency the whole of the principal sum or 10 so much thereof as is then owing to the Company together with interest accrued thereon to the date of payment of the same shall become immediately payable to the Company.

8. THIS Deed shall enure to the benefit of and be binding upon the successors and assigns of the Company and the executors administrators and assigns of the Borrower.

9. IN this Deed words importing the singular number shall include the plural and the masculine gender 20 shall include the feminine and neuter.

IN WITNESS whereof the parties hereto have executed these presents the day and year first hereinbefore written.

EXECUTED on behalf of VACUUM OIL)
COMPANY PROPRIETARY LIMITED by)
being signed by the Officer)
whose signature appears opposite)
hereto) 20

SIGNED SEALED AND DELIVERED)
by the Borrower in the presence)
of)Seal
Borrower 30

Witness.....

Address

.....

Appellants
Exhibits

F(ii)
continued

3. THE Borrower HEREBY COVENANTS with the Company that during the period referred to in Clause 2 hereof
- (a) he will not sell transfer assign or otherwise dispose of the whole or any part of his estate or interest in the said premises or any part thereof or in the garage and service station business carried on by him thereon unless -
- (i) in case he is proposing to sell the same he shall have first offered the same in writing for acquisition by the Company on the same terms and conditions and at the same price as those on and at which he bona fide proposes to sell the same to any other person or company and the Company shall have rejected the same or shall have failed to accept the same within twenty-eight days after receipt of such offer, and 10
- (ii) in case he is proposing to sell the same and the Company has rejected or failed to accept his offer, or in case he is proposing to dispose of the same otherwise than by sale the Company approves of the person or company to whom the Borrower proposes to dispose thereof and such person or company executes the Company's form of Trading Agreement for a period not being less than the then unexpired portion of the period referred to in Clause 2 hereof and undertakes to the satisfaction of the Company to assume and carry out the obligations and liability of the Borrower under this Agreement for the said unexpired portion of the said period provided however that the Company's approval shall not be unreasonably withheld in the case of a person or company willing to execute such form of Trading Agreement as aforesaid; 20 30
- (b) unless and until he shall have disposed of the same in conformity with the provisions of paragraph (a) hereof he will during the said period continue to remain personally in occupation of the said premises and will not vacate or part with the possession of the same or any part thereof in favour of any other person or company. 40
4. THE Borrower hereby grants to the Company the sole and exclusive advertising rights in relation to

all parts of the said Garage or Service Station for the period ending on the _____ day of _____ 19 ____ . Appellants Exhibits

5. DURING the continuance of the Trading Agreement referred to in Clause 2 hereof the Company shall have the right from time to time to enter the said Garage or Service Station together with its servants and agents and trainee service station and garage operators undergoing training by the Company (hereinafter called "trainees") and conduct thereon training courses in service station and garage operations PROVIDED THAT the Company shall only enter as aforesaid at such times as are convenient to the Borrower. Whenever such training course is being held at the said Garage or Service Station the Company's servants and agents and the trainees shall have the unrestricted right to attend to the refueling lubrication and general servicing of the vehicles of the customers of the Borrower and for that purpose to use the Borrower's refuelling lubrication and servicing facilities plant equipment tools utensils and stock-in-trade and to have the use of the Borrower's sanitary and washroom facilities. F(ii) continued

6. DURING the period ending on the _____ day of _____ One thousand nine hundred and _____ provided that the Borrower remains personally in occupation of the said Garage or Service Station and continues to observe the provisions of this Agreement, the Company shall on or as soon as practicable after the first day of each month (commencing as on the first day of _____ One thousand nine hundred and _____) pay to the Borrower a sum equal to _____ for each gallon of motor fuels purchased by the Borrower from the Company for resale at the said Garage or Service Station during the immediately preceding month and payment of any of such sums shall at the option of the Company be sufficiently made in terms of this Agreement if credited by the Company to the account of the Borrower in the books of the Company.

7. PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED that upon the commission by the Borrower his executors administrators assigns lessees mortgagees or encumbrancers or any of them of any breach of the covenants or provisions herein contained and on the part of the Borrower to be observed and performed or upon the commission as aforesaid of any act of bankruptcy or insolvency the whole of the principal sum or so much thereof as is then owing to the Company

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Exhibits

F(ii)
continued

together with interest accrued thereon to the date of payment of the same shall become immediately payable to the Company.

8. THIS Deed shall enure to the benefit of and be binding upon the successors and assigns of the Company and the executors administrators and assigns of the Borrower.

9. IN this Deed words importing the singular number shall include the plural and the masculine gender shall include the feminine and neuter.

10

IN WITNESS whereof the parties hereto have executed these presents the day and year first hereinbefore written.

EXECUTED on behalf of VACUUM OIL)
COMPANY PROPRIETARY LIMITED by)
being signed by the Officer)
whose signature appears opposite)
hereto)

SIGNED SEALED AND DELIVERED by)
the Borrower in the presence of)Seal 20
Borrower

Witness

Address

Appellants Exhibits

F(iii)
continued

Vacuum shall on or as soon as practicable after the first day of each month (commencing as on the first day of _____ One thousand nine hundred and _____) pay to the Operator a sum equal to _____ for each gallon of motor fuels purchased by the Operator from Vacuum for resale at the said Garage or Service Station during the immediately preceding month until the Operator shall have purchased as aforesaid from Vacuum a total of _____ gallons of motor fuels after which no further payment to the Operator shall be made by Vacuum; provided that if by the end of the said period the Operator shall not have purchased from Vacuum a total of _____ gallons of motor fuels as aforesaid Vacuum shall if the Operator continues to observe the provisions of the said Trading Agreement continue to pay the said sum to the Operator on the basis aforesaid until the Operator shall have purchased as aforesaid from Vacuum a total of _____ gallons of motor fuels and payment of any of the said sums shall at the option of Vacuum be sufficiently made in terms of this Agreement if credited by Vacuum to the account of the Operator in the books of Vacuum.

10

20

6. THIS Agreement shall be binding upon the Operator and his legal personal representatives.

IN WITNESS whereof the parties hereto have executed these presents the day and year first above written.

30

SIGNED SEALED AND DELIVERED by)
 the said Operator in the)
 presence of:)

EXECUTED on behalf of Vacuum Oil)
 Company Proprietary Limited by)
 being signed by the Officer)
 whose signature appears opposite)
 hereto.)

.....
Authorized Officer.

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EXHIBIT "F"(iv): MODERN FORM OF FULL PERIOD SS1-C
AGREEMENT (F.P.)

F(iv)

FORM SS1-C(21/9/1959)

THIS AGREEMENT is made the _____ day of _____ 19____
BETWEEN

_____ of _____
in the State of _____ carrying on a Service
Station or Garage known as " _____ "
at _____ in the said State (herein-
after called "the Operator") of the one part and 10
VACUUM OIL COMPANY PROPRIETARY LIMITED of
_____ in the said State (herein-
after called "Vacuum") of the other part whereby
IT IS MUTUALLY AGREED AND DECLARED as follows:-

1. THE Operator hereby grants to Vacuum the sole
and exclusive advertising rights in relation to all
parts of the said Service Station or Garage for a
period of _____ years from the date hereof.

2. DURING the said period Vacuum shall have the
right from time to time to enter the said Service 20
Station or Garage together with its servants and
agents and trainee service station and garage opera-
tors undergoing training by Vacuum (hereinafter called
"trainees") and conduct thereon training courses in
service station and garage operation PROVIDED THAT
Vacuum shall only enter as aforesaid at such times
as are convenient to the Operator. Whenever such
training course is being held at the said Service
Station or Garage Vacuum's servants and agents and 30
the trainees shall have the unrestricted right to
attend to the refuelling lubrication and general
servicing of the vehicles of the customers of the
Operator and for that purpose to use the Operator's
refuelling lubrication and servicing facilities plant
equipment tools utensils and stock-in-trade and to
have the use of the Operator's sanitary and washroom
facilities.

3. THE Operator shall execute Vacuum's form of
Trading Agreement for a period of _____ years from
the date hereof and during that period he shall comply 40
with the terms and conditions thereof in all respects
so long as he continues to occupy the said Service
Station or Garage.

4. THE Operator HEREBY COVENANTS with Vacuum that during the period referred to in Clause 3 hereof -

Appellants
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(a) He will not sell transfer assign or otherwise dispose of the whole or any part of his estate or interest in the said premises or any part thereof or in the Service Station or Garage business carried on by him thereon unless -

F(iv)
continued

10 (i) in case he is proposing to sell the same he shall have first offered the same in writing for acquisition by Vacuum on the same terms and conditions and at the same price as those on and at which he bona fide proposes to sell the same to any other person or company and Vacuum shall have rejected the same or shall have failed to accept the same within twenty eight days after receipt of such offer, and

20 (ii) in case he is proposing to sell the same and Vacuum has rejected or failed to accept his offer, or in case he is proposing to dispose of the same otherwise than by sale Vacuum approves of the person or company to whom the Operator proposes to dispose thereof and such person or company executes Vacuum's form of Trading Agreement for a period not being less than the then unexpired portion of the period referred to in Clause 3 hereof and undertakes to the satisfaction of
30 Vacuum to assume and carry out the obligations and liability of the Operator under this Agreement for the said unexpired portion of the said period provided however that Vacuum's approval shall not be unreasonably withheld in the case of a person or company willing to execute such form of Trading Agreement as aforesaid;

40 (b) unless and until he shall have disposed of the same in conformity with the provisions of paragraph (a) hereof he will during the said period continue to remain personally in occupation of the said premises and will not vacate or part with the possession of the same or any part thereof in favour of any other person or company.

5. DURING the period ending on the _____ day
of One thousand nine hundred and

IN THE PRIVY COUNCIL

No. 53 of 1964

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N :

MOBIL OIL AUSTRALIA LIMITED
(formerly called Vacuum Oil Company Proprietary
Limited) Appellant

- and -

THE COMMISSIONER OF TAXATION OF THE
COMMONWEALTH OF AUSTRALIA Respondent

RECORD OF PROCEEDINGS

Allen & Overy,
9-12, Cheapside,
London, E.C.2.
Solicitors for the Appellant.

Coward, Chance & Co.,
St. Swithin's House,
Walbrook,
London, E.C.4.
Solicitors for the Respondent.