

IN THE PRIVY COUNCIL

*Judgment -*  
*6* 1965 No. 43 of 1964  
*P.C.*  
*6510.6*

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

BETWEEN: PACIFIC MOTOR AUCTIONS PTY. LIMITED  
(Defendant) APPELLANT

AND: MOTOR CREDITS (HIRE FINANCE) LIMITED  
(Plaintiff) RESPONDENT

RECORD OF PROCEEDINGS

VOLUME I

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~~G.D.I. 6.6~~

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
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IN THE PRIVY COUNCILNo. 43 of 1964

ON APPEAL FROM THE HIGH COURT  
OF AUSTRALIA

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BETWEEN: PACIFIC MOTOR AUCTIONS PTY. LIMITED  
(Defendant) APPELLANT

AND: MOTOR CREDITS (HIRE FINANCE)  
LIMITED (Plaintiff) RESPONDENT

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ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

BETWEEN

PACIFIC MOTOR AUCTIONS PTY. LIMITED  
(Respondent) Appellant

AND

MOTOR CREDITS (HIRE FINANCE) LIMITED  
(Appellant) Respondent

RECORD OF PROCEEDINGS

No.1

PLAINTIFFS DECLARATION

IN THE SUPREME COURT  
OF NEW SOUTH WALES )

No. of 1961

In the Supreme  
Court of New  
South Wales

BETWEEN

MOTOR CREDITS (HIRE FINANCE) LIMITED Plaintiff

No.1  
Plaintiff's  
Declaration

AND

PACIFIC MOTOR AUCTIONS PTY. LIMITED Defendant

10th October  
1961

The 10th day of October in the year of Our  
Lord One thousand nine hundred and sixty-one.

SYDNEY) MOTOR CREDITS (HIRE FINANCE) LIMITED a  
TO WIT) Company duly incorporated and able to sue  
in and by its said corporate name and  
style by JEREMY JAMES BINGHAM its  
solicitor sues PACIFIC MOTOR AUCTIONS  
PTY. LIMITED a company duly incorporated  
and liable to be sued in and by its said  
corporate name and style for that the  
defendant company detained from the  
plaintiff company its goods, that is to  
say the undermentioned twenty (20) motor  
vehicles:

1956 Plymouth Powerflite regd.no. BKD-320  
1952 Jaguar BYK-628

I consent to this Declaration being filed although out of time  
10 of  
out of  
time  
James C. Holman  
Defendant's Solicitor  
V. Hughes  
Witness

In the Supreme Court of New South Wales

No. 1

Plaintiff's Declaration continued

10th October 1961

1956 FE Holden Sedan	BAF-754	
1955 Ford Mainline	AWW-316	
1957 Holden Sedan	AOL-688	
1958 Hillman	BNJ-679	
1958 Vauxhall Victor	BPZ-516	
1956 Ford Zephyr	BRW-333	
1957 Holden Utility	BKR-894	
1958 Simca	BLJ-118	
1953 Holden Sedan	ARH-677	
1954 Morris Sedan	BMX-673	10
1954 Wolseley Sedan	AMM-282	
1955 Ford Customline Sedan	AYR-585	
1958 Singer	CDC-820	
1958 Austin Lancer	BMN-787	
1955 Ford Anglia	AFB-155	
1956 Morris Minor	AYX-821	
1956 Ford Prefect	BAA-691	
1955 Austin	AVB-483	

AND the plaintiff company claims a return of the said goods or their value of Twelve thousand seven hundred and sixty five pounds (£12,765) and the sum of Seven thousand pounds (£7,000) damages for their detention. 20

J. J. Bingham

Plaintiff's Solicitor.

No. 2

Plaintiff's Points of Claim

11th December 1961

No. 2

PLAINTIFF'S POINTS OF CLAIM

IN THE SUPREME COURT)  
OF NEW SOUTH WALES No. 10201 of 1961

BETWEEN

MOTOR CREDITS (HIRE FINANCE) LIMITED

Plaintiff

AND

PACIFIC MOTOR AUCTIONS PTY. LIMITED

Defendant

POINTS OF CLAIM

1. THE motor vehicles hereinafter referred to were on the 2nd November 1960 and at all material times

and still are the absolute property of the plaintiff. These vehicles are:-

	1956 Plymouth Powerflite regd. no.	BKD-320
	1952 Jaguar	BYK-628
	1956 FE Holden Sedan	BAF-754
	1955 Ford Mainline	AWW-316
	1957 Holden Sedan	AOL-688
	1958 Hillman	BNJ-679
10	1958 Vauxhall Victor	BpZ-516
	1956 Ford Zephyr	BRW-333
	1957 Holden Utility	BKR-894
	1958 Simca	BLJ-118
	1953 Holden Sedan	ARH-677
	1954 Morris Sedan	BMX-673
	1954 Wolseley Sedan	AMM-282
	1955 Ford Customline	AYR-585
	1958 Singer	CDC-820
	1958 Austin Lancer	BMN-787
20	1955 Ford Anglia	AFB-155
	1956 Morris Minor	AYX-821
	1956 Ford Prefect	BAA-691
	1955 Austin	AVB-483

In the Supreme  
Court of New  
South Wales

No. 2

Plaintiff's  
Points of  
Claim  
continued

11th December  
1961

2. ON the 2nd November 1960 the said motor vehicles were in the possession of Motordom Pty. Limited, as bailee for the plaintiff and not otherwise.

3. AS at the 2nd November 1960, Motordom Pty. Limited had no authority to sell the said motor vehicles or any of them.

30 4. ON the 2nd November 1960, Motordom Pty. Limited purported to sell the said motor vehicles to the defendant.

5. THE defendant purported to pay for the said motor vehicles by its cheque drawn in favour of Motordom Pty. Limited, which said cheque immediately upon delivery of the same to Motordom Pty. Limited was endorsed by Motordom Pty. Limited to the defendant and re-delivered to the defendant.

40 6. THE defendant on the 2nd November 1960 took possession of the said motor vehicles.

7. ON or about the 8th November 1960 and the 24th January 1961, the plaintiff made demands on the defendant for the return of the said motor vehicles to the plaintiff but the defendant did

In the Supreme Court of New South Wales

No. 2

Plaintiff's Points of Claim continued

11th December 1961

not comply with the said demands or any of them and refused so to do.

8. BECAUSE of the failure of the defendant to hand over the said motor vehicles as aforesaid the plaintiff on the 2nd May 1961 served on the defendant a notice of demand for the return of the said motor vehicles to the plaintiff, such notice appointing the 15th May 1961 at 2 p.m. at the offices of the defendant as being the time, date and place at which the said motor vehicles should be handed over by the defendant to the plaintiff.

10

9. THE plaintiff by its servants and agents attended at the time and place appointed but the defendant neglected and refused to hand over the said motor vehicles or any of them and has continued to so neglect and refuse to hand them over to the plaintiff.

10. THE plaintiff claims a return of the said motor vehicles or their value as at the date when the defendant refused and neglected to return the same, namely, £12,760.

20

11. THE plaintiff also claims damages for the detention of the said motor vehicles being £6,590.

DATED this 11th day of December 1961.

J. J. BINGHAM

Plaintiff's Attorney

No. 3

Defendant's Points of Defence  
7th February 1962

No. 3

DEFENDANT'S POINTS OF DEFENCE

IN THE SUPREME COURT  
OF NEW SOUTH WALES }

No. 10201 of 1961

40

BETWEEN

MOTOR CREDITS (HIRE FINANCE) LIMITED

Plaintiff

AND

PACIFIC MOTOR AUCTIONS PTY. LIMITED

Defendant



POINTS OF DEFENCE

In the Supreme  
Court of New  
South Wales

\_\_\_\_\_  
No. 3

Defendant's  
Points of  
Defence  
continued

7th February  
1962

1. IN answer to paragraph 1 of the Points of Claim the Defendant denies that the motor vehicles therein referred to were at any time and that the same are the property of the plaintiff.

2. IN answer to paragraph 2 of the Points of Claim the Defendant as to the motor vehicles registered numbers AWW.316, AYX.821, AVB.483 and BMN.787 denies that the same were in the possession of Motordom Pty. Limited on 2nd November 1960 and as to the remainder of the said motor vehicles denies that the same were on 2nd November 1960 in the possession of Motordom Pty. Limited as bailee for the Plaintiff and not otherwise.

3. IN answer to paragraph 3 of the Points of Claim the Defendant denies that as at 2nd November 1960 Motordom Pty. Limited had no authority to sell the said motor vehicles or any of them.

4. IN answer to paragraph 4 of the Points of Claim the Defendant denies that it was on 2nd November 1960 that Motordom Pty. Limited purported to sell to the Defendant motor vehicles registered numbers AWW.316, AYX.821, AVB.483 and BMN.787.

5. IN answer to paragraph 5 of the Points of Claim the Defendant denies that it purported to pay for the motor vehicles referred to in paragraph 1 of the Points of Claim in the manner alleged in paragraph 5.

6. IN answer to paragraph 5 of the Points of Claim the Defendant denies that it purported to pay for the motor vehicles referred to in paragraph 1 of the Points of Claim in the manner alleged in paragraph 5.

6. IN answer to paragraph 6 of the Points of Claim the Defendant denies that it was on 2nd November 1960 that it took possession of motor vehicles registered numbers AWW.316, AYX.821, AVB.483 and BMN.787.

7. IN answer to paragraphs 10 and 11 of the Points of Claim the Defendant denies that the Plaintiff is entitled to a return of the said motor vehicles or any of them or to their value and the Defendant further denies that it is

In the Supreme  
Court of New  
South Wales

\_\_\_\_\_  
No. 3

Defendant's  
Points of  
Defence  
continued

7th February  
1962

liable to pay to the Plaintiff the sums in the said paragraphs alleged or any sums.

8. IN answer to the whole of the Plaintiff's claim the Defendant says that the Plaintiff is estopped from denying the authority of Motordom Pty. Limited to sell the said motor vehicles in that the Plaintiff held out and represented the said Motordom Pty. Limited as the owner of the said vehicles or as the person having in respect of the said vehicles full power and authority to sell the same to a purchaser so as to vest a valid title therein in a purchaser and in that the Plaintiff knowing that the said Motordom Pty. Limited was representing itself and holding itself out to the public including the Defendant as the owner of the said vehicles or as the person having in respect of the said vehicles full power and authority to sell the same to a purchaser so as to vest a valid title therein in a purchaser acquiesced and consented to the said Motordom Pty. Limited so representing itself and holding itself out and the Defendant dealt with the said Motordom Pty. Limited on the faith of such representations and holdings out as aforesaid

10

20

9. IN answer to the whole of the Plaintiff's claim the Defendant says that Motordom Pty. Limited was throughout the premises acting as the duly authorised agent of the Plaintiff within the scope of its actual or apparent authority as such agent.

10. IN answer to the whole of the Plaintiff's claim the Defendant says that at all material times Motordom Pty. Limited was a mercantile agent within the Factors (Mercantile Agents) Act and was entrusted as such with the possession of the said motor vehicles and the said Motordom Pty. Limited sold and disposed of the said motor vehicles to the Defendant in the ordinary course of business of a mercantile agent and the Defendant in the premises acted in good faith and had not at the time of the sale and disposition of the said motor vehicles to it noticed that the said Motordom Pty. Limited had not authority to make the same.

30

40

11. IN answer to the whole of the Plaintiff's claim the Defendant says that at all material times Motordom Pty. Limited was a Trader within the Bills of Sale Act and the documents whereunder the Plaintiff purported to acquire the said motor

vehicles and each of them from Motordom Pty. Limited were "Trader's Bills of Sale" within the said Act and none of the same was filed lodged or otherwise complied with the requirements of the Bills of Sale Act and in the premises none of such documents was operative or had any validity at law or in equity or conferred upon the Plaintiff any title to the said motor vehicles or any of them.

10 12. THE Defendant claims by way of cross-action against the Plaintiff money payable by the Plaintiff to the Defendant for the purchase price of a number of motor vehicles purchased by the Plaintiff through its agent Motordom Pty. Limited from the Defendant between 8th October 1960 and 2nd November 1960 in the sum of Sixteen thousand five hundred and ten pounds (£16,510).

DATED this 7th day of February 1962.

20 J. C. HOLMAN  
(J. C. Holman)  
Solicitor for the Defendant,  
of CLAYTON, UTZ & COMPANY,  
136, Liverpool Street,  
SYDNEY.

No. 4(a)

TRANSCRIPT OF PROCEEDINGS BEFORE HIS HONOUR  
MR. JUSTICE WALSH

IN COMMERCIAL CAUSES

CORAM: WALSH, J.

MOTOR CREDITS (HIRE FINANCE) LTD. v.

30 PACIFIC MOTOR AUCTIONS PTY. LIMITED

FIRST DAY: TUESDAY 27th FEBRUARY 1962

JOHN ROLAND GIBSON  
Sworn, examined, deposed:

MR. RATH: Q. Your full name is John Gibson?  
A. John Roland Gibson.

Q. Where do you live? A. I live at 20 Highlands Avenue, Wahroonga.

In the Supreme  
Court of New  
South Wales

No. 3

Defendant's  
Points of  
Defence  
continued

7th February  
1962

No.4(a)

Transcript of  
Proceedings  
before His  
Honour Mr.  
Justice Walsh  
Plaintiff's  
Evidence

John Roland  
Gibson

Examination  
27th February  
1962

No.4(a)

Transcript of  
Proceedings  
before His  
Honour Mr.  
Justice Walsh  
Plaintiff's  
Evidence

John Roland  
Gibson

Examination  
continued

27th February  
1962

Q. You are the manager of the Merrylands branch  
of the Commercial Banking Company of Sydney?

A. Yes.

Q. In the early part of 1960 did you have an  
account in that branch in the name of the firm of  
Motordom? A. Yes, the account was opened on 23rd  
May, 1960.

Q. Was that account later closed? A. Yes.

Q. When was that account closed? A. The account  
was closed at the end of that financial year, I  
think it was the 1st ... just shortly after the  
end of the financial year on about the 4th July  
1960, it was finalised and finished.

10

Q. Did you then open another account in the name  
of Motordom Pty. Ltd.? A. That is true, yes.

Q. Will you have a look at cheque number 12608?  
A. 12608, yes, I have it here, for an amount of  
£137.2.0.

Q. That is a cheque dated 22nd July 1960?  
(By leave approaching witness). Looking at that  
cheque, will you say it was cleared through your  
bank? A. Yes, I can, it bears our stamp, the  
stamp of the Commercial Banking Company of Sydney,  
Merrylands, and was negotiated by those people.

20

Q. Into what account was the proceeds of that  
cheque paid? A. It was paid into the company's  
account, the new account which was formed for that  
and bears the stamp of Motordom, it was paid into  
the Motordom Pty. Ltd. account.

Q. The cheque is shown "Pay Motordom" and it is  
an account payee only cheque and it is endorsed  
Motordom Pty. Ltd. and the witness says that you  
paid it into that company account? A. The cheque  
was paid into the company account.

30

HIS HONOR: Q. Is that the 22nd July?

MR. RATH: It is the 22nd July, cheque No.12608  
for £137.2.0. We have stapled these cheques and  
the copy supporting document. I think perhaps  
the best idea is to have the cheque marked for  
identification.

40

MR. STREET: In the light of what my friend said  
about proving his practices, he can more or less  
lead his witness through it if your Honor would  
allow. I have no objection to that, your Honor,  
subject to my friend linking up the date.

MR. RATH: Attached to the cheque is a white copy document dated 22nd July, 1960. This is a particular proof and consists of a carbon copy of the cheque, voucher and this part down here is the carbon copy of the cheque No. 12608, and the top part is the voucher attached to the cheque.

10 Attached to that again, is the letter addressed to Motordom at 124 Merrylands Road, Merrylands, on the same date, 22nd July, 1960. I draw attention to the fact that the first document, that is the perforated part of the cheque form, has an entry on it "as per enclosed statement".

I tender cheque 12608 and the supporting documents. That cheque came from our own bank, the Bank of New South Wales, as the paying banker with Mr. Gibson as the collecting banker and the fact that the cheque had been attached to these documents by ourselves in recent times is evidence.

20 I should point out, with regard to that cheque, otherwise we may become confused, that this relates to the first vehicle, namely 1956 Plymouth Powerflite BKD-320.

I might mention here that the number of the vehicle may sometimes be wrong on all sides every now and again in the course of our business dealings, but on that I would submit that there will be enough before the Court in respect of any one of them to positively identify the vehicle. No trouble will arise with this one, BKD-320.

30 If your Honor will look to see the pattern of these, the first annexed document shows that a certain car with which we are not concerned has been accepted on a hire purchase basis by the plaintiff company.

It has been paid out on that basis and that represents a credit in favour of Motordom of £668.17.0. It purports to deduct from that matters shown on the enclosed statement of £530 and gives a balance of £137.

40 If we look at the enclosed statement, that is the letter of 22nd July, it first of all lists under the heading of "Pay out display plan" vehicles which we say have been on display plan and have been sold by Motordom at these prices, and that is, that some are not sold at those prices but he had added a certain price for which he must account to us for this sum of money.

In the Supreme  
Court of New  
South Wales

No.4(a)

Transcript of  
Proceedings  
before His  
Honor Mr.  
Justice Walsh

Plaintiff's  
Evidence

John Roland  
Gibson

Examination  
continued

27th February  
1962

The first page of the letter shows that he owes us £6214. There is some more of it on the next page which shows that he owes us on vehicles sold on our behalf £7816. His debt is further increased by the next, called "display charges".

Within the final one, the list "display plan" are the vehicles which we have now put on the plan which we accept from him and that is the credit sum for him. The fifth one is the Plymouth Powerflite and it shows a balance of £531.15.0. which brings us back to the first page.

10

I am sorry ... that shows a balance against Motordom of £531, which we then deduct from the vehicle we have accepted as fully paid out on a hire purchase basis.

HIS HONOR: I see that on the first page of the green document after each vehicle is mentioned there is an item "charges" and various amounts of £5, £3 and £2 and so on, and a separate list of display plan charges.

20

MR. RATH: I failed to ask what those are; I will have that cleared up.

HIS HONOR: I wonder why they show these charges in two ways. It is on different vehicles, I think. I have not checked through to see if any vehicles appear in both lists.

MR. RATH: It appears not, your Honor, it looks as if the first list means the vehicle he sold on our account and the next list is the vehicle apparently still on the display plan for which we debited him the sum of the current charges and the next is his credit side, so that the nett result of the £531 which he has been shown to owe us would take account of our display plan charges on all vehicles right up to the point of time of sending the cheque.

30

The next cheque is No. 12658 of the 28th July 1960.

Q. (By leave approaching witness): Was that cheque cleared by your bank and paid into the company's account on the 28th July? A. 29th July, yes.

40

Q. I should have got the date on which the last cheque was paid into the bank. I will come back to that. So this cheque was cleared and the amount paid into the bank account of Motordom Pty. Ltd. on 29th July 1960? A. That was, yes, sir.

Q. And with regard to the prior cheque, that was cheque No. 12608, dated 22nd July, was that paid into the company account on 26th July? A. Yes, on the 26th July. That was the date.

(Cheque shown to his Honor).

MR. STREET: Unless my friend wishes to go through these separately, if he wishes to tender the whole bundle on the same basis, I do not object.

10 MR. RATH: I tender cheque No. 12658 dated 28th July, plus a copy of the voucher bearing the same date, plus a copy of the voucher and cheque bearing the same date and a copy of the statement bearing the same date.

That relates to the second vehicle, the Jaguar No. BYK-628. That is the second last vehicle mentioned in the letter of 28th July.

(Cheque No. 12608 for £137.2.0. dated 22nd July tendered and marked Exhibit "A").

20 Cheque No. 12658 dated 28th July, tendered and marked Exhibit "B").

Q. The next one is cheque No. 13453 of the 6th October, 1960, for an amount of £376.9.0. was that cheque, Mr. Gibson, cleared and the proceeds paid into the account of Motordom Pty. Ltd. on the 8th October 1960? A. It was sir, on the 8th October 1960, yes.

MR. RATH: I tender the cheque, the copy voucher and cheque and copy letter of 6th October 1960.

30 (Cheque No. 13453 dated 6th October, copy voucher and copy letter tendered and marked Exhibit "C").

MR. RATH: This is a case where the vehicles, of which there are four in this case, are identified on the voucher itself. The vehicles are 1956 Holden BAF-754, 1955 Mainline AWW-316 ...

MR. STREET: That has gone off.

MR. RATH: I know, I thought I should identify it. The next one is the 1957 Holden which is either ADL or AOL-688, I cannot quite read this.

40 There are three, and not four as I said. Those vehicles are under the heading of "display plan" and they are the first, second, fourth and last one.

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HIS HONOR: It appears to be ADL on the voucher and it is AOL in the points of claim.

MR. RATH: The next cheque is No. 13648 dated the 14th October for the sum of £4060. I would ask specific questions about this cheque. (By leave approaching witness).

Q. This cheque was collected by your bank and the proceeds were paid into the account of Motordom Pty. Ltd., is that right? A. That is correct, sir, yes.

10

Q. In point of fact this is a cheque, you notice, drawn in favour of the Motordom Company? A. Yes.

Q. It is an account payee only cheque and it is not endorsed but your bank has put a form of endorsement on the back of the cheque, the effect of which I gather was that once you endorse that on the back of the cheque the Bank of New South Wales was prepared to repay your bank notwithstanding that the cheque had not been endorsed by the payee? A. An agreement between the banks was that in the event of that not being endorsed, as tellers sometimes forget to get them endorsed, we have an agreement whereby we put the stamp of the bank and the payee bank is credited, and that is sufficient for the paying bank.

20

MR. RATH: I tender cheque No. 13648 and a copy of the cheque and voucher. There is no other supporting document in this case.

(Cheque No. 13648 and the copy of cheque and voucher tendered and marked Exhibit "D").

30

This relates to the 1958 Hillman BWJ-679, the 1958 Vauxhall Victor BPZ-516, the 1956 Prefect BAA-691 and the 1957 Holden utility BKR-894.

In that case the Court will observe it is a purely credit account in favour of Motordom ... I might have made a mistake.

MR. STREET: I think that BRW-333 came off the floor plan.

MR. RATH: I think you will find that is floor planned again, it has been floor planned twice. I do not know why, but the Court might notice that 1956 Zephyr BRW-333 is on this list.

40

Q. The next cheque is 14060 dated 19th October 1960 and this is a cheque for £790.19.0, was that paid into the company's account on the 20th October



1960? A. Yes, I just didn't get the number. 14060 did you say?

Q. 14060. A. £790.19.0; that was paid into the company's account on the 20th October, 1960.

Q. I think I forgot to ask you the date with regard to the prior cheque, cheque No.13648 on the 14th October 1960, was that paid into the account on the 15th October, 1960? A. Yes.

10 MR. RATH: I tender the cheque, the copy cheque and voucher and a copy letter dated 20th October 1960.

(Cheque No. 14060 for £790.19.0. dated 19th October 1960 tendered and marked, together with copy cheque and voucher and copy letter dated 20th October 1960, Exhibit "E").

In this case the vehicle we are concerned with is referred to on the voucher form and is the third vehicle under the heading of "Plus display plan" on the voucher form.

20 It is a 1958 Simca No. BLJ-118. The Court will observe that in this one there is a slightly different system of filling in the voucher, one which is better from the point of view of my trying to prove the case.

We show on the voucher the credit sum and we show the sum "suspense" so in this case, although there is a further supporting document it is just to explain that suspense item.

30 Q. The next cheque is cheque No. 14088 of 21st October, 1960, for £3444.18.0, Mr. Gibson, were the proceeds of that cheque paid into the account of Motordom Pty. Ltd. on 22nd October 1960? A. Yes.

MR. RATH: I tender cheque No. 14088 of the 21st October 1960, together with a copy of the cheque and a supporting voucher. In this case there is no other document.

40 (Cheque No. 14088 dated 21st October 1960 for £3444.18.0, together with a copy cheque and supporting voucher tendered and marked Exhibit "F").

This relates to the 1953 Holden ARH-677, the 1954 Morris Oxford No. BMX-673, that is No. 12 on the list; the 1954 Wolseley ANM- which is the thirteenth, and the 1955 Customline which is No. 14 as shown on the document I now tender as AXR-585 and not AYR-585.

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It should be AXR-585. I think that in the case of that Customline the fact is that AXR-585 is correct and our points of claim are wrong in that regard.

Q. The next cheque is No. 14094 dated 24th October 1960 for £1590, were the proceeds of that cheque, Mr. Gibson, collected by your bank and paid into the account of Motordom Pty. Ltd.? A. On the 24th October, yes.

Q. They were paid in on 24th October? A. Yes, they were paid in on 24th October, in onto the company's account. 10

Q. The reason I pause is that the 24th is obscured on my document but it is quite clear on the original document. A. Yes.

MR. RATH: I tender cheque No. 14094 of the 24th October 1960, together with the copy voucher and cheque dated 24th October 1960.

(Cheque No. 14094 of 24th October 1960 with copy voucher and cheque tendered and marked Exhibit "G"). 20

There is no other supporting document. It is vehicle No. 8, the 1956 Zephyr BRW-333 and refers to vehicle No. 15 also, the 1958 Singer CDC-820, the second and third vehicles mentioned on the list.

That is the Zephyr which apparently had been previously floor planned on the 14th October 1960.

Q. The next cheque is No. 14443 of the 28th October 1960, for £1530.6.0, Mr. Gibson, were the proceeds of that cheque paid into the account of Motordom Pty. Ltd. on 29th October, 1960? A. Yes. 30

MR. RATH: I tender cheque No. 14443 dated 28th October 1960, together with copy of the voucher and cheque of the same date.

(Cheque No. 14443 dated 28th October 1960, together with copy of voucher and cheque tendered and marked Exhibit "H").

In this case there is a further document headed page 2, which purports to read page 2 of the voucher, that may not show but what was done in that case was to annex a slip of paper and we have carried the voucher over. 40

It is a slightly different method from the method of the attached letter. This relates to the vehicle which is No. 16 on the list, the 1958 Lancer

No. BNM-787, and vehicle No. 20 which is the 1955 Austin ABB-483 and vehicle No. 17 which is the 1959 Ford Anglia AFB-155, and on the top of page 2 is vehicle No. 18, the Morris Minor AJX-621.

They are all the cheques and supporting documents relating to the claimed vehicles.

10 Q. In this period, Mr. Gibson, was there another cheque No. 12830 of the 16th August 1960 drawn by Hire Finance Ltd. in favour of Motordom which was paid into the account of Motordom Pty. Ltd. on, I think, the 18th August, 1960? A. Yes sir, I was going to ask you about that one because all of the cheques I have been asked to give domicile for, that was the one which you had not mentioned up to date. Yes... That went to the company's account.

20 Q. I have given all, you have now dealt with all of the cheques drawn by Hire Finance in favour of Motordom and paid into the Motordom account from the first cheque of the 22nd July 1960, to the last one of the 28th October 1960? A. No, that is not quite true.

Q. Not quite right? A. All those cheques were not in favour of Motordom, some were in favour of the company.

Q. Some were payee Motordom and some were Motordom Pty. Ltd.? A. Yes.

30 Q. Now that I have referred to this last cheque, I have dealt with all the cheques drawn by Hire Finance Ltd. in favour of Motordom or the Motordom Company and paid into that account on and after the 22nd July, 1960? A. Yes.

MR. RATH: I will have this marked for identification. My friend of course may look at it. It is just that I do not want to put an unnecessary number of exhibits in.

40 As at present advised, I do not think it is material for the Court to know any more about this one except that it is the fact that it completes the account over that period.

(Cheque No. 12830 m.f.i. "1").

Q. Mr. Gibson, I want to deal with the period prior to the opening of the Motordom Company account. I am going to start with a cheque dated 30th May 1960, being cheque No. 12033 drawn by

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Hire Finance in favour of Motordom for £4095, was that cheque paid into the account of the firm of Motordom? A. Yes sir, it was paid into the Motordom No.2 account as it has been described.

MR. STREET: I did not interrupt before that answer, because it might have meant that the question would have had to be repeated, but I would formally be submitting to your Honor that none of these matters are relevant to the inquiry before the Court.

I concede the relevance of the transactions and the course of dealing between Motordom Pty.Ltd. and the plaintiff company, but unless my friend can link up the prior transactions in some way by way of some novation or something of that sort, I submit they are not relevant and for that reason I take objection at this stage.

10

HIS HONOR: I suppose that what Mr. Rath will seek to do is to bring this evidence and then show from it what was the course of dealing with the plaintiff in relation to these vehicles.

20

MR. STREET: Yes, I anticipate the problem concerning my friend is the problem of "Is this arrangement between Motordom Pty. Ltd. and Hire Finance sufficiently certain for the Court to be able to say what it was" and it is in relation to that that my friend would now seek to prove. Stopping perhaps just at the formation.

MR. RATH: I am trying to go back a little before the company was formed, through the transition period.

30

MR. STREET: My submission at the conclusion of the evidence will be that unless there is more evidence than is apparent from my friend's opening, then the arrangement will be too uncertain to support what my friend expounds, but I recognise he has to adduce such evidence as he can, and my objection is protected by being noted.

HIS HONOR: I will allow it.

MR. RATH: Q. I asked you whether cheque No.12033 of the 30th May, 1960, drawn by Hire Finance in favour of Motordom was paid into the account of the firm of Motordom on the 31st October, 1960? A. Yes sir, that was a cheque for £4095.

40

MR. RATH: I tender cheque No. 12033 and the supporting voucher dated 30th May, 1960.

(Cheque No. 12033 and voucher dated 30th May 1960, tendered and marked Exhibit "J").

There is no vehicle to look for of course in this case. It may be observed that the voucher and the letter in this case is drawn to the very same address and drawn to the very same person, Motordom, as in most of our other correspondence.

10 We did not address it to Motordom Pty. Ltd. although once in a while we did draw a cheque in favour of Motordom Pty. Ltd.

HIS HONOUR: The payee is endorsed but I see it is signed by someone called Bell.

MR. RATH: That was a secretary of Mr. Webb.

MR. RATH: Q. Mr. Gibson, the Motordom firm account, that was virtually an account owned by Robert Webb, was it? A. He was in fact the sole proprietor under the Business Names Act.

20 Q. The next cheque is No. 12072 dated 3rd June 1960 for £2330 drawn by Hire Finance in favour of Motordom, were the proceeds of that cheque paid into the Motordom firm account - is it the 4th or the 14th June? A. Paid to the firm's account on the 4th June 1960.

Q. On the 4th June 1960? A. Yes.

(Cheque No. 12072 dated 3rd June 1960, together with supporting voucher of the same date tendered and marked Exhibit "K").

30 Q. Were the proceeds of cheque No. 12095 of the 7th June 1960, being a cheque for £2360 paid into the ... (Withdrawn; by leave approaching witness): I want you to look at cheque No. 12095 dated 7th June 1960 drawn by Hire Finance Ltd. in favour of Motordom Pty. Ltd.

Look at the endorsement on the back, payee's account credited with and for the Commercial Banking Company of Sydney Ltd. It is endorsed "Robert Webb, Motordom".

40 Into what account were the proceeds of that cheque paid? A. They were paid into the firm's account, Motordom.

(Cheque No. 12095 dated 7th June 1960, and the supporting voucher of same date tendered and marked Exhibit "L").

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Q. I refer you now, Mr. Gibson, to cheque No.12219 dated 20th June, 1960, drawn by Hire Finance Ltd. in favour of Motordom for £3025, were the proceeds of that cheque paid into the firm's account on the 21st June 1960? A. Yes.

(Cheque No. 12219 dated 20th June, 1960, together with supporting voucher tendered and marked Exhibit "M").

Q. Finally, Mr. Gibson, cheque No. 12258 dated 24th June, 1960, drawn by Hire Finance in favour of Motordom for £4220, was that paid into the firm's account on the 28th June, 1960? A. It was, yes.

10

Q. Have I covered all ... (Withdrawn).

(Cheque No. 12258 of 24th June, 1960, together with supporting voucher of same date tendered and marked Exhibit "N").

Q. Mr. Gibson, have I now covered all the dealings of the firm's account, being payments from Hire Finance Ltd. to the firm from the 30th May 1960 to the date when the firm account was closed? A. Yes sir, as far as our records show.

20

Actually, I was not asked to make reference to any other cheques but these that were brought before the Court this morning.

Q. You have others there? A. We could have others, I don't know, but I was asked to refer to those.

Q. You have got an account there with you, have you not? A. I have the statement of accounts for Motordom, Motordom No.2 account and Motordom Pty. Ltd.

30

Q. Of course, they do not show who the drawers of the cheques were? A. No.

(Luncheon adjournment).

AT 2 P.M.

CROSS-EXAMINATION

Cross-examination

MR. STREET: May I have Exhibit "D"?

HIS HONOR: Yes.

MR. STREET: Q. (By leave approaching witness): Mr. Gibson, do you remember Mr. Rath showing you this cheque made payable to Motordom Pty. Ltd. or Order, don't talk about the details for the moment. A. Yes.

40

Q. In fact, it has no endorsement on the face of it in the place marked "Payee's endorsement", but it has been signed on the back; is that your signature on the back? A. It is my signature, yes.

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Q. I take it that at the time you signed that on the back, you were the banker of Motordom Pty. Ltd.? A. That is right, sir.

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10 Q. And you signed it as an endorsement in the place of Motordom Pty. Ltd. on the back? A. I said it went to their account.

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Q. Your understanding of it was that you were endorsing it for Motordom Pty. Ltd.? Yes, I explained the arrangement between the banks.

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Q. It was your endorsement on the back which on your understanding of it would result in the paying bank making payment? A. Yes, it required the payee's endorsement on it without that being on it.

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20 Q. When you filled that in on the back, I take it that that was an indication by you that the money would go to the Motordom account? A. That is correct sir.

Q. And there was never any query raised by Webb or anyone on behalf of Motordom in respect of that having taken place in connection with this cheque? A. No sir.

Q. They, indeed, accepted a credit of this cheque to the Motordom Pty. Ltd. account? A. They accepted? Whom do you mean?

30 Q. I am sorry, Motordom Pty. Ltd. accepted the credit of this amount? A. I don't quite understand that.

Q. The credit was passed to the Motordom Pty. Ltd. account? A. The credit was here, yes.

HIS HONOR: Q. They did not go along and say they should not have a credit? A. No.

MR. STREET: Q. were you the manager of the bank during the month of October and early November 1960? A. I was, sir.

Q. Of this particular branch? A. Yes.

40 Q. Do you remember some cheques drawn by Motordom in the latter part of October being dishonoured? A. Yes, unfortunately I do.

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Q. (By leave approaching witness): I show you three cheques, Mr. Gibson; one was dated 20th October 1960, for £6965.

MR. RATH: There will be no dispute to that, Mr. Street, there will be no dispute to the fact that those cheques were dishonoured.

MR. STREET: Q. The second one is dated 25th October 1960, for £2535 and the third one is dated 28th October 1960 for £3790? A. Yes.

Q. Do you remember some discussions between yourself and the manager of the bank at which Pacific Motor Auctions kept its account in connection with the payment of these, or one or more of these cheques? A. I cannot say that I remember any conversation that I had with their manager. 10

Q. Do you remember any inquiry being made of you by Pacific's bank manager as to the prospect of these cheques being met? A. Not exactly, no. I do not.

Q. What do you mean when you say "not exactly"? A. I know that there were queries from time to time because at that stage I had just had occasion to dishonour this man's cheques. 20

Of course, there were natural repercussions and inquiries made by the payee's bankers, there were quite a few.

Q. When you first dishonoured the first of those cheques, that is for £6965 you marked it "Present again"? A. Yes.

Q. I take it that at that stage you had regarded it as quite possible that funds would come in to enable that cheque to be covered? A. I did, sir. 30

Q. The same marking of "Present again" was the first of the markings, of several such cheques? A. Yes, I had in mind that he would make good to make those cheques.

Q. You anticipated quite a real possibility that moneys would come in and the cheques would be paid in due course? A. Yes, I had no doubt in the world they would be met at the time. 40

Q. You had no doubt at all in the world? A. Yes, I thought they would be met.

Q. It is fair to say that it was something of a surprise to you on the 2nd November to find that



there was no possibility of these cheques being met? A. It was a complete surprise. I was on holidays at the time and I heard about it, and I went back to the branch for one day to make sure everything was all right.

It was a complete surprise to know then that the cheques would not be met.

10 Q. I take it you returned from your holiday because of the unexpected fate of Motordom Pty. Ltd.'s financial affairs? A. Yes, quite so. I had no idea; I had no idea they were in a position not to meet their cheques.

Q. I think it is correct to say, is it not, that all such information that you did furnish to the manager of Pacific's bank was that you indicated to him some optimism regarding the fate of those cheques? A. I could have, sir, because I gave them good references all through.

20 Q. When you say "all through", may I take it that you mean until the 2nd November? A. Until I knew they were in fact closed.

Q. Until? A. Until I knew in fact they were almost - almost bankrupt.

Q. When did you know that, on the day of the ...  
A. I knew they were bankrupt after they came and took the cars from the yards.

30 Q. If I told you that the cars were taken from the yards on the 2nd November, on the evening of the 2nd November can you tell me when you first became aware of their financial difficulties?  
A. I knew about it two days later, I think it was.

Q. I see. A. I was told about it and as I say, I returned from holidays to spend a day at the branch to sort things out.

Q. As the banker for Motordom Pty. Ltd. you had some opportunity of observing the volume of business which was done by that company? A. Yes.

40 Q. It is fair to say, is it not, that it was a very substantial volume of business in the purchase and sale of second-hand cars? A. It had an annual turnover of something in the vicinity of £250,000 or £300,000 a year.

Q. That is a big turnover for a second-hand car dealer? A. Yes.

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Q. Did you visit the premises where Motordom carried on this business? A. Yes, many times.

Q. Webb had, I think, four yards in the end? A. He had four. One was in Merrylands, one in Guildford, one in Fairfield and another one at North Parramatta.

Q. The one at North Parramatta had only been opened up about a month or six weeks before this fateful 2nd November? A. I wouldn't be sure. I couldn't be sure of the date of the opening of the yard, but a good time before that, I think it was the original yard. 10

Q. That was the original one? A. At North Parramatta.

Q. Was there not a new one, a new yard, opened just shortly before the end? A. He opened two new yards towards the end; one was at Fairfield and the other one at Guildford.

Q. There was quite a lot of concrete paving work being done in connection with those two new yards? A. Quite a good deal of improvement and concreting. 20

Q. And the erection of office space? A. Yes, quite a good deal of capital outlay in getting the yard ready for business.

Q. It would be fair to say it was an outward show of great prosperity? A. Yes, yes. My word!

Q. And of course, Mr. Webb outwardly appeared to be a man of some prosperity? A. Prosperity?

Q. He drove a four headlight Cadillac, whatever that may be, did he not? A. That is quite correct. 30

Q. With a two-way radio telephone in it? A. Yes, trailing a boat behind.

Q. I think some time earlier in 1960 you had attended a housewarming party that he gave? A. I did, sir.

Q. And you saw representatives of Pacific at that party? A. I think everybody was there.

Q. And it was a very lavish party? A. Most lavish.

Q. There was a fountain filled with cracked ice with bottles of champagne in it? A. Yes, there were. 40

Q. And it would be fair to say, would it not, there was nothing until the 2nd November to cause you the slightest suspicion he was in financial difficulties, even taking into account those cheques were not covered? A. Honestly, I had no occasion to believe that he was bankrupt.

10 HIS HONOR: Q. Was he working on an overdraft at the bank? A. Oh, on a temporary occasional basis as these statements will show. He had always covered it.

I always made sure he did, by contact with the hire purchase companies from whom he was dealing, and they would inform me as to what cheques would be in the mail in regard to those transactions, so I gave him certain liberties in respect of that.

20 Q. I was speaking not so much of giving him liberties as to whether he had an overdraft account? A. He had what we call a temporary occasional arrangement with the manager only, there is no sanctioned arrangement with the bank, only on my behalf.

MR. STREET: Q. That had, on occasions, run up into many thousands of pounds for a very brief period, had it not? A. Yes, unfortunately, yes.

30 Q. And always on prior occasions the account had come back into the credit within a short period of that time? A. On the day of the overdraft we almost always would have a remittance in which we did not put in until the next day and they would hold that because it was after 3 o'clock and it would arrive at 4 on the understanding that it would be banked next day and it covered the overdraft.

40 Q. On occasions when you had been to these premises which were occupied by Motordom, had you seen customers coming in and looking at cars and seen what appeared to be ordinary business going through? A. There was evidence to me that it was continuing and conducting a very active business. It was always in evidence.

Q. Did you ever see any indications anywhere at all in relation to his premises or his other four yards which would give any indication that he was not the owner of the cars that he had available for sale in his lots? A. No, that was never indicated to me at all. (Objected to; question withdrawn).

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MR. STREET: Q. What was your belief, Mr. Gibson, as to the ownership of the various cars which were in these yards where Motordom was carrying on business? (Objected to).

HIS HONOR: How does belief matter?

MR. STREET: Part of my case is to show a holding out in such circumstances that ... I do not wish to say very much in front of the witness. I want to show a holding out of a wide-spread and of an indiscriminate nature.

10

HIS HONOR: A holding out that he was the owner?

MR. STREET: Yes. I do not wish to elaborate further. If your Honor looks at paragraph 8 of the defence your Honor will see what I am seeking, but I draw a very real distinction between paragraph 8 and paragraph 9.

Paragraph 8 is directed to a proprietary and ownership matter and not a representative matter.

HIS HONOUR: I see what the paragraph says, Mr. Street, but I do not see for the moment how the belief of Mr. Gibson helps.

20

MR. STREET: I submit I am either entitled to have his belief or I am entitled to have from him what the indicia were which might affect the belief one way or the other.

Whether there are any indicia that indicated to him that one situation or the other was the true situation, is what I seek to ascertain.

HIS HONOUR: I think you may ask him as to anything he saw if it is something that might be relevant to this question.

30

MR. STREET: Q. Did you ever see anything either in the offices where Motordom was carrying on its business or on the business premises or in any of their documents indicating to you whether or not Motordom owned the cars that were available for sale in its yards? A. Well no, I didn't. The only thing that crosses my mind there is that I knew a lot of the cars in his yards were not his. They were on the floor plan because he told me he had a floor plan.

40

Q. He told you he had a floor plan? A. We used to discuss that sort of thing with each other.

Q. The only way in which you became aware of the existence of the floor plan was Webb had told you about it? A. That is right, I never saw any documents stating he had a floor plan.

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Q. Did you ever see any documents at all indicating that this company, Motor Credits (Hire Finance) Ltd. had any interest in any of the vehicles that were on the lots? A. I saw no documents to that effect.

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10 Q. Did anyone from Motor Credits (Hire Finance) ever communicate with you or the bank so far as you are aware prior to 2nd November 1960?

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A. I received several calls from Mr. Gulson.

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Q. Mr. Gulson? A. Yes, as to the man's character. I think he made an initial request to me for a banker's opinion of him and the matter was discussed with permission of Mr. Webb on a personal basis and that would be about the only occasion on which they contacted me about matters.

Cross-examination continued

20 Q. Did anyone from Motor Credits (Hire Finance) tell you that they owned a lot of vehicles or they claimed to own a lot of vehicles which were in Webb's yard or yards? A. No, they never actually made any claim to me, no. Not until afterwards.

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Q. Not until after the trouble? A. Not until afterwards.

RE-EXAMINATION

30 MR. RATH: I call for the three cheques. (Produced).

Re-examination

Q. Will you have a look at these cheques. You will see that they are all marked on the back, "Payment stopped". (Approaching): Do you remember that? Every one is marked on the back "Payment stopped"? A. Yes.

Q. Now whose marking on the cheque is that; is it your bank's marking? A. That is not my writing, but it would be with my authority.

Q. With your authority? A. Yes.

40 Q. The history of these cheques is that they are dishonoured, and at a later stage payment is stopped on them; is that right? A. That is correct.

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Q. Who stopped payment on the cheques? A. Well, Mr. Webb would stop payment, on his written authority.

Q. Would it be correct to say that he stopped that payment on the 3rd November 1960? A. I would not really say the exact date, sir, I could not.

Q. You cannot give us the date? A. We would have it on record at the bank, the day the stop payment notice was signed, to have authority to stop.

Q. You would have so marked the cheques on the authority from the Motordom Company? A. That is right. 10

MR. RATH: I call for the Notices of dishonour.

MR. STREET: I produce four Notices of dishonour dated respectively 26th October, 31st October, 3rd November and 9th November, 1960. I think those cover them all, your Honor.

MR. RATH: The one of 9th November refers to three cheques, your Honor. I take it, Mr. Street, these were issued to you by the Bank of New South Wales? 20

MR. STREET: Yes, I presume.

MR. RATH: Yes, that is right. That is the receiving bank.

(Cheque dated 20th October 1960 tendered and withdrawn).

Q. (By leave approaching witness): Who signed these cheques? A. Webb.

Q. As what? A. Governing Director.

Q. Of what? A. Motordom Pty. Limited.

Q. I take it, Mr. Gibson, if there had been any funds in the Motordom Company account sufficient to meet those cheques you would have paid them? A. Yes. 30

MR. RATH: I tender cheque dated 20th October, 1960, drawn by Motordom Pty. Ltd. in favour of Pacific Motor Auctions Pty. Ltd. for £6965, that cheque is No. E568.

I tender also cheque No. E569 dated 25th October 1960, Motordom Pty. Ltd. in favour of Pacific Motor Auctions Pty. Ltd. for £2535. 40

I also tender cheque No. E607 dated 28th October 1960 in favour of Pacific Motor Auctions by Motordom Pty. Ltd. for £3790. Together with notices of dishonour from the Bank of New South Wales to the defendant dated respectively 26th October, 1960, 31st October 1960, 3rd November 1960 and 9th November 1960.

10 I ask the Court in its power to direct admission to direct an admission as to whether the notice of dishonour dated 31st October 1960 by whom the ink writing on it was made, signed and initialled, and with regard to the notice of dishonour dated 9th November 1960, in whose handwriting the ink writing is made.

20 I do not want the Court to direct that now but that certain people go into the witness box in the defence case would be immaterial, but if they do not, it may be a material matter for the Court to know who did the ink writing. My friend would prefer not to at this stage.

MR. STREET: At this stage I will indicate to your Honor why I do not wish to do so. If your Honor looks at the document your Honor will see what the note is.

Your Honor will see two ink notes on it, on two of the dishonour notices. (Shown to his Honor).

MR. RATH: It will no doubt be immaterial if my friend does not press any cross action.

30 MR. STREET: In actual fact, the cars which were the subject of the transactions for which those cheques were given were not, in truth, the subject of purchase or re-purchase. Your Honor will see that we did not buy back the cars for which those cheques were given.

HIS HONOR: I do not know yet what cars you bought back, if any.

MR. RATH: I do not question it at this stage.

40 HIS HONOR: I will admit these documents as an exhibit, but take no notice of the writing to which you refer, Mr. Rath. I will defer any question of further evidence upon them.

MR. RATH: Perhaps the Court might note that the documents are produced from the defendant's custody.

HIS HONOR: Yes.

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(Cheques Nos. E568, E569, E607 and notices of dishonour dated 26th October 1960, 31st October 1960, 3rd November 1960 and 9th November 1960, tendered and marked Exhibit "O").

MR. RATH: Q. Mr. Gibson, you have seen these three cheques which your bank would not meet; had there been any prior cheques drawn by the Motordom Company in favour of Pacific Motor Company which your bank had refused to meet? A. I think not, no. 10

I think they were the only ones but I couldn't say for sure until I refer to my dishonour register.

Q. You think it was? A. I think it was.

Q. Has the Motordom Company account been closed? A. No, it has not.

Q. Has it been operated since the 2nd November 1960? A. No, it has been placed in liquidation by the bank. It still owes money.

Q. Is it in debit or credit at the present time? A. It is in debit. 20

(Witness retired)

(By leave Mr. Gibson excused).

MR. RATH: With my friend's concurrence, your Honor, and subject to the same conditions as before with regard to the other letters I have tendered, I tender a copy letter dated 31st October 1960 from the plaintiff company to Motordom Pty. Ltd. It is the wind up of the floor display plan. There is no cheque because the two sums balance one another.

(Copy letter dated 31st October 1960 from plaintiff company to Motordom Pty. Ltd. tendered and marked Exhibit "P"). 30

It does refer to the 1956 Zephyr.

HIS HONOR: That is one of the cars that is mentioned in the list?

MR. RATH: Yes. It seems to have been floor planned twice and here it is dealt with again.

My friend, in a question to Mr. Gibson, said something about this sale taking place on the evening of 2nd November. My next witness deals solely with the time of day of the sale. 40



I do not know whether my friend is prepared to make an admission about it or whether he prefers to have the witness called?

MR. STREET: I think I would prefer to have the witness.

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No. 4(b)

No.4(b)

PETER BERNARD BETSON  
Sworn, examined, deposed:

Peter Bernard Betson

Examination

10 MR. RATH: Q. What is your full name? A. Peter Bernard Betson.

Q. What is your address? A. 316 Blaxland Road, Ryde.

Q. What is your occupation? A. I am in the motor business.

Q. I want to put a few things to you. You were brought here under subpoena? A. That is correct.

Q. You have not seen me? A. No sir.

Q. Nor my learned junior? A. No sir.

20 Q. I think you saw my instructing solicitor, Mr. Bingham, quite some time ago over a different matter from this occasion? A. Yes, that is correct, so.

Q. Mr. Betson, were you at any of the yards of Motordom on the 2nd November 1960? A. It has been a while ago and I haven't come prepared to answer any questions but was that the evening that I purchased a motor car for Motordom.

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Q. It may be, you see. Was it the evening that a Mr. Crealey was there? A. That is correct.

Q. We will assume it is the 2nd November, what yard were you at? A. The one at Church Street, North Parramatta.

Q. What time of the day was it? A. Approximately only 7.30 in the evening.

Q. Did you see Mr. Webb there, Mr. Robert Webb?  
A. Yes.

Q. Was there anybody else there? A. Yes, there was, besides Mr. Webb there was, as I presumed, his accountant or some man that I know worked for him. 10

Q. Mr. Bell? A. Yes, another man I know worked for him and I don't know his name. Mr. Crealey - there was some one with Mr. Crealey but truthfully I don't know who.

Q. Did you see anything being done about a cheque between Mr. Crealey and Mr. Webb? A. No.

Q. Did you see anything being done between Mr. Webb and Mr. - A. No, when I arrived they were talking together. 20

Q. When you arrived were there any motor vehicles in the yard? A. Yes.

Q. About how many would you say? A. It would be a sheer guess - 20 - but it is honestly a sheer guess.

CROSS-EXAMINATION

Cross-  
examination

MR. STREET: Q. You are at present concerned in the second-hand field? A. Yes. 30

Q. As manager of a business? A. Yes, my own proprietary company.

Q. For how long have you been concerned in the second-hand car business? A. I think I joined the business in either late 1946 or early 1947.

Q. And have been constantly engaged in it ever since? A. Yes.

Q. You knew this business, Motordom Pty. Ltd., before the night you have spoken of in your evidence? A. Yes. 40

Q. It was a fairly active, flourishing business, was it not, so far as you could see? A. It appeared so.

Q. Cars being bought and cars being sold there?  
A. Yes.

Q. You had, on many occasions, sold cars to Motordom? A. Yes.

Q. And on many occasions you had bought cars from Motordom? A. We bought cars.

Q. When I saw Motordom, I am referring to Webb's company, Motordom Pty. Ltd.? A. Yes.

10 Q. You understood it as such? A. I understood it as such.

Q. On the occasions when you had sold cars to Motordom Pty. Ltd., with whom did you negotiate the transaction? A. Mr. Webb.

Q. Did he pay you in cash or by cheque, as a general rule? A. By cheque.

Q. A cheque on a bank account, signed by Motordom Pty. Ltd.? A. Yes.

20 Q. On occasions when you bought cars from him, did you pay him in cash or by cheque? A. By cheque payable to Motordom.

Q. Could you give me any idea, in terms of cars, how many cars you might have bought from him from say July to October 1960? A. I could not say truthfully. I have not come prepared.

Q. Would it be in the order of one or two, or in the order of thirty or forty? A. That I purchased from Motordom?

30 Q. Yes - in July, August, September, October 1960?  
A. I could not answer. It may have been none in those months or it may have been three or four.

It is a long time ago. I presume I did buy some, but I could not tell you the number.

Q. On the occasions that you buy cars from persons, do you have some practice about getting declarations as to ownership or asking them about the title of the car? A. Yes. If it is a company or person, we have them sign a declaration stating that they own the car and there is no money owing on it or no encumbrance.

40 Q. On the occasions when you bought cars from Motordom Pty. Ltd., may I take it you followed this ordinary routine? A. Yes, always.

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Q. Of obtaining declarations? A. Yes.

Q. May I take it you were assured by Webb on each occasion, that he was the owner of the cars you were buying? A. That is so.

Q. Never any suggestion to you that the cars in his lot were on floor plan? A. No.

Q. On the occasions when you went there to buy cars from him, did he ever say to you anything on the lines of, "These cars are mine and those others over there are floor plan"? A. No.

10

Q. Was anything like that ever said? A. No.

Q. You went there. He had a stock of cars in his yard, and if you wanted one you bought it? A. Yes.

Q. And he gave you the assurance you wanted as to his ownership of the particular car you bought? A. That is correct. He just signed a declaration.

Q. There was never any trouble, anybody else coming in and later on claiming those cars back from you, which you had bought from Webb's yard, up till 2nd November? A. No.

20

Q. No trouble? A. No trouble.

Q. Are you familiar, in your experience in the motor trade, with what is described as floor planning of vehicles? A. Yes.

Q. Would it be fair to describe the system of floor planning as a method by which a dealer borrows money from a finance company on the security of cars that he has in his yard?

A. That would be a good interpretation I would suppose myself, yes.

30

Q. Supposing you had some cars and you rang up a finance company and said, "I will put these on display plan". What, in the motor trade, would you understand followed some conversation along those lines? A. I have been a wholesale motor trader all my life.

I have not actually done it but from experience in the trade it is a case of approaching a finance company and asking them for a display plan or floor plan - whichever you wish to call it - I presume they would be the same - and they give you a small certificate or piece of paper - exactly what is on it I could not say - and when you purchase the car you fill this in and post it to the finance company and they return a cheque.

40

That is just what I have seen done in passing, but I have always been a wholesale trader.

Q. But you assent to the general description I put to you a few minutes ago, of it being a method of borrowing money on the security of a car or cars which you may have? A. Yes, in my opinion.

10 HIS HONOR: Q. Would you, when you bought cars from Motordom, be buying them from him because you had a request for some particular sort of car which you did not have yourself? A. No.

Q. How would it work, that you would be buying cars from him? A. In the time I was buying from Motordom I was in an auction business where we required to sell, in those days, approximately 100 cars a week.

They take a lot of acquiring and where we purchase most of them was from new car houses, as trade-ins.

20 There were times when we were short of stock and we would fish around and buy from used car yards and people we mainly sold to, to make a complement for an auction.

Q. To make up enough for a reasonable sized auction? A. Yes.

RE-EXAMINATION

MR. RATH: Q. What were you doing there on this night? Were you there to buy cars? A. Yes. I went there to purchase a motor car.

30 Q. Were you able to buy any? A. Yes. I purchased some.

(Witness retired)

No. 4(c)

ROBERT BRUCE MYLOTT  
Sworn, examined as under:

MR. RATH: Q. Is your full name Robert Bruce Mylott? A. Yes.

Q. Your address? A. 53 Churchill Crescent, North Manly.

Q. Your occupation? A. Process server.

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Peter Bernard Betson

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Re-examination

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Plaintiff's Evidence

Robert Bruce Mylott

Examination

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Robert Bruce Mylott

Examination continued

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Q. Were you handed by Messrs. Hall and Hall, a subpoena for service on Mr. Robert Webb? A. Yes.

Q. When were you handed that subpoena? A. At dinner time, roughly 12 o'clock on Wednesday, 21st February.

Q. You have made notes of your efforts to serve him? A. Yes.

MR. STREET: I concede that he has made efforts to serve and has been unsuccessful.

MR. RATH: Q. What efforts have you made to serve Robert Webb? A. On Wednesday the 21st, at 7.40, I attempted to serve him at 193 North Rocks Road, North Rocks. That was the address given on the subpoena. I checked with a neighbour, who informed me he lived there, and the place was empty.

10

On Thursday, at 11 p.m. on 22nd February - there was no one there; on Saturday at 6.45 p.m., at the address at North Rocks Road; on Monday morning at 9.15, at 24 Church Street, Ryde.

Q. Why did you take it to that address? A. I was informed by Mr. Parker, for whom I work, that he could be found there at Ryde Electronics, which is at the rear of Ryde Real Estate Agency. I was informed that he was not there. I attempted again this morning, at 9.15.

20

Q. At what address? A. 24 Church Street, Ryde. I was informed by two male adults and one female adult that he was out of town for about a week.

HIS HONOR: Q. Is this a place of business?

A. It goes under the name of Ryde Electronics.

30

MR. STREET: Q. You have never tried to serve any subpoena on Motordom Pty. Ltd.? A. No. I was informed that this -

Q. You have not? A. No.

(Witness retired)

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No.4(d)

NITA ELSIE BELL

Sworn, examined as under:

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- MR. RATH: Q. What is your full name?  
A. Nita Elsie Bell.
- Q. Where do you live? A. 28 Reid Street,  
Merrylands.
- Q. Are you employed at the present time?  
A. Not at the moment.
- 10 Q. You worked, I think, for Mr. Robert Webb when  
he traded under the firm name of Motordom? A. Yes.
- Q. And you worked for him while he was running  
the company of Motordom Pty. Ltd.? A. Yes.
- Q. When did you cease to be employed or in the  
employ of the Motordom Company? A. December 20th  
I think - about the Thursday before Christmas,  
1960.
- Q. December 1960? A. Yes.
- 20 Q. Early or late in December? A. I could not say  
exactly, but about the 20th.
- Q. (Approaches witness). I show you Exhibit "A".  
Is the endorsement on the left-hand side signed by  
you? A. Yes.
- Q. I want you to look at the endorsement on  
Exhibit "B". Is that signed by you? A. Yes.
- Q. And the endorsement on Exhibit "C"? A. Yes.
- Q. Exhibit "D" is not endorsed. Do you know  
anything about that? A. No. I would not know.
- 30 Q. Exhibit "E" is endorsed by you? A. Yes.
- Q. Exhibit "F" is endorsed by you? A. Yes.
- Q. Exhibit "G" is endorsed by you? A. Yes.
- Q. Exhibit "H" is endorsed by you? A. Yes.
- Q. You have seen all those cheques before? A. Yes.
- Q. As regards those cheques that you have endorsed,  
what was the form of them when you first saw them?  
Did they have anything attached to them? A. I would  
not remember. I would not remember exactly. They  
must have been for something.
- 40 Q. Have you ever seen a document like the one I  
just show you, before? A. Yes.

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Q. With this bit on the top? A. Yes.

Q. Can you say whether, when you received those cheques, you had a top like that? A. I presume it would. It looks as if something has come off the top.

Q. What work did you do for the Motordom Company? A. Just things in general.

Q. Such as? A. Such as typing, a certain amount of typing, and phone.

Q. How about books? A. I did not do much in the way of books. I did a certain amount. 10

Q. Did you do the banking? A. I wrote out the bank. I did not always take the bank.

Q. When you received cheques, did you do anything to see what the cheque was for? A. Oh, I think I would have connected it with something.

HIS HONOR: Q. You said you had something to do with the books, but not much? A. Yes.

Q. You also said that you made out the banking? A. Yes.

Q. If you had a number of cheques that were to go to the bank, would you do something so that afterwards it would be known what the cheques were for? Did you write anything in any book? 20

A. I did not keep a cashbook or anything, if that is what you mean.

Q. Did you do anything so there would be a record as to what transactions the cheques related to?

A. If there was something on the top I would tear that off and it would be filed away.

Q. But you would not personally enter it into some other document? A. No. 30

CROSS-EXAMINATION

Cross-  
examination

MR. STREET: Q. It is correct, is it, that you were authorised, on behalf of Motordom Pty. Ltd., to endorse those cheques? A. Yes.

Q. Where you have signed them? A. Yes.

Q. I am showing you Exhibits "A" to "H", omitting "D". I want you to look at them. I am going to ask you will you agree that on each occasion you signed the cheques on behalf of Motordom Pty. Ltd.- Exhibit "A"? A. Yes, that is my signature. 40



Q. Exhibit "B"? A. Yes.

Q. Exhibit "C"? A. Yes.

Q. I am leaving "D" out. Exhibit "E"? A. Yes.  
That is my signature.

Q. Exhibit "F"? A. Yes.

Q. Exhibit "G"? A. Yes.

Q. And Exhibit "H"? A. Yes.

Q. On all of those except "D", you signed for  
Motordom Pty. Ltd.? A. Yes.

10 Q. Pursuant to the authority that you had from  
that company? A. Yes.

Q. (Approaches witness): I want to show you  
sixteen documents and ask you on each occasion  
would you identify a signature. As regards the  
first document I show you, whose signature is  
that? A. I do not know.

Q. I will retire again. How long had you worked  
for Mr. Webb? A. A period of ten months.

20 Q. Did you see him writing from time to time,  
while you were working for him? A. I guess I did.

Q. And you would recognise his signature, would  
you, if you saw it? A. The trouble is it did not  
seem to be always the same, but I suppose I could.

Q. (Approaches witness). Is that Mr. Webb's  
signature on the first document I show you? A. I  
could not be definite, but it looks like it.

Q. It appears to you to be Webb's signature?  
A. It looks like it but I could not be definite.

30 Q. As one who has seen him sign and who has seen  
his signature, what is your opinion as to that  
signature, without being definite or not? A. It  
looks as though it could be.

Q. Can you tell me, in your opinion is that Mr.  
Webb's signature? A. It is so hard for me to say.  
The "W" -

HIS HONOR: I think you are making it less definite  
the longer you go on.

40 Q. Was there anybody else there who did secretary's  
work, kept books or anything of the kind? A. He had  
a young girl there who did a little bit.

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MR. STREET: Q. Mr. Webb had a fairly big turnover, in buying and selling cars, did he not?  
A. Yes.

Q. And those cars that he sold were sold out as being sold by Motordom Pty. Ltd.? A. As far as I know, yes.

Q. As far as you knew? A. Yes.

Q. As if Motordom were the owner of the cars being sold? A. Yes.

Q. And as far as you knew, when cars were bought for the yard, at any of these yards, they were bought by Motordom Pty. Ltd. itself. Is that right? A. I would think so, normally. 10

Q. Were you ever present when any sales of cars were being made by Mr. Webb, when he was talking to customers? A. It was not in my department. I did not have anything to do with the actual selling. The men did that.

Q. Were you ever present when there were discussions about customers buying cars? A. I do not really know. I suppose I was. 20

Q. You do not recollect having been present on any occasion? A. Not when the actual sale went through.

Q. As far as you know, were any persons who bought cars which were in the yard at Motordom's premises told anything to suggest that those cars were not owned by Motordom Pty. Ltd.? (Objected to). A. Not as far as I know. (Allowed: objection withdrawn). 30

Q. Was there a system of stock cards or stock records or anything of the sort kept in the office?  
A. There were cards, yes.

Q. Did you see these cards that were kept?  
A. Sometimes. I did not always handle them.

Q. Was it part of your duty to keep these cards?  
A. No, not really.

Q. To fill them in? A. Not really. It was not really my place to do it.

Q. Did you, on occasions, fill in a card? A. On occasions I did, yes. 40

Q. What were these cards? Were they stock cards?  
 A. They were just a little shaped card and they were printed, "Bought from", "Sold to", and particulars.

Q. With an engine number and registration number?  
 A. Yes.

Q. And that sort of thing? A. Yes.

Q. "Bought from"? A. Yes.

Q. That would be filled in? A. Yes.

10 Q. I suppose with the date of purchase? A. Yes.

Q. And then "Sold to"? A. Yes.

Q. Do you know where those cards are now? A. No, I would not have any idea.

Q. Those cards were used, were they not, by the salesmen when they were checking up in relation to discussing prices at which to sell cars to customers? A. I do not know how they worked it out. I could not say.

20 Q. Did you ever see recorded on any of those cards, any such entry as "Display plan to Hire Finance", or "On display plan to Hire Finance"?  
 A. No.

Q. You do not think there was any such note as that on any of these cards? A. No.

HIS HONOR: Q. When a cheque came in from a customer - I understand that the company was paid by cheque for some of these deals, was it? A. Yes. There were always a certain amount of cheques going through.

30 Q. Did you ever send out any receipts to the customers? A. Occasionally.

Q. Did you have a printed form of receipt or did you just make out something for the occasion, or what? A. It was a small receipt book, just one of those small receipt books, and it had a Motordom stamp on it.

Q. You mean a rubber stamp? A. Yes.

MR. STREET: Q. Moneys coming in were banked to the company's account? A. Yes.

40 Q. And from time to time did you see cheques being written on the company's account, to pay for cars which had been bought? A. Yes.

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Q. Did you ever yourself communicate, at any stage, with Hire Finance? A. Oh yes.

Q. You have communicated with them? A. Yes.

Q. Over the telephone or by letter? A. Over the telephone.

Q. With whom? A. I think Mr. Gulson.

HIS HONOR: Q. What did you communicate with him about? A. Different things in connection with selling cars. They went through his purchase company. 10

MR. STREET: Q. May I take it that you understood that Hire Finance was the finance company through which customers of your business purchased their cars on hire purchase, if they wanted terms? A. Yes.

Q. Is that what you understood was the business dealing between Motordom and Hire Finance?

A. It goes through a finance company - it went through Hire Finance. A person would only pay a certain deposit, and then it went through Hire Finance. Is that what you mean? 20

Q. With a customer wanting hire purchase terms, the business would go to Hire Finance? A. Yes.

Q. And it was in connection with those matters that you communicated with Hire Finance? A. Yes.

Q. And only those matters, as far as you can recollect? A. Yes.

RE-EXAMINATION

Re-  
examination

MR. RATH: Q. Have you ever heard of a floor display plan? A. Yes. 30

HIS HONOR: Q. Where did you hear about that? A. When I worked there.

MR. RATH: Q. What did you hear about that? A. Just a matter of cars being financed through the company.

Q. With whom did you hear the floor display plan was with? A. With Hire Finance.

Q. You spoke about filing things. What sort of filing cabinets and so on did you have? A. One of those steel ones. 40

Q. Was it your job to file things away? A. A certain amount of them.

Q. Was any bookkeeper employed by the company?  
A. An accountant. We had an outdoor accountant.  
He came in occasionally. Is that correct?

HIS HONOR: I know what you mean.

MR. RATH: Q. What records did you file in the  
filing cabinets? A. The copies of hire purchase  
agreements - any copies of any type of work that  
went through, really - any transactions.

10 Q. Do you know when the Motordom yards were  
closed? A. No. I would not know. I could not  
say definitely.

Q. About when? A. It would be about December,  
just before Christmas.

Q. At what places did you work? A. I worked at  
Merrylands first. I was employed at Merrylands  
and then Guildford, and then North Parramatta.

Q. Do you mean you would move from one place to  
another place or - A. No. It was where, what  
they called their head office.

20 Q. Which was the last one you worked at? A. At  
North Parramatta.

Q. When you moved from one place to another  
place, were any records transferred? A. I do not  
think so.

Q. Do you know anything about what has happened  
to the company's records? A. No.

HIS HONOR: Q. You said you left about the  
Thursday before Christmas of 1960? A. Yes.

30 Q. Was the office still going at that time?  
Was there anyone else still working there?

A. I was the only one in the office there.  
There were a couple of men there - three.

Q. A couple of men where? A. At -

Q. North Parramatta? A. Yes.

Q. Were cars still being bought and sold at that  
time? A. They did not seem to have much to sell  
then.

40 Q. That is what I was interested in. If there  
were a couple of men there, what were they doing?  
A. Just sort of wasting time. They were not doing  
much work.

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Nita Elsie  
Bell

Re-  
examination  
continued

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Nita Elsie Bell

Re-examination continued

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No.4(e)

Plaintiff's Evidence

Robert Walter Stevens

Examination

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Q. Was Mr. Webb still coming in each day?

A. No. He was not in every day.

Q. He was coming in there from time to time?

A. Yes.

Q. When you left, whatever records had been there were still there, were they? A. Yes..

Q. There had not been any clean-out? A. No.

Q. Or taking away of the records? A. No. They were still there.

(Witness retired)

10

No.4(e)

ROBERT WALTER STEVENS

Sworn, examined as under:

MR. RATH: Q. Your full name is Robert Walter Stevens, and you live at Flat 42, Robinson Crescent, Marrickville? A. Yes.

Q. And you are the acceptance manager of the plaintiff company? A. I am.

Q. And you have been with them three years in that capacity? A. That is correct.

20

Q. In the year 1960 the plaintiff company's name was Hire Finance Ltd.? A. That is right.

Q. And its office was partly situated at 70 William Street, where I think you were most of the time? A. Yes.

Q. Another part in Bligh Street, where Mr. Gulson, Mr. Reddie, the secretary, and I think Mr. Attwill, the managing director, were most of the time? A. Yes.

Q. As acceptance manager, speaking especially of the latter half of 1960, what were your duties in the plaintiff company? A. My duties, amongst other things, were the acceptance of hire purchase agreements delivered to the company, during the

30

course of it I would, following acceptance, receive a cheque drawn by the secretary, who would give the cheque to me by sending correspondence to go with that cheque, and I would sign the cheque, examine the documents -

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10 Q. I just want to know at this stage, broadly what your duty was. Did you deal with anything else besides hire purchase? A. Yes, I did. I handled some phases of accountancy business, such as banking and so on. Certain moneys were received in this office -

Plaintiff's  
Evidence

Q. Do not go into that. Did you, in 1960, have anything to do with a Mr. Robert Webb? A. I did.

Robert Walter  
Stevens

Q. Did you ever see him? A. Yes, on a number of occasions.

Examination  
continued

Q. And did you ever deal with him on the phone? A. Yes, many times.

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20 Q. Would you look at that document? Is that a cancelled cheque form and voucher? A. That is, yes.

Q. Is that the sort of cheque and voucher that was in use in the year 1960 by your company? A. Yes. It was the same.

Q. The bottom right-hand corner is torn off. Is there any reason for that? A. Yes. The reason for that is that when cheques were cancelled I, as a matter of habit, removed the signature section so there was no possibility of the cheque being used at a later date.

30 Q. Were all the cheques drawn by your company in that year, in that form, coupled with a voucher? A. Yes.

Q. No other forms of cheque? A. No.

Q. Just look at that. Is that the form of voucher and cheque used since the company changed its name? A. Yes, that is correct.

Q. Do you see that white slip attached to it? A. Yes.

40 Q. Was there a white slip like that attached to the forms in use in 1960? A. Yes, in all cases. That was the office copy of the cheque and voucher.

MR. STREET: I do not mind my friend leading on this.

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Robert Walter Stevens

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MR. RATH: Q. So far as your experience in the company was concerned, was a cheque ever sent out without the voucher attached to it? A. No.

Q. In the case of some cheques, did you have to send out other documents as well, to explain the cheque? A. Yes, in many instances.

Q. The voucher part not being big enough to contain all the information? A. Yes.

Q. The practice was, was it not, that the cheques were drawn but not signed, the supporting part of the voucher was typed in, and any supporting letter was typed? A. Yes. 10

Q. The cheque and any supporting letter were then pinned together? A. Yes.

Q. With a normal form of pin like this small one here? A. Yes.

Q. In addition to the cheque and its original supporting documents being pinned together, there would be a duplicate set, a carbon set? A. Yes.

Q. Also pinned together? A. Yes. 20

Q. So far as you dealt with them, you would check to see that the supporting documents justified the amount of the cheque? A. Yes.

Q. And you signed the original letters and you also signed the carbon copy? A. Yes.

Q. Then all the letters and cheques that you had in any one day, together with the carbon copies, were sent, together with envelopes already stamped, to Bligh Street? A. That is correct.

Q. You would send as many envelopes to Bligh Street as you had letters for them to send off? A. Yes. 30

Q. You have worked at Bligh Street as well? A. Yes.

Q. You know that the practice there at that time was that the carbon copy, I think, went in to the accountant; the original would go to Mr. Gulson if he was there? A. Yes.

Q. Or to the secretary, Mr. Reddie, and just once in a while might go to Mr. Attwill? A. That is right. 40



Q. And they, as a matter of practice in the firm, would again check the amount of the cheque with the supporting documents? A. Yes.

Q. The letters were posted from Bligh Street; they were not then sent back to you, but any further work was done to them at Bligh Street? A. Yes.

Q. You then had no postings book? A. No.

10 Q. (Approaches witness). The first cheque, Exhibit "A", is signed by you; the second signature on the right-hand side? A. That is right.

Q. Have you any independent recollection of the deal to which it relates? A. No.

Q. Are the documents that are now attached to that cheque, first of all the white one, the white sheet which was attached to all your cheque forms? A. Yes.

20 Q. And read together with your cheque form then and the cheque, that is, read together with the voucher and the cheque, does it show what was typed on the voucher and what was on the cheque itself? A. Yes.

Q. And the attached letter is your company's file copy of some original letter? A. Yes. That is the file copy of the letter that was sent with that cheque.

30 Q. The original letter would contain the original of all typing on this copy? A. Yes, it would.

Q. In addition, it would contain your normal letterhead form? A. Yes.

Q. But it would contain none of the ink or pencil marks? A. No. They were put on there by me afterwards.

Q. Exhibit "B" is not signed by you? A. That is correct. It is not signed by me.

40 MR. STREET: I would be prepared to concede that the bundle of exhibits my friend has have been taken from the ordinary office records of the plaintiff company, and that they have all been processed in the way the witness has just described in relation to Exhibit "A", if that is of any assistance.

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HIS HONOR: Q. I thought, when you were explaining what happened, you said you were working at William Street and the cheques were sent for signature at Bligh Street? A. For counter signature.

Q. You signed before they left William Street? A. Yes.

Q. And some other officer of the company had to sign also, at Bligh Street? A. Yes.

MR. RATH: Q. In one or two instances, in regard to the cars we are concerned with in this case, either because you were away or for some other reason, you did not sign a cheque? A. That is correct.

10

Q. I think there are two? A. Yes, two instances.

(Cancelled cheque form and voucher formerly in use, together with modern cheque form and voucher tendered; admitted and marked Exhibit "Q").

Q. These exhibits "A" to "H" show certain vehicles as being accepted on floor plan by you, by your company. Are you aware of that? A. Yes.

20

Q. In each case, how did it come about that you accepted a vehicle for floor plan? A. There are two ways of that happening. In some instances a representative of the company -

Q. Mr. Patrick? A. Mr. Patrick would call at the dealer's yard and examine.

MR. STREET: I ask my friend now to put his case more strictly.

MR. RATH: Q. In some instances Mr. Patrick brought you something? A. That is correct. He would bring me a list of - (Document brought in objected to, unless produced).

30

MR. RATH: I will produce the sole ones brought in.

WITNESS: He would bring to me a list of motor vehicles which he had discussed with Motordom and in some instances which he had examined, to replace vehicles which were previously placed on floor plan with the company and had been sold, in other words, they were to maintain a certain amount of motor vehicles in the dealer's yard and when he had sold a number of them he would always replace them, and Mr. Patrick, on his call to the yard would make these arrangements and get a list of the vehicles to replace those which had been sold, and give them to me.

40

From that list I would then have a draft made up for a cheque to be drawn to make the necessary adjustment.

10 Q. That is one method? A. The other method was that these matters would be occasionally adjusted by telephone call, in that Mr. Webb would ring me or Mrs. Bell would ring me on instructions from Mr. Webb, and advise me that some procedures were to be followed, that a certain number of vehicles had been sold and that they required them to be replaced by a number of vehicles.

I would go through them with her on the phone, take a list and correspondingly make the adjustment by cheque to Motordom.

20 HIS HONOR: Q. When you say they would telephone and tell you about a list, would you expand that a little? What would be said to you on the telephone? A. The conversation would probably go like this: "We would like to make a floor plan arrangement. We have sold a number of cars which have been on your floor plan and these are they."

I would take a note of them on the phone and add the amount of money involved and so on -

MR. RATH: Q. Where did you get the amount of money from? A. I beg your pardon?

Q. You say you added up an amount of money? A. I added up the total of the amounts of the individual motor vehicles previously on the floor plan. That totalled a certain amount.

30 Q. How about the new vehicles? Where did you get the amounts for them from? A. They would be advised to me by whoever I was talking to on the phone, Mr. Webb or Mrs. Bell.

Q. What amount was it that you were being advised of? A. The actual cost price that the dealer, Motordom, had purchased the vehicle for. They would advise me the amount they had paid out and we would advance them 90 per cent. of that amount.

40 Q. You were advised of the actual price he had paid? A. Yes. We were told he had paid a certain amount of money for the vehicle, and naturally we would believe that until otherwise proved.

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Q. To take an instance on Exhibit "A", it has "1956 Plymouth Powerflite BKD-320, £750". Does that represent the sum you were told Mr. Webb had paid for it, or the sum you allowed for it?

A. That is the sum we allowed for the vehicle.

Q. Normally what proportion of the purchase price did you allow? A. Ninety per cent. of the purchase price.

Q. When Mr. Webb or Mrs. Bell rang, would you know then whether he had the car that he was putting on the floor plan? A. I would not know definitely. I would presume so.

10

Q. What was done about seeing that he had the car?

A. Reasonably frequently - I cannot recollect at that time how frequently - our representative, Mr. Patrick, would receive from me a typed list of all the vehicles which were on display plan according to our books, following these arrangements, and I would give Mr. Patrick that list of vehicles and he would make a physical check of the vehicles at Motordom's yard. Whilst doing that he would also establish from where the vehicles had been purchased and sight receipts for their purchase, to establish that the amounts they advised us having paid for the vehicles were true.

20

HIS HONOR: Q. This statement in Exhibit "A" contains a list of items under the heading, "Pay out display plan"? A. Yes.

Q. It also, later, has a list under a heading, "Less display plan"? A. Yes.

Q. From what you have said so far, I take it that, having been told either through Patrick or on the telephone, that they wanted to put onto the plan a specified vehicle, you would put it on at 90 per cent. of the price you had been told it had cost, and you would credit them with that amount, pay them that amount, although sometimes you would not pay that amount because there would be debits to come off to adjust the cheque? A. Yes.

30

Q. Later on, when that particular vehicle went off the list, you were advised that it had been sold or whatever it was, what happened then in relation to that vehicle, in relation to your accounting between yourselves and Motordom?

A. In that instance it would be replaced in the "less pay out display plan" section. It would come off a subsequent cheque to the dealer.

40

MR. RATH: Q. Over this period June to the end of October, you were raising his loan account limit?  
A. That is correct.

MR. RATH: I worked it out in the lunch hour. If you are raising a man's limit, you can take things off and put things on and he will never send you a cheque. That can only go on for a certain length of time, while you still raise his limit.

10 At a certain point of his £15,000 limit, a certain stage will be reached when he will have to pay you something. He pays you nothing while you are still increasing your loan to him.

HIS HONOR: Maybe he does not pay you, but I am trying to get how the figure is worked out.

Q. As I understand it, he got a credit when a new car was put on to the display plan? A. Yes. He was paid for it.

20 Q. When he had sold one of these and got the price, something would have to come back from him to your company, whether it came back in cash I am not concerned with, but he would owe you something?  
A. Yes. I think the exhibit you have there shows the pay outs exceed the amounts going on to the display plan.

30 Q. Yes, they do, but when the particular vehicle appears on this as an item debited against him, how do you fix the price at which you debit him? Does it depend on the price at which it was sold, or the amount for which you had bought it, or the amount you had advanced? A. When we arrive at an amount for the original floor plan agreement, and the vehicle is sold, he only has to pay us back the same amount.

Q. The same amount as you had paid him? A. As we had paid or credited to him for that particular car.

MR. RATH: That does not sound quite right, because of the word "charges".

40 HIS HONOR: Q. You have some charges on this sheet?  
A. Yes. The way they arose was this.

When a vehicle on floor plan was sold and the company received a hire purchase agreement on that car, when the adjustment was made, the amount that was paid to us or that we made an adjustment on was the nett amount we originally advanced on the

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vehicle, but when the vehicle was sold for cash we charged an amount, an interest rate on that amount for the number of days we had had the vehicle on our floor.

So those charges mean - take the top one - we originally loaned him a certain amount of money. In view of the car being sold for cash, we calculated so many months or days interest at, I think at the time it was about 8 per cent., and it worked out to that amount of charges, so that we added that to the amount he owed us when he settled.

10

Q. If you look at this document for a moment, you have one list of items, charges put in under each vehicle specified? A. Yes.

Q. And then you have another list with further charges? A. Yes.

Q. Why do you have two different ways of setting it out in the statement? A. That was, I would say, a rarity in that we had made a floor plan adjustment. It may have been one which sometimes occurred.

20

The dealer replaced vehicles that he had sold, with a number of vehicles which gave so small a balance that I did not have any facilities at the time, you could not charge them to him at the time. I would have a note to take from him a cheque -

Q. The charges are not different in kind and not different as to how they arise, but different as to the particular setting out of them on that document? A. Yes.

30

MR. RATH: Q. Still looking at Exhibit "A", on the cheque-voucher form there is the credit for the Holden sedan, £668.17.0. That represents a car of Motordom which you accept from him as a hire purchase vehicle? A. That is correct. We financed that amount of money on the hire purchase agreement on that vehicle.

Q. You would have financed it to the extent of £668.17.0. and you therefore give him credit for it? A. That is right.

40

Q. You get the vehicle from him. In the course of your dealings with either Mr. Webb as the Motordom firm, or the Motordom Company, did it ever work out that he would have to send you a cheque? A. I think so. I cannot clearly recall but I think it did occur.

HIS HONOR: Q. I suppose a good many of these vehicles went under hire purchase terms, did they?  
A. Yes, quite a number of them.

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Q. In those cases I suppose you got a written offer to hire? A. Yes.

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Q. Signed by some intending hirer? A. That is right.

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Q. That would be sent in from the Motordom people?  
A. Yes. They would be sent in to us.

10 Q. Did you get any other document accompanying it, from Motordom? A. No, not that I can recollect - very rarely. There may have been.

Plaintiff's Evidence

I would say never at the moment - only the hire purchase agreement and other legal notices - insurance proposals and so forth. That is all I can recall.

Robert Walter Stevens

Examination continued

Q. You did not, for example, get an offer signed by Motordom, offering to sell a car to you? A. No.

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20 Q. I was just wondering how you ever knew, at the time you accepted a particular hire purchase agreement, whether at that time you yet had any title to the car to which it related.

Is there any way in which you were ever able to know that, or is it the practice of hire purchase financing companies not to worry about that? A. It is the practice of the hire purchase company to accept a statement from a dealer, until title is proved bad.

30 The dealer, in normal circumstances, guarantees title to the finance company under a separate agreement known as a trade agreement, which waives the necessity.

Q. The theory of the thing is that the dealer - it might not be the theory in this particular case - but in some cases the theory is that the dealer knows the car which he has bought from someone and that title is transferred to the finance company, which then hires it out to someone else? A. That is right.

40 Q. How do you ever know at what point of time the title comes over from the dealer to you? I am assuming it is a good title. A. I would think, my own view would be, on the despatch of the cheque for the residue of the contract, to the dealer.

(Further hearing adjourned until 10 a.m. on Wednesday, 28th February, 1962).

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In the Supreme Court of New South Wales

IN COMMERCIAL CAUSES

CORAM: WALSH, J.

No.4(e)

MOTOR CREDITS (HIRE FINANCE) LTD. V.

Transcript of Proceedings before His Honor Mr. Justice Walsh

PACIFIC MOTOR AUCTIONS PTY. LTD.

SECOND DAY: WEDNESDAY, 28th FEBRUARY 1962

Plaintiff's Evidence

ROBERT WALTER STEVENS  
Examination continued:

Robert Walter Stevens

MR. RATH: My learned junior thinks I have already asked my next question. I mentioned it in my opening address, but I do not know whether I have asked it.

10

Examination continued  
28th February 1962

Q. You told his Honor that you were rung up by people at Motordom about putting cars on floor plan?  
A. Yes.

Q. You have told how the cheques were drawn and the supporting documents were drawn, and you have outlined the practice so far as you know it.

With respect to any of the cheques with which we are concerned in this case, Exhibits "A" to "H" all of which I think you have seen before -  
A. Yes.

20

Q. - not only when you signed them, but you have seen them just before this case? A. That is correct.

Q. With respect to any of those, did you ever hear from the Motordom firm or the Motordom Company or anybody connected with it that they could not understand a cheque or anything like that?  
A. No, never.

Q. Did you ever get any query from them about the cheques? A. No.

30

Q. 1956 Zephyr BRW-333 is shown on Exhibit "D" in this way, 14th October 1960, under the heading of "Display plan". It is a simple dealing in which the amount of the cheque is exactly the amount of the vehicles put on display plan.

I will show you all of these together: 24th October, Exhibit "G", 10 days later, by another simple transaction, where the cheque is equal to the vehicles put on display plan; 1956 Zephyr BRW-333 - it again appears and it appears at the same price;

40



and it appears again on Exhibit "P" confirming adjustments to the display plan and shows "Display plan" and "less display plan Zephyr BRW-333, £560."

Would you look at these Exhibits, "G", "D" and "P"? (Handed to witness). You, I think, signed each of the letters concerned in those three matters, did not you? A. No. I did not sign the cheque of 14th October.

10 Q. Did you sign the letter? A. There was no letter with that one. It was a straightforward transaction.

Q. Did you sign the next two cheques? A. Yes, I did. I signed the cheque and the letter.

Q. What does that mean? (Objected to).

Q. With regard to the first one, 14th October, that shows the vehicle going on the floor plan? A. That is correct. (Objected to).

Q. The second dealing is the same sort as the first, is it not? A. Yes.

20 Q. How about the third? A. The third dealing is an adjustment - (Objected to; argued; document handed to his Honor).

MR. RATH: I would like your Honor also to adumbrate: "So far as your company was concerned, what is the dealing in Exhibit 'P'?" and then I propose to say, "In between, did anything occur?"

30 HIS HONOR: If this witness can recall something that happened about this car, some conversation about it or whatever it was, I will allow you to give that evidence, but if what you are seeking to do is to get him to give his understanding of what these documents mean, I will reject that.

MR. RATH: I was not trying to do that. I was trying to get two things. One is perhaps partly covered by your Honor's ruling and I will get that clear before I put it to the witness.

40 The first matter is the movement. We see the vehicle going on the display plan twice. I want to see if he knows of anything that occurred in between. I will put that first.

Q. I am dealing with the fact that it is shown as being put on display plan twice. Do you follow that? A. Yes.

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Robert Walter Stevens

Examination continued

28th February 1962

Cross-examination

Q. Do you recollect, with regard to that vehicle, anything taking place to account for that double movement? A. Yes, I do.

Q. What do you recall? A. During the course of Mr. Patrick's display plan check of the list of vehicles which I gave him, that particular unit, that vehicle appeared twice on the list. It was not picked up by myself at any time prior to Mr. Patrick checking that particular list. When he went to Motordom's yard he found only one vehicle naturally and pointed out -

10

HIS HONOR: I suppose you should get this part from Mr. Patrick really.

MR. RATH: Q. Mr. Patrick said something to you? A. He said to me that the vehicle had been floor planned twice.

Q. He said something to you? A. Yes.

Q. What did you then do? A. I prepared that adjustment of the floor plan, which I forwarded to Motordom.

20

Q. And that took it off once? A. Yes. It took it off floor plan once and left it on floor plan.

CROSS-EXAMINATION

MR. STREET: Q. You were the executive officer of the plaintiff company who was most directly concerned with these transactions with Webb? A. That is correct.

Q. And I think Mr. Patrick was a junior officer in the organisation, to you? A. Yes.

Q. Had you at any time been to any of Webb's premises? A. No.

30

Q. Did you know how many car yards he had just before the end, and by "the end" I mean 2nd November, the beginning of November? A. Well, I was under the impression that I knew, yes.

Q. How many did you believe that he had? A. Three.

Q. And it was within your knowledge, was it not, that he had a very active business in terms of turnover? A. Yes.

40

Q. And so far as you knew, a very flourishing business? A. Yes.

Q. And it was a business, as you understood it, of buying second-hand cars? A. Yes.

Q. In his own name? A. Yes.

Q. And selling second-hand cars? A. Yes.

Q. In his own name, as the vendor? A. Yes.

10 Q. And he had, to your knowledge, been carrying on that business throughout the whole of the corporate life of this company? Let me remind you that the company, I think the evidence is, was incorporated in about June or July 1960. A. Yes. Well, I cannot say that I was fully aware at any time of the incorporation of the company, myself.

Q. Would it be fair to say that whatever the particular business was that Webb was operating, whether it was a solely owned firm or whether it was a private company, you understood that Webb was the executive in control of the business? A. Yes.

20 Q. And whether that business was a company business or a firm business, it had been carried on, for some months at all events before November 1960, on the basis I have just put to you, of Webb buying in his own name and selling in his own name? A. Yes.

Q. When I say "Webb in his own name", I mean whatever the real owner of the business was, whether it was the firm or the company? A. Yes.

Q. You agree with that? A. Yes.

30 Q. You never at any stage interfered, did you, in any of the transactions of buying or selling which were being carried on by Motordom, right up till 2nd November? A. No, I never interfered.

Q. Nor did your company? A. Not to my knowledge.

Q. And if your company did, you would expect it to be within your knowledge, would you not? A. Yes.

Q. You have some familiarity with the course of a motor dealer's business, I take it? A. Yes.

40 Q. You know, do you not, that it is a common practice for second-hand motor dealers to furnish declarations that they own the vehicles that they are selling, and that the vehicles they are selling are unencumbered or that there is no bill of sale - or some other similar assertion that they have a secure title? A. Yes.

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Q. That is almost universal with second-hand car dealers? A. Yes. It is a recognised practice.

Q. So far as you knew, the Motordom business in respect of the cars it was selling over this period, was furnishing such assurances or declarations to purchasers from it? A. I cannot say I ever saw one myself, in writing.

Q. But you believed that they were? A. Well, it was presumed.

Q. And for a second-hand trader, this Motordom business was a particularly active one, was it not, in terms of turnover, so far as you knew? A. Yes, as far as I knew. 10

Q. On the occasions that you have told Mr. Rath about, when Mr. Patrick would visit Webb's premises he would come back and have some discussion with you on his return, would he? A. Normally.

Q. It is the fact, is it not, that on many occasions you learned that vehicles which, according to your records were on display plan, were not in Webb's yard at the time of one of the Patrick inspections and those vehicles were then taken off the display plan by you? A. Yes. 20

Q. That happened quite frequently, did it not? A. Yes.

Q. In other words, the first intimation that your company would receive of the vehicles having gone off display plan would be a report from Patrick, following upon his having been out there and found the vehicles had been sold? A. No, not necessarily. 30

As I said before, in some instances, in quite a number of instances, adjustments were made direct with Mr. Webb, on the telephone.

Q. I perhaps put my question badly. I am not suggesting that it was in all instances that the vehicles were taken off your records following upon your finding that Webb had sold them, but in many cases you took the vehicles off your display plan records, following upon Patrick discovering that Webb had already sold them? A. Yes. 40

Q. And in no cases of that sort did you ever raise any query or complaint with the person who had purchased from Webb? A. No.

Q. When you say no, I think you agree with me? A. Yes.

Q. The true value of your company's association with Motordom was the prospect of hire purchase customers coming in; is that correct? A. Yes.

Q. It was that which rendered the connection with Motordom a desirable one from your company's point of view? A. Yes.

10 Q. The arrangement to which you have referred as the display plan was no more than an incidental type of transaction between yourself and Motordom, which it was hoped would promote a flow of hire purchase business between Motordom's customers and your company? A. Well, it is difficult to answer. At that particular time I think the display plan was of reasonably great importance in maintaining a relationship with the car dealer.

Q. Important in maintaining a relationship with the car dealer? A. Yes.

20 Q. But it was the relationship of prospective hire purchase business that your company wanted - A. That was the object, yes.

Q. And the display plan was the incidental attraction to the dealing? A. Yes.

HIS HONOR: Q. In the cases where the Motordom company sold a car for cash - I suppose some of those occurred? A. Yes, quite considerably.

30 Q. What exactly, did your company get out of the transaction in such case? A. Interest charges, as we discussed yesterday. We charged a certified rate of interest for the number of days the vehicle was on the floor plan before it was adjusted.

MR. STREET: Q. You would get back the amount of your loan plus the interest for the period during which Motordom had had the loan? A. That is correct.

Q. You said yesterday, I think, that the interest charge was 8 percent.? A. That was a recollection.

40 Q. You left some element of doubt. I am not troubled about the rate percent. for the moment. In cases where the Motordom customer entered into a hire purchase agreement with Hire Finance, was there not still some charge made for interest in respect of the original loan on the display plan? A. I cannot quite recall. I do not think so at the time.

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The system has changed in a number of instances. At that time I do not think there was any charge. I think I can say emphatically it was not.

Q. It was your belief that the display plan arrangements were following the lines of the written agreement Webb had signed back in February 1960?

A. That is difficult to say. I am not very conversant with the legal implications of that agreement, but that agreement actually was with Mr. Robert Webb, trading as Motordom. 10

Q. You told me a few minutes ago you did not have a precise knowledge of when, or perhaps even if there was a proprietary company? A. No, but I have a reasonable belief that there was. I have since found out.

Q. Did not you believe that you were dealing with Webb's business, whether incorporated or not, in terms of the written document which Webb had signed in February 1960? A. On my reading of the display agreement, on some of the clauses, yes. 20

Q. I am asking you about your belief at the time, in 1960? A. At that time I would say that my knowledge of the agreement was not sufficient for me to really know, but on the surface of it I would say once the document is signed, I would believe that.

Q. Back in 1960 when these dealings were going on with Webb, it was your belief that they were consistent with the terms of the written agreement? A. In most respects, yes.

Q. Did you have any affirmative belief, in 1960, that they departed from the written agreement in any way? A. No. There was no definite departure from the method of operation with Motordom from the moment we started till we finished. 30

HIS HONOR: Q. Any departure that might have occurred was inadvertent rather than deliberate and planned? A. Yes.

MR. STREET: Q. So far as your belief in 1960 took you, both you and Motordom were adhering to the written agreement? A. We were trading in the same way as when we first started doing business with them, yes. 40

Q. So far as your belief took you, in 1960 you thought that both you and Webb were adhering to the mutual obligations set forth in the written agreement? A. I probably would say that, yes.

Q. Did you on any occasions that you can recollect - and I do not suggest that your recollection is precise - receive any letter from Webb or Motordom informing you of a change of the vehicles going on or off display plan?

A. I cannot recollect having received one personally, no.

10 Q. Do you stress the word "personally"? A. I have recollections of Mr. Patrick having a firm letterhead with a typed list of vehicles on them.

Q. Do you know where those lists are? A. I think probably they were not retained. I cannot recollect them having come to myself, and I do not think Mr. Patrick still has them.

Q. Do you know that strenuous efforts have been made to find Webb, for the purposes of this case? A. Yes. I have heard that.

20 Q. And also to find Webb's records in terms of the original documents of which you identified some of the carbons yesterday? A. I understand that is so.

Q. May I take it that you yourself would regard the originals of those documents as being of some importance? A. Well, I would not say that. We have duplicates of them.

Q. You have the duplicates of them? A. Yes.

30 Q. I want you to look - I do not want you to read any of them at the moment - and see if you recognise any of these as being the originals of the carbon copies which you identified yesterday.

I do not suggest they are complete and precisely co-extensive, but those are the documents, are they not, of the type which you say were sent out? A. Yes.

Q. I think it might even be possible to identify some of them with one of the exhibits you had this morning, Exhibit "O"? A. That is Exhibit "P", I think.

40 Q. Quite right. Would you take Exhibits "A" to "H" at the moment? The document which you see there appears to be the original of Exhibit "A"? A. Yes.

Q. And you will agree it is, in fact, the original, of which Exhibit "A" is a carbon copy? A. Yes.

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Q. And the next one, the date? A. July.

Q. The document I now show you appears to be part of Exhibit "B", does it not?

MR. RATH: It has been put. In view of that question asked on the actual document shown to the witness, the strict principle is now, of course, that it must be read to the Court.

That is, of course, never adhered to. But I am now entitled to see it.

MR. STREET: Yes.

10

HIS HONOR: I think so.

MR. STREET: My friend can come and look here, if he wishes.

Q. The document I now show you appears to be the original of part of Exhibit "B", does it not?

A. Yes.

Q. And the next one? A. 6th October.

Q. The document I show you appears, does it not, to be the original of Exhibit "C"? A. Yes, it does.

Q. Exhibit "D" is dated - A. 14th October.

20

Q. The document I now show you appears to be the original document of Exhibit "D", does it not?

A. Yes.

Q. The date of the next? A. 19th October.

Q. The document I now show you appears to be the original of Exhibit "E"? A. Yes.

Q. When I say "appears to be", they are, in fact, the originals, are they not? A. I would say so.

MR. RATH: I notice there are some ink markings on them. Perhaps you might find out whether that is part of the original.

30

MR. STREET: Q. Some of them bear notations which are probably welcome to the plaintiff - "Received" with a date, written in ink on them? A. Yes.

Q. They were not on them when you sent them out? A. No.

Q. And the date of the next one? A. 24th October.

Q. The one I now show you is the original of Exhibit "G", is it not? A. Yes.

Q. Again with some ink note? A. Yes.

40



Q. There appears to have been an alteration?

A. Yes, there is an alteration.

Q. On a car? A. Yes. That follows Exhibit "P".

Q. As regards the alteration of the car, in the registration number on the original of Exhibit "G", was that on it at the time it was sent out by you?

A. No, it was not.

Q. And the date of the next one? A. 28th October.

10 Q. These documents are the originals of Exhibit "H", are they not? A. Yes, they appear to be so.

(Bundle of documents shown to witness tendered by Mr. Rath, viz. document dated 22.7.60, 28.7.60, 6.10.60, 14.10.60, 20.10.60, 24.10.60, 28.10.60 and 31.10.60).

MR. STREET: Q. I show you the original of Exhibit "F". I will get your assent to the identity apart from the ink notation of receipt. A. Yes.

20 (Document dated 21st October 1960, corresponding to Exhibit "F", also tendered. Above-mentioned documents admitted and marked Exhibits "A1" to "H1" and "P1").

Q. Do you see that in this file I have, there are some other documents apparently directed by your company to Motordom in the latter half of 1960?

A. Yes.

30 Q. You can, for instance, identify your signature on the foot of a document dated 16th August 1960, which purports to record some movements on and off the display plan, together with some payments in full? A. Yes. That is my signature.

Q. I show you another document signed by you, being a letter dated 15th December 1960, which acknowledges the receipt of a cheque for £4,300 from Motordom Pty. Ltd., that letter being accompanied by an official receipt for £4,300? A. Yes.

Q. And that was a transaction in respect of certain identified vehicles being, according to the heading on the letter, "Pay out display plan"?

A. Yes.

40 Q. I show you then the carbon copy of a letter here dated 1st October 1960 addressed to you at your employing company, with certain details of vehicles going on and off the display plan. Do you see that letter? A. Yes.

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Q. Would you look at Exhibit "C"? You will see that, on 6th October 1960, there was prepared in your office a display plan adjustment corresponding to the details set out in the carbon copy of the letter of 1st October which I show you?

A. Yes.

Q. Although I understand you to say that you have not in your records, at the moment, the original of the carbon copy letter which I show you, dated 1st October 1960? A. No, I have not.

10

Q. It is more probable than not though, is it not, that the original of this letter was received by you at the plaintiff company's office, and that it furnished the reference from which you prepared the original of Exhibit "C"? A. Yes.

MR. RATH: It is addressed to a person by name.

MR. STREET: Q. It is addressed to Mr. Stevens, Hire Finances, Box 2542, G.P.O., Sydney. That G.P.O. box is the plaintiff company's box? A. Yes.

Q. And you would have no doubt that the carbon copy I show you was received in your office and that - A. I would say, without having a clear recollection, that that is probably what happened.

20

(Abovementioned carbon copy letter m.f.i. "2").

(Document dated 15th September 1960 with attached receipt from Hire Finance Ltd. of same date, tendered by Mr. Rath; admitted and marked Exhibit "S").

Q. Would you look at the exhibit which follows 29th September 1960? Would you look and see if there is a list in any of the exhibits which starts with BNF-809 going off the display plan? A. Yes.

30

Q. I am sorry. That is the same one. I also show you a letter dated 6th September, sent by you to Motordom, recording movements on the display plan? A. Yes. That letter is signed by me.

Q. Without the ruling out of two vehicles? A. That is correct.

40

Q. I show you another letter dated 7th October 1960, recording debits in respect of certain charges or in respect of what are described as display plan charges on 12 or 15 vehicles? A. Yes.

Q. Asking for a cheque for £91.1.0? A. Yes.

Q. That was signed by you and sent to Motordom?  
A. Yes.

(Letter, Hire Finance Ltd. to Manager of Motordom, 7th October 1960, without ink markings which purport to record a payment having been made, tendered by Mr. Rath; admitted and marked Exhibit "T").

10 MR. STREET: Q. I show you also in this file an unfilled-in printed document, together with a roneoed document also uncompleted, which are, I suggest to you, documents which originated from the plaintiff company? A. I presume so, yes.

Q. They are the plaintiff company's documents, are they not? A. Yes.

20 Q. And they are the documents used for the making of the display agreement and a re-purchase agreement which is customarily required by your company contemporaneously with the display agreement being made? A. Yes.

Q. I think you told Mr. Rath that you would prepare the originals of Exhibits "A" to "H", or had them prepared by one of your staff? A. Yes.

Q. Following upon receipt of some information from Motordom? A. Yes.

Q. That information, I think you said yesterday, might on occasions have come to you over the telephone from Webb? A. Yes.

30 Q. On occasions, might have come to you in the form of a letter such as the original of this document m.f.i. 2? A. Yes.

Q. And it might, on occasions, have come to you by some message through Patrick? A. Yes.

Q. Those would be the three sources from which you would then proceed to have the necessary documents prepared in your office? A. Yes.

Q. Recording the display plan transactions?  
A. Yes.

40 Q. On an occasion when Webb rang you up and told you that he wanted some change in the display plan, that he wanted to put some vehicles on and take others off - you recall such things happening?  
A. Yes, such things happened.

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Q. On occasions such as that it is correct, is it not, to say that you understood that he was offering to sell certain cars to you, to your company, on the express condition and essentially on the condition that you would take such steps as were necessary to bring these cars within the display plan arrangement with him? A. Yes.

Q. And that display plan arrangement, as you understood it, was the arrangement which was recorded in this agreement which you have said you signed with Webb, or your company signed with Webb in February 1960 - as you understood it? A. Yes. Webb signed the agreement. 10

Q. I will make sure you understand my question. The display plan arrangement that you understood was involved in the transaction which Webb was offering you when he rang you or wrote to you or sent a message through Patrick, was the arrangement which, on your understanding, had been the subject of this written agreement back in February 1960? A. Yes. 20

Q. And as you understood the situation say when Webb rang you, say to take a middle month, in September 1960, if you had not been prepared to leave the vehicles with him on the display plan basis, he would not have been willing to sell them to you; I put it to you it was one entire transaction? A. I could not presume his. Ours were that they were still subject to display plan arrangement. 30

Q. It was not contemplated that you were going to buy these cars from Webb and that would be the end of the matter? A. No.

Q. It was to be an entire transaction; he would sell to you and put them on the display plan? A. Yes.

Q. And it was one entire transaction and not two distinct and separate steps, as you understood it? A. No. He would buy the vehicles in his own name and sell the vehicles too. 40

Q. I suggest to you he would sell it to your company only on the basis that it was being put, by your company, onto the display plan? A. Yes.

Q. That was an essential part of the transaction between you and Motordom, namely that you would put it on display plan? A. Yes.

HIS HONOR: Q. If it were an outright sale with no string to it, he would be selling it, would he not, for 90 per cent. of the amount he had just paid for it? A. That is correct.

MR. STREET: Q. As you understood it, the step necessary to give effect to your intentions or belief, namely that the vehicle should go on display plan was the preparation in your office of these vouchers and details, and the sending to Webb of the cheque for the balance in his favour?  
10 A. Yes.

Q. That gave effect, did it not, to the offer which Webb made you when he rang you up? A. Yes.

Q. Of course, your cheques were always drawn as being order cheques and not bearer cheques?  
A. Yes.

Q. And you required the endorsement of Motordom on those cheques? A. Yes.

Q. And you know, don't you, that those cheques have been produced in evidence in this case?  
20 A. Yes.

Q. Does your company get its cheques back from its banker from time to time? A. Yes.

Q. And does it then verify its own internal records against the cheques that you get back from the banker? A. I believe that comes into audit.

Q. May I take it that the endorsements on those cheques would indicate to you that they had been received by Motordom and that the deal was binding on both you and Motordom? A. Yes.  
30

Q. The particular transaction? A. Yes.

Q. Would it be correct to say, as you understood the arrangement between you and Webb, it was the sending out of these vouchers containing the details of the transaction, coupled with the cheque and the acceptance by Webb of the cheque, that effectuated the putting on and taking off of vehicles on the display plan? A. Yes.

Q. Once Webb had received his cheque and put it in his bank, in your mind there would be no doubt at all that the transaction recorded on the voucher you had sent him, had been completed both so far as your company was concerned and as far as Motordom was concerned? A. Yes.  
40

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Q. And become binding on you both? A. Yes.

Q. These transactions, display plan transactions, were merely a means, were they not, of your company lending money to Webb or Motordom, on the security of the cars that he might have in his yard and that he might offer by way of security? (Objected to; withdrawn).

Q. As you understood the situation, the object of these display plan transactions was to effect a loan of money by your company to Motordom, on the security of the cars that Motordom offered you for that loan? A. Well, I never looked at it from that point of view. I looked at it from the point of view of the money changed hands, yes, but the vehicles actually belonged to our company.

10

Q. But they belonged to your company in the sense that your company had them as security for the advance that it had made to Motordom? A. Yes.

Q. That was your understanding; because you were not concerned with what price Motordom got for cars? A. We were not concerned, as long as we were paid for the advance.

20

Q. Other than interest, where you had decided to charge it? A. Yes.

Q. And the amount you were prepared to advance on any given vehicle was 90 per cent. of what it had cost Webb to buy it? A. Yes.

Q. And I think you regarded yourself, did you not, as at liberty to lend less on any car if your own experts reported that it was not worth what Motordom had paid for it? A. Yes.

30

Q. And these interest charges that you made in respect of advances were computed on the amount outstanding on any particular car from time to time, were they not? A. Yes.

Q. You would not necessarily await the removal of any car from the display plan before debiting interest - A. Yes.

Q. Against Motordom for that car, would you? A. Interest was not charged until the vehicle was actually moved.

40

Q. That, I take it, was for the purpose of accounting finance; you took one charge of interest when the car was no longer the subject of the display plan? A. That is true.

Q. And it was computed as an annual percentage, charged daily? A. Yes.

Q. And calculated but once for each car? A. Yes.

Q. That would be the full description, would it?

A. That is right.

Q. Was it your belief that when a car had been put onto display plan with your company, you were then at liberty to take possession of that car from the dealer at any time, had you wished so to do? A. Yes.

10 Q. That, of course, was an essential part of the transaction as you understood it, was it not? A. Yes.

Q. And as you understood it, the acceptance by Webb of your accounting and your cheque, his receipt and acceptance of those documents, would then entitle your company at any time, if it wished, to take possession of the vehicles which were the subject of that accounting? A. Yes. (Objected to; withdrawn).

20 Q. As you understood it, when Webb received your accounting and your cheque, that then operated to put that vehicle on display plan? A. Yes.

Q. And once the vehicle was on display plan, your company was then, as you understood it, at liberty to take possession of the vehicle at any time that it wished? A. Yes.

Q. That is so, is it not? A. Yes.

30 Q. Of course, it was not contemplated by you, was it, as the acceptance manager of your company, that you would ordinarily exercise the right of taking possession of any of the cars put on display plan? A. Well, it was not thought of. It was our right, of course.

Q. It was your right to take it at any time which you chose, but a right which you refrained from exercising, as long as things were going all right? A. Yes.

40 Q. Indeed, I suppose it would have been quite impossible, would it not, for you to have actually taken physical delivery of all the vehicles that Motordom had on display plan with you at any given time, if he had brought them into your premises? A. It would have been awkward, of course.

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Q. You would have had to go out and take possession at his premises, would you not? A. We have facilities to look after them in our present location in William Street.

Q. But as I understand you to say, it would not be contemplated that you would avail yourselves of those facilities, so long as the dealer was going along all right? A. Yes.

HIS HONOR: Q. You want money and not cars?  
A. That is right.

10

MR. STREET: Of course, on occasions your company has exercised its right of taking possession of vehicles which dealers have put on display plan with you? A. Yes, it has.

Q. Would you agree, for instance, that the normal way in which you do that is to go and put a lock on or take charge of the yard where the dealer has your vehicles? A. That would be the normal.

HIS HONOR: Would that be an authorised act, according to law?

20

MR. STREET: I do not know. I think when these dealers get into difficulties, it is a question of -

HIS HONOR: I suppose if the dealer owns the yard or even has a leasehold of it, if he has, by agreement, authorised that, it would be all right but otherwise it would not be.

It would not be merely by having some arrangement in regard to the car itself, surely?

MR. STREET: I think probably not.

30

Q. Regardless of the matter of strict entitlement, the practice is when a dealer defaults and you are cancelling your floor plan arrangement with him, in the first instance you go and put a lock on his yard and freeze the vehicles there and then arrange to have the vehicles taken down? A. That has not been my experience with the company.

Q. What about Weinark's yard? Was not a lock put on his yard when you terminated his display plan? A. Not to my knowledge. I was instrumental in that particular business but I did not know that. I went to one yard only. He had two yards.

40

Q. You went out to those yards? A. To one.



Q. And said to the dealer, "We are taking possession"? A. Yes.

Q. And you thereupon took possession and had them driven away? A. Yes.

Q. Did you give him any forewarning of it?

A. I cannot remember the circumstances leading up to it. I did not deal directly with the manager of the company.

10 Q. But on this occasion you went out and spoke to the dealer yourself? A. No. I spoke to the dealer's representative.

Q. And you told him that you had come to take possession of your company's cars? A. That is right.

Q. As far as you could see, that was the first information he had that the cars were being taken?

A. I could not say that. He was not very surprised.

20 Q. He certainly was not expecting you, as from Hire Finance, was he? A. Well, I could not say that he was not expecting me.

Q. You have those blue documents which I produced to you in the witness box this morning, the originals of your letters? A. Yes.

Q. You would regard those, would you not, as being documents of some importance?

MR. RATH: This was put before.

MR. STREET: I will withdraw it.

30 HIS HONOR: Q. I suppose your company did not concern itself with the car registration certificates, did it? A. Not in the normal course of business.

Q. I suppose on some occasions Motordom would get, when it bought the car, a registration certificate from the previous owner? A. Yes.

Q. But you did not trouble yourself to inspect those or to get them into your possession or anything of the sort? A. No. That was handled by the dealers.

40 MR. STREET: Q. Did you ever tell anybody in the Pacific organisation, the defendant company's organisation, on 2nd November, that there was a display plan or floor plan in existence between

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your company and Motordom, and that Motordom had a lot of your company's cars which you were going to take back? Did you tell anybody that? (Objected to). A. No. I never spoke to them -

Q. Did you ever tell anybody from Pacific, on 2nd November or before that, that your company was taking back its display plan agreements from Motordom? A. No.

Q. Were you in touch with Webb from time to time, in the days preceding 2nd November, 1960? You know the significance of 2nd November 1960? 10

A. I cannot recollect having seen him for a number of days beforehand. I did not see him on that day or the day before, to my knowledge, or the day after.

Q. Was he in touch with you on or immediately before 2nd November? A. I personally cannot recollect. He may have rung me for some reason, but I cannot recall.

Q. Do you remember yesterday giving some evidence about the arrangement made when a car, which is on floor plan, was sold by Motordom? I want to direct your mind to that type of circumstance. 20

A. Yes.

Q. I want you to assume Motordom has a car which is on floor plan and a customer of Motordom wants to enter into a hire purchase agreement. A. Yes.

Q. You would expect Webb or Motordom to put that hire purchase agreement through your company, would you not? A. Yes. 30

Q. And the procedure is, is it not, for the customer to fill in an offer to take on hire purchase? A. Yes.

Q. Those forms being forms which your company has printed and makes available to dealers?

A. Yes.

Q. And that offer to take on hire purchase or that form is then sent by Motordom to your company, is it not? A. Yes.

Q. For consideration? A. Yes. 40

Q. And there is provision made, is there not, on that form, to the effect that no agreement will become binding on your company until it is accepted by signature on the form? A. That is correct.

Q. So your company then receives this offer or offer to take on hire purchase, from the customer, through the medium of Motordom; considers the transaction? A. Yes.

Q. And if it decides not to enter into the hire purchase agreement, the vehicle just goes on remaining on display plan? A. That is correct.

10 Q. Until somebody comes along. If your company decides to enter into the hire purchase transaction, the procedure is, is it not, or the procedure was that the hire purchase agreement is signed on behalf of your company? A. Yes.

Q. And then the documents are prepared recording that transaction as between yourself and Motordom, and the necessary cheque is sent out under cover of those documents, to Motordom? A. The cheque is the only document.

20 Q. (Approaches witness): I show you Exhibit "A". You will see there, will you not, a transaction recorded, of an occasion when your company accepted an offer to take on hire purchase, from someone called Haines? A. Yes.

Q. And the notification which would go out to Motordom when the transaction was acceptable to you was confined, was it not, to the original of Exhibit "A", part of which, of course, was the cheque for the amount? A. Yes, the original letter and the cheque.

30 Q. And that would record the transaction between your company and Motordom, under which Motordom became entitled to a credit for the amount? A. Yes.

Q. And that is the only communication from your company back to Motordom, in response to the receipt of the offer to take on hire purchase? A. Normally, yes.

40 HIS HONOR: Q. Do you know whether it was the practice of Motordom to keep the car until you had made it known that you were accepting the hire purchase offer, or was it the practice to hand the car over to the would-be hirer? A. I did not know specifically as far as Motordom was concerned, but the usual practice is that the car is delivered to the hirer, when the agreement is entered into, other than on weekends.

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Q. When he signs his documents and pays some deposit or trade-in, he gets the car? A. That is the normal procedure.

MR. STREET: Q. I have been asking you about the way in which you effectuate the hire purchase transaction where Motordom has a car on display plan.

Where Motordom has a car which is not on display plan and he has a willing customer, would you receive the offer to take on hire purchase in the same way as if the vehicle were on display plan? A. Yes. 10

Q. You would deliberate on it and if you decided to accept the hire purchase offer, you would then prepare a voucher, in that case paying out to Motordom the amount to which Motordom would become entitled after giving credit for the amount of deposit Motordom was holding? A. Yes.

Q. And once again, the voucher containing those details and the accompanying cheque would effectuate the transaction between yourself and Motordom, under which your company would buy the vehicle from Motordom? A. Yes. 20

Q. Indeed, it is the despatch by your company of the voucher and the cheque in those two cases which you would regard as concluding the transaction between your company and Motordom, under which your company buys the car so that they enter into the hire purchase agreement? A. Yes, that is correct. 30

Q. In Webb's case the fact is, is it not, that he was an unreliable business counterpart? A. I understand he was reasonably difficult to catch up with at times.

Q. Would you say, as far as your dealings with him were concerned up till 2nd November, he was reasonably satisfactory? A. Some delay in adjustments of floor plan did occur at times.

Q. When you say "some delay in floor plan adjustments", you mean some delay between the time he would sell vehicles on display plan and the time he would tell you of it? A. No, not necessarily that. 40

When he owed us small amounts of money, I would have to hold up finalisation until I had money owing to him from which I could deduct. There were only one or two of those involved usually.

Q. I asked you before as to your understanding about this display plan arrangement? A. Yes.

Q. Was it your understanding that Motordom was at liberty to sell, in his own name, without disclosing the existence of the display plan, cars which were in truth on display plan? A. Yes.

Q. And similarly, to act in the same way whether he was selling for cash or whether he was selling on terms of taking in a trade-in? A. Yes.

10 Q. He would act in his own name? A. Yes.

Q. And in relation to these repossessions or what you understood to be the company's right to take possession at any time, it is correct, is it not, that you understood that your company could take possession without any prior notice, could take possession of cars on display plan without any prior notice to Motordom? A. Yes.

20 Q. And that it could enter any premises of Motordom, by force if necessary, to take possession of cars on display plan? A. I cannot say I can recollect that, by force.

RE-EXAMINATION

MR. RATH: Q. My friend spoke about delays by Mr. Webb in the floor plan. Would you look at Exhibit "S"? (Handed to witness). That contains a receipt by your company for money received from Motordom? A. Yes.

Q. In respect of floor planned vehicles?  
A. Yes.

30 Q. Was the money received by you? A. Yes. I would have received a cheque for that amount indicated.

Q. You said to my learned friend, or perhaps to his Honor, that sometimes Webb would be in delay and you would have to wait until there was some cheque you could send to him, to adjust what he owed you. Do you remember saying that?  
A. Yes.

40 Q. You called those delays in the working of the floor plan. What did you expect? Why did you call it a delay? A. The usual settlement made by the company I am employed by, if we had a floor plan adjustment to make and there was a surplus of money owing to the dealer, we would pay the dealer the cheque immediately, on the same day.

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But at times the position would arise where the dealer would not pay at all. He would make no attempt to forward a cheque to us for display plan adjustment by way of Patrick etc., and I would deduct moneys owing from any money we owed him, as near as I could possibly do it.

Q. My friend has put to you what you expected under this floor plan. Did you expect that you would get cheques from him from time to time?

A. Well, you usually do.

10

Q. When he sold the car, you would have expected a cheque in respect of what he sold the car for?

A. Usually it was not done in that way, but should there be more vehicles sold than he has to put on floor plan, I would definitely expect a cheque from him.

HIS HONOR: Q. Did you have a settling day which occurred at regular intervals, a week, a month?

A. Usually Mondays and Fridays I would contact him or he would contact me, or Mr. Patrick would call on him - following the weekend sales, when the volume of cars was sold.

20

MR. RATH: Q. My friend put to you questions directed to the volume of business on floor plan, that it was a small matter compared to your hire purchase business.

I think there are figures in Court which you have here, are there not, which show the volume of the floor plan business you did with Motordom? (Short adjournment).

30

MR. RATH: My question before the adjournment was on a false basis. I had Motordom's balance sheet before me. I thought I had my own company's balance sheet before me. I withdraw the half-framed question I put before the adjournment.

Q. You said you would expect Webb to put through your company, hire purchase of floor planned vehicles? A. Yes.

Q. Did he invariably do so? A. To the best of my knowledge, yes.

40

Q. Questions were put to you as to where the vehicle went to after an offer of hire purchase and prior to acceptance by your company. First of all, in respect of certain types of vehicle, did you have certain rights of recourse against Motordom? A. Yes.

Q. Would you look at that? Is that the only general recourse agreement you had with the Motordom Pty. Co.? A. This is the form of re-purchase agreement which we had with the company.

Q. That is in the event of default under a hire purchase? A. Yes. If the hirer could not continue his payments and the vehicle be re-possessed and delivered back to the dealer, he was obliged to finalise it.

10 Q. And that document is undated? A. Yes.

Q. But purports to be under the common seal of Motordom? A. Yes.

(Document tendered and marked Exhibit "U").

(Mr. Rath called for a letter dated 27th October 1960 from Hire Finance Limited to the directors Motordom Pty. Ltd.; document not produced).

20 Q. Will you have a look at this copy letter (handed to witness). Is that a letter prepared by your company? A. Yes: this is a copy of a letter prepared by the company.

Q. And was it prepared by you? A. Yes; it was prepared by me following a discussion with other officers of the company.

Q. And was it put into an envelope? A. Yes.

30 Q. What sort of an envelope? A. I would not be able to say definitely.

Q. What procedure in your office would that go through after being signed by you? A. That would be placed in an envelope and posted direct from my office at 70 William Street.

(Letter dated 27th October 1960 tendered).

Q. Did you observe, by the way, how that letter was addressed? A. Yes.

Q. Its date was the 27th October 1960? A. Yes.

40 Q. I think you said that it was signed by you?  
A. Yes.

(Letter dated 27th October 1960 admitted and marked Exhibit "V").

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Q. Do you know whether any of the collateral security referred to in that letter was obtained by your company? A. I do not know the full details, but the mortgage over the property at Penshurst was in some form or effect but was not finalised.

Q. It was not finalised? A. It was never finalised.

Q. Prior to that letter what was the extent of Motordom's credit with your company? A. I cannot recall the exact amount. I am not definitely positive. The amount did fluctuate, but I think it was £10,000 - £5,000 interest. 10

Q. Bearing in mind how that letter was addressed - the directors of Motordom Pty. Ltd.? A. Yes.

Q. And bearing in mind that Exhibit "C" is a cheque that you signed and addressed to Motordom Pty. Ltd., have you anything to say about your state of knowledge as to whether Motordom was a company or not prior to the 2nd of November 1960? 20

A. For some months prior to that Mr. Webb indicated that a company was being formed, and this was conveyed to my staff, as these things usually are, but I advised them not to use the name of the company until such time as we had actually received notification that the company had been registered and so on.

Q. And did you ever receive such notice? A. I have never received it, no. I believe that the purpose of addressing the cheque to Motordom was purely and simply an office error but the letter that was sent to Motordom on the 27th October - some evidence has been given to me and officers of the company that the formalities had been finalised. 30

Q. That re-purchase agreement I have just shown to you - was that sent out by you or somebody else to Webb? A. I could not say that definitely. I believe that it would have been taken to Motordom's yard by Mr. Patrick.

Q. My friend put some questions to you to the effect of your belief and understanding that your company's dealings with Webb and with the Motordom Company were on the basis of a document signed by Webb - do you remember that my friend put that to you? A. Yes. 40



Q. Is that the document you were referring to in your answers to him? (Document tendered to witness). A. Yes.

Q. That is signed by Mr. Webb? A. Yes.

(Document tendered and marked Exhibit "W").

Q. Did you personally ever have any communication with anybody in the defendant company about the floor plan arrangements with Motordom? A. You mean in writing or - ?

10 Q. No; verbally. Well, take first of all in writing - did you ever have any written dealings with them with regard to the Webb floor plan?  
A. Not that I can recall.

Q. Did you ever have any verbal dealings with them? A. Not that I can recall.

Q. In relation to that general re-sale agreement with Motordom, in certain instances did you ever get his personal guarantee - the personal guarantee of Webb? A. Yes.

20 Q. And in other instances did you not get his guarantee? A. Yes.

Q. What would have been the differentiating matter in your mind to determine whether you would want his guarantee or not? A. His personal guarantee?

Q. Yes. A. The reason for a personal guarantee was if I felt that the hire purchase agreement offered was not quite acceptable for various reasons - possibly due to the vehicle being high priced.

30 The company has certain standards that they set regarding how much they will carry or how much to finance on certain vehicles, and should that amount be exceeded we had cause at time to call on the dealer to guarantee.

In other instances a hire purchase agreement may have some difficulty in its background; the hirer might not be able to be traced back very far, and he might go away, and in that case we would have the dealer guarantee it.

40

(Witness retired)

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MR. RATH: Before I call the next witness it might be convenient to get further documents before the Court on the aspect of the case that will have to be dealt with.

I call for fol.489 of the defendant company's purchase ledger.

MR. STREET: I do not want to press something onto my friend that he does not want, but I have had extracted and will be tendering myself, from our purchase ledger, a complete list of the vehicles that we have purchased from Motordom from the 1st January 1960 to the 31st October 1960. 10

MR. RATH: That is not what I want. I want what you did on this date.

MR. STREET: There was a misunderstanding; it should have gone right through to the end.

MR. RATH: It has 489 on the top right hand corner.

MR. STREET: As a matter of convenience, I will be tendering the list which I have completed. I thought it had gone right through to the last transaction. 20

I answer my friend's call by producing - if he is prepared to defer his tender I may have my list brought up to date to include -

MR. RATH: I want the document that was discovered to us - a single sheet of paper.

MR. STREET: I produce this document (indicating) in answer to my friend's call.

MR. RATH: That was not what I saw.

MR. STREET: Yes it is; it has been put back into its ledger. It was taken out on discovery. 30

HIS HONOR: Is it easily detachable?

MR. STREET: It needs a key which is not here at this time.

MR. RATH: I tender fol. 489 of a ledger of the defendant company, headed "Cash Payment for the month of November 1960".

MR. STREET: I have no objection to that going in.

(Folio 489 of ledger admitted and marked Exhibit "X"). 40

MR. STREET: As a matter of convenience I would like, if I could, to substitute a copy for that sheet.

MR. RATH: I would like that because it would be very convenient, and I think my friend will probably agree that these figures are right - that is the complete list of cars purchased from Motordom on the 2nd November.

10 It contains all the cars in respect of which we sue, except those four that I have abandoned, and it sets out the purchase price from Motordom. These further matters appear - I have not got the precise reference to the discovery document, but all of them were subsequently sold by the defendant company.

From the discovery documents I could not, in every instance, ascertain with perfect certainty what they were sold for.

20 MR. STREET: I won't put my friend on strict terms in calling for documents, precisely. If he tells me what he wants I will supply the information he wants.

MR. RATH: I might just go through that list. The first car is a Simca, BLJ-118 - it is one of those vehicles which the defendant company had at a prior point of time - it is one of the ones we claim for and it is one of the ones at a prior point of time the defendant company sold to Motordom.

30 I can show that the original selling price was also £525. The next car is another one in the same class, and its original selling price was £620.

The next car, the Rover, is in the same class and its original price was £785. The next car, the Wolseley, is the same. The Zephyr and Singer are not cars that were bought from the defendant company by Motordom.

MR. STREET: I think you have made an error.

40 MR. RATH: The Zephyr BEO-567, and the Singer, CDC-820, were not cars bought by Motordom from the defendant.

MR. STREET: I think that last one was - CDC-820, but I do not see the Zephyr.

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MR. RATH: I could be wrong. However it is not a car that we are concerned with, and as far as I can say it was not a car which was bought by Motordom from you. I could be wrong.

The next car, the Holden, AGC-428, is a car with which this case is concerned, and one of the ones purchased in the first place from Pacific, The original purchase price was £235.

MR. STREET: That is not right, I do not think.

MR. RATH: If it is not, the important point is that the defendant's records show that this is a car purchased from them at a price of £235. That is the main point. 10

The same thing applies to ARH-677, which is undoubtedly a car that we are concerned with. I know nothing about the Holden AOL-688.

MR. STREET: AOL-688 was bought from us.

MR. RATH: But there is nothing, as far as I can see, in the discovery documents which show the price at which it was bought from you. 20

The Zephyr BRW-333 was bought at the same price, and that is the end of what the discovery document shows as to from whom these cars were bought and at what price, except towards the end - the 8th from the end - the Victor, BPZ-516; that car is shown there as bought from Motordom for £595.

MR. STREET: That came from us originally.

MR. RATH: Yes, but it came from you at the sum of £525. Three cars after that, the Holden BKR-894, is another car - 30

HIS HONOR: These are near the end of the column, are they?

MR. RATH: The Victor is the 10th last car in the Motordom list. It is shown as purchased from Motordom for £595, but in the first place was sold by Pacific to Motordom at £525.

MR. STREET: £540.

MR. RATH: Are you sure you are not thinking of a Holden, VKR-894? 40

MR. STREET: Yes, I am.

MR. RATH: It was resold by the Pacific people at £850.

MR. STREET: This is BPZ-516?

MR. RATH: Yes. Then coming three down, the Holden BKR-894, purchased from Motordom for £550, had been sold to them by the Pacific people for £540, but its resale after the 2nd November is £435.

From the discovered document it is not possible, as far as I can see, to determine those similar factors with regard to all these cars.

10 So that my friend will know, I am going to suggest to the Court at some stage that that Holden car especially shows how the check happened to arrive at the precise figure of the debt.

MR. STREET: It might be of assistance for us to co-operate in preparing a document showing the data and the price at which we sold these cars in the first place, and then there can be a further column showing the price at which they were sold later.

20

We can look at the matter over the luncheon adjournment and I will facilitate access to our records.

MR. RATH: In view of that being done, I might at this stage close my case before I have proved all matters of value because I will be relying, amongst other things, on the price at which the defendant bought from Motordom, primarily as against them, and also, to some degree upon the price at which they subsequently sold, but I will be primarily relying on the first figure.

30

That is the general picture of the list which your Honor will obtain. In view of that list which is going to be prepared, I think that perhaps the other matters which I was going to call for will not be material except this.

I think that I can now show the Court the picture of how the £16,510 debt by Motordom is made up.

40

HIS HONOR: Have you finished referring to this folio?

MR. STREET: If it will assist my friend, if he wants to show the breakdown of the £16,000, there is a letter of particulars and I will concede that those are the cars which make up the £16,000.

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MR. RATH: Perhaps we can go this far. Perhaps I could put it this way. Folio 510 of the sales ledger shows the cars sold to Motordom which make up the cheque of £6,965.

That, read together with invoice No.9479 - and you will find that folio 510 refers to £1,365 - plus an invoice for £5,600, and then, if you turn to the invoice of the 12th October 1960, it will list the cars. That is how the figures in respect of the £6,965 are made up.

10

I think it is a sufficient short cut for me to have an admission that the sum of £16,510, being the amount of the re-endorsed cheque by Motordom to the defendant company, was intended to be in discharge -

MR. STREET: No.

MR. RATH: I am prepared to reframe it in this way - was referable to purchase of motor vehicles by Motordom from Pacific in respect of which, first of all, the cheques for £6,965, £2,770 and £3,790 were given by Motordom -

20

MR. STREET: No. I won't make an admission in those terms. I would be prepared to make any admission along these lines, that as at the 2nd November, Motordom was indebted to the defendant company in respect of cars bought by Motordom from the defendant company, the purchase price of which totalled £16,510, and in respect of part of that purchase price we had received the three cheques which were dishonoured and which have been tendered.

30

MR. RATH: That is all right; we will accept that.

MR. STREET: Those being the cars described in the letter of the 21st February 1962 from the defendant's solicitors to the plaintiff's solicitors. £16,510 is the amount. I think I might have said £16,590.

HIS HONOR: It probably does not matter at all, but when you were referring to the cheques a moment ago you referred to the second one as being £2,770. According to a note I made earlier it was for £2,535. Which is rightP

40

MR. RATH: It is £2,535 perhaps I should carry it a little further.

HIS HONOR: Before you do according to the note I made earlier the three dishonoured cheques were for a total amount of £13,290.

MR. RATH: That is right.

HIS HONOR: So that the difference between that total and the sum of £16,510 is £3,320. That is the balance of the indebtedness which is not accounted for by the cheques.

MR. RATH: Yes; that is right.

10

MR. STREET: £3,220.

HIS HONOR: Yes; you are quite right; it is £3,220. No, that is not right. I think I was right the first time.

MR. RATH: £3,220.

MR. STREET: I am prepared to assist by saying what that is.

HIS HONOR: £3,220.

20

MR. STREET: I am prepared to say that £3,220 is the price payable for six cars bought by Motordom on the 24th October 1960.

MR. STREET: For which no cheque had, at any time prior to the 2nd November, been given by Motordom.

MR. STREET: I am not sure of that.

MR. RATH: That must be right.

HIS HONOR: Yes; I think it must.

MR. RATH: Well, if it is not I should have seen such a cheque on discovery.

MR. STREET: We have not received any cheque for that.

30

MR. RATH: I tender letter dated 21st February 1962 from the defendant company's solicitors, being the list of vehicles referred to in my friend's last admissions.

MR. STREET: I have no objection.

(Document admitted and marked Exhibit "Y").

MR. RATH: I suppose the amounts you have set out in respect each of those would be set out in that letter and represents your selling price to Motordom?

40

MR. STREET: Yes.

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NORMAN JOHN GULSON  
Sworn and examined:

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MR. RATH: Where do you live? A. 33 Fairweather Street, Bellevue Hill.

Q. And you are employed by the plaintiff company?  
A. That is correct.

Q. In what capacity? A. Manager - N.S.Wales manager.

Q. And how long have you been N.S.Wales manager?

A. Well, I was manager of Hire Finance Limited, but when it was taken over by Motor Credits Limited I was then appointed N.S.Wales manager of Motor Credits Hire Finance Limited, but I was manager for N.S.Wales - or manager of Motor Credits Hire Finance Limited and of Hire Finance Limited for the past 5 years.

10

Q. And you mentioned some third company in the course of that. What was the third name?

A. Well, Motor Credits Limited -

Q. That is a Melbourne company? A. That is a Melbourne based company which owns Motor Credits Hire Finance Limited. We cannot trade as that in N.S.W. because Motor Credits Limited is already a registered company in N.S.W.

20

Q. You are a company engaged in hire purchase business? A. Yes.

HIS HONOR: Q. Is it restricted to the motor vehicle field - A. No.

Q. Or does it go out to other hire purchase business as well? A. Hire purchase only for motor vehicles.

30

Q. Only for motor vehicles? A. Yes.

MR. RATH: I think the name was changed from Hire Finance Ltd. to Motor Credits Hire Finance Ltd., in January 1961? A. That would be correct.

Q. How did you first come to meet Mr. Robert Webb?  
A. Mr. Crealey -

Q. Of where? A. Director Pacific Motor Auctions, rang me and asked me were we taking on new dealers. I said we were.

40

He said "I have a Mr. Robert Webb who trades as Motordom, with whom we have done considerable business, and he wishes hire purchase accommodation



and floor plan accommodation, and I recommend him and I will arrange an appointment for you to see him.

Q. Was such an appointment arranged? A. Yes.

Q. And I think that after that you got in touch with Mr. John Gibson, the Merrylands Bank Manager, with Mr. Webb's consent? A. That is correct.

10 Q. Prior to the 2nd November 1960, did you have any other conversations with Mr. Crealey relating to the floor plan with Motordom? A. Yes.

Q. One or more than one, or how many?  
A. Several times.

Q. Where did they take place?

MR. STREET: I take it that my friend is going to give them; otherwise I object.

MR. RATH: Yes, I am going to give them.

Q. Where did they take place? A. By telephone, by meeting Mr. Crealey -

20 Q. Where? A. Sometimes at the golf club and sometimes in his own place of business Pacific Motor Auctions - and I cannot recall whether he ever visited me in my office, but he has been in our office.

Q. Can you fix the times of these conversations with him? A. The last conversation was at the time of the granting of the additional £5,000 accommodation as given in our letter addressed to Motordom Pty. Ltd.

30 Q. That was when it was raised - when Motordom's credit was raised to £15,000? A. That is right.

Q. Was that on the 'phone or personally?

A. That was on the 'phone.

Q. What was said then? A. Mr. Crealey asked -

Q. Who rang up - do you recall? A. That I cannot recall.

40 Mr. Crealey - the main topic of conversation was Webb's financial position. He was asking me how he stood in regard to our company, and I was questioning him in relation to his credit rating with the Auctions, and apparently, Webb - (Objected to).

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Q. Is that what he said? We just want to know what was said - not what you assumed? A. Well, Crealey said to me, "Has he still got a floor plan"? I said, "Yes". He said, "Is it being increased"? I said, "Yes", and he asked me by what amount it was being increased.

Q. Yes, and what did you say? A. I said that it was being increased by £5,000 on a security of a property at Penhurst, and Mr. Crealey, in the course of that conversation, said to me that he understood that the property at Penhurst, which he had seen, was valued at far in excess of the £5,000 additional floor plan we were giving him. 10

Q. Do you know whether this took place before or after your company wrote the letter of the 27th October to Motordom? A. That I could not say.

Q. Would it be about that time? A. It was about that time.

Q. Is there anything else that comes to your mind now about the telephone talk with Mr. Crealey? 20  
A. No.

Q. Do you recall, as separate matters, any prior talks you had with him? A. As to dates, no, but I can recall discussing with Mr. Crealey -

Q. Can we fix it in a year - was it in some year that we had these talks? A. Yes.

Q. What year? A. 1960?

Q. What did you discuss with him in these other conversations - these would all be prior to this one you told his Honor about? A. Yes, that is correct. 30

Q. What was discussed with him in these prior ones? A. Whether Webb still had -

MR. STREET: I ask that the witness say what was said.

HIS HONOR: Yes.

MR. RATH: You must try and say what was said, as far as possible. A. The conversation usually ran in this way. Crealey would ask me "Has Webb still got floor plan accommodation?" "Are you satisfied with the paper he is supplying?" 40  
Meaning in respect to volume.

I would ask Crealey "How is his credit rating with the Auctions?" He would enquire from me if I had asked or been in conversation with the bank manager, and vice versa.

Q. You were in court when my learned friend put to Mr. Stevens certain questions about padlocks on the A.B.C. Motors. What is the other name of them?  
A. David Whymark.

10 Q. Is it true that you did lock up one of his yards? A. We did lock up one of his yards.

Q. And was that done with or without his consent?  
A. At the request of David Whymark and his partner John Keary.

Q. And have you ever done any such thing without any express request that it be done? A. No.

Q. I think that Webb's credit limit was first fixed at £5,000? A. Yes.

Q. And then increased to £10,000? A. Yes.

20 Q. And then there was the final increase of Motordom to £15,000? A. Yes.

Q. Did you receive - did you discuss certain matters with your Mr. Patrick on the 1st November 1960? Do not say what you discussed? A. Yes.

Q. Did you get in touch then with Mr. Webb?  
A. I was unable to get in touch with Mr. Webb.

Q. Did you make at some stage, an arrangement with him to come and see you on the next day?  
A. Yes.

30 Q. Did he come and see you on the next day?  
A. Yes.

Q. What time of the day did Mr. Webb come and see you on the 2nd November? A. 1.30 p.m.

Q. How long was he with you? A. He was with me from 1.30 to 3.15.

Q. Was anything said relating to his authority to sell floor plan vehicles, while he was with you? A. No.

Q. After he left did you receive a telephone call from Mr. Patrick? A. Yes.

40 Q. At what hour of the day did you receive that?  
A. 3.45.

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Q. He told you something - do not say what he said? A. Yes.

Q. What did you do then? A. Tried to ring Webb.

Q. Did you get him? A. Yes.

Q. At what hour of the day did you get through to him? A. 4.15.

Q. What was said? A. I said "We are finished -" (Objected to - objection withdrawn).

HIS HONOR: Q. Yes, go on? A. I said, "We are finished. The authority to handle our stock is withdrawn. Do not touch our stock. Mr. Patrick and I will be at your yard at 9 o'clock in the morning".

MR. RATH: I am not going into the matter of the demand and so on. I think that my friend agreed that there was no issue about that.

MR. STREET: Yes.

HIS HONOR: Yes; he did agree to that.

MR. RATH: There are matters of the office procedure at Mr. Gulson's end of the town, but my friend, I think, now agrees that there is no need to do that as all the original supporting cheques have been produced except in one case where the perforated voucher has not been produced.

I think my friend is not going to take any point on that. That is so, is it not?

MR. STREET: Yes, that is so. I won't make any submission to the Court along the lines that there is any doubt as to the due despatch of the cheques Exhibits "A" to "H" and their receipt by the addressee.

MR. RATH: Q. Did you, on the 3rd November, the next day, visit any of Motordom's yards yourself? A. Yes.

Q. How many yards did Motordom have on the 2nd November? A. Three.

Q. Where were they? A. North Parramatta, Guildford and Fairfield.

Q. And on the 3rd November how many of those yards did you visit? A. I visited Guildford and North Parramatta.

10

20

30

40

Q. At the Guildford yard how many motor vehicles were there, or what did you find there in the way of motor vehicles? A. There were a few wrecks of cars at the rear end of the yard.

Q. Anything else, besides the few wrecks?  
A. In the way of motor vehicles?

Q. Yes. A. No.

Q. I think you said that you also entered the North Parramatta yard? A. Yes.

10 Q. What did you find there in the way of motor vehicles? A. I think there were two similar type of wrecks left on the yard or left in the yard, one in the yard and one around the back where they used to do work on them - a type of workshop.

Q. Had you been to these yards at any prior point of time? A. Yes.

Q. About how long before was your visit to some of his yards? A. Within 14 days.

Q. Within 14 days? A. Yes.

20 Q. What yards did you visit within 14 days?  
A. Three.

Q. Was the picture 14 days before the same or different to the picture on the 14th November?  
A. Each yard was stocked with motor vehicles.

Q. In round figures approximately how many vehicles were in the respective yards on your prior visit? A. I would say 70.

Q. Roughly how many were in the North Parramatta yard? A. 20.

30 Q. And roughly how many in the Guildford yard?  
A. 30.

(Luncheon adjournment)

AT 2 P.M.

MR. RATH: I have no further questions to ask this witness.

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CROSS-EXAMINATION

MR. STREET: Q. At the present time you are finding in your business, are you not, that you have plenty of money and you are looking round for dealers to take on your books? A. No.

Q. Aren't you? A. No.

Q. Are you familiar with the description of a buyers' and sellers' market? A. Yes.

Q. Well, if we transposed to a dealer and finance market, I suppose it is a dealers' market at the moment? A. To a degree.

10

Q. And finance companies are quite pleased at the present time to get a new dealer on their books are they not? A. Yes.

Q. And indeed, when you find a likely prospect it is your practice is it not, at the present time, to make such enquiries as you can to ensure that he is going to be a satisfactory man to have business dealings with? A. That has always applied.

Q. And indeed, even within the last few weeks, you have rung officers of Pacific to ask them about persons you are contemplating taking on as dealers, have you not? A. Not to my knowledge. When you say "Past weeks" - what period?

20

Q. When did you last ring somebody from Pacific and discuss with him an intention or a contemplation on your part to enter into some dealings with car dealers? A. I think you have the picture in reverse.

Q. I will thank you to answer my question if you would (Objected to).

HIS HONOR: Q. Have you within any time that you can remember, got in touch with someone at Pacific to discuss the proposals by your company to enter into dealings with a dealer that you had not dealt with before? A. Yes.

30

Q. When was the last time that you did that? That is what you are being asked - how long ago? A. Many months.

MR. STREET: Q. Many months ago? A. Yes.

Q. How many months - more than two or three months? A. Yes.

40

Q. Well, that would mean, would it not, then, that it would not have been since the easing of the credit squeeze, that you have rung and made any enquiries? A. No.

Q. And of course you were not looking for dealings during the credit squeeze from car dealers, were you? A. Yes.

Q. You were? A. Yes.

10 Q. Was not there tremendous competition between finance companies before the credit squeeze, to write new hire purchase business? You will agree with that? A. Your Honor, could I have a definition of when the credit squeeze and when - ?

Q. You know when the credit squeeze started, do you not? A. In relation to what trade?

Q. Well, we are talking about the motor trade, are we not? A. Yes.

20 Q. And you know perfectly well when the credit squeeze started in relation to the motor trade do you not? A. I have my own idea.

Q. Well, what is your idea? A. In the motor trade it started approximately in August 1960.

Q. August 1960? A. Yes.

Q. Are you serious? A. Yes.

Q. It was November 1960 that the credit restrictions were announced, was it not? A. I am talking about the car trade.

30 Q. It was in November 1960 that the credit restrictions were announced? A. I do not know who you refer to as announcing the credit squeeze.

HIS HONOR: Credit restrictions.

MR. STREET: You have never heard the mention of "Credit restrictions having been announced"?

A. Yes.

40 Q. And you are telling his Honor the truth when you say you do not know who I referred to when I spoke of announcing credit restrictions? A. Many people announced it. I would say you are referring to Mr. Holt when you get down to a fine point.

MR. STREET: Q. And you knew it was Mr. Holt all along? A. No.

Q. Are you being honest? A. Yes.

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Q. You did not know that I was referring to the Federal Government's Financial policy? A. Your Honor, he referred to "credit squeeze" and "credit restrictions". Now in regard to credit restrictions, yes, Mr. Holt. Credit squeeze could refer to anything.

Q. How long have you been in the motor industry? A. 7 years.

Q. You are the manager for the State of N.S.Wales? A. Yes.

10

Q. And I take it that quite a lot of business of your company is done in N.S.Wales? A. Yes.

Q. You have not been away for any extended period of leave in the last 18 months? A. No.

Q. And you were being quite frank, were you, when you said you did not know what I meant by the "credit squeeze"?

HIS HONOR: I do not think he said that.

MR. STREET: I won't press it.

Q. The Federal Government economic policies which were announced in November 1960, had a very depressing effect on the car trade did they not? A. Yes.

20

Q. Prior to the announcement of those economic policies the car trade had been booming had it not? A. No.

Q. Not at any time prior to those policies being announced? A. Yes.

Q. When do you say it had been booming, and when do you say the booming had stopped? A. As far as our company was concerned, the trade was depressing, approximately August 1960.

30

Q. Now leaving aside your company as an individual entity, in your capacity as N.S.Wales manager were you familiar with the motor industry and motor trade affairs as a whole in N.S.Wales in 1960? A. I would not say I would know the whole of the motor trade in N.S.Wales in 1960.

Q. You would not, then, I take it, claim to have any knowledge of the state of the motor industry in 1960 except so far as it affected your company? A. No, I would not say that.

40



Q. Would it not be part of your job, as N.S.Wales manager, to familiarise yourself with the trends in your own industry? A. Yes.

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Q. Did you fulfill that part of your job in 1960?  
A. Yes.

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Q. And what was the trend in the motor industry up to 1960? A. Well, up to 1960, as I have said, twice before, in my opinion the trade was declining as from August 1960, and as from November 1960 onwards, after the restrictions were applied, it depressed very rapidly.

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10

Q. I suppose one of the easiest ways of seeing how the trade is going is seeing what sort of prices you are getting, is it?

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HIS HONOR: You mean for second hand cars?

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MR. STREET: Q. For second cars - would that be so?  
A. When you say you are getting -

Cross-examination continued

Q. Well, what sort of prices are being got on the second-hand car market? A. Well. the only way you can gauge any market is by the price of goods.

20

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Q. And if you find that the prices of second-hand cars are holding, and indeed if anything increasing, that would indicate to you, would it not, that that particular field of industry is flourishing? A. To a degree.

Q. And you know quite well, do you not, that the prices of second-hand cars were holding very firm until November 1960? A. No.

30

Q. Did you keep in touch with the second-hand car values during 1960? A. Yes.

Q. There are trade journals that are published are there not - ? A. Yes.

Q. That show the prices being paid for second-hand cars? A. Yes.

Q. Did you read them? A. Yes.

Q. Would you not agree with me that a perusal of those trade journals shows that the prices of second-hand cars were holding very firm right up to November 1960? A. No.

40

Q. You do not agree? A. No.

Q. And they show a marked slump after November 1960? A. Yes; I think there would be, yes.

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Q. You will agree with me, at all events, that up until August 1960 the motor industry was in a state of what is described as booming? A. I would not say "booming".

Q. You would not say "booming"? A. No.

Q. In a state of increasing prosperity - I will put it that way? A. No.

Q. In a state of increasing activity? A. No.

Q. Well, at what point do you say there was a turn down in the prosperity of the motor industry in 1960? A. I have already stated it now three times - August 1960. 10

Q. Well, state it four times? A. August 1960.

Q. In my last question I put August 1960 as the date which I suggest, according to you, that the boom - ? (Objected to).

HIS HONOR: Go on, Mr. Street.

MR. STREET: Q. Prior to August 1960 the motor industry had been extremely prosperous had it not? A. I would say "not extremely prosperous". 20

Q. Very prosperous? A. No.

Q. Just prosperous? A. Prosperous.

Q. Just prosperous - that is all, is it? And that prosperity began to wane in August 1960?

A. I would say so, yes.

Q. And that, you say, is your interpretation of the prices being paid for second-hand cars during 1960? A. I would say so, yes.

Q. And the prosperity which you agreed - ? (Objected to - pressed - argument ensued). 30

HIS HONOR: If the witness has refused to concede three or four times to what you put, I do not think you are entitled, for a fifth time, to put the same question.

MR. STREET: My last question that I put to the witness was a repetition of what the witness told me his view was. Might I have it read?

HIS HONOR: Yes.

(The following was read from the shorthand notes:-

"Q. And that, you say, is your interpretation of the prices being paid for second-

hand cars during 1960? A. <sup>i</sup> would say so, yes.

Q. And the prosperity which you agreed - ?  
(Objected to - pressed - argument ensued).")

MR. STREET: The question was "And the prosperity which you agreed that the motor industry had enjoyed prior to August 1960 - ". I cannot re-frame it grammatically. I cannot remember the grammatical construction.

10 HIS HONOR: Well, start again.

MR. STREET: Q. We have reached agreement about whether there was prosperity in the motor trade before August 1960? A. Yes, to a degree.

Q. And your company, as you have told Mr. Rath, was concerned only in the hire purchase financing of motor vehicles? A. Yes.

Q. And as such the prosperity of your business is directly dependent upon the prosperity of the motor industry is it not - you, in common with  
20 other motor hire purchase companies? (Objected to - admitted).

HIS HONOR: I do not think that it can go to anything because it is an attempt to get the witness to assent to the obvious in this particular case.

MR. STREET: I want to get his assent to the obvious.

HIS HONOR: ALL right; get it if you can.

MR. STREET: Q. Would you agree that your company,  
30 as a motor hire purchase company, in common with other hire purchase companies, finds its prosperity directly linked onto the prosperity of the motor industry. A. Your Honor, when he refers to my company -

HIS HONOR: Q. Yes; meaning the plaintiff company. A. The plaintiff company - we have a subsidiary which has large ramifications throughout Australia and engaged in more activities than motor hire purchase.

40 HIS HONOR: Well, refer to your company.

MR. STREET: Q. When you find yourself in times of prosperity in your industry - the financing of motor cars - there is competition amongst the various companies for trading relations with dealers? A. I assume so, yes.

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Q. You are all out, in effect, after business?  
A. Well, naturally - with reservations.

Q. I put it to you that at the time you say you first discussed with Mr. Crealey Mr. Webb's business of Motordom, it was a time when, in the industry, the finance companies were looking for new dealers? A. I would not say so.

Q. You would not agree with that? A. Yes.

Q. When was it that you first discussed the matter with Mr. Crealey? A. February 1960.

10

Q. At a time of prosperity in the industry?  
A. I repeat that I said that times were prosperous. I am not saying that times were booming or that there was any super amount of prosperity; it would be shown in the accounts of our company which are filed.

HIS HONOR: Just keep to "prosperity" without any further addition to it.

MR. STREET: Q. In February 1960 you or your company were looking round for new dealers that you could take on as having trading relations with?  
A. Selected and recommended dealers.

20

Q. Ones whom you were able to satisfy yourselves as regards their honesty - commercial honesty?  
A. Honesty and financial background.

Q. And what I suggest to you is that so far from Mr. Crealey ringing you and asking if you would take Motordom on, you rang up Mr. Crealey and asked him whether he knew of any dealers that you might approach? A. At that time, no.

30

Q. And that was a type of conversation that you had with Mr. Crealey and other officers of the defendant company on quite a number of occasions both before and after this time in February 1960? (Objected to - question withdrawn).

MR. STREET: The witness has had time to think about it now, so there is no point in pressing it.

Q. You did agree with me some time ago this afternoon that prior to the last three or four months you had rung up somebody from the defendant company and asked for suggestions about dealers that you might take on to your books? You do not agree with that? A. No.

40

- Q. Have you ever rung them up and asked for their comments and assistance in regard to new dealers that you might take on your books? A.Yes.
- Q. How long ago? A. I cannot say the exact date.
- Q. Was it in the order of days, weeks, months or years? A. Months.
- Q. Months ago? A. Many months.
- Q. Many months ago - back, probably in 1960?  
A. It could be, yes.
- 10 Q. Let me remind you or suggest to you that some five weeks ago you were talking on the telephone with Mr. Watters of the defendant company? A.Yes.
- Q. You know Mr. Watters, do you not? A. Yes.
- Q. The secretary of the defendant company? A.Yes.
- Q. And do you remember talking to him about 5 weeks ago on the telephone about a cheque for a Jaguar car - a cheque for £175? A. £175 for a Jaguar?
- 20 Q. Yes. A. I do not remember £175.
- Q. I suggest to you that you rang Mr. Watters up, and, in the course of the conversation, told him that you had collected the cheque for £175 on the Jaguar? A. I do not recall the conversation.
- Q. And that he told you that he would not know anything about that - that Crealey was handling that? A. Your Honor, I do not -
- Q. You do not recollect that? A. No.
- 30 Q. And then, after some reference to the finance market you said to Mr. Watters, I suggest to you, "If you know any good dealers shoot them along"?  
A. I cannot recall the conversation.
- Q. Will you deny that such a conversation took place within the last five or six weeks? A. I will not deny it.
- Q. You won't deny it? A. No.
- Q. You have told me that it was in February 1960 that Crealey rang you up and mentioned Webb or Motordom to you? A. Yes.
- 40 Q. And was there any other topic that was the purpose of that telephone call as far as you knew?  
A. Not to my recollection.

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Q. So that Crealey rang you for the specific purpose of asking you to take Webb on? A. Yes.

Q. And has that ever happened on any other occasion - that Crealey has rung you and asked you to take a dealer on? A. Yes.

Q. When, and who was the dealer? A. The dealer was Goodwin Motors.

Q. When? A. I cannot give you the exact date.

Q. Of course the Goodwin Motors conversation took place again within recent weeks, did it not?  
A. No. 10

Q. Didn't it? A. No.

Q. I suggest to you that in recent weeks you rang Crealey and asked Crealey how Goodwin Motors were? A. No.

Q. Didn't you? A. No.

Q. Have you discussed Goodwin Motors with Crealey in the last few weeks? A. No.

Q. Not in the last few weeks? A. No.

Q. When? A. Some months ago. 20

Q. How many months ago? A. I could not say off-hand. I would say at least 7 months - six to seven months ago.

Q. And at that conversation who brought up Goodwin Motors - you or Crealey? A. Crealey.

Q. And in effect you say that he asked you to take Goodwin Motors on, do you? A. Yes.

Q. What other dealers has Pacific or Crealey ever asked you to take on? A. Caines.

Q. Caines? A. Yes, Cain Motors. 30

Q. When? A. Some - two years; 18 months or two years ago.

Q. You know, do you not, that the defendant company has quite a large auctioneering business in second-hand cars? A. Yes.

Q. By far the largest in Sydney as a matter of fact? A. Yes.

When you say "the defendant company", do you mean Pacific or Suttons?

Q. Do you not know who the defendant company is?  
A. Yes. 40

Q. Well, why do you ask? A. Well, I do not know the turnover of each auction so I cannot answer the question.

Q. Your company as well as other finance companies, is very concerned to promote good relations with Pacific Motor Auctions by reason, I suggest to you, of the substantial business that Pacific does in the second-hand motor industry? That is so, is it not? A. Could I have that question again?

10

HIS HONOR: Yes. (Question objected to; question withdrawn).

MR. STREET: Q. When you say that this conversation with Crealey took place, it is a time at which you had never heard of Motordom or Webb? A. Yes.

Q. You are agreeing with what I am putting to you? A. I did not know Motordom.

20

Q. And do you know who Motordom or Webb had been dealing with by way of hire purchase before he went to you? A. No.

Q. Did you know he had had dealings with Terms and Credits? A. No.

Q. Did you not check with Terms and Credits, on Webb's background? A. No.

30

Q. I suggest to you that at about the same time you spoke to Crealey about Webb, you also checked with Terms and Credits, or spoke with Terms and Credits about Webb? A. I have no recollection of it.

Q. You have no recollection at all? A. It does not appear in our company's records.

Q. You have not made any note of it? A. I could not make any note of it -

Q. If it does not appear in your company's records, may I take it that you have a record that Crealey rang you up and spoke to you about this? A. Yes.

40

Q. May I see the record? A. Yes.

MR. STREET: I call for it.

WITNESS: May I leave the box?

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HIS HONOR: Yes; very well. (At this stage the witness left the witness box, went down to the floor of the Court; produced a document and returned to the witness box).

MR. STREET: Q. Now just to be clear, you have a record that Crealey rang you and asked you to take Webb on? A. No.

MR. STREET: So that we can be precise, I wonder if the evidence could be read?

HIS HONOR: Yes. I think I know what has happened. We will have it read. 10

(At this stage the following questions and answers were read from the shorthand notes:-

"Q. I suggest to you that about the same time as you spoke to Crealey about Webb you also checked with Terms and Credits or spoke with Terms and Credits about Webb? A. I have no recollection.

Q. You have no recollection at all? A. It does not appear in our company's records. 20

Q. You have not made any note of it?  
A. I could not make any note of it -

Q. If it does not appear in your company's records may I take it that you have a record that Crealey rang you up and spoke to you about this? A. Yes.").

MR. STREET: Q. Have you a record that Crealey rang you up and spoke to you about this? A. I have a copy of the reference he gave me over the telephone. 30

Q. You have a note that you made in the course of a telephone conversation with Crealey? A. Yes.

Q. But you have no record that Crealey rang you up about Webb and asked you to take Webb on? A.No.

Q. What I suggest to you happened back there in February 1960 was that you rang Crealey up and asked him about Webb? Do you deny that? A. I have already said I did not know Webb until Crealey rang me up on the telephone and asked me about Webb. 40

Q. And you asked Crealey, I suggest, what was the volume of business that Webb was doing with the defendant company? A. I did not ask him what volume of business.



Q. And you asked him what Webb's credit rating was with Pacific? A. Yes.

Q. You did? A. Yes.

Q. Are you quite clear that there was actual discussion about floor plans at that first conversation? A. Yes.

10 Q. The floor plan is only what one might call a "come hither" so far as your company is concerned, in respect of dealers, is it not? Do you understand the question? It is an attraction that you offer to dealers so that you will get their hire purchase business? A. It is a service.

Q. A service? A. Yes, a service.

Q. And in terms of remuneration or earnings to your company it is of negligible importance compared to your finance business - your hire purchase business? A. Yes.

20 Q. What do you say was said about the floor plan at this first phone conversation?

A. Crealey asked me did we have floor plan accommodation available.

Q. Yes. What did you say? A. I said "Yes".

Q. Would you just give me again that conversation as it took place according to you? A. Crealey asked me did we have floor plan accommodation available and I said "Yes".

Q. I want the whole conversation? A. He then -

HIS HONOR: Q. No; start from when Crealey rang you up.

30 MR. STREET: Q. Start from the beginning?

HIS HONOR: When Crealey rang you up to talk about Webb, tell us of that, will you? A. When he called me, the normal amount of chatter went on, one with the other.

The basis of the conversation was that he asked me were we interested in a new dealer; I said, "Yes", provided he could recommend him and he was sound financially.

40 Crealey asked me if he was sound financially and was recommended by them, was there floor plan accommodation available. I answered "Yes".

MR. STREET: Q. Well now -

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HIS HONOR: Wait a moment. Has he finished relating the conversation?

Q. You have not finished relating the conversation have you? A. Then an appointment was made or Mr. Crealey said he would make an appointment for me to interview which I subsequently did.

MR. STREET: Q. And you said that if he was recommended and was sound financially you would be prepared to take him on? A. Yes.

Q. Of course, at that point of time, in February 1960, your company would have welcomed any dealer who was satisfactorily recommended and sound financially, would it not? A. Provided we knew nothing to his detriment. 10

Q. Well, that is what I put to you - provided he was satisfactorily recommended and sound financially, you would have taken on any dealer? A. After investigations by our own company.

Q. And any dealer that you did take on, you would have made available floor plan or display plan facilities to? A. No. 20

". You say that with some dealers you withheld those facilities did you? A. Yes.

Q. Some whose paper you were taking as a regular thing? A. When you say "taking as a regular thing" - from what date?

Q. In February 1960, I am talking about? A. If we took the dealer on in 1960 and were satisfied that the title for the vehicle which he was offering on hire purchase was good, and the paper was good, we would accept him. 30

Q. And you would extend floor plan accommodation to him? A. No.

Q. Wouldn't you? A. No.

Q. Did you have any dealers that you dealt with regularly in February 1960, who did not have floor plan accommodation available to them? A. Yes.

Q. Many? A. In round figures I would say that two-thirds of the dealers we dealt with did not have floor plan accommodation. 40

Q. So that you would agree with me, would you not, that floor plans are by no means universal so far as dealers are concerned? A. No.

Q. Well, you agree? A. Yes.

Q. And you certainly would not assume that merely because a dealer has a lot of cars in his yard, he has those on floor plan? You would not agree, would you? A. May I have that again?

Q. You would not assume, if you saw a dealer with a lot of cars in his yard, that he had those on floor plan? A. Nor that he owned them.

10 Q. Because of the dealers with whom you dealt only one-third had floor plans? A. Yes.

Q. Two-thirds did not? A. No.

Q. And you dealt with many many dealers, did you not, in 1960? A. Not many many, no.

Q. Well, delete the second "many" - you dealt with many dealers in 1960? A. We dealt with a number of dealers - not many.

20 Q. Those dealers with whom you were in fairly constant trading transactions with were persons with whom you were anxious to keep current information about, were you not - gather current information about? Perhaps I put that question badly. I will put it another way.

Dealers with whom you deal frequently are persons whose credit and trade habits you are anxious to keep current check on from time to time? A. Yes.

Q. And once you took Webb on you did in fact see to it that you kept yourself currently informed as to how he was going? A. Yes.

30 Q. And the sources of information available to you as to how he was going were other persons dealing with Webb in the motor industry? A. Yes.

Q. Such as Pacific? A. Yes.

Q. And you, on a number of occasions, asked Crealey how Webb was going, did you not? A. Yes.

Q. And you were concerned to collect such information as you could about Webb? A. Yes.

40 Q. And those were the occasions, I suggest to you, when you did discuss Webb with Crealey during 1960 - occasions when you were checking up on Webb? A. Mutually.

Q. Mutually? A. Yes.

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HIS HONOR: Q. You mean that each was checking  
up on him? A. Yes.

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MR. RATH: Q. About how many dealers were you  
dealing with in 1960? A. 50.

(Witness retired)

MR. RATH: I speak for the title declarations  
signed by Robert Webb and made by him, delivered  
to the defendant company upon the sale of the  
2nd November 1960 of the following cars - it is  
enough to say all the cars mentioned in the  
claim except the four that I am not pressing.

10

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MR. STREET: I did not hear the first part of  
the call. I have the title declarations which  
I will produce. Perhaps I could have the call  
read. (At the direction of his Honor the short-  
hand note of Mr. Rath's call was read). Yes, I  
produce those.

Re-  
examination

These documents which I am producing to my  
friend are in each instance part of a pair of  
documents which I am separating to answer my  
friend's call, and I wonder whether I could have  
the documents that I am separating marked for  
identification so that I can have them matched  
back onto the declarations.

20

HIS HONOR: Yes; very well.

(Documents m.f.i. "3").

MR. STREET: I produce 16 documents dated 2nd  
November 1960.

(Documents tendered and marked Exhibit "Z").

30

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GRAHAM PATRICK

Sworn, examined as under:

MR. RATH: Q. What is your full name? A. Graham Patrick.

Q. Where do you live? A. Flat 3, 25 Havelock Avenue, Coogee.

Q. And you are employed by the plaintiff company?  
A. Yes.

10 Q. In what capacity are you employed by the plaintiff company? A. As a representative and valuer for the company.

Q. Were you so employed by them in the year 1960?  
A. Yes.

Q. Did you know Robert Webb? A. Yes.

Q. And did you know where the saleyards of the firm of Motordom and the company of Motordom were?  
A. Yes.

20 Q. I am referring now to the vehicles dealt with in Exhibit "A". In regard to the vehicle 1956 Plymouth Powerflite BKD-320, first of all have you any independent recollection of having seen it, or do you need to refresh yourself from records?  
A. From records I can refresh myself.

Q. Did you sight that vehicle? A. Yes.

Q. And did you make notes at the time when you did sight the vehicle? A. Yes.

Q. The form of your note in each case, is a list of vehicles, a typed list? A. Yes.

30 Q. And you insert the date when you inspected?  
A. Yes.

Q. And if the vehicle is there, your system is to put a cross through the car? A. Yes.

Q. With reference to those records, on what day or days did you see this Plymouth Powerflite in one of the Motordom yards? You can consult your records. A. My records are over there.  
(Produced to witness).

Q. You have compiled a list from the records that I referred to? A. Yes.

40 Q. With regard to the Plymouth Powerflite, you sighted it - your lists show this - on 12th July 1960? A. Correct.

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Q. 26th July 1960. When you went on 15th August 1960 you did not see it? A. You are reading from the list? That would be correct, yes.

HIS HONOR: When do you say he did not see it?

MR. RATH: 15th August 1960.

Q. Does that mean that you did not see it at any one of the yards or what? A. That particular day I did not visit the yard it was at.

Q. You saw it again on 30th August? A. Yes.

Q. 10th October? A. Yes.

10

Q. 18th October? A. Yes.

Q. 26th October? A. Yes.

Q. And 1st November? A. Yes.

Q. With regard to Exhibit "B", the vehicle 1952 Jaguar BYK-628, you sighted I think on 12th July 1960 for the first time. I think that might be a mistake. Forget about that. You saw it on 26th July 1960? A. Yes, that is correct.

Q. 15th August 1960? A. Yes.

Q. 30th August 1960? A. I think you have that particular copy of my notes. Mr. Gulson handed that to you earlier in the day.

20

Q. Is that right or wrong, that I put to you?  
A. Yes.

Q. 14th September 1960? A. Yes.

Q. 28th September 1960? A. Yes.

Q. 10th October 1960? A. Yes.

Q. 18th October 1960? A. Yes.

Q. 26th October 1960? A. Yes.

Q. 1st November 1960? A. Yes.

30

Q. Exhibit "C", 1956 Holden BAF-754, you sighted on 10th October 1960? A. Yes.

Q. 26th October 1960? A. Yes.

Q. 1st November 1960? A. Yes.

Q. The 1957 Holden, AOL-688, you saw on 10th October 1960, 18th October 1960, 26th October 1960 and 1st November 1960? A. Yes.

Q. 1955 Ford Mainline -

HIS HONOR: That is No.4 in the list.

MR. RATH: That is the one that has gone out of the case.

Q. Exhibit "D", 1958 Hillman, BNJ-679, you sighted 18th October 1960? A. Yes.

Q. 26th October 1960 and 1st November 1960? A. Correct.

10 Q. 1958 Vauxhall Victor, BPZ-516, sighted 18th October 1960, 26th October 1960 and 1st November 1960? A. Correct.

Q. The 1957 Holden utility, BKR-894, sighted 18th October 1960 and 1st November 1960? A. Correct.

Q. 1956 Ford Prefect, BAA-691, sighted 18th October 1960, 26th October 1960 and 1st November 1960? A. Yes.

Q. Exhibit "E", 1958 Simca, BLJ-118, you sighted on 26th October 1960 and 1st November 1960? A. Correct.

20 Q. Exhibit "F", 1953 Holden, ARH-677, sighted 26th October 1960 and 1st November 1960? A. Correct.

Q. 1954 Morris Major, BMX-673, sighted 26th October 1960 and 1st November 1960? A. Correct.

Q. 1954 Wolseley, AMM-282, sighted 26th October and 1st November 1960? A. Correct.

Q. 1955 Customline, AXR-585, sighted 26th October 1960 and 1st November 1960? A. Correct.

30 Q. Exhibit "G", 1956 Zephyr, BRW-333, sighted 26th October 1960 and 1st November 1960? A. Correct.

Q. 1958 Singer, CDC-820, you sighted 26th October 1960 and 1st November 1960? A. Correct.

Q. Exhibit "H", 1958 Austin Lancer, BNN-787 - that is one of those I abandoned. The 1955 Ford Anglia, AFB-155, you saw that on 1st November 1960? A. Yes.

40 Q. You did not inspect on 2nd November. Is that right? A. No.

Q. Did you inspect the yards on 3rd November? A. I inspected the yards, yes.

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Q. Were those vehicles missing? A. Yes.

Q. On 1st November did you inspect all the yards? A. Yes.

Q. And on 3rd November did you inspect all the yards? A. Yes.

Q. Would you compare the state of the yards on 1st November with their state on 3rd November, in regard to the number of vehicles you saw in them?

A. The yards - (Objected to; allowed).

Q. I asked you to compare the yards of Motordom one by one if you can - there were three of them - from the point of view of the number of vehicles and type of vehicles in them on 1st November and 3rd November? A. Well, the North Parramatta yard was a yard full of vehicles.

10

Q. On the 1st? A. On the 1st.

Q. And about how many vehicles would you say they had there? A. Say 25 vehicles, 25 to 30 vehicles.

Q. And what was there when you saw it on the 3rd? A. About three or four vehicles.

20

Q. What sort of vehicles were they? A. The type of vehicle - two or three pre-war vehicles and another couple of earlier post-war vehicles. They were not in a going condition.

Q. What is the next yard? A. Guildford.

Q. What was the state of that on the 1st?

A. On the 1st that was a full going concern then.

Q. About how many vehicles? A. Say about 20 vehicles. This is in the front line I am speaking of. They had a yard down the back in which they had possibly six to a dozen vehicles which were just heaps, as they call them.

30

Q. When you saw it on the 3rd, what did you find there? A. Just the heaps left.

Q. What is the third yard? A. The third yard is one at Fairfield, which is quite a substantial yard.

Q. What did you find there on the 1st? A. Quite a number of vehicles. The number could be in the region of between 30 and 40.

Q. What did you find there on the 3rd? A. Similar to the Guildford yard, about half a dozen vehicles.

40

Q. What sort of vehicles? A. In very poor condition.



Q. At what time did you visit these three yards on 1st November? Have you any recollection? You have no notes of this? A. I did not put down the time of the day, but from memory it was late in the morning and I had other duties to perform during the day - late morning and early in the afternoon.

Q. At what time was your inspection made of these yards on the 3rd? A. Late in the morning.

Q. You had visited these yards many times before?  
A. Yes.

Q. Have you ever seen any one of them in the condition that any one of them was in on the 3rd?  
A. No.

Q. Anything like it? A. No, nothing like it.

Q. You have valued vehicles as part of your employment, on behalf of the plaintiff company?  
A. Yes.

Q. You valued them both for the purposes of floor plan and for hire purchase purposes? A. Yes.

Q. And you have been doing that for some years?  
A. Yes.

Q. And you have prepared a list showing your opinion of the value of the vehicles at the time when you saw them on the 1st November? A. Yes.

Q. You never saw them after that, but you also prepared, on this same list, the values which, in your opinion, they would have as vehicles of that type of vintage, assuming that nothing had happened to them. Do you know what I mean? A. Yes.

Q. Assuming that nothing further had happened to them, except that they had grown older? A. Yes.

Q. Have you got that list with you? A. No.

Q. Have you got the list here? A. Yes.  
(Obtained by witness).

Q. Have you some copies of the list? A. I have one here and the other one is with - (Copy produced to Mr. Rath).

Q. You have shown in the first two columns of figures, "October 1960". Does that mean the time at which you saw them? A. That is correct.

Q. Why do you say October 1960 instead of November 1st 1960? A. Well, I used the month of October as a basis.

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Q. Then you show two lists of figures, "T" and "R", "R" being higher than "T". I gather that the "R" indicates your views of the retail value, and "T" your views of the trade value at that date, of those vehicles? A. That is correct, yes.

Q. And then you show a figure for May 1961, (which was the date of the demand, I think). Again you show trade and retail figures. No. You just show a trade figure there? A. Yes. I remember it.

10

Q. And then for July 1961 (which, I think was the date of the writ in this matter, your Honor), excepting certain ones, you show M.T.A. figures. What are they? A. Motor Traders Association.

Q. Are they a trade or retailing - A. Retailing price.

Q. In your view, are they reasonably sound? A. Reasonable average price.

Q. Against a number of those figures in the M.T.A. column you have placed an asterisk, which you explain, "Not from M.T.A."? A. The M.T.A. retail list of prices is for sedans only. Those vehicles with the asterisk are commercial vehicles, for which the average price there is from experience.

20

Q. Again, as a trade price? A. As a retail price.

Q. Did you say that the M.T.A. figure was a retail figure? A. Retail.

Q. Then you have shown further figures for February 1962, again on the trade and retail bases? A. Yes.

(Abovementioned list left with Mr. Street over adjournment; to be tendered later. By consent, four cars abandoned not to be checked by Mr. Street).

Q. On 1st November 1960 you visited the Motordom Company's office at Guildford? A. Yes.

Q. And that was to make a physical check of your floor plan vehicles? A. Yes.

Q. You checked them, made a similar check at North Parramatta and Fairfield? A. Yes.

Q. And you found some missing? A. That is correct, yes.

Q. And then you spoke to Mrs. Bell? A. Yes.  
Q. But you did not see Mr. Webb. You then came back into town and saw Mr. Gulson? A. Yes.  
Q. That, I think, was a Tuesday? A. Yes, that is correct.  
Q. On Wednesday, the morning of 2nd November, you went to the Guildford office of Motordom?  
A. That is correct.  
Q. You saw Mrs. Bell but not Mr. Webb?  
10 A. That is correct.  
Q. She told you something there? A. I beg your pardon?  
Q. She told you something there? A. Yes.  
Q. And you again telephoned Mr. Gulson? A. Yes.  
Q. And he directed you to do something?  
A. That is correct.  
Q. You then went to Pacific Motor Auctions?  
A. Correct.

Q. Where is that? A. Parramatta Road.  
20 Q. At what time did you go there? A. Approximately a quarter to four; half past three or a quarter to four.  
Q. Did you see somebody there? A. Yes.  
Q. Who did you see? A. Mr. Crealey.  
Q. Did you have a conversation with him? A. Yes.  
Q. What was said by you and what was said by him?  
A. I asked him about vehicles that were -  
Q. Try and get as close as you can -

30 HIS HONOR: Q. As far as you can do it, in the form, "I said so-and-so" and "Crealey said so-and-so". A. I said to Mr. Crealey the reason for my visit was to find out about the vehicles that were sold to him from Motordom. I showed him my list, which I have here.

MR. RATH: Q. You showed him a document which is now in your hand? A. Yes, and pointed out the vehicles to him in this way and asked him had Webb or Motordom sold him these vehicles, whereupon he said he would check with his accountant, and he  
40 went out of the room and came back and said, "Yes. I can ascertain that these vehicles were sold to us on 25th October," whereupon I wrote that down here.

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Q. What vehicles on that list did you point out to him? Name them? A. Mainline AWW-316, an Austin Lancer BMN-787, 1955 Austin AVB-483, 1953 Holden AJJ-560, 1954 Holden ARK-254, 1956 Morris Minor AYZ-621, 1956 Zephyr BBS-997.

Q. Is that all? A. That is all.

Q. Does that list contain upon it the other vehicles that were floor planned with your company as at that date? A. Yes.

Q. You said you showed it to Mr. Crealey. Did he have it in his hand? A. He was sitting on the other side of the desk. I turned it around and showed it to him like that, on his desk, whereupon he took a note of the numbers and left the room.

10

Q. A note of what numbers? What did you see him do? A. That I cannot recollect, the exact detail.

Q. But you did point out those ones you have mentioned, to him? A. Yes.

HIS HONOR: Q. On the form of that document, are they distinguishable from other cars listed on the document, and if so, in what way? A. Yes, by not being crossed out. The others, which I have physically seen, I have crossed out and these ones are not crossed out.

20

(Abovementioned list tendered).

MR. RATH: I think I must crave the Court's and my friend's indulgence here. I do not think this is a discovered document.

I think it is true that so far as myself and my junior are concerned, we were never aware that this document was used in the way it was actually used, that is, shown to Mr. Crealey.

HIS HONOR: You mean on the knowledge of it you had at the time of the discovery, you would have taken the view it was not discoverable?

MR. STREET: I am not unduly injured.

MR. RATH: I am really concerned about it. I think it reflects on me. I think it reflects on me taking something for granted and not pressing something further when dealing with a witness.

However, this is a very small one compared to the great bundle I saw earlier today.

MR. STREET: I did not have that. That was a last-minute nest egg.

MR. RATH: I think the Court should know that my friend did not discover those originals, but he did not get them until after this case got going.

Q. As regards the document you showed to Mr. Crealey, did you show him that whole bundle that you have there? (Returned to witness). A. It would have been the first two pages, plus the two pages of the 26th.

10 Q. The first two pages - A. Which is the list of the floor plan for that particular day, that I checked, plus the previous visits.

Those four pieces of paper would have been stapled together or on a clip together like that, and I would have shown him that.

HIS HONOR: Q. But they would not have been attached to the other part of that bundle?  
A. No. These were previous visits.

(Abovementioned list not objected to; admitted and marked Exhibit "AA").

20 Q. Had you ever dealt with Mr. Crealey before? Did he know you? A. Yes.

Q. Did he know what your business was? A. Yes.

Q. Where you came from? A. Yes.

Q. After he showed you this list of vehicles that had been sold to him on 25th October, was there anything else said between the two of you? A. Well, at that stage there were doubts in my mind, and I asked Mr. - (Objected to).

30 Q. Did you say anything else to him or did he say anything else to you? A. I asked Mr. Crealey did he owe him any money.

HIS HONOR: Q. Did who owe whom money? A. Did Mr. Webb, Motordom, owe Pacific Auctions any money, and he said "No".

MR. RATH: Q. Anything else? (No answer).

Q. That is all you can recall, is it? A. That is all I can recall.

Q. What time did you leave Mr. Crealey?  
A. Approximately 4 o'clock.

40 Q. What did you do then? A. I went to a telephone and rang Mr. Gulson.

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Q. At just about what time? A. Shortly after 4 o'clock. There is a public telephone down the road from Pacific Auctions.

Q. You then made certain arrangements to go out to the Motordom yards next day. Is that right?  
A. Yes.

Q. You did make some arrangements to go out there next day? A. Yes, over the telephone with Mr. Gulson.

Q. You arranged to go out with Mr. Betson?  
A. Yes.

Q. At that time he was an employee of Motor Market Auctions? A. Yes.

Q. Did you go out with him on the next day?  
A. No.

Q. What happened? Did you get in touch with him? A. Yes, after I phoned Mr. Gulson I went to Hercules Motors, to get my car attended to, at about a quarter to five, and I phoned Mr. Betson at Motor Market and asked him would he go out with me the following morning to put some prices on some cars, and he asked me where, and I said Motordom - (Objected to; rejected).

Q. I am speaking of the time you showed this document to Mr. Crealey. A. Yes.

Q. Were those words "Display plan as at 1.11.60" on it or not? A. Yes. May I say that everything was on there except that in red down there.

Q. Everything that appears on that was then upon it, except the part in red - A. And when I put these crosses here, "Sold on the 25th". When Mr. Crealey told me they had been sold the cars, I put those four crosses there, and after that -

Q. Looking at the first page of Exhibit "AA", all the typewriting and writing and marks as appearing upon it, were there at the time it was shown to Mr. Crealey, except the crosses and the references to the crossed vehicles being sold on the 25th? A. Yes.

Q. And except the red ink, which you put on some months later? A. That is correct.

Q. Looking at a cross in the left-hand corner, followed by a question mark "Zephyr BFG", was that there or not there? A. That would have been there,

because the vehicle was supposed to have been with Mr. Webb, and I intended looking for it at a later date. That was there when I showed it to Mr. Crealey.

Q. The only cross in the left-hand margin was there when you showed it to Mr. Crealey? A. Yes.

Q. Can you say whether the second page was ever actually in front of Mr. Crealey's eyes? Do you understand? A. Yes.

10 Q. The whole thing was before him? A. Yes.

Q. But can you say whether he ever saw the second page? A. No, he did not.

Q. Did he see the third page? A. No.

Q. Or the fourth page? A. No.

CROSS EXAMINATION

MR. STREET: Q. On this Wednesday, 2nd November, when you went to the Guildford office of Motordom and saw Mrs. Bell, was that before or after lunch? A. Before lunch.

20 Q. Did you have with you at that time, these papers, Exhibit "AA"? A. Yes.

Q. Could you tell me whether you went to the Motordom yard between 14th October 1960 and 26th October 1960? You have refreshed your memory from some documents when giving evidence to Mr. Rath? A. Yes.

Q. Can you identify for me the documents from which you refreshed your recollection when giving evidence to Mr. Rath? A. Yes.

30 Q. They comprise the four sheets you just had in front of you and the others you now have in front of you? A. Yes.

MR. RATH: I do not mind you looking at these without any penalty.

MR. STREET: Q. (Approaches witness). Were you there between 14th and 26th October? A. Yes, on 18th October 1960.

MR. RATH: WE have some more here.

WITNESS: They were taken from here earlier today.

40 MR. STREET: Q. When you were there on 18th October, did you see BRW-333? A. Yes.

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Q. A 1956 Ford Zephyr? A. At the Fairfield yard.

Q. And you saw that on your subsequent visits after 18th October? A. The 26th.

Q. May I see the rest of the documents, other than the exhibit?

MR. RATH: What I said does not apply to the last set. They were never in the witness' hands at the time.

MR. STREET: Q. These are the ones from which you refreshed your memory? A. Yes. 10

HIS HONOR: Q. You said that they had been detached from the other documents before you started to give evidence at all? A. Yes. They were visits back in August, where the details are that I was asked for earlier in the day.

MR. STREET: Q. You spoke in the witness box this afternoon, did you not, of visits in August? A. Yes.

Q. And in the evidence you gave regarding those August visits, had you refreshed your memory on these other lists which have just been handed back? A. They were in those papers which I had before me. 20

Q. Those were in the papers I have in my hand? A. Yes.

Q. These were the only ones you used to refresh your memory for the purpose of giving evidence today?

MR. RATH: He ought to have these, in order to check that. (Documents handed to witness, from Mr. Rath). 30

WITNESS: May I have the question again?

MR. STREET: Q. Did you refresh your memory, for the purpose of giving your evidence, from the documents which you now have before you? A. Yes.

Q. May I see those also, please? (Produced). Would you look at this document which is one of those amongst those which you produced. That is a document, may I take it, which was handed to you on some occasion, by Webb? (Objected to). 40



Q. Was that document handed to you by Webb?  
(Objected to; argued; not pressed). A. I cannot recall on that day whether Webb actually gave it to me, but he would have been present.

Q. And it obviously came to you from Motordom, either from Webb or Mrs. Bell, or somebody on behalf of Motordom Pty. Ltd.? A. Yes.

10 Q. May I take it you understood it as a document which was directed towards taking some vehicles off floor plan and putting other vehicles on to floor plan? A. Yes.

Q. And when you got back to your office or to the plaintiff company's office, did you initiate some action to put vehicles on and take vehicles off the floor plan, according to the details contained in that document you have. A. Yes. I would have given it to Mr. Stevens to act upon.

(Abovementioned document m.f.i. "4").

20 Q. (Approaches witness). Would you look at these two documents which are amongst the bundle you have produced, also on the letterhead of Motordom Pty. Ltd., two sheets, both headed at the top with the date 12th July 1960?

May I take it that those sheets similarly came to you from Webb or somebody on behalf of Motordom Pty. Ltd.? A. The sheets of paper, yes.

Q. With these details which they now bear, filled in on them? A. That is my writing.

Q. This is your writing? A. Yes.

30 Q. Were these filled in by you at Motordom's premises? A. Yes.

Q. And at Webb's dictation? A. Yes

Q. And this was written by you, but prepared by yourself and Webb jointly, when present at the same time? A. Yes. (Objected to).

40 Q. Webb dictated to you the information that you wrote down? A. Not exactly. We would discuss things when I went there. I would have my original list with the vehicles on. He would tell me a certain number of vehicles were sold.

We would tally up the amount and he would then tell me and I would make notes of various vehicles to go on floor plan.

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Q. You wrote this down for Webb, when you were there on 12th July? A. Not necessarily for him. I write it down perhaps because his typist was not there.

Q. Did he check it through with you, as it was written? A. He would be present, yes, and checked it. (Cross-examination in this form objected to; Mr. Street protested at witness being "put on guard"; question and answer read).

MR. STREET: Q. I take it you took this document back to your company's office again and initiated the necessary procedures to put on to floor plan, the vehicles listed in it, and take off floor plan the other vehicles listed in it? A. Yes.

10

(At this stage further hearing adjourned until 10 a.m. on Thursday, 1st March, 1962).

IN COMMERCIAL CAUSES

CORAM: WALSH, J.

MOTOR CREDITS (HIRE FINANCE) LTD. V. PACIFIC MOTOR AUCTIONS PTY. LTD.

THIRD DAY: THURSDAY, 1ST MARCH 1962

1st March 1962

GRAHAM PATRICK  
Cross examination continued:

MR. STREET: At the adjournment I was questioning Mr. Patrick. I had asked to have a document marked for identification, but before doing so might I approach the witness about it?

HIS HONOR: Yes.

MR. STREET: Q. You will see that that document I was questioning you about yesterday includes a 1956 Plymouth P/Flite, which is what, Power Flite? A. Yes.

Q. BKD-320? A. Yes.

MR. STREET: I will ask the witness to remove that, so that I can have it marked.

(Above mentioned document m.f.i. 5).

Q. It is correct to say, is it not, that on 14th September you went out to Motordom's yard and found that quite a number of vehicles which you thought were on floor plan were no longer in the yard? A. Well, I had my list with me at the time.

10 Q. I suggest to you that what happened was that you went out on 14th September and found that there was missing from the yard, the vehicles which you at some point of time ruled right through from start to finish, and I suggest to you that then you procured from Webb a letter to Hire Finance, sending Hire Finance a cheque for £4,300? A. No, not exactly that way.

On that date I would have gone to the office at Merrylands - I remember this particular day - and asked Mrs. Bell. I always go through with Mrs. Bell, the list of floor plan.

20 I would start with the list, "Has this vehicle been sold or not?" "No." "Where is it"? And I would put here the yard - I had a letter for the yard. I would go through all vehicles in such a fashion.

She would say, "That has been sold", and I would cross it out as I have done, with a ruler right through, and ask how it was sold, under Hire Purchase Agreement or, as you see here, Pacific Motor Auctions, loan, cash or contract.

30 Q. Having ascertained - and I may interject that the identity of none of these vehicles is relevant; it is the course of conduct which is relevant - that one of the vehicles on the list you had on 14th September had been sold, you ruled it off the list? A. Yes.

Q. At the end of your discussion on 14th September, you found that altogether nine vehicles had been sold? A. Yes, that would be correct.

40 As you see here, I have written down the amounts, to tally them up, to see how much has been sold and, as I have not had enough room on the paper, I have asked Miss Chalmers there, who was sitting there at her typewriter doing nothing, to type it out for me.

Q. On this particular day you found that nine vehicles had been sold; you then asked Miss Chalmers to type out the list of the vehicles which

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had been sold, with the amounts due to repay the advance from Hire Finance? A. Yes.

Q. Totalling in all, some £4,300? A. Yes.

Q. Did you then ask her for a cheque for the £4,300, or ask her to get Webb to draw a cheque for £4,300? A. I cannot recall that conversation, of having asked for that, but when I called back to the office later on, after visiting the yards to see if the other vehicles were there, Miss Chalmers would have given me that.

10

Q. Miss Chalmers would have given you that, and when you say "that", you point to a letter dated 14th September, 1960, on the Motordom letterhead, listing these nine vehicles, showing an amount of £4,300, and the letter stating, "Please find enclosed cheque for the sum of £4,300, being payment on below listed vehicles". That letter was, you think, handed to you at some stage? A. Of that day.

Q. On 14th September? A. Yes.

Q. Together with a cheque? A. I cannot recollect whether a cheque was there, but I will assume that.

20

(Above mentioned letter of 14th September 1960 called for by Mr. Rath; produced; added to Exhibit "S").

MR. RATH: Q. The handwriting on that letter, the model numbers of the vehicles and the total figure in ink, £4,300, the words "on twice" and these words, "No vehicles to go on" - A. "G.P." - my initials.

Q. That is all your handwriting? A. It is intended for my notes. Those crosses and the "on twice" - those two vehicles were on floor plan twice previously, by mistake I take it, and this was to be taken off. The other vehicles were sold.

30

Q. This document comes from your own records? A. Yes, my notes. That was in my -

Q. The whole of this? A. Yes. It was amongst all those.

MR. STREET: Q. Having obtained from Webb that cheque for £4,300 on 14th September, as far as you were concerned that regularised the disposal of these nine vehicles? A. That was the usual procedure.

40

Q. If there were vehicles sold, to adjust them in that manner your concern, on behalf of your company, was to get the cheque appropriate to those nine vehicles? A. Not necessarily.

In that case the floor plan had been reduced somewhat, so a cheque was called for rather than the usual adjustment.

10 Q. Your concern was to ensure that Webb paid out in full, the advances on any vehicles he had sold, or else that the amount of those advances was properly accounted for to your company - A. Or replaced with other vehicles on floor plan.

Q. I suppose it would be fair to see your visits were in the nature of policing visits, for the purpose of ensuring that the plan was being properly operated by Webb? A. That is correct.

20 Q. And you were concerned either to see that the vehicles were there or else, if they had gone, to see that they had been replaced by another vehicle or replaced by some accounting by Webb to your company? A. Yes.

Q. And those were your concerns? A. Yes.

30 Q. As far as the transaction of 2nd November 1960 was concerned, and by that I mean the sale by Motordom to Pacific of these sixteen cars, if Webb had accounted to you or to Pacific through you, on your visit, for the price Pacific had paid him for these cars, that would have been satisfactory as far as you were concerned? A. On 2nd November when I visited there, Webb was not present, so he did not account to me.

Q. Was Webb there on 3rd November when you went there? A. In the morning, yes.

Q. At that stage, on 3rd November, a lot of the vehicles had gone? A. That is correct.

Q. As you said in evidence yesterday? A. Yes.

40 Q. If Webb had said to you then, "16 of these vehicles went out to Pacific Auctions, and here is the cheque they gave me for them", as far as you were concerned, that would have been a satisfactory accounting by Webb for those 16 vehicles? A. Yes. That would have been considered -

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Q. So it is fair to say, is not it, that the real complaint, as far as you understand the administration of this display plan - (Objected to; rejected; withdrawn).

Q. On this occasion when you say you went to see Mr. Crealey, on 2nd November, whereabouts was he when you saw him? A. In his office at Pacific Motor Auctions.

Q. At Pacific Motor Auctions? A. Yes.

Q. Are you quite certain as to the day on which you saw Mr. Crealey? A. Yes. 10

Q. Was there anybody else present in this office on this occasion - I do not mean elsewhere - but anybody in the immediate vicinity of yourself and Mr. Crealey? A. I cannot recollect, but Mr. Guest may have been there; Mr. Guest who was working with the company at that time may have been there.

Q. And you are equally certain of the time, about 3.45? A. Yes. I am positive of the time.

Q. I suggest to you that Mr. Crealey was, in fact, at Debien's office on that afternoon, until after 3.45? A. I was definitely there at 3.45. 20

Q. Does that occasion you any doubt that it was at 3.45 on that day? A. No doubt.

Q. Debien's is another motor auction business? A. Yes.

Q. With its office well away from Pacific's office? A. Yes.

HIS HONOR: Q. Where is its office?

A. Parramatta Road, Leichhardt. 30

Q. And Pacific is Parramatta Road where? A. Strathfield.

MR. STREET: Q. Was this office that you went into, where you say you saw Mr. Crealey, his own office? A. Yes, his own office.

Q. At Pacific? A. Yes. I can describe that to you.

Q. How do you identify it as his own office? A. The previous time I did see him on some other matter, he was in that office. When I asked for Mr. Crealey I was shown into that office, and I saw that it was his. 40

Q. He did not, in fact, have an office at Pacific at this time? A. It could have been his office.

Q. You say you think Mr. Guest might have been there? A. I cannot recollect whether he was present. I remember one visit to Pacific when Mr. Guest was present, but whether it was that particular one I cannot recollect.

10 Q. Had you met Mr. Guest? A. Possibly so. I am not sure. I am in and out of auctions all the time.

Q. You know, do you not, that after 2nd November, or on the night of 2nd November, the indebtedness of Motordom to Pacific was satisfied as a result of this purchase of cars by Pacific? A. Whether it was completely satisfied I do not know, but I understand it to be somewhat satisfied.

Q. Your recollection is that you asked Mr. Crealey whether Motordom owed Pacific money? A. Yes.

Q. And Mr. Crealey said to you - A. No.

20 Q. And that, as you understand it, all or a substantial part of the indebtedness of Motordom to Pacific had been met on the night of 2nd November, as you now understand the situation? A. Yes, I do now.

Q. Does that assist you with my suggestion that it was not on 2nd November, but sometime after the 2nd that this conversation you speak of took place? A. No. It took place on the 2nd.

30 Q. You told me yesterday that you went before lunch to the Motordom yard at Guildford. A. Yes. Are you speaking of the 2nd?

Q. Yes, on Wednesday, the 2nd. A. Yes.

Q. You went there before lunch? A. Yes.

Q. By "lunchtime" I take it you mean 1 to 2, do you? A. Any time between 12 and 2 o'clock.

Q. Where did you go after you left Motordom on that day? Trace your movements through on 2nd November. A. On Wednesday, the 2nd, I went to Fairfield and went to see the manager of the I.A.C.

40 Q. Before or after lunch? A. Just on lunch time, between 12 and 1 o'clock, after spending some time at Guildford office, at Motordom, and I had lunch at Fairfield in a cafe there and then came back to the Guildford office of Motordom.

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Q. What did you go back to the Guildford office of Motordom for? A. To discuss further about these vehicles. I also inspected, at the same time at Fairfield, the yard at Fairfield, to see what vehicles had turned up there, if any.

Q. You had been to the Guildford office that morning and seen what vehicles were there?

A. And had a long discussion with Mrs. Bell, who was very vague about the whereabouts of all these vehicles.

10

Q. When you went back in the afternoon was Webb there? A. No.

Q. So you did not stay long at Guildford in the afternoon? A. No. It was then I decided to ring Mr. Gulson from the public phone down the road and discuss it, whether I should go to Pacific Auctions straightaway and find out if these vehicles alleged to have been sold had been sold, that is, this half dozen.

Q. You went to Pacific and ascertained that this half dozen had been bought by Pacific? A. Yes.

20

Q. And you have given the whole of your conversation, which you say you then had with Mr. Crealey, apart from, I suppose, pleasantries and matters of that sort? A. Yes.

Q. And you had no further communication with anybody from Pacific after this conversation you have spoken of with Mr. Crealey? A. No, until the next morning, with Mr. Gulson.

Q. I think you identified yourself as a representative and valuer for Hire Finance? A. That is correct.

30

Q. If Hire Finance had taken these 16 cars which are in dispute, from Motordom, on 3rd November, they would have been sold on the wholesale market, would they not? A. Not exactly, no. They would have been sold to the best advantage.

Q. But of course, your company has no facilities for the retail sale of vehicles? A. Yes. We have two or three yards.

40

Q. But is it not correct to say that your company would have to deal with these cars on a wholesale basis? A. No. We would have taken the cars and decided which vehicles to sell to auction and which vehicles would return the best from the retail market.



Q. So some would have been sold wholesale and some would have been sole retail? A. Possibly so, yes.

Q. That would be your anticipation? A. Anticipation, yes.

Q. And of course, as the valuer, your advice would have been sought by your company as to the disposal of these vehicles? A. Yes.

10 Q. You are familiar, are you not, with what is known in the trade as the yellow book? A. Yes.

Q. And the yellow book is entitled, "The dealer's guide to the Used Car Market"? A. Yes.

Q. And that is a trade publication which lists the current prices being paid for second-hand motor vehicles? A. Yes.

Q. It comes out monthly? A. Correct.

20 Q. It has a limited circulation, limited in the sense of restricted circulation, inasmuch as it is not available to the public? A. That is correct.

Q. But it is, as you understand it, a standard reference in the car trade itself, on questions of values of second-hand cars? A. I understand it to be a guide to some prices, yes.

Q. And indeed, I think your company is one of the subscribers to this publication, is it not? A. Yes. We subscribe to that.

30 Q. And it is used, is it not, by your company, in its business? A. Not always. We use other market guides also.

Q. But this is, I suggest to you, the most authoritative of the guides that you use, where you do go to guides for the purpose of ascertaining current prices for second-hand cars? A. That is subject to opinion. There are several on the market.

HIS HONOR: Q. You mean there are several of these publications on the market? A. Yes.

MR. STREET: Q. There are several on the market? A. Yes.

40 Q. You would agree, would you not, that the yellow book is the one which is most widely regarded - A. Generally regarded.

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Q. Generally regarded as the most authoritative?  
A. It is regarded as a popular book. Put it that way.

Q. The Motor Traders' Association figures are figures which are circulated to the public at large, are they not; they are available on news stands? A. No. They produce another journal, which is the trade magazine also.

Q. But not having a circulation which is confined to the trade? A. It is confined to the trade, yes, the Motor Traders' Association Journal. It circulates amongst its members in the trade. 10

Q. This yellow book has "Confidential" printed on the outside of it? A. Yes.

Q. And you know that efforts are made to see that its contents do not get out to the public at large? A. I am not sure of that.

Q. Would you take one and have a look at it? (Handed to witness). Look on the outside of the back cover and you will see a note there to the effect that the subscriber undertakes that the book will not be passed on to any member of the general public, non-scriber or unauthorised person-  
A. That is not to stop a dealer from giving one away to a member of the public. 20

Q. No efforts are made to restrict the journal of the Motor Traders' Association? A. Not to my knowledge.

Q. And the source of the Motor Traders' Association Journal is the information furnished by the various motor traders themselves, is it not? A. No. I understand it is furnished by auction houses, as the wholesale and retail prices. 30

Q. Is not it fair to say that the Motor Traders' Association figures are regarded in the trade as being a little on the high side, because they represent what the traders would like to be getting for their vehicles, rather than being an analysis of what they are, in fact, getting for their vehicles? A. I cannot answer that. I can only say that the auction houses do supply that information to them. 40

Q. Would you accept the figures in the yellow book as being reliable figures for the purposes of ascertaining values of second-hand cars, in

respect of the period to which each yellow book applies? A. It is a fair average guide.

MR. STREET: I do not want to trouble Mr. Patrick by going through these things one by one. I will have in court shortly a list, being prepared, of the figures from this yellow book, appropriate to these cars.

I do not want my friend to criticise me for not cross-examining him on each individual figure.

10 MR. RATH: I cannot bind myself at this stage.

HIS HONOR: I do not feel that I can rule that if you do not ask some questions, it will not be fair that any comment be made on it.

RE-EXAMINATION

MR. RATH: Q. You were asked questions tending to suggest to you that you had confused a conversation which you say you had on 2nd November with one you had on 3rd November. My friend put that to you? A. Yes.

20 Q. Did you see Mr. Crealey on 3rd November?  
A. Yes, with Mr. Gulson.

Q. Where did you see him? A. In the same office, Pacific Motor Auctins.

Q. What conversation took place on 3rd November between Mr. Crealey, Mr. Gulson and yourself?  
A. When we first went into the office there were greetings, pleasant greetings, and Mr. Gulson asked Mr. Crealey what he had done with our motor cars, he must have had a busy night the night  
30 before, and he referred to the conversation with me the previous day, that Webb, Motordom, owed no money and asked why this happened.

Mr. Crealey said that Motordom's cheque had bounced that afternoon, that is the previous afternoon, inferring that it was after my visit.

Q. Leave out what he inferred; only what he said.  
A. And Mr. Gulson then said to him that he had cancelled the floor plan arrangements with Mr. Webb that afternoon, the previous afternoon, after my  
40 phone call, after leaving Pacific.

Q. Was anything said about what vehicles Pacific had bought from Motordom the previous night?  
A. Yes. I had my list with me and we went through the list with the accountant there.

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No.4(g)

Transcript of Proceedings before His Honor Mr. Justice Walsh

Plaintiff's Evidence

Graham Patrick

Cross-examination continued

1st March 1962

Re-examination

In the Supreme Court of New South Wales

No.4(g)

Transcript of Proceedings before His Honor Mr. Justice Walsh

Plaintiff's Evidence

Graham Patrick

Re-examination 1st March 1962

No.4(f)

Plaintiff's Evidence

Norman John Gulson Recalled

Examination 1st March 1962

Q. You mean you checked your list of floor planned ones with his list of the ones he had bought the night before? A. Yes.

Q. Was Mr. Crealey present when you went through the list with the accountant? A. Yes.

(Witness retired)

No.4(f)

NORMAN JOHN GULSON  
Recalled on former oath:

HIS HONOR: Q. You are still subject to the oath which you took when you first began to give evidence? A. Yes.

10

MR. RATH: Q. Your full name? A. Norman John Gulson.

Q. Did your company give Webb or the Motordom Company any written authority to buy motor vehicles? A. No. (Objected to).

Q. With regard to authorising Webb or the Motordom Company to buy vehicles on your behalf, what did your company ever do? A. Nothing.

MR. STREET: No questions.

20

(Mr. Street indicated that he would seek leave to recall Mr. Gulson in connection with documents on subpoena from another Finance Company).

(Witness retired)

GRAHAM PATRICK

Recalled on former oath:

No.4(g)

MR. RATH: Q. It appears that you were at the Guildford yard of Motordom on 2nd November? A.Yes.

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Q. Any other yard? A. Fairfield yard.

Q. At about what time were you at the Guildford yard on 2nd November? A. In the morning, a fair time in the morning, a couple of hours; and in the afternoon.

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10 Q. How about the Fairfield yard? A. Before lunch. I went from Guildford about 12 o'clock, to Fairfield -

Graham Patrick  
Recalled

Q. That is near enough for my purposes.

Examination

HIS HONOR: Q. Which one were you at latest? A. Guildford.

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Q. Did you go directly from there to Pacific? A. Yes. I phoned Mr. Gulson and we discussed, "shall I go to Pacific Motor Auctions?" I said to Mr. Gulson, "It is the only alternative I have, to find out about these cards."

20

Q. Did you give any time as to when you made that telephone call? A. I would think not.

Q. That telephone call was from Guildford?

A. The public telephone box just near Guildford yard.

Q. You think that was about three o'clock?

A. About three o'clock.

Q. And then you say you set off to -

A. Pacific Motor Auctions.

30

Q. In Strathfield? A. Yes.

MR. RATH: Q. What was the state of the Guildford and Fairfield yards when you saw them on 2nd November, with regard to the number of vehicles in them? A. Well-stocked with vehicles.

Q. How did they compare with the way you describe them as being stocked on the prior day, 1st November? A. Similar.

MR. STREET: No questions.

(Witness retired)

40

MR. RATH: Subject to tendering that list of the vehicles and our values of them, that is my case.

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DEFENDANT'S EVIDENCE

(Document m.f.i. "2" referred to in cross-examination of Mr. Stevens, at p. tendered; objected to; admitted and marked Exhibit "1").

(Document m.f.i. "5" tendered; objected to; admitted and marked Exhibit "2").

No.4(h)

CECIL MILTON CREALEY

Sworn, examined as under:

MR. STREET: Q. What is your full name? A. Cecil Milton Crealey. 10

Q. Your private address? A. 26 Irene Crescent, Kingsgrove.

Q. I think you are the general manager and a director of the defendant company? A. That is correct.

Q. And you were, I think, a director of the defendant company during 1960? A. Correct.

Q. At that time what was your actual executive occupation in the car industry? Were you an executive of the defendant company? A. Debien's Motor Auctions, general manager, and Pacific also. 20

Q. Debien's is an associated auction house? A. That is correct.

Q. I think you have occupied those positions since 1956? A. Yes.

Q. There had been, through 1960, quite a number of transactions between Pacific and Webb's business? A. Yes.

Q. Webb had originally been trading under the firm name of Motordom, and then he formed a company in the middle of 1960. Were you aware of that? A. Yes. 30

Q. And your company continued on trading with that business, whether it was Webb, or Webb through the medium of his company? A. Yes.

Q. And during 1960 and indeed, in the ordinary course of your company's business over the years, you conducted weekly auctions? A. Yes.

Q. Did Webb attend any of your company's auctions during 1960? A. Yes. 40

Q. Many of them? A. I would say 90%

Q. And did he buy cars at those auctions?  
A. Yes.

Q. Is there a record kept of the sales made by your company at auction to various purchasers?  
A. Yes.

Q. And that record, I think, is kept in the form of a sales ledger? A. Yes.

Q. And the sales ledger is in court? A. Yes.

10 Q. Have you had extracted from it the details of the vehicles purchased by Motordom and by Motordom Pty. Limited, from 1st January 1960 to 31st October 1960? A. Yes.

Q. Is this the extracted details? A. Yes.  
(Abovementioned list tendered on basis that ledger will be made available to Mr. Rath, if desired).

Q. I do not think Motordom or Webb or his company purchased any vehicles from Pacific after 31st  
20 October 1960? A. No.  
(Above mentioned tender not objected to; list admitted and marked Exhibit "3").

Q. The course of business, to put it in general terms, was that when Webb attended an auction and bid for the cars, he would drive them away to his yard, or have his men drive them to his yard?  
A. Yes.

Q. Your auctions were held which day of each week? A. Monday, Wednesday and Saturday.

30 Q. Are you familiar with the nature of the business of a second-hand car traders, as distinct from an auction house? A. Yes.

Q. When is the peak period of the week for the second-hand car dealer? A. At the week-ends.

Q. Did your company, on occasions, buy vehicles from Motordom during 1960? A. Yes.

Q. Could you tell his Honor the type of occasion - I am not worrying about 2nd November for the moment - but the type of business you did with Motordom when you bought vehicles from Motordom?  
40 A. We had an arrangement that we would buy their trade-ins, with dealers who were our customers.

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We would go out, generally each Monday, and view their trade-ins, that they traded in at the week-ends, any stock that they traded which they did not want to keep.

Q. Sometimes a dealer does not want two cars of the same sort in his yard? A. Yes.

Q. And often he has cars traded in that he does not like the look of dealing with? A. Yes.

Q. And your company buys those cars in from dealers and auctions then? A. Yes.

10

HIS HONOR: Q. Whatever trade-ins they do not want to keep themselves? A. Yes.

Q. You take? A. Yes.

MR. STREET: Q. I think you said you would usually go around on Monday? A. Yes.

Q. And see what the dealers wanted you to take? A. Yes.

Q. Did you go, on occasions, to Webb? A. Yes.

Q. On the occasions when you went out to Webb - if we can take a typical occasion in 1960, before the period at the end - can you recollect a specific time when you went out? A. I have been with Mr. Guest and also with Mr. McConnell, the previous manager.

20

Q. When you got to Webb's premises, would you find Webb there? A. Yes.

Q. Would there be some discussion about the cars? A. Yes.

Q. What lines did those discussions - (Objected to).

30

Q. Can you recollect any specific occasion when you went and had a discussion with Webb, about buying some trade-in cars from him? I am not talking about 2nd November, but about the ordinary course of dealing.

Can you recollect any specific occasion when you went? A. No, not a date.

Q. Leaving the date aside, can you cast your mind back to any day when you were there?

A. I can remember on two occasions going on Monday afternoon, when the sale was finished in Sydney.

40



Q. Take either of those and tell us the conversation that you had with Webb. (Objected to).

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Q. Can you recollect when? (Objected to; withdrawn).

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Q. Can you give me the conversation on either one of these occasions? A. Generally my conversation with Webb would not be in the pricing of the motor cars but how he went on the week-end and generally how he was trading. The pricing was left to the manager.

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10

Q. On the occasions when you went there, did you write out any document or anything of the sort? A. Not myself.

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Q. Did you see any documents written out? A. Yes.

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Crealey

Q. What documents? A. The manager would always fill in the declarations and Webb would sign them.

Examination  
continued

1st March 1962

Q. Declarations of ownership? A. Yes.

20

Q. What about paying for the vehicles? A. Occasionally they would pay there, but a lot of times back at the office. Either one of Webb's employees or himself would pick up the cheque.

Q. On other occasions a cheque would be given to him there and then, in his yard? A. Yes.

HIS HONOR: Q. By the way, when he bought cars at Pacific's auction sale, did he pay any money then and there or was it all booked? A. All booked.

30

Q. And later, I suppose, you sent him some sort of statement of account? A. Yes.

Q. As to how much he owed? A. Yes. An invoice went out that day.

MR. STREET: Q. To whom were those invoices addressed? A. Motordom Pty. Limited.

Q. Did you ever see any of the cheques that came back from Webb, or any of the cheques that were handed over by Webb or sent by Webb in payment for cars that he bought? A. No.

40

Q. And on occasions, when the cheque was made out at Webb's premises for vehicles you were buying from Motordom, did you sign such cheques? A. I possibly could have. I could not say for sure. Sometimes there was one signature on -

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Q. On the occasions when you saw the cheques, to whom were they made out? A. Motordom.

Q. Did you ever, so far as you know, invoice any of the cars which Webb had bid for at auction, to Hire Finance? A. No.

Q. Did you ever make out any cheques in payment for vehicles which you selected in Motordom's yard, to Hire Finance? A. No.

Q. And was there any occasion that you can recollect, when you were at Webb's yard, when there was any mention of a display plan or floor plan? A. No. 10

Q. Have you similarly had extracted from your purchases ledger, the details of all vehicles your company purchased from Motordom and from Motordom Pty. Ltd., from 1st January, 1960, up to and including 2nd November, 1960? A. That is correct.

(Above mentioned extract tendered; admitted and marked Exhibit "4").

(Short adjournment). 20

Q. You were familiar with Webb's business premises? A. Yes.

Q. They were well set up premises? A. Yes.

Q. And he had a flourishing business, as far as you could see? A. Correct.

Q. Did you ever have any trouble regarding claims by finance companies for any of those vehicles that you bought from Webb prior to 2nd November, 1960? A. No.

Q. Or any title problems at all? A. No. 30

Q. In respect of any vehicles bought from him prior to 2nd November, 1960? A. No.

Q. You knew Mr. Gulson of the plaintiff company? A. Yes.

Q. He was, I think, in and out of your auction room from time to time? A. Correct.

Q. Can you recollect the first time when you and Mr. Gulson ever had any conversation regarding Webb or Motordom? A. Mr. Gulson asked me -

Q. Was this on the telephone or in person? A. No, in person. 40

Q. Can you tell me, first of all, about when this was? A. I would say, anything from around 1958 onwards. He used to call in and have a cup of tea.

Q. But can you tell me the first time you and Gulson discussed Webb? Can you fix a date, a month or a year, for the first time you discussed Webb with him? A. In 1959.

Q. Can you recollect where the conversation took place? A. At Pacific.

10 Q. Doing the best you can to recall back the words, would you tell me what was said? A. In regard to Webb?

Q. Well, in general, at that conversation?  
A. Normally Mr. Gulson would call in to get the trend of the motor trade and on numerous occasions he would ask me did I know any dealers his company would have on and I said no, or if I did hear of anyone looking for finance, I would then name them and say, "Here is someone you might be able to do  
20 finance with", and leave it at that.

Q. Can you recollect the terms of your first discussion with Mr. Gulson, about Webb, beyond what you have already told me? A. I have a faint recollection of him asking if we had any volume dealers, what volume dealers we had, and if any of those were looking for finance, and I mentioned Webb's name to him.

30 I said, "Here is a young bloke. He seems to be progressing. He started with one yard and now has four. If you call on him, you may do some good". That is as far as it went.

Q. Do you recollect anything of this sort ever happening? Did you ring up Mr. Gulson and say this or anything to this effect, "I have a Mr. Robert Webb who trades as Motordom, with whom we have done considerable business, and he wishes Hire Purchase accommodation and floor plan accommodation, and I recommend him and will arrange an appointment for you to see him"?

40 A. No. There would be no advantage in me doing that.

Q. In the early part of 1960 and the latter part of 1959, did you ever approach any finance company on behalf of dealers, to see if the finance company would take the dealers on? A. No.

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Q. What was the state of the motor trade in 1959 and 1960, regarding availability of hire purchase finance for dealers? A. There was plenty of money.

Q. Was it difficult for dealers to get on to hire purchase companies, or difficult for hire purchase companies to find dealers? A. Hire purchase companies to find dealers. They were chasing dealers.

Q. Do not answer this until my friend has had an opportunity to consider it. Is there any policy in your company regarding the recommendation of dealers to finance companies? A. Yes. 10

Q. What is the policy? A. We are not allowed - it is a direction from the managing director that no one is allowed to recommend any dealer to any finance company. We can give the names but no recommendations.

Q. That is from the managing director, Mr. Sutton, the head of the whole group? A. Yes.

Q. You saw Mr. Gulson from time to time during 1960, in the ordinary course of your business and his? A. Yes. 20

Q. Was Webb ever mentioned on any of those occasions? A. Yes, I would say he was.

Q. Do you recollect any occasion at all when floor plan or display plan was mentioned or discussed between you and Gulson? A. No.

Q. In relation to you or Motordom? A. No, only his paper work, his hire purchase agreements. That was discussed, but no floor plan. 30

Q. Only hire purchase agreements? A. I would ask Mr. Gulson how his paper work was, which I would ask all the finance people, about dealers. It is called jacking the contract - it is a good warning to us.

Q. That is the practice of dealers in representing to a finance company that they have a bigger deposit than they have, in fact, received on a vehicle? A. Yes. Some call it boosting also.

Q. Is it merely that you have no recollection of discussing floor plan or display plan in relation to Webb or Motordom? Are you able to deny that there was never any discussion regarding floor plan or display plan between yourself and Gulson regarding Motordom, at any time before 2nd November? A. Yes, I deny that. 40

Q. Do you recollect the period just before 2nd November, when Webb's account with your company was overdue, just before the end? A. Yes.

Q. Was it within your knowledge that a cheque had been dishonoured? A. Yes.

Q. When did that first come to your knowledge? A. Approximately the 25th.

Q. 25th October? A. Yes.

Q. Did you then communicate with Webb? A. No.

10 Q. When did you first speak to Webb with regard to that, this dishonoured cheque, or these unpaid for vehicles? A. On 2nd November.

Q. Did you communicate with anybody else regarding this dishonoured cheque? A. Yes. I rang the manager of Pacific and asked him -

Q. Mr. Guest - A. Yes.

HIS HONOR: Q. Were you usually, yourself, at the office of Pacific? A. No. I had my office at Debien's. I used to travel between the two.

20 Q. And Guest was usually at Pacific? A. Yes.

MR. STREET: Q. Coming forward to 2nd November 1960, do you recollect having done anything in particular in the earlier part of 2nd November 1960? Do you recollect anything happening? A. Before November 1960?

Q. No, on the day of 2nd November 1960? A. Yes.

Q. What office had you gone to first? A. I had been to Pacific, I would say, in the morning, and I went down to Debien's.

30 Q. Why did you go to Debien's? A. I worked there. My office was there.

Q. But was anything happening at Debien's on this day? A. No.

Q. When did you get to Debien's? A. I would say anything between 11 to 12 o'clock.

Q. For how long did you stay at Debien's?

A. Until Mr. Guest rang me from Pacific.

Q. When was that, that Mr. Guest rang you?

A. Approximately three o'clock, I would say.

40 Q. And after Mr. Guest rang you, what did you do then? A. I then drove to Pacific.

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Q. About what time did you get to Pacific?

A. 3.30.

Q. And when you got to Pacific, what did you do?

A. I asked Mr. Guest what - (Objected to).

Q. You had some discussion with Mr. Guest, did you?

A. Yes.

Q. Then what? A. And then I asked him -

Q. No. You had a discussion with Mr. Guest?

A. Yes.

Q. Whereabouts in Pacific? A. In Mr. Guest's office. 10

Q. Did you remain in Mr. Guest's office for the rest of that afternoon? A. Yes.

Q. Where was Mr. Guest for the rest of that afternoon? A. He was with me.

Q. In there with you? A. Yes.

Q. A big office? A. Yes.

Q. How big would the room be? A. About 12 x 10.

Q. Mr. Guest I think has since left Pacific's employment? A. Yes. 20

Q. But he is outside the court at the moment?  
A. Yes.

Q. After you had this discussion with Mr. Guest when you got there, did you then do something or speak to somebody? A. Yes, I spoke on the phone.

Q. To whom? A. Mr. Webb.

Q. Later that day did you see Mr. Webb? A. Yes.

Q. About what time? A. 5.30, 6 o'clock; 5.30 to 6.

Q. At any time on that afternoon did you see Mr. Patrick? A. No. 30

Q. Do you know Mr. Patrick? A. Yes.

Q. Of Hire Finance? A. Yes.

Q. Did you speak with Mr. Patrick at all on the afternoon? A. No.

Q. When you saw Mr. Webb at 5.30, he came into your office did he? A. Into Mr. Guest's office.

Q. Did you then speak to somebody else?

A. Mr. Skinner.

Q. Mr. Skinner, the accountant? A. Yes.

Q. Were you in touch at all with Mr. Sutton on that day? A. Yes, I spoke to him on the phone also.

HIS HONOR: Q. Before or after you saw Mr. Webb?  
A. It would be before.

MR. STREET: Q. About how long before? A. I was at Pacific when I spoke to him. It would only be within an hour or so.

10 Q. You described Mr. Sutton a moment ago as the managing director? A. Yes.

Q. Of what is he managing director? A. All of our motor companies.

Q. All of these motor auction companies? A. Yes.

Q. Did Mr. Sutton give you some directions?  
A. Yes.

Q. Was it after speaking to Mr. Sutton that you went with Mr. Webb out to Webb's yard? A. Yes.

20 Q. Pause before you answer this: what instructions were you given by Mr. Sutton? A. To have satisfaction of the cheques.

Q. How did you start off the conversation with Mr. Sutton? When you talked to him on the phone what did you tell him first? A. I told him I was at Pacific - he knew I was at Pacific - that I had everything under control and I was going to do something that day or that night before I went to bed and I would have it all cleared up.

Q. What did he say? A. "All right, carry on".

30 Q. That was the first time that day you had spoken to Sutton? A. Yes.

Q. Had you had some discussion with Mr. Watters before that? A. Yes.

Q. When Mr. Webb rang you up - or I think you said you spoke to him on the telephone after you got back to Pacific - what did Mr. Webb tell you - (Objected to; question withdrawn).

Q. Did you ring Mr. Webb or did he ring you?  
A. He rang Mr. Guest.

40 Q. And did Mr. Guest put the call across to you?  
A. Yes, after he had finished I spoke to him; I spoke to Mr. Webb after Mr. Guest had finished.

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Q. What was said at that conversation between you and Mr. Webb - (Objected to).

MR. STREET: I press the question. I put the question not on the basis of being any evidence of any admission but as part of the transaction in relation to which we bought these vehicles, one of the essential matters for your Honor being on the estoppel point what did we know and what did we believe.

MR. RATH: On that ground I will withdraw the objection. 10

HIS HONOR: Q. May I get something clear. I may not have followed the exact sequence of events as this witness said they occurred. I understood you to say you got to the Pacific premises from Debien's about 3.30? A. Approximately 3.30.

Q. Is this 'phone call you speak of now something which happened shortly after you got there or a long time after? A. It would be within a half hour I would say to an hour. I am not really certain on that. 20

Q. From half an hour to an hour after you got there? A. Yes.

MR. STREET: Q. What was said at that conversation between you and Mr. Webb? A. I said to Mr. Webb, "What are you going to do about these dishonoured cheques?" And he said, "I am in the city now and I have arranged my financial position".

He said "They will be met tomorrow".

Q. Webb said, "I am in the city now, I have arranged my financial position and they will be met tomorrow"? A. Yes. 30

Q. What did you say to that? A. I said to him, "Well I want to see you tonight and have a talk with you". He said "All right, well I will come out and see you".

Q. That is all that was said at that conversation? A. Yes.

Q. What was the next thing that happened after that conversation, regarding Mr. Webb? A. He arrived at Pacific. 40

Q. That night? A. Yes.



Q. What conversation took place between you and Mr. Webb that night? This is at 5.30 or thereabouts at Guest's office at Pacific? A. That is correct.

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Q. What conversation then took place? A. I asked him again what his intentions were with regard to the dishonoured cheques. He said, "I have fixed everything up in the city" and he said, "I don't know what all the panic's about, they will be met tomorrow".

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10 I said, "You have been telling them that here for a few days now and I want some satisfaction tonight. I suggest you sell me some of your stock to offset the returned cheques and I will talk to you again tomorrow. If the cheques are cleared well then we are back in business again and I'll return your motor cars to you".

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Q. What did he say to that? A. He said "All right, we will drive to the yard and we will see what stock you can buy".

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20 Q. Did you and Mr. Webb then go out together in a car to one of his yards? A. Yes.

Q. Who went with you in the car? A. Mr. Guest, Mr. Skinner - I think Mr. Skinner was there.

Q. Which yard did you go to first? A. To North Parramatta.

Q. What happened when you got to the yard?

A. I told Mr. Guest to value his stock and I just stood there talking to Mr. Webb and Mr. Guest came back with a list of the stock there with values on it. There was nothing done there.

30

We went from there to his Guildford yard and the same procedure there and then we went to the Fairfield yard, the same procedure, and then we went back to North Parramatta.

Q. Was there some discussion with Mr. Webb about the prices? A. Yes.

Q. Who had that discussion? A. Both Mr. Guest and myself.

Q. With Mr. Webb? A. Yes.

40

Q. What was that discussion? A. When we showed him the prices we put on the motor cars he said "Well I don't think that's a real fair 'go'" and he said "You should be able to help me more on them".

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Then he said "I am definitely going to take the cars back". I said, "If that is the case I will give you what you paid for the vehicles; I will hold the vehicles, I will give you a week to satisfy us and then I will give you back the cars", which we did do.

We held the cars there for a week before we started to sell them.

Q. When you say you said to Mr. Webb, "I will give you what you paid for them" did you suggest that first or did Mr. Webb? A. I did. 10

Q. From where did the information come as to what Mr. Webb had paid for the cars? A. Off his stock cards.

Q. Did you actually see any of the stock cards at the time? A. No I never looked right at them but I saw them there on the desk.

Q. You saw them but did not read them? A. No.

Q. Who then extracted the information from the stock cards as to the prices Webb had paid for the cars? A. I would say it would either be Mr. Skinner or Mr. Guest, I am not real sure. They were both writing. 20

Q. Were some declarations then obtained?

A. Yes.

MR. STREET: They have been tendered in evidence, your Honor.

Q. Those were filled in and signed by Mr. Webb?

A. Yes.

Q. Altogether some 29 cars? A. That is correct. 30

Q. Purchased that night? A. Yes.

Q. Of those 29 cars some had come from Pacific originally? A. Yes.

Q. Did that 29 cars clean out the yard, clean out Webb's yard? A. Oh no. I would say he would carry anything from, conservatively, 80 to 100 cars.

HIS HONOR: Q. Do you mean in all his yards or in each yard? A. In all of his yards, collectively.

MR. STREET: Q. About how many cars were left in all of his yards after the selection of these 29 which you and Mr. Guest had selected? A. I would say conservatively 50 to 60. 40

Q. What was the discriminating factor in selecting the cars as far as you were concerned, the cars you wanted to take? A. There was none actually. We just went around and priced cars to make up the amount..

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Q. To make up what amount? A. The amount of the bad cheques.

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10 Q. After you had been around the yards and got back to the first yard again was a cheque then filled in? A. Yes.

Q. And signed by yourself and Mr. Skinner?  
A. Yes.

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Q. Is that the cheque (cheque shown to witness)?  
A. Yes.

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Q. What happened to this cheque after you filled it in? Was there some discussion -

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MR. RATH: I object to any reference to this cheque. It is not a discovered document.

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20 MR. STREET: My word it is, and I think poured over for many minutes.

MR. RATH: I have tendered a cheque for £16,510.

MR. STREET: It is document No.21 in the affidavit of discovery, cheque 15736 drawn by the defendant on 2nd November, 1960, in favour of Motordom Pty. Ltd. for £16,510, which is the cheque I have in my hand and which I showed to the witness.

However, the matter of discovery is no answer to a relevant document.

30 HIS HONOR: I remember discussion about this cheque but I just do not recall whether your witnesses were asked about it.

MR. STREET: It has not been identified as a document in this case as yet, but I am going to tender it so my friend need not be concerned.

MR. RATH: (After perusing cheque). Yes, I have seen it.

(Above mentioned cheque tendered and marked Exhibit "5").

40 HIS HONOR: Q. Did your company have a number of different accounts with the Bank of New South Wales? A. I think the secretary would be able to answer that.

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MR. STREET: Q. That cheque was filled in, and what was done with it after you filled it in?

A. I then asked Mr. Webb to sign it back to us.

Q. And he then wrote on the back of it and gave it back to you? A. That is correct.

Q. Do you recollect any discussion with Mr. Webb about what was going to happen to these vehicles? Did Mr. Webb ask you anything about the vehicles at any stage that night? A. Only the part about holding them for him, that was all, would I definitely hold them and I said yes.

10

I said "We will have them back here, if you have those cheques cleared when the banks open we will have them back in half an hour, have them back in your lots".

Q. Was anything said about the price at which he could have them back? A. The same price again.

Q. Those vehicles were taken away by employees of the defendant company that evening? A. Yes.

Q. They were sold, after being held for a week? A. We commenced then to start selling them.

20

Q. Do you have in court the records of the dates of their sale and the prices which they fetched on sale? A. Yes.

MR. STREET: That is the list I discussed with Mr. Rath yesterday in court and it is still being completed. The records are here from which it is prepared. When that is produced I will tender it.

Q. You have had some years of experience in the motor trade? A. Yes.

30

Q. When these vehicles were sold by your company was there anything special about the sale of them or were they just sold in the ordinary course of your company's auctioneering? A. Yes. They are sold on seven days' credit.

Q. Along with the other stock which your company sold? A. Oh yes.

Q. So far as the market worth of those vehicles is concerned, what was your opinion as to the prices at which you took those vehicles back from Mr. Webb on the night of the 2nd November - (Objected to; allowed).

40

What is your opinion of the market worth of these vehicles in relation to the prices at which

they were taken back from Motordom on the 2nd November, 1960? A. Some were over-priced. A big percentage of them was around about the value. Some were over-priced.

There was one car I can remember, it was a Plymouth, and another one was a Jaguar, they were pretty well up. Both the prices on those were well up.

Q. In the sense of being over-priced? A. Yes.

10 HIS HONOR: Q. You said did you not that Mr. Guest had worked out values on a list and so on and Mr. Webb claimed that the prices on that list were too low? A. Yes.

Q. And you then agreed to pay the price at which he had bought them regardless of whether that coincided with the price which Mr. Guest had on his list, is that what happened? A. That is correct.

MR. STREET: Q. Are you familiar with what is known as the yellow book? A. Yes.

20 Q. What is the information which is contained in the yellow book? A. It has the current auction price and it is classed as the market price throughout the motor trade and the average price of a vehicle.

MR. STREET: Strictly speaking I ought to take the witness through each case and put a figure on a car and ask him what he relies on. If I can shorten it in some way I am relying on the yellow book.

30 MR. RATH: If it is left like that there will be a certain conflict of value, that is the only matter I would reserve. I am not prepared to admit if it is done in this way that any particular degree of weight should be given to it.

MR. STREET: What I propose to submit to the court eventually will be that the best evidence of value is what these vehicles brought when we sold them, having been sold in the ordinary course of business.

40 That would be no doubt the most reliable guide to the individual values of these cars.

HIS HONOR: At the time you first sold them to Motordom or when you afterwards sold them?

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MR. STREET: After repossession. The first one on the list was back in July 1960, that is when it had been bought. I will submit the repurchase on the night of the 2nd November was affected by such special considerations that the court might not regard that as a reliable indication of the market.

I could not anticipate, if your Honor holds against me in this case, that your Honor would award the plaintiff a verdict of less than we actually got for selling the cars.

10

If your Honor finds they were the plaintiff's cars and we should not have sold them it would seem unreal for me having made a profit out of them.

At the same time I would be pressing upon your Honor the commercial reality of visiting upon us the liability to pay such amounts as we did get on the vehicles.

HIS HONOR: How do the amounts you got compare with the yellow book?

MR. STREET: On an amount in the vicinity of £8,000 there is a difference in the order of £100 or £150. Perhaps I could tender the yellow books for the months of October and November 1960, January, May and July 1961 and February 1962, those being the different months which might be thought to provide the relevant date. I have followed all the dates my friend took and added November.

20

(Six books, described as yellow books, tendered and marked Exhibit "6").

MR. STREET: Q. Is the yellow book used in the motor trade? A. Yes.

30

Q. For what purpose is it used? A. For the guidance for prices of vehicles on trade-ins, and finance companies use them. They are their Bible, I would say.

Q. At the time you went out to Webb's yard that night, and indeed at any time on the 2nd November, what was your belief as to the ownership of the vehicles which you bought? A. He owned them; they were Webb's property.

40

Q. Did Mr. Webb say anything to you that night about floor plan or display plan in any context at all, whether relating to these vehicles or otherwise? A. No.

- Q. Or did anybody on the 2nd November say anything to you about Mr. Webb having vehicles out at his yards which were on floor plan? A. No.
- Q. Or display plan? A. No.
- Q. Was it as a result of anything which anybody had said to you about floor plan, display plan or repossessions by finance companies that you went out that night? A. Definitely not. The amount of the cheques was enough.
- 10 Q. What was it that decided you to move on the 2nd November, 1960? What was it that happened on the 2nd November which led to your decision to go out there? A. His second cheque was returned and I told them to check on his first cheque and at first they were told it was through and I instructed Mr. Skinner to get on to somebody with authority at the bank and check, and they said no, it was not through and we asked about the third cheque and they said, no that would not be met either. That is
- 20 when -
- Q. When did that information reach you, the result of those inquiries? A. Some time between one and three. I started the inquiries off then if I remember.
- Q. Between 1 and 3 on what day? A. That would be on the 2nd.
- Q. 2nd November? A. Yes.
- Q. That is when you started the inquiries off?  
A. Well we started an inquiry on the first cheque
- 30 before that.
- Q. How long before the 2nd November? A. Three or four days and the bank said if it was re-presented it would be met.
- Q. You got the final result of the inquiries between 1 and 3 o'clock on the afternoon of the 2nd November? A. Yes. That was when Mr. Guest rang me, all this was going on.
- Q. Mr. Guest rang you when you were at Debien's?  
A. Yes.
- 40 Q. It was after that you spoke to Mr. Watters, the secretary and then you spoke to Mr. Sutton, the head man? A. Yes.

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MR. RATH: Q. It is the custom of your firm to obtain a title declaration of the sort you obtained from Mr. Webb in every case where you buy a vehicle from a dealer? A. Yes, excepting in very exceptional cases.

Q. And you rely upon that as being correct?

A. Yes.

Q. And had dealings with Mr. Webb in 1959, did you not? A. Yes.

10

Q. Around about Christmas 1959 you seized his stock, did you not? A. No.

Q. You went and bought a lot of his stock around about Christmas 1959? A. Not to my knowledge; I can't remember.

Q. Was there a time in 1959 when you obtained from Mr. Webb a number of motor cars which you later returned to him? A. No.

Q. Do I take it in your dealings with Mr. Webb in 1959 you had had no bother at all with him?

20

A. I can remember on one occasion a cheque, of seeing a cheque floating around as a matter of fact. What actually happened there I could not say.

Q. What do you mean by you say a cheque floating around? A. Well I have seen it, I mean recently, a returned cheque.

Q. You do not know who dealt with the matter at that time? A. No.

Q. It would not be true to say in 1960 Mr. Webb was having some difficulty getting hire purchase finance? A. I would say definitely not. He had two other finance companies.

30

Q. Let us take around the beginning of 1960. So far as you know was he experiencing any difficulty in getting hire purchase finance? A. No.

Q. Do you know anything about it one way or the other? A. I would say he had no trouble at all because he more or less slept with the manager from I.A.C.; they were together all the time. I even went to lunch with them once.

40

Q. Yet he changed from I.A.C.? A. No, he was with the three companies together.



- Q. Griffiths Brothers was one he was with?  
 A. Yes.
- Q. And he was with the whole three of them at the same time? A. Yes.
- Q. On what basis was he doing business with I.A.C.? A. That I would not know.
- Q. How about Griffiths Brothers? A. I would not know.
- 10 Q. What do you know about his being in this close companionship with an executive of I.A.C.?  
 A. Well whenever I saw Mr. Webb this fellow from I.A.C. was with him.
- Q. Have you heard of floor display plans? A. Yes.
- Q. You know it is a common thing in the motor trade for a motor dealer to be financed under a floor display plan? A. Yes.
- 20 Q. And your understanding of a floor display plan is that the title to the cars is vested in the finance company? A. No I don't know. I don't know that side of how they give them the money for the display plan, as they call it; on what security or how they do it.
- Q. You know it is secured on the cars? A. Well 90% of the time.
- Q. Coming to the events of the 2nd November, you were at the office of Pacific from about 3.30 onwards? A. Yes.
- Q. Did you make any notes of your movements on that date? A. No.
- 30 Q. Do you keep any diary of people who have called on you for an interview? A. Well if there was anything in reference with what I had to do, I would, yes.
- Q. Have you any diary notes for what you did on the 2nd November? A. That I could not say.
- Q. What form do your diary notes take when you do make them? A. It would just be a name or a phone number.
- 40 Q. What do you put them in, in an ordinary diary?  
 A. Yes.
- Q. You have not made any check on that to ascertain what you did on the 2nd November or who you saw?  
 A. No.

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Q. You did see Mr. Patrick and Mr. Gulson on the 3rd November, the day after you bought these cars?  
A. I could not say for sure if it was that day. It was either that day or the next day. I think it was that day.

Q. And you gave them a list, or your accountant gave them a list, of the cars you bought on the night of the 2nd November?  
A. Not to my knowledge. I do not know. If they requested it we probably would have.

10

Q. When you saw them on the 3rd November, where did you see them?  
A. At Pacific. I would say it was at Pacific.

Q. In Mr. Guest's office?  
A. Yes, I would say in Mr. Guest's office.

Q. Who was present beside yourself and Mr. Patrick and Mr. Gulson?  
A. If I remember rightly, Mr. Gulson and Mr. Patrick. I was in the office and they inquired and I came out and saw them and we went back into the office.

20

Q. What was said between you and them?  
A. Mr. Gulson gave me a letter of a list of motor cars and he said that belonged to Hire Finance.

Q. Anything else?  
A. I said to him, "Well they can't belong to both of us, they belong to me, to Pacific Motor Auctions".

Q. You knew as soon as you looked at the list that they were cars that you had bought the night before?  
A. Not all of them, no, some.

HIS HONOR: Q. You knew that, did you?  
A. That day, yes.

30

MR. RATH: Q. How did you recognise the cars that you had bought and the ones that were on his list?  
A. I would not say I could identify every car but I could see cars that were there, on that list.

Q. What else was said after you said "They can't belong to both of us"?  
A. Mr. Gulson then said, "You have let us in". I said "Well I can't see that".

I said "He has still got other properties, I know he has just acquired a property at Penshurst and if you move quickly, if things are that bad, you will probably be able to get that and his house at West Pennant Hills".

40

From there I think he did move onto the properties - plus a speed boat, plus a Cadillac.

Q. Was anything else said? A. No, I think his parting words were, he would take this further and he will issue the necessary legal document.

Q. Was any reference made to a visit the day before by Mr. Patrick? A. No.

10 Q. Did you at any time have a conversation with Mr. Patrick about the purchase by your company of a number of motor vehicles before the 2nd November?

A. No, I can point that one out pretty clearly because I was upset about that at the time.

Q. Upset about what? A. About not being offered a go at these vehicles; they were offered to the opposition for them to have a look at but I was not offered the opportunity to look at them which I could not work out at the time because I was friendly with Mr. Gulson.

20 Q. What was offered to the opposition? A. To look at these vehicles.

HIS HONOR: Q. Which vehicles? A. I don't know what they were or anything but there was a list of vehicles. Mr. Betson told me there was a list of vehicles Hire Finance had asked him to value, or they may have them for him to value.

MR. RATH: Q. Mr. Betson told you there was a list of vehicles which Hire Finance had asked him to value, is that what you say? A. Yes.

30 Q. That is correct what I have said so far: Mr. Betson told you that Hire Finance had given him a list of vehicles to value? A. No, they asked him - I would not say they had given them to him.

Q. Did you have some talk with Mr. Betson?  
A. On what date?

Q. Anywhere around about this time? A. This was well after the 2nd November.

HIS HONOR: Q. You say the impression you got was these cars were in the control of Hire Finance, is that right? A. Yes.

40 Q. And they offered them to some other auction company instead of to you? A. Yes.

Q. This was after the 2nd November? A. Yes. It was a common thing for finance companies to ask us to value their repossessions.

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Q. Did you feel concerned because they did not ask you to value or because they did not give you the opportunity to buy? I am not clear what you are saying? A. Well you have the opportunity to buy, value, and then it is more or less the highest bidder.

Q. But generally, and apart from that particular incident, were you still carrying on trade-in business dealings with the plaintiff, Hire Finance, after the 2nd November, 1960? A. Yes, we were still on a friendly basis. 10

Q. Notwithstanding this present argument? A. Yes.

MR. RATH: Q. You went out with Mr. Skinner and Mr. Guest to the Motordom yard. What time did you arrive at the first yard, which was Parramatta I think? A. Approximately 6.30 to 7.

Q. What you did there was to value some of the stock? A. Yes.

Q. And that is all you did there at that time? A. At that time, yes. 20

Q. Then you went to the Guildford yard and you valued some stock there? A. Yes.

Q. That is all you did there at that time? A. Yes.

Q. Then you went to the Fairfield yard and valued some stock? A. Yes.

Q. That is all you did? A. Yes.

Q. And then you went back to the Parramatta yard is that right? A. Yes.

Q. Was Mr. Webb with you when you went to the Parramatta yard, the Guildford yard and the Fairfield yard the first time? A. Yes. 30

Q. And did he come back with you from the Fairfield yard to the Parramatta yard? A. Yes.

Q. Has the Parramatta yard got a fence around it? A. A chain fence, yes.

Q. Has it got a gate? A. A chain, yes.

Q. You arrived there with Mr. Webb? A. Yes.

Q. When you arrived at the Parramatta yard was there anybody else in there? A. No.

Q. Not a soul? A. I would say no. 40

Q. It was closed? A. Yes.

Q. With a lock? A. Yes.

Q. I am talking about the first time you went there, on the 2nd November? A. Yes.

Q. You told me then you went to the Guildford yard? A. Yes.

Q. Has that got a fence? A. Yes.

Q. What sort of a fence? A. A wire fence of some sort.

Q. With a gate and a lock? A. Yes.

10 Q. Was anybody there when Mr. Webb and yourselves arrived? A. There was one person there. I don't know what he was or who he was.

Q. And how did you get into the yard? A. We walked into it.

Q. Was the gate locked? A. No.

Q. What was this one person doing there?

A. He was in the office there. What he was doing I don't know. I never even went into the office.

20 Q. What time of the day was it you arrived at this Guildford yard? A. That would be around about 8.30 I suppose.

Q. And you went from there to the Fairfield yard? A. Yes.

Q. What time did you arrive at the Fairfield yard? A. 20 minutes from then.

Q. I take it you arrived at the Guildford yard about 9 o'clock -

HIS HONOR: About 8.30.

30 MR. RATH: Q. You valued what vehicles you wanted to do, went to the Fairfield yard and it took you about 20 minutes to do your vehicle valuations of Guildford and get to Fairfield, is that right?  
A. Not to do the valuations.

Q. You got to the Guildford yard you say about 8.30? A. Yes, when we finished Guildford it would be about 8.30?.

40 Q. What time did you arrive at the Guildford yard? A. I would say it would be in the vicinity of 9 o'clock.

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HIS HONOR: There is a misunderstanding there, surely.

MR. RATH: Q. You told me you, Mr. Skinner and Mr. Guest and Mr. Webb went from the Parramatta yard to the Guildford yard, that is right is it not? A. Yes.

Q. And when you arrived at the Guildford yard there was one person there? A. Yes.

Q. What time did you first arrive at the Guildford yard? A. It would be approximately between 8 and 8.30 I would say. 10

Q. How long did you spend there? A. 20 minutes I would say, 15 or 20.

Q. And how long did it take you to get from there to Fairfield? A. About another 15 minutes I think.

Q. So it was not less than about 9 o'clock when you arrived at Fairfield, is that right? A. Yes.

Q. And Mr. Webb went out from Guildford to Fairfield with you? A. Yes.

Q. Was anybody at the Fairfield yard when your party arrived there? A. I would not like to say on that. 20

Q. Has it got a fence and a gate? A. No, it was a fairly new yard; I cannot remember one being there. I do not think it had been open very long.

Q. Any lights on when you arrived? A. I would not like to say that.

Q. In each of these three yards you valued certain selective vehicles, is that right? A. Yes-valued vehicles, I would not say they were selected. 30

Q. Did you value all of the vehicles in each of the yards? A. No.

Q. You valued only some of the vehicles in each yard? A. Yes.

Q. The best of them in each case? A. No I would not say that. We were seeing if there were any vehicles he purchased off us. We had to look through each yard to find that out.

Q. The first thing you were trying to get, to look for, was vehicles he had bought from you? A. Yes. 40

(Luncheon adjournment)

AT 2 P.M.

MR. RATH: Q. On the night of the 2nd November did you see Mr. Betson? A. Yes.

Q. Where did you see him? A. At North Parramatta.

Q. When, on the time of your first visit or the time you went back? A. When we went back.

Q. What time did you arrive back at North Parramatta? A. It would be approximately ten o'clock; somewhere 9.30 to 10.

Q. And you saw him there then? A. Yes.

10 Q. Was there anybody else there then? A. Yes.

Q. How many other people were there besides Mr. Webb, your party and Mr. Betson? A. Approximately 7, 6.

Q. Can you give us the names of some of them?  
A. Yes, there was the two Mr. Curtis', Mr. Dowse, Mr. Marsh. The others were just drivers, I think.

Q. Do you know what work Mr. Curtis did at the time, what was his business? A. He was a proprietor of the Motor Market.

20 Q. You say there were two of them there? A. Yes.

Q. Father and son? A. Two brothers.

Q. What was Mr. Dowse? A. I don't know his position.

Q. Do you know what firm he was with? A. Motor Market.

Q. How about Mr. Marsh, who was he with?  
A. Motor Market.

30 Q. So Motor Markets were represented by the Messrs. Curtis and Mr. Betson, Mr. Dowse and Mr. Marsh, is that right? A. Yes.

Q. When did you leave North Parramatta finally?  
A. Approximately 11 I suppose, something like that.

Q. Were the cars that were finally purchased by you obtained from different ones of these three yards or all from the one yard? A. From the three.

Q. Were you there at any of the yards when vehicles purchased by you were driven away? A. Yes.

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Q. Were you at the Parramatta yard when vehicles purchased by you were driven away? A. I would have been in the office there then.

Q. You said they were taken away by employees of yours? A. Yes.

Q. How many drivers or employees were employed that night on driving away the vehicles purchased by you from Motordom? A. Approximately 8 to 10 I suppose.

HIS HONOR: Q. When did they arrive on the scene? A. I would say they were there about 7 to 7.30. 10

MR. RATH: Q. Were they at the Parramatta yard at the time when this cheque was drawn and paid across and endorsed back? A. No they would not have been.

Q. They were not there then. Are they men you employed when you had to repossess any vehicle? A. No, they are drivers, they are employed as drivers.

Q. Were you at the Guildford yard when the vehicles were driven away? A. No, they moved them into a street there I think. 20

Q. Were you there when they did that? A. Yes.

Q. Is this correct, on that night you visited the Guildford yard twice? A. No, I don't think so. I was there once.

Q. So the first time you visited the Guildford yard you did more than simply value some vehicles there? A. The first time we went there? Yes. The declarations were drawn, made out. 30

Q. At Guildford? A. Yes.

Q. In respect of cars at Guildford? A. Yes.

Q. Was anything done about the cars themselves then, on this time these declarations were drawn? Did you move them out into the street then? A. Yes.

HIS HONOR: Q. You did not then have drivers with you, I take it, you had yourself - and Mr. Guest was it? A. Yes.

Q. Did you have other people there employed as drivers at that time or did you send them along later? A. They were moving cars from Parramatta at that stage, I would say. 40



MR. RATH: Q. Before you went to the Guildford yard your drivers had already arrived at Parramatta? A. Yes.

Q. But this cheque did not pass hands until you returned to the Parramatta yard, did it? A. That is right.

Q. So the drivers were moving vehicles out before any cheque passed hands, from Parramatta? A. Yes, but - yes, that's right.

10 Q. Were you at Fairfield when the cars were driven out of the yard? A. Yes.

Q. Did you visit Fairfield once or twice that night? A. Twice.

Q. So the first time you went to Fairfield you valued cars, or had them valued? A. Yes.

Q. Were any statutory declarations drawn on the time of that first visit? A. Yes.

Q. In respect of these cars that you valued? A. Yes.

20 Q. At the time of this first visit to Fairfield was anything done about the cars themselves, anything physically done about them? A. No, I would say not.

Q. And on the second time you went to Fairfield you were there when your employee-drivers were there? A. Yes.

Q. And they drove these cars away? A. Yes.

Q. By that time the cheque had already passed hands? A. Yes.

30 Q. You told my friend that Mr. Guest valued all the vehicles you were going to purchase? A. Yes.

Q. Did the figures he arrived at as the value of the cars you were going to take total the amount of Motordom's debt to you, to your company? A. That I could not say offhand.

Q. Mr. Webb said that was not a real fair go? A. Yes.

Q. And you agreed to pay him the price for which he had bought them? A. Yes.

40 Q. Did that apply to ones he had bought from you and also to ones he had not bought from you? A. Yes, he had traded them.

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Q. So the final agreement with him was that you would pay him the price at which he had bought them? A. Yes.

HIS HONOR: Q. You are unable to say what was the total of the valuation figures when Guest had first made them out before Webb complained that it was not a fair go? Do you know what the total was at that stage? A. No, I do not offhand. It must have been under -

Q. It must have been less? A. Oh yes.

10

Q. There is no bringing in of any additional vehicle or anything of that sort - I do not know whether you follow me. Guest had made a list of a number of cars which you were proposing to buy from Motordom? A. Yes.

Q. Then there was the discussion about whether the price was all right and your arrangement to give him what he had paid; that related to the same cars with no additional cars coming into the discussions, is that so? A. Yes. There was one car, it was a repossession or something and we had to take that out at one stage, I think.

20

Q. You mean you had to take one car off your list for some special reason affecting that car, is that what you mean? A. Yes.

Q. And when did you do that, at what stage of the matter? A. That was when we got back to North Parramatta.

MR. RATH: Q. Before the cheque passed hands? A. Yes.

30

Q. I want to ask you about one of the cars you purchased, Holden BKR-894. You can assume that that car was a car which you had, at a prior point of time, before the 2nd November, sold to Motordom and you sold it to Motordom for £540.

On the 2nd November you bought it back for £550, why? A. On different occasions there were trades with vehicles. I don't know if he bought that car under the hammer or whether it was a car he traded with Mr. Guest.

40

He may have changed over a car with Mr. Guest and he wrote that in at that price probably.

Q. Although you gave him more than he paid you for it you sold that car for £435 -

HIS HONOR: Probably the witness does not remember the particular vehicles and if he is trying to remember a particular vehicle it might be confusing. According to the list this particular one is a utility, it is described as a 1957 Holden utility.

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MR. RATH: Q. Do you remember anything special about that car? A. No I cannot.

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10

Q. Can you explain why it is that you gave Webb, or Motordom, £10 more than the price that he had bought it from you for? A. The only explanation is the one I said, if he did trade a vehicle on it, he may have written it in at that price.

                      
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HIS HONOR: Q. At what price? A. The higher figure. They trade a vehicle but it is just a swap over.

                      
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MR. RATH: Q. This is a vehicle he had bought from you? A. Yes, but he may have bought it on a trade basis. We may have changed him over for a certain figure.

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20

He may have traded in an old motor car as something on it, with a difference of £300 or something.

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Q. Would this be a fair enough way, you were trying to arrange these prices of these vehicles in such a way that the total sum would come to the amount of your debt? A. No I would not say that.

30

Q. You told my learned friend, your counsel, Mr. Street, that when you went around to value the cars the discriminating factor was to price cars to make up the amount of the bad cheque, you said that to my friend? A. Yes.

Q. That is when you were going around putting a value on the cars? A. Yes.

Q. But then you changed that and agreed with Mr. Webb to pay the price that he had paid? A. Yes.

Q. Well did not you find on that basis, paying Mr. Webb the price he had paid, you could not make a bill up that way coming to £16,510? A. Yes. I actually was not doing the accounting side.

40

Q. Would you agree with me if you are buying a number of motor vehicles at the price at which they had been previously bought it would be an extra-ordinary thing if you could arrive at exactly a pre-determined amount of £16,510? A. Not in the motor trade.

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I would say there were some old cars there which probably owed Mr. Webb nothing -

Q. You were not concerned with any old cars on this night though, were you? A. Not particularly.

Q. You would not have taken any old cars on this night, would you? A. I think we did get some pretty wild units.

Q. You think what? A. That we did. I just can't remember offhand. They were pushing a few about.

Q. I see you took one for £235 -

10

HIS HONOR: It depends on what you call an old car, I suppose.

WITNESS: (To Mr. Rath). But not in your list, in the full 29 motor cars.

MR. RATH: Q. In the past you had bought cars from him with prices as low as £10 had you not?  
A. Yes.

Q. That would be a heap, would it not? You would have a hard job to drive that away, would you not? A. You would probably be doing him a favour to get it off his premises.

20

Q. You did not want to get any heaps on this night, did you? A. As long as they were value, that is all we were interested in.

Q. You said to Mr. Street some vehicles were over-priced but the big percentages were around the value? A. Yes, that's right.

Q. It was part of the arrangement with Mr. Webb that you would hold the vehicles for a week and if he satisfied you you would give them back to him? A. Yes.

30

Q. And that was his request, that you should hold them for a week? A. He said he would have it fixed the next day.

Q. But it was his request you should hold the vehicles? A. No, it was my suggestion.

Q. And he agreed to that? A. Yes.

Q. And he asked you what the price would be?  
A. Yes.

Q. And you said "It is the price at which we bought them"? A. Yes.

40

Q. So to get his vehicles back he would have had to pay you £16,510? A. Correct.

Q. Did you gain the impression that if he had the money he would want to get his vehicles back?

A. Yes.

Q. So he thought that his vehicles were a better bargain than the amount for which he had just sold them to you? A. I do not follow you.

Q. He wanted to get his vehicles back? A. Yes.

10 Q. You made it plain that he would have to find £16,510 to get them back? A. Yes.

Q. And he still said he would try and get them back? A. Yes.

Q. At least he thought they were worth while to get back at that price? A. I would say it was more on a good faith attitude.

Q. On his part? A. Yes.

Q. Good faith to whom? A. To us, and to keep faith with himself.

20 Q. How about good faith with those with whom the vehicles were on floor plan? A. I don't know anything about that.

Q. What is a floor plan? A. It is the form of finance that a dealer gets from a finance company.

Q. On this night when the possible going back to Webb of these vehicles was discussed, did he say he would want them back as a sign of good faith?

A. No, he never said that, no.

30 Q. What made you think he would want them back as a sign of good faith? A. On my suggestion to hold them for him for a week.

Q. Where did good faith come into it? A. I said that was only a suggestion that it was good faith.

Q. Whose? A. Well we were doing a big volume of business between one another.

Q. You say it was good faith to you? A. Yes.

40 Q. That he would pay you out, you would give him back the cars and that would show his good faith to you. So you suggested to him, to give him a chance to show his good faith to you, you would hold the cars for a week to see if he could pay you out the debt? A. Yes.

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HIS HONOR: Q. Did he raise any question about these dishonoured cheques that were still in existence, whether they ought to be handed back to him or torn up or anything of that sort? A. No, he said they would be definitely met the next day, on the 3rd.

Q. I know he said that, but as I understand you you were worried about the debt which was represented at any rate in part by the cheques and you were wanting to get some satisfaction about it and I think you said your managing director had asked you to try and get some satisfaction about it. 10

It just occurs to me either you or he might have raised the question, when you were making this deal and handing him your cheque which he was then handing back to you and so on, that the outstanding cheques had in effect been met by that deal, do you follow me? A. Yes.

Q. And therefore they ought to be handed over or torn up or something so perhaps some third party might not get rights against him? A. There was no suggestion. Naturally I thought they would be going straight back into the bank the next day. 20

MR. RATH: Q. With regard to these cheques, did Mr. Webb say to you that night he had now stopped payment on the dishonoured cheques? A. No.

Q. Was it arranged with him he should stop payment on them? A. No.

Q. Are you aware now he did? A. No.

Q. Did you go out to the Motordom yards on the night of the 2nd with a cheque book or just with this one cheque? A. It would be just with that one cheque. We may have had other cheques with us but they would not have been in a cheque book form. 30

Q. The cheque I gather was filled in at the North Parramatta yard? A. Yes.

Q. You produced it out of your pocket at the North Parramatta yard? A. The accountant would have, I would say.

Q. The accountant; who is that? A. Mr. Skinner.

Q. Was it just a blank cheque form at that time? A. Yes I would say so. 40

Q. (Witness approached by leave and show Exhibit "5"). Did you sign the cheque with your own pen? A. I would say Yes.

Q. In whose handwriting is "Motordom Pty.Limited" filled in? A. The accountant's, Mr. Skinner.

Q. Is that different from the handwriting in the next line? A. No, I would say they would be the same.

Q. You think it is the same pen? A. That one there? (Indicating).

Q. Yes. A. Yes.

10 Q. Was the name of the payee and the date and the amount written in before you signed it? A. It would have been I would say.

Q. Was this part here on the back "Motordom Pty. Limited. R. Webb" filled in and signed before you signed it? A. No.

Q. Are you sure? A. Positive.

Q. Was the part "please pay to the order of Pacific Motor Auctions Pty. Ltd. R. Webb" filled in before you signed it, the part at the top?

20 A. This part but not that part; the top part but not the signature.

MR. RATH: The top part "Please pay to the order of Pacific Motor Auctions Pty. Limited" could have but not the signature "R.Webb" underneath it.

Q. You observe that "Motordom Pty. Limited" is written in ink in the endorsement? A. I would say they were the same pen.

Q. But it is in ink? A. In Biro.

Q. Where this cheque was drawn up, at North Parramatta? A. Yes.

30 Q. Is that where Webb's office was at the time?  
A. Yes.

Q. Were you in his office when this was being done?  
A. Yes, part of the office set-up. I don't know if it was this particular office, it was in the office.

Q. Did you know there was a Motordom rubber stamp?  
A. I would not know.

Q. Were those words "Motordom Pty. Limited" written in by Mr. Webb? A. No, I would say it was by the accountant.

40 Q. Do you think those words were written in before you signed the cheque? A. I would say they would be.

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Q. So this cheque was all prepared for re-endorsement before you handed it across to Mr. Webb - for endorsement? A. For him to endorse back to us, yes.

Q. Did it ever physically pass into his hands?

A. Yes, he had to sign it.

Q. Did anybody hold it while he signed it? A. No.

Q. How many were in the room with him when he signed this cheque? A. There would be three I suppose, the accountant, Mr. Guest and myself.

10

Q. Had Mr. Skinner signed the cheque before Motordom, Mr. Webb, endorsed it? A. I would say so, yes.

Q. You would agree, having looked at this cheque, Mr. Skinner's signature upon the cheque is done with a different pen from the part filled in by him as to the amount? A. Yes.

Q. Do you know why it was he used a different pen to fill in the amount and to sign? A. No, it could have been done back at the office.

Q. What might have been done back at the office?

A. His signature may have been put on the blank cheque at the office. But there is one thing, I will never sign a cheque unless there is a signature.

20

Q. Do you mean Mr. Skinner may have signed this cheque after you left the Motordom's yards and returned to your own place of business? A. No, before he took the cheque from Pacific.

Q. But you would not have signed the cheque until the amounts had been filled in and payee's name put in? A. No.

30

MR. RATH: I call for the bank statements of the defendant company showing the passage of this cheque through their accounts.

MR. STREET: I think I can produce them. I am prepared to make any admission my friend wants on this to keep the record unencumbered.

MR. RATH: Q. While my friend is looking for that, your company, the defendant company, at all events had a No.1 and a No.2 account? A. Yes.

Q. This cheque which was drawn on the No.2 account was also paid through the No.2 account? A. I could not answer that question.

40



MR. STREET: I am not in a position to produce all the documents in respect of my friend's call. There is no dispute about this and I am prepared to admit that the cheque, Exhibit "5", was deposited to the bank account of the defendant company on or before the 4th November, 1960, and that it appears in the bank account as both a debit entry and a credit entry.

MR. RATH: In the No.2 account?

10 MR. STREET: Yes, in the No.2 account.

HIS HONOR: It is said to be drawn on William Street and to have gone through a Strathfield bank.

MR. STREET: It was debited against the William Street account. I am informed, as a matter of convenience, we make our deposits in Strathfield to save having to attend the more congested area in William Street.

HIS HONOR: Because it is closer to the business?

MR. STREET: Yes.

20 MR. RATH: Q. It appears from your ledger which sets out the purchase of cars by your company, that the vehicles you purchased from Motordom are on Folio 489. It shows in the left hand side the date of the receipt of the money.

Do you know the way your books are made up in that regard? A. I would say that would be made up the next day.

30 Q. It shows the date as, I think I am correct in saying, 2nd November, and "2" is crossed out to "3" or it might be vice versa. It is vice versa.

The date of the cash payment is shown as "3.11.60", and the "3" has been crossed out and a "2" put above it. Do you know anything about that?  
A. No.

Q. You didn't pay for these cars on 3rd November, did you? A. No.

Q. It is not true that you seized these cars on the night of 2nd November and paid for them on the 3rd, is it? A. No.

40 Q. Do you know what caused the books to be made up in the form in which they now appear? A. No.

Q. Who would know? A. The accountant.

Q. Who is that? A. Mr. Skinner.

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Q. As you agreed to hold these cars for a week, you would not sell them before 9th November. Is that right? A. I would say, approximately.

Q. When did Mr. Holt announce the credit restrictions? A. Mid-November.

Q. So you sold most of these cars, did not you, at just about the time that Mr. Holt announced his credit restrictions? A. Yes. I would not say most-

Q. And the announcement of those credit restrictions had a most depressing effect on the secondhand car trade? A. Yes. 10

Q. And forthwith? A. Yes.

Q. So the prices you sold those cars for, after you took them from Motordom, does not represent what they were worth on 2nd November at all, does it? A. It depends on what dates we did sell them.

If we sold them on the 9th and around those dates, the first effect was not a big slump. There was a definite decrease. It was not - a gradual decline. 20

HIS HONOR: I think, Mr. Street, some list you promised will show when these were sold?

MR. STREET: No. The documents marked for identification will have the dates.

HIS HONOR: I suppose someone can reach agreement eventually, as to what date it was when Mr. Holt made the speech?

MR. STREET: I think it was 17th November. Your Honor will have the October as well as the November yellow book, and it is not quite as marked as one might expect. 30

HIS HONOR: May be the increased sales tax would have a counter balancing effect. I do not know.

MR. STREET: The yellow book figures will, I think, perhaps assist on that.

MR. RATH: Q. (Approaches witness). The Plymouth, BKD-320, was sold on 24th November, 1960? A. Yes.

Q. Jaguar, BYK-628 was sold 9th November, 1960? A. Yes.

Q. The Holden, BAF-754, was sold 9th November, 1960? A. Yes. 40

Q. Holden, AOL-688, was sold 7th December, 1960? A. Yes.

Q. The Hillman, BWL-679 was sold 4th November, 1960. That is a bit of a breach of the agreement, is not it? A. Yes.

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HIS HONOR: On this list it is BNJ-. I know errors have occurred, but that is a remarkable error. It might be some other car.

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MR. RATH: Q. It is BNJ, the car being referred to. We may take it, may we not, it was the car BNJ?

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A. It looks like it.

10 Q. Vauxhall, BPZ-516, was sold 5th November, 1960? A. Yes.

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Q. And that was another breach of the agreement with Webb, was not it? A. Yes.

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Q. The Zephyr, BRW-333, was sold 23rd November, 1960? A. Yes.

Cross-examination continued

Q. The Holden utility, BKR-894, was sold 14th December, 1960? A. Yes.

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20 Q. You think, do not you, that is the actual date that Mr. Holt did announce the credit restrictions, 14th December, 1960? A. I am sorry. I am a month out. Simca, BLJ-119. you sold 4th November, 1960? A. Yes.

Q. Another breach, was not it? A. Yes.

Q. The Holden, ARH-677, was sold the 14th November, 1960? A. Yes.

Q. Do you think that is the date on which Mr. Holt announced his credit restrictions? A. I do not know the exact date.

MR. STREET: I think it is the 17th.

30 MR. RATH: Q. Morris Major - A. BMX-673.

Q. That was sold 1st December? A. Yes.

Q. The Wolseley, AMM-282, was sold 5th November? A. Yes.

Q. Another breach? A. Yes.

Q. The Ford sedan, AXR-585 - does that stamp up there help to indicate when that may have been sold? A. It might be a test date.

Q. I have nothing on this form to indicate when it was sold? A. No.

40 Q. The Singer, CDC-820, sold 23rd November, 1960? A. Yes.

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Q. And Anglia, ASV-155, nothing to indicate the date of sale? A. No.

Q. The Ford sedan, BAA-691 - again there is nothing on your sales sheets to indicate when it was sold? A. No.

Q. You seem to have honoured this seven days holding agreement as much in the breach as anything else, don't you? A. Yes.

Q. Did you ever make such an agreement with him? A. Yes.

10

HIS HONOR: Q. Did you get in touch with him again to tell him why you were not keeping it? A. I cannot remember, your Honor.

Q. I can see reasons - A. There would have been reasons.

Q. I can see reasons why you would not want to keep it, but I was wondering whether you let him know?

A. There would have been reasons, but I could not say.

MR. RATH: Q. You do not know what the reasons were? A. No.

20

HIS HONOR: Q. Don't you? A. Well, I presume. I do not know offhand, but I presume what the reasons were.

Q. What is your guess about what the reason was?

A. There were so many people claiming the ownership of them.

MR. RATH: You understood, on the night of the 2nd, when you saw this large number of people at North Parramatta, from Motor Market Auctions, that they were down there on the same sort of business as yourself? A. I presumed so, yes.

30

MR. STREET: There is a date on these forms which I think will supply the -

MR. RATH: Do you mean a stamped date?

MR. STREET: Yes.

MR. RATH: I showed him that. The witness said he thinks that is the date of the test.

RE-EXAMINATION

Re-examination

MR. STREET: Q. There is a date on the back of these sales sheets and at the top of each sheet there is a rubber stamped date? A. Yes.

40

- Q. The rubber stamped date seems to be the date of sale? A. Yes.
- Q. It does not always correspond with the date of the test? A. Yes.
- Q. Having pointed that out to you, can you say from these sheets when it was that these - take ASV-155, when it was that it was sold? A. 14th November.
- Q. Would you look at BAA-691? A. 12th November.
- 10 Q. And other one was AYR-585. A. AXR-585, 7th November.
- Q. At the close of business on 3rd November, did you see any prospect of Webb getting out of his financial difficulty? A. No.
- Q. None? A. No.
- Q. My friend asked you about the extent to which the floor plan or display plan operated in motor dealing circles. How long have you been in the secondhand car field? A. 20 years.
- 20 Q. All the time in second-hand car dealing establishments? A. Yes.
- Q. Has any establishment in which you have worked ever had a floor plan or display plan? A. No.
- Q. How many have you been in over those 20 years?  
A. In our own companies and one other motor company.
- HIS HONOR: Q. That is two? A. Yes.
- Q. One at Pacific Motors. What was the other?  
A. Hastings Deering.
- 30 MR. STREET: Q. Pacific would, I suppose, include Debien's? A. Yes, plus the Melbourne Auctions.
- HIS HONOR: Q. Would you describe any of those as second-hand car dealers, in the ordinary sense of that term? A. Yes.
- Q. You do not draw a distinction between the auction places and the man who has a yard to which people come along? A. No. One is wholesale and one is retail.
- MR. STREET: Q. Are there many auction places in Sydney? A. Yes, five all told.
- HIS HONOR: Q. How many dealers all told, some hundreds? A. Yes. There would be 150 on Parramatta Road, I would say.

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\_\_\_\_\_  
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Crealey

Re-  
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Q. Perhaps some thousands, all told, in the whole Metropolitan area? A. Yes.

MR. STREET: Q. I think the number of auction houses is less, in Sydney, than it was some years ago? A. Yes.

Q. They have come under some more unified ownership? A. Very similar.

Q. Some questions were asked of you about Mr. Betson, and you said you felt some resentment that Betson had been invited to value some vehicles? A. Yes. 10

Q. When was it that you learned, the point of time at which your knowledge arose, that Betson had been invited to make some valuations, or alerted to make some valuations? A. Sometime in 1961.

Q. At what point of time was it that, as you understood it, the intimation had been made to Betson that he might be asked to value some vehicles?

A. In -

Q. Do you understand the distinction between that question and the last one I asked you? A. Yes. 20

Q. You said you heard of this in 1961. According to the information you got in 1961, when was it that you understood the invitation had been made to Betson? A. It was prior to 2nd November.

Q. Prior to 2nd November? A. Yes.

Q. Correct me if I am wrong. Is this a summary? In 1961 you learned, for the first time, that prior to 2nd November, Betson had been alerted to make some valuations? A. Yes.

Q. And it was in 1961 you felt this resentment that pre-2nd November, Hire Finance had not given you the green light also? A. Yes. 30

Q. When you went out with Webb on the night of 2nd November, how many pounds worth of vehicles were you going to buy from him? A. £16,000 odd - 510.

Q. That was the value of vehicles you set out to buy on that night? A. Yes.

Q. Was that discussed with Webb before you left Pacific's premises? A. Yes.

Q. When you said to his Honor something about Webb having a list of vehicles, did Guest actually have some written list at any stage that night, that you saw? A. He probably took our debtors' list with him. 40

Q. But did you ever see Guest with a list of vehicles that he had prepared from the vehicles in Webb's yard? A. Before we went with Webb?

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Q. No, while you were going around with Webb, while you were discussing price with Webb? A. He was just writing them down on slips of paper.

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10 Q. How did it come about that after you had gone on to this new price basis of allowing Webb what he had paid for them, it just rounded out exactly on the £16,510? Was that accidental or deliberate on your part? A. I would say deliberate. (Objected to).

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HIS HONOR: Q. Do you mean that some prices were adjusted, some prices of the individual cars were adjusted so that it would arrive at that total?

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A. I would say when we got up towards the end of the value of the cars, yes. I would say anything from when, it could be £14,000 on, or £15,000 on.

Re-examination  
continued

20 Q. You told us earlier that Webb rang you up saying he was in the city and that he had arranged or fixed up his financial position, and that his cheques would be met the following day. Do you remember that? A. Yes.

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Q. He also said he would come out and see you, and he did later come out and see you? A. Yes.

Q. At the Pacific office? A. Yes.

30 Q. Either on the telephone or after he got out there, did he tell you or did you ask him, with whom he had arranged his financial position in the city? A. No.

Q. You were not curious? A. No. He blamed most of it on to his bank manager being away on holidays.

Q. He blamed it on his bank manager? A. Yes.

Q. You say that he told you that he had arranged his financial position. Did he use those precise words - A. I could not say anything definite.

40 Q. Or did he convey to you that he had got some further arrangements with some financing institution different from those which he had before?

A. His conversation on the phone first was that he had had paper work held up, that it would be through.

One of his remarks was, "With these hire purchase agreements, if you do not dot the "I's", they won't put them through", and he said, "I have been in to straighten them out".

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Q. He did not say where he had been doing this straightening out? A. Not specifically, no.

MR. RATH: Q. Did he tell you that Hire Finance had just increased his financial limit by another £5000? A. No. As a matter of fact, the week before that he asked me to extend his credit and I would not.

Q. And he did not tell you that he just had his credit extended by Hire Finance? A. No.

Q. Did Mr. Gulson, around about 27th October, within a day or so about there, tell you that they have extended the credit to £15,000? A. No. 10

Q. Were you not concerned to know around this time, what credit Motordom was getting? A. No.

HIS HONOR: Q. By that time, is it not right that one cheque for a substantial amount had bounced, to use the expression that was used here earlier? A. That is right, yes.

MR. RATH: Q. You knew that he had a credit arrangement with Hire Finance? A. No. 20

Q. You knew he had dealings with them? A. Yes.

Q. And on 2nd November you were very concerned as to whether he could raise the money to pay you, were you not? A. Yes.

Q. You got in touch with his bank? A. I never, personally, no.

Q. But your firm did? A. My firm did, yes.

Q. Did you get in touch with any of the hire purchase or finance companies with which Webb dealt? A. No. 30

Q. Did anybody else in your firm do that? A. No.

Q. Would not have been a natural thing to do? A.No.

Q. Would you not have been concerned to know what his credit limit was with any firms? A. No.

Q. When you got in touch with the bank, who did you speak to? A. I never -

Q. Who got in touch with the bank? A. Mr. Skinner.

Q. And that was to find out if there was any hope of any cheques coming into Webb's account? A. To see if our cheques would be met. They will not tell you if cheques are coming in. 40



Q. Were you then told that they hoped that they would get in cheques from Hire Finance? A. I never had the conversation.

Q. You just do not know? A. But I would say no.

MR. STREET: Q. I want to ask you specifically whether, on or about 27th October, you recollect any telephone conversation with Mr. Gulson, in which you asked whether Webb had a floor plan?

A. No.

10 Q. And that Mr. Gulson said to you, "Yes", and you then said, "Is it being increased?" And asked by how much, and Mr. Gulson said it was being increased by £5000 on security of a property at Penshurst? A. No.

Q. Was there anything like that said at any conversation with Mr. Gulson on or about 27th October? A. No. I told Mr. Gulson about the house on the 3rd. I thought that was the first time he knew of it.

20 HIS HONOR: Q. You told him about the house at Penshurst? A. Yes.

MR. STREET: Q. Did you say to him, at a telephone conversation on the 27th, that you understood the property at Penshurst was valued far in excess of £5000? A. No. I looked at the property myself.

Q. Was it valued far in excess of £5000? A. I would say no.

HIS HONOR: Q. But you say you told Gulson on the 3rd, about the property at Penshurst? A. Yes.

30 Q. Did he say, "I know all about that", or "I knew something about that"? A. That I cannot remember.

Q. Was there any phone conversation with Gulson at all, in the latter part of October, discussing the floor plan in any context? A. No.

(Witness retired)

(Mr. Street sought leave to re-open cross-examination of Mr. Gulson with the object of obtaining the consent of Mr. Gulson to the floor planning of three vehicles with another finance company; objected to).

40

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Cecil Milton Crealey

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Plaintiff's  
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Norman John  
Gulson  
Recalled

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NORMAN JOHN GULSON  
Recalled on former oath

(Leave granted Mr.Rath to tender advice to  
Mr. Gulson before the latter entered the  
witness box).

(Ronald Frederick Brock, an officer of  
Griffiths Brothers Credits Limited, pro-  
duced documents under subpoena duces tecum,  
together with the subpoena. Leave granted  
Mr. Street to inspect documents).

10

MR. STREET: Q. I would like you to look at  
Exhibit "B", that being the document which relates to  
vehicle No.2 in these proceedings, the Jaguar BYK-  
628. (Handed to witness). That vehicle apparently  
went on floor plan sometime in - what is the date?  
A. 28th July, 1960.

Q. Would you look at this document? (Handed to  
witness). read it through first, before I ask you  
anything? A. Yes.

Q. Would you agree with me that that document  
appears to be signed by Mr. Webb? A. It has the  
name "Webb" on it.

20

Q. It appears to be signed by Webb? A. I said  
there is a name "Webb" on it. I have not got Webb's  
signature to compare, in front of me.

Q. It appears to relate to the Jaguar car, does  
not it? (Objected to; withdrawn).

Q. Having seen that document, will you agree with  
me that the Jaguar car was display planned to  
Griffiths Brothers Credits Pty. Ltd.? A. I could  
not say.

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Q. You are not prepared to admit that? A. I  
could not say.

Q. May I take it what you mean by "I could not  
say" is that you do not agree with my suggestion  
that the Jaguar was floor planned or display  
planned to Griffiths Brothers Credits Pty. Ltd.?  
A. I would not know.

Q. Do you have any doubt as to the authenticity  
of that document which you have in front of you?  
A. I would not know. (Objected to).

40

(Three documents produced under subpoena,  
from Griffiths Brothers Credits Pty. Ltd.,  
together with subpoena, tendered; objected to).

MR. STREET: I ask the court, pursuant to the Evidence Act, to compare the signatures on the three documents.

WITNESS: While you are examining those, is it in order for me to have a word with my counsel?

HIS HONOR: Yes. I will allow you to do that. (Witness confers with counsel).

10 On the handwriting point, I am prepared to hold that there is sufficient similarity to say that, prima facie, these documents were signed by the Webb who signed documents already in evidence, such as Exhibit "Z".

MR. STREET: Whilst my friend is looking at them, perhaps I should say that I will not press for further admission on Mr. Gulson, in view of his reluctance to make them, but will call the gentleman who produced the documents.

20 (Objection to tender of three documents renewed; tender of two documents withdrawn; objection to third document renewed).

No.4(j) (Witness retired)

RONALD FREDERICK BROCK  
Sworn, examined as under:

MR. STREET: Q. You have already given your full name? A. Yes.

Q. Your residential address? A. 2A Strickland Street, Rose Bay.

30 Q. You have already produced some documents in response to a subpoena addressed to Griffiths Brothers Credit Pty. Ltd.? A. Yes.

Q. In your capacity as credit manager? A. Yes.

Q. Do you have some association with the display plan arrangements made by your company with car dealers? A. No. I have an association, as I work in the car department, but I only handle mainly the repossessions, credit follow-up and so forth.

At the particular time of this document we had a manager, McCormack, and an outside representative, Mr. Grounds, dealing with the dealer.

40 Q. Would you look at the document I show you? Can you identify for me the signature appearing opposite the printed word "approved"? A. Yes.

Q. Whose signature is that? A. Mr. Grounds' the representative.

Q. Do not worry about the signature opposite the word "dealer". Do you recognise any other of the

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Defendant's Evidence

Ronald Frederick Brock

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erick Brock

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handwriting on that document? A. Yes, our office manager; and the initials, I would say, are very much like those of Mr. McCormach, our manager at that particular time.

Q. Whose province is it, in your company, to approve the placing of vehicles on display plan? (Objected to).

MR. RATH: (On voir dire). Have you some written form of display plan agreement? A. We have.

Q. The document that you have there is not it? A.No. (Further questions objected to).

MR. STREET: Q. Where is that agreement? A. As we were notified very late today to produce these documents, we could not get hold of our display plan agreement at present with our solicitor, Mr. Aitken of Aitken & Pluck, or Mr. Carmichael, the barrister.

We have had dealings with this dealer ourselves and could not get hold of it very quickly. (Question pressed).

Q. Within whose province was it, in the office of Griffiths Brothers Credits, to approve the placing of vehicles on display plan? Who had authority - (Objection withdrawn; allowed). A. The representative at the time, Mr. Grounds, would inspect the vehicle and he would submit this to our manager at the time, Mr. McCormack, who would approve it.

Q. And I think you have identified his initials?

A. Yes, I would say those are his initials.

Q. So far as you are aware, is there any record in Griffiths Brothers Credits Pty. Ltd. relating to the taking off of the vehicle mentioned on the document, from display plan? (Objected to).

HIS HONOR: Q. Have you looked to see? A. I could not say offhand, without investigating.

Q. You have not had a look to see if you could trace this vehicle as being taken off or not taken off?

A. No, I have not, no.

(Tender of third document renewed; argued).

HIS HONOR: At the moment, I am against you. I do not like documents getting into a case in the hope that ultimately they may have something to do with the case.

MR. STREET: During the adjournment, I will follow through with Mr. Carmichael the question of this agreement. I will withdraw the tender and ask to withdraw the witness.

HIS HONOR: The bringing back of him or not will depend on the decision you make as to asking further questions, Mr. Rath having indicated that if no further questions are asked in chief, he will not want to ask questions of him.

(Further hearing adjourned until 11 a.m. on Monday, 5th March, 1962).

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IN COMMERCIAL CAUSESCORAM: WALSH, J.MOTOR CREDITS (HIRE FINANCE) LTD. V.PACIFIC MOTOR AUCTIONS PTY. LTD.FOURTH DAY: MONDAY, 5th MARCH 1962RONALD FREDERICK BROCK  
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10 MR. STREET: Q. Have you, over the adjournment,  
obtained the display plan agreement between -  
(Objected to; withdrawn).

Q. Have you, over the adjournment, obtained a  
document from your legal advisers? A. Yes.

Q. Is that document which I hand you, the  
document which you have obtained? A. Yes. That  
is the document. ~~That is our original display  
plan agreement with Webb.~~ (Last sentence struck  
out by direction).

Q. Do you recognise the signature which appears  
on the back page there? A. I do.

20 Q. Whose signature is that? A. Mr. Joe Bar-  
rington, our manager at the time that Webb -

Q. Your manager in March, 1960? A. That is  
right.

Q. Was it within the duties of your manager, in  
March, 1960, to make display plan agreements with  
dealers? A. Yes.

30 MR. STREET: I ask your Honor to consider that  
in accordance with s.60 of the Evidence Act and I  
ask your Honor for a factual ruling as to whether  
that is a display agreement with Webb.

MR. RATH: It will stand on the same basis as  
the other document. I will not raise any point  
on admissibility.

MR. STREET: Q. Are you familiar with the pro-  
cedure in your company, under which a dealer who  
has a display plan agreement, brings that agree-  
ment into operation in relation to a particular  
vehicle? A. Yes.

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Q. What is the procedure in your company for a dealer wishing to bring a vehicle within the display plan? What does he do? A. He buys a certain vehicle and our representative would go out and see the vehicle and he would then submit a document.

Q. Could you identify the type of document he submits? A. Very similar to that you have there only there are three copies - original, duplicate, one for the office and one for the dealer. 10

He submits that with details of the vehicle and provided the price is right and we find the vehicle is all right -

Q. Is that such a document as you have described which is effective to place a vehicle on display plan? (Objected to).

Q. I withdraw question "effective", and substitute "used". A. Yes.

(Document signed by Messrs. Barrington and Webb, together with blue document referred to by witness, tendered). 20

MR. RATH: Q. (On voir dire). To whom would your company, in a case such as this, pay the cheque, to the dealer or to the vendor?  
A. To the dealer.

Q. And would you actually sight the motor vehicle before paying the dealer? A. I could not really say on those particular ones. I could not answer that. 30

(Tender of both documents objected to).

MR. RATH: The Singer sedan was purchased by Motordom Pty. Limited from Pacific Motor Auctions, the defendant, on 12th October, my friend agrees. The evidence in this case, therefore, is that the vehicle belonged to Motordom Pty. Limited at that point of time.

These documents are between Mr. Webb personally and Griffiths Bros. Secondly, on the point - 40

HIS HONOR: You say this car came under your floor plan when?

MR. RATH: 24th October.

MR. STREET: It is number 15 in the list.

MR. RATH: Whereas this shows the Griffiths Bros. floor plan as 17th October. The first matter I point to is the parties in this matter, bearing in mind the undisputed evidence as to the title of the vehicle in the company at this time.

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10       The second matter I point to is the unre-  
stricted power of sale in Clause 11; and the  
third matter I point to is that, reading the two  
documents together, they constitute the transac-  
tion with regard to this motor vehicle, as be-  
tween Webb and Griffiths Bros., and they are, in  
my submission, quite clearly void as unregistere-  
d traders' bills of sale.

HIS HONOR: What do you say about it being no  
use submitting this, because it is void?

20       MR. STREET: That is a matter I will be making  
submissions on in relation to the main transac-  
tion. It may be a convenient course, in the par-  
ticular circumstances of this case, to defer  
ruling on it on that ground.

HIS HONOR: Looking through it, I saw some things  
in it that might seem to indicate that it would  
come within the Act.

MR. STREET: I will be submitting that my friend's  
documents are bills of sale. This, of course,  
would be an a fortiori one, because it is a much  
better administered scheme.

30       If I am right as regards my friend's docu-  
ments being bills of sale, I am not concerned  
whether this is a bill of sale or not.

HIS HONOR: You would only want it in if I made  
some decisions about the Bills of Sale Act, which  
you would say are erroneous?

MR. STREET: Yes. In effect, I am tendering it  
but saying it is to be of no effect in law or  
equity.

40       MR. RATH: I only want to say it is not the right  
party.

HIS HONOR: If that were the only point I would  
be disposed to admit the document, because it may  
be that an argument could be developed that there  
is enough material for drawing inferences that  
Webb could deal, on behalf of Motordon, in rela-  
tion to matters such as this.

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Two documents have been tendered and have been objected to. If otherwise admissible, they are relevant on a question that arises, as to who had title to a particular vehicle which is one of those in dispute in the case. Objections have been taken on a number of grounds.

I think I should admit the documents, but in doing so I am not to be taken as deciding at present that the documents are valid documents which could confer title or be evidence of title because a point has been raised as to whether these documents are made void by the Bills of Sale Act, and that is that is a matter on which I would wish to hear further argument before coming to any final decision.

Objection was also taken on some other grounds as to the admissibility of the documents, but I think I should overrule those so far as deciding the question of admissibility is concerned, although it will be opened later for Counsel for the Plaintiff to submit that, because of the matters that he raised, the documents in the end have no effect on the case.

(Documents referred to on page 169 admitted and marked Exhibit "7").

MR. RATH: No questions.

(Witness retired).

MR. RATH: Before my friend calls his next witness, we have agreed on the list of vehicles. We have gone through the list of vehicles that the defendant brought from Motordom on the night of the second.

In this list we have set out all those vehicles and marked with an asterisk the ones we are concerned with in this case, as part of the plaintiff's claim, and it shows the prices at which Motordom bought them from the defendant, the prices at which the defendant bought them from Motordom on 2nd November, and the prices at which the defendant sold them, and it shows the date upon which the defendant sold them after 2nd November.

The first column - the price at which the defendant sold them to Motordom - is not complete, because not all of these vehicles were bought by Motordom from the defendant; so the

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gaps in the price column indicate vehicles not bought by Motordom from the defendant company.

MR. STREET: There are some minor divergencies in regard to registered number, but I think each vehicle is identifiable without any difficulty.

(Above mentioned list tendered; admitted and marked Exhibit "X").

10 HIS HONOR: I see there is one gap in the right-hand column, as to date sold, etcetera. The price is given, £550.

MR. STREET: That ought to be 24/11/60.

MR. RATH: That is correct.

MR. STREET: I have a document myself. I will offer it to your Honor and tell your Honor what it is and then I will see if my friend accedes to it.

20 First of all, in the left-hand column is the number in the claim, and then the description of the vehicle. No.5 is described there as an excavator. I will be tendering oral evidence about that from the next witness.

30 Then there are registered numbers, the October, 1960, yellow book and November figures, and then the prices of re-purchase from Motordom; the prices at which sold by Pacific after 2nd November, date sold by Pacific after 2nd November, and then a series of crosses at the foot of the page, prices at which purchased by Motordom from Pacific originally, all purchased during the month of October, 1960.

HIS HONOR: That appears to cover eleven out of the sixteen.

MR. RATH: So long as it is changed to purchases by Motordom Pty. Limited, I do not object. I will try to check this in the lunch hour.

HIS HONOR: Perhaps Mr. Rath could check it before it is tendered.

40 MR. STREET: May I have leave to withdraw and correct an admission that I made inadvertently the other day? Your Honor will recall that a question arose as to what were the vehicles which Pacific had sold to Motordom Pty. Limited, giving rise to the debt of £16,510.

I made an admission that, as at 2nd November,

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Pacific was owed by Motordom Pty. Limited £16,510, in respect of a number of cars. I erroneously identified those cars as being the cars listed in a certain letter of particulars.

May I withdraw the admission relating to the letter of particulars and substitute for it a list of cars that I have had run out over the week-end?

These are the cars which had been sold by Pacific prior to 2nd November, giving rise to our claim for £16,510, and in each instance the dates appear in the left-hand column, the details of the car, and then I have marked in red on the right the serial number of the car in this claim.

10

HIS HONOR: You say this is different from the particulars given in a letter of particulars?

MR. STREET: Yes, which was tendered, a letter I think of 27th November. What the letter in fact records is the details of the 29 cars we bought back on 29th December.

20

MR. RATH: If purported to be a list of vehicles to which my friend's cross-action related. Instead of giving me that list, he gave me the list of vehicles taken on 2nd November.

We both assumed that the letter consisted of the vehicles to which the cross-action related. I would have remained assuming that, but mr friend has picked up the mistake.

Could the document I now tender perhaps be substituted for Exhibit "Y", or added to it?

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HIS HONOR: Very well.

MR. RATH: So that a check of this prior list of my friend's might be made, might I lift the yellow books?

(Exhibit, comprising "yellow books" released into custody of Mr. Rath).

No.4(k)

ADRIAN GEORGE GUEST  
Sworn, examined as under:

No.4(k)  
Adrian George  
Guest  
Examination  
5th March 1962

MR. STREET: Q. Your full name is Adrian George Guest? A. Yes.

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Q. You live at 35 Dixson Avenue, Dulwich Hill.

In February, 1960, you commenced employment with the defendant company, Pacific Motor Auctions, as manager? A. Yes.

Q. A position which you retained until the end of 1961? A. That is correct.

Q. I think you have since left the defendant company, and are engaged in business with what company? A. Bowen Motors Pty. Limited.

10 Q. That is another company which carries on business in the second-hand car market?

A. That is correct.

Q. In your capacity as manager I think you, in fact, did carry out auctions at Pacific Motor Auctions? A. Yes - licensed auctioneer.

Q. Do you remember a man named Webb?

A. I do.

Q. Did he attend any of your auctions?

A. Practically every auction.

20 Q. And did he bid at the auctions? A. Yes.

Q. And bid successfully? A. Yes.

Q. Do you recollect the name in which vehicles were knocked down to him at auction? A. On the auctioneer's slip? Webb.

30 Q. Who did you understand that he was buying for? A. He was managing director of Motordom, purchasing for Motordom. On the bid slip "Webb" was used, because it was shorter, and "Motordom" was noted on the back of the auction sheet.

Q. Do you remember at one stage he was trading as Motordom, and became Motordom Pty. Limited during 1960? A. Yes.

Q. Did you, at any stage, knock down any vehicles for which Webb had bid successfully, to Hire Finance? A. No.

Q. Or to Motor Credits (Hire Finance)?

A. No.

40 Q. Did you ever hear from Webb or from anybody else, prior to the end of this - (Objected to; withdrawn).

Q. Did anybody from Hire Finance Pty. Limited ever communicate with you regarding vehicles

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purchased by Webb prior to 3rd November, 1960?  
A. No.

Q. On what terms were these vehicles knocked down when Webb bid successfully? A. We operate a credit system, whereby vehicles purchased by motor dealers that are listed for credit, purchase their vehicles, and the vehicle is delivered to their yard and they pay for the vehicles in seven days.

Q. Seven days credit? A. Yes.

10

Q. Apart from attending and bidding at auctions, did Webb ever communicate with you on other occasions about buying cars from Pacific?  
A. Yes.

Q. In what circumstances? A. Often Webb would call to the auction room in between sales and sometimes said that he was short of stock and what did we have there that he could purchase between auctions.

In some instances he might buy seven or eight motor cars in the yard, sold to him as a trader, between auctions.

20

Q. Was there any mention, on any of those occasions, of Hire Finance? A. No.

Q. Did you, or did your company, to your personal knowledge, ever purchase any cars from Webb's yards? A. Many.

Q. Were you personally associated with those transactions? A. Yes. I was the one who operated in the purchase of motor cars.

30

Q. I am leaving out of account for the moment the night of 2nd November. Was it rare or frequent for you to purchase motor cars from Motordom? A. Frequent - I would say possibly once a week.

Q. What was it that led you to purchase cars from Motordom? A. Webb would contact me by 'phone, usually after the week-end, and state, "I have had a big week-end. I have traded a lot of units. Will you come up and purchase them?"

40

The reason was that the vehicles he had traded - (Objected to).

Q. They were vehicles he did not want? A. Yes.

Q. Would you then go up to his yards? A. Yes.

Q. Did you see Webb there? A. Yes. I always did the business with Webb.

Q. Did you have some discussion with him about prices? A. Yes.

Q. And values? A. Yes.

Q. A bit of haggling? A. Always a bit of haggling.

Q. And then a price would be fixed between you and Webb? A. Yes.

10 Q. After fixing on a price, what happened then at Webb's yard? A. Usually the cars were valued on slips of paper, in Webb's yard, and we would go from there to his offices, which are upstairs, adjoining the yard at Merrylands; or at Parramatta it is an adjoining office.

In every case we would go into the office and the business would be finalised in the office.

20 Q. What was involved in finalising the business in the office? A. The filling in of the declarations. We would go into the office because he had cards there with registered number and engine number, and we would take them from the card.

He would fill the Statutory Declarations in and I would witness the signature on the declaration.

30 Q. What are the declarations you refer to? A. All motor auction houses have a declaration printed on the form, which the person selling is asked to finalise.

Q. (Exhibit "Z" handed to witness). Is that the printed form of declaration that you refer to? A. Yes.

40 Q. What about paying for the cars? A. In most cases, on the purchase of stock it was done, or tried to be arranged to be done on a sale day, and the reason why I did that was to go up and purchase cars from Webb and bring him back so he could purchase from us.

He would clear stuff he had traded over the week-end and come and purchase better-class vehicles from us.

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Q. On those occasions when you went into his office and the declaration was filled in, when was the cheque written out? A. That would vary. There have been instances where the cheque has been paid over on the spot. There have been instances where we have posted it - very few. Usually Webb would come back with us and take his cheque then.

Q. In the course of negotiating with Webb on the prices of vehicles, when you went out on these occasions, did he refer the prices to any other person? A. No.

10

Q. Was there any mention, on any of the occasions when you went to buy vehicles from him, of Motor Credits (Hire Finance)? A. No.

Q. Or of vehicles being on floor plan or display plan? A. He had a yard at Woodville Road and at one time when I called to purchase vehicles and enquired about vehicles in the bottom yard, he said they were finance company vehicles and not for sale, but at any other time he never mentioned having finance company vehicles there. I understood they were re-possessions.

20

Q. These particular ones he referred to on that day? A. Yes.

HIS HONOUR: Q. You referred to Woodville Road. I know where it is, I think but we have heard mention here of yards at North Parramatta, Guildford, and Fairfield.

30

This would be the one referred to as Fairfield, would it? A. No. This would be the Guildford yard.

MR. STREET: Q. Do you recollect at one stage, that Webb had four yards? A. Yes.

Q. When was that? A. He leased the Merrylands yard to O.K.Motors. I could not remember offhand when he disposed of that yard.

Q. Do you remember any occasion before 2nd November, when Webb said anything to you about the numbers of cars he had in his yards?

40

A. Webb would ring me up to purchase cars from him, but in most cases, did not even disclose the amount of vehicles in the yard; but on one occasion he rang me and said, "I am pretty much over-stocked. I own about 143 units".

On that occasion I think we purchased 16 or 18 vehicles from him.

HIS HONOR: Q. When would that be? A. It was when he had the Merrylands yard also. I am afraid I do not know.

MR. STREET: Q. Do you remember the night when you went out with Mr. Crealey? A. Yes.

10 Q. The last night. That was 2nd November. Can you relate it to that in any way? A. Mr. Crealey may be able to help there, because he came up earlier in the day with me, and then we called at Merrylands.

Q. I think, like most auctioneers, you are able to identify or recollect a lot of the cars you sold to Webb? A. Yes.

Q. If shown a list of cars you bought? A. I think there were 18 in the group.

20 Q. Would it assist you to look at that? A. It might. I think possibly it might be around June.

Q. (Exhibit "4" handed to witness). A. No. I am afraid, even from that list, I could not pick that particular time. The list on 12/10/60 seems to be the list, but I would feel it was before that that they were purchased.

HIS HONOR: I think it comes to this, that he does not know.

MR. STREET: Q. You remember the night of 2nd November, 1960? A. Yes.

30 Q. Prior to that, did you have any discussion with Webb regarding payment of his account to Pacific? A. Yes.

Q. Can you recollect about when it was that you discussed with him, payment of his account?

A. This is the actual discussion in reference to the cheques?

Q. Yes. A. It would be the day after we received the first cheque that was unmet.

40 Q. About how long before the second was that? A. Ten days.

Q. When you spoke to Webb, did you see him personally? A. No, a 'phone conversation.

Q. Who rang who? A. I rang Webb.

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Q. What was said at that conversation? A. I said to Webb, "Bobby, we have got a cheque that has bounced." Bob replied, "Re-present it and it will be right".

Q. Did he say anything about the cause of the mishap? A. When I asked what happened, Webb stated that his bank manager was on holidays.

Q. That is all you can recollect of that conversation, is it? A. Yes.

Q. Did you see him at all later on that day, or after that day? A. We saw quite a lot of one another. I am not sure whether it was that day or the following day, but I did see him soon after that. 10

Q. Omitting what you heard from people inside your own company for the moment, do you remember hearing something about another cheque being dishonoured? A. Yes.

Q. Did you speak to Webb after that? A. Yes, I did. 20

Q. What was said on the occasion of the second cheque being dishonoured? A. It was again, I think, that I contacted Webb by 'phone and I think at that time I said, "This is going to cause trouble. You had better come and see me". I cannot remember the actual conversation.

Q. Do you remember when this was, roughly? A. I think there were three cheques altogether - about ten days before 2nd November, in that period. 30

Q. Did Webb then come and see you about them, about a dishonoured cheque or dishonoured cheques? A. Yes.

Q. Do you remember the terms of any discussions you had with him about them? A. Webb stated on numerous occasions - after we received the first cheque, he stated that everything would be O.K. and the cheque would be met.

Q. Did he, at any stage, tell you anything different from that? A. He stated that he was awaiting moneys which would more than amply cover the cheques which were unmet to us. 40

Q. Did he tell you anything about the source of the moneys? A. Yes. He stated that he was being held up by finance company payout.



Q. What did you understand by "finance company payout"? (Objected to; rejected).

Q. What did you say when Webb told you that?

A. I think at the time - I do not remember the actual conversation - I said, "It is putting me into a very awkward position".

Q. Was there any mention, on any of these conversations when you spoke to him, of which you have told me so far, of any floor plan or display plan? A. No.

10

Q. Or any payments to become due to him under a floor plan or display plan? A. No. Webb had not discussed that side of his business at all.

(Luncheon adjournment).

MR. RATH: Before my friend proceeds it might be convenient to find that, in regard to this list of vehicles prices, that No.13, the 1954 Wolseley -

20 MR. STREET: It should be 4/44.

MR. RATH: The price is too high. If it is a 4/44 the price is right.

MR. STREET: I meant to alter that to 4/44. Mr. Guest recollects that also. It was a 4/44.

MR. RATH: That will clear that up.

HIS HONOR: That means that the price is right, but the description is wrong?

MR. STREET: Yes.

HIS HONOR: I have altered that.

30 MR. RATH: I return Exhibit "6". I accept the rest of the figures. There seems to be doubt about No.5, but it is for me rather than against me.

MR. STREET: Q. I had been asking you before lunch about the period leading up to 2nd November, when you had had some discussions with Webb about the dishonouring of cheques.

40 I now want to take you to 2nd November and ask you did you have some discussion with Webb, either in person or on the telephone? A. A telephone conversation, yes.

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Q. Who rang who? A. Webb rang me from the city.

Q. Where were you? A. Pacific Motor Auctions.

Q. About what time was it? A. About half past three. I am sorry. It would be earlier than that. The auction was in progress. The first call would be about 2 o'clock.

Q. He rang you twice that day, did he?  
A. Yes.

10

Q. What was said at the first call? A. Webb stated that he would call out and see me, as he was in trouble, financial difficulties. He said he would come out to Pacific Motor Auctions.

Q. Can you recollect the words that he used, when he so described himself? A. It was a very short conversation, something after the lines, "I think I am in strife. I will be out to see you shortly". It was a short conversation and the auction was in progress then.

20

Q. After you had spoken to Webb, what did you do? A. continued on with the auction.

Q. Then did you get in touch with anybody?  
A. I rang Mr. Crealey.

Q. Whereabouts was Mr. Crealey when you rang him? A. In his office at Debiens.

Q. About what time did you ring him? A. Soon after that call.

Q. Soon after the Webb call? A. Yes.

Q. I cannot ask you what you said to Mr. Crealey, but did you see Mr. Crealey that afternoon?  
A. Yes.

30

Q. Where? A. At Pacific Motor Auctions.

Q. Whereabouts at Pacific? A. In my office.

Q. Did Mr. Crealey come to your office?  
A. Yes.

Q. About what time did he get there? A. There was an auction in progress. I did not see Mr. Crealey when he arrived.

Q. He was in your office when you got back from the auction? A. Yes.

40

Q. What time was that, that you walked into the

office and he was there? A. 3.30 or somewhere around that time, a bit after 3 o'clock.

Q. Do you know where Mr. Crealey went from that time until you and he left later that afternoon, with Webb, to go to Webb's yard?

A. We stayed at Pacific.

Q. Whereabouts? A. Mainly in my office. He was also in the accounts office, and also we went to the canteen and had afternoon tea.

10 Q. Was he out of your company at any stage from then on, until you all left to go out with Webb? A. We were in the one building but in different rooms at times, but not for very long.

Q. During that afternoon, did you see a Mr. Patrick? A. No.

Q. Did you know Mr. Patrick? A. I know Mr. Patrick now, but I did not at that time.

Q. Did you talk to Mr. Patrick at all on 2nd November? A. No.

20 Q. Or see him at all anywhere? A. No.

Q. After Mr. Crealey came to your office and you met him there, was there a further communication with Webb? A. Yes. Webb rang again, to me, again from the city, and said he had been delayed, that he wanted to see me and would I wait for him.

I said Yes, we would wait, and I passed the 'phone then to Mr. Crealey.

30 Q. Later that afternoon did you actually see Mr. Webb? A. He arrived out there.

Q. About what time did he get there?

A. Sometime after 5 o'clock.

Q. What was the conversation between him and Crealey and yourself, when he got there?

A. Webb seemed to have changed his opinion, to his early conversation with me, that he was in financial difficulty, and stated that he thought he had things organised and that he would be able to meet the cheques.

40 Mr. Crealey mainly conducted the conversation with him and said that he had to have some action on the amount of money that was owing to us and that he wanted to do something about it immediately.

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There was a suggestion by Mr.Crealey then, I think, that he purchase cars, and a discussion with Webb as to what cars he had in the yard, and Webb then decided that - (Objected to).

Q. Can you give me the bit of the discussion about the cars, what Webb said and what Mr. Crealey said? A. The trend of the conversation Mr. Crealey said "Bobby, do you think you will be able to do anything about this debt?" Webb replied, "Yes, I think so, but not right at this moment". 10

It was then Mr.Crealey said that he would have to have satisfaction and he made the suggestion as to purchasing cars.

Q. What was the suggestion he made as to purchasing cars? A. He said, "Bobby, have you got cars to the value of the debt in your yard?" Webb replied, "Yes".

Mr. Crealey then said, "We will purchase the cars from you and you re-endorse the cheque over to clear the debt" 20

Q. Did you then, in company with Mr.Crealey and Webb, go out in a car to one of Mr.Webb's yards? A. Yes, with Mr. Skinner.

Q. He is the accountant of Pacific? A. Yes.

Q. Which yard did you go to first? A. North Paramatta.

Q. When you got to the North Parramatta yard, I think you walked around and had a look at the cars? A. Yes. 30

Q. Did Webb accompany you? A. Webb accompanied me.

Q. Was there some discussion between you and Webb about prices? A. Yes.

Q. What was that discussion? I do not want to ask you about haggling over individual cars. A. I said to Webb "Some of these cars you have had here for some time, you purchased from us, and I feel they would be too dear for me to re-purchase" - referring to the actual figure he paid at auction. 40

Webb said "That is about the only way we can do business. You have to give me the money back that I paid you". Some of the cars in the

yard were not purchased from Pacific, but the vehicles purchased from Pacific were re-purchased back on bid prices.

Q. That is the price Webb had bid for them?

A. Yes.

Q. Was there any discussion about prices before that between you and Webb? A. No. We did not discuss individual prices until we arrived there.

10 Q. Anything about prices of cars that he had not bought from Pacific? A. Not at that stage.

Q. How many vehicles did you select from the Parramatta yard, roughly? A. I do not know exactly off-hand. I think may be eight or ten.

Q. Were there many vehicles in the Parramatta yard at that stage? A. There might have been another four or five or six vehicles.

20 Q. Was there any discussion about the cars at all, about the ownership of the cars, on that occasion? A. No, not at that moment, I do not think.

Q. Then I think you went to some other yards and eventually came back to the Parramatta yard? A. Yes.

Q. When you got back to the Parramatta yard, did you and Mr. Crealey and Mr. Webb go into the office there? A. No. Actually, the business.

30 Q. Tell me what happened when you got back. A. The business was conducted. I was operating, actually, as a purchasing officer with Mr. Webb, and the prices were written down, with the registered numbers, on slips of paper, and Albert Skinner, the accountant of Pacific, was following us around making "decs" out.

Q. Making declarations out? A. Yes.

Q. These are the declarations of title?

40 A. Yes. He was just putting down "Motordom" and so forth and preparing them, and that was done later in the office, from the slips of paper where Webb and I had priced.

Q. That was done in Webb's office, when you got back to the Parramatta yard on the second

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occasion? A. Yes. Actually I was not in the office with them that much, because I had drivers there.

I had been pricing the cars and was directing the drivers to put them into the street.

Q. Were you present when anything was done with the cheque? A. No. Mr. Crealey and Mr. Skinner passed the cheque out.

Q. Did you see a cheque on this night?

A. Yes. I was in the office when Webb was signing the declarations, but I was not there when it was passed over. 10

Q. Do you remember any discussion at all with Webb, on that night, that you had with him, regarding whether or not he owned the vehicle? Did he say anything to you about that or did you ask him anything about that? A. There was one vehicle at Fairfield yard, a Holden sedan, that was, I think, to be valued in the vehicles we were purchasing there, and Webb said, "I cannot sell you that one. It belongs to a finance company". 20

That was the only vehicle mentioned that did not belong to him. ~~The rest belonged to him.~~ (Last sentence objected to; struck out by direction).

Q. Apart from that one vehicle, did Webb say anything to you about a display plan or floor plan affecting any of the other vehicles?

A. No. 30

Q. Or did he mention Hire Finance? A. No.

Q. So far as the prices that were put on the cars that night are concerned, how, in your opinion, did they compare with the market worth of the cars? A. Some of the cars would be above market value.

Q. Do you recollect; amongst those cars, a Holden Standard Sedan, AOL-688, which came back in at £650? Would you look at that declaration? I am showing you the one relating to vehicle No.5, AOL-688. Do you recollect anything in particular about that car? A. Yes. 40

Q. What do you recollect about that car?

A. One of my representatives -

Q. I want you to say what you recollect about

the car. A. The car was originally purchased by Pacific Motor Auctions for £460 and sold to Motordom. I cannot remember the exact figure - five hundred and some odd pounds, I think -

Q. What was the history of that car?

A. It was an ex-taxi.

Q. It was a Holden Standard Sedan? A. Yes.

10 Q. As regards another car, No.13 in the list - do you remember a Wolseley sedan in the cars that came back? A. A Wolseley 4/44.

CROSS EXAMINATION

MR. RATH: Q. When did you cease to be employed by the defendant company? A. Last November I think, October or November.

20 Q. Were you present at a conversation between Mr. Crealey and Mr. Gulson on the day after 2nd November, that is, on the 3rd? A. Part of the conversation.

Q. Do you remember Mr. Gulson saying, "We cannot both own them," or words to that effect? A. No.

Q. Anything like that? A. No, I do not remember that.

30 Q. Do you remember Mr. Gulson saying anything like this, "Well, you have let me in" or "left me in"? A. I think Gulson said, "Why didn't you let us know about it? You have left us in trouble" - something like that.

Q. Did Mr. Crealey mention something about a property of Webb's at Penshurst? A. That is correct, yes.

Q. He said something along the lines, "Why don't you go and get that?" A. I am afraid I cannot remember the exact conversation.

40 Q. And did Mr. Gulson say anything like this, "It is the first I have ever heard about his having a place at Penshurst"? A. I would not remember.

Q. Might he have said something like that?

A. Not to my memory.

Q. What do you think he said? First of all,

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what do you think Mr. Crealey said about the place at Penshurst? A. I remember it being mentioned, but I do not remember the conversation that was carried on that day.

Q. Who mentioned it, Gulson or Crealey?

A. I do not know. It was discussed. I do not remember who.

Q. Was Mr. Patrick present at that conversation? A. Yes, Mr. Patrick and Mr. Gulson.

Q. That was the first time you had ever met Mr. Patrick, was it? A. Yes.

10

Q. Who introduced him to you? A. Mr. Crealey, I think.

Q. I take it you do not know how long Mr. Crealey was in your office on 2nd November, before you came in yourself? A. Maybe five or ten minutes.

Q. How do you know? A. Well, I was in and out of the office. It was in that period of time.

20

Q. How many desks, at that time, were there in your office? A. Two.

Q. Both the same size? A. No.

Q. One very much bigger than the other? A. Yes.

Q. When you arrived in it, at what desk was Mr. Crealey sitting? A. The small one.

Q. On what side of it? A. Against the wall, in the correct position.

Q. The one, as you sit down at it, as if you were going to work at the desk? A. Yes.

30

Q. What was that desk normally used for?

A. It was Mr. Crealey's desk. Whenever he called, he used that desk.

Q. So this was an office used by both of you from time to time? A. It was my office, with the director's desk in there.

Q. And the director's desk was not as big as yours? A. No.

Q. You said that Mr. Crealey went into the accountant's office? A. Yes.

40

Q. How many times, while you were there, did



he go into the accountant's office?

A. Once to my knowledge.

Q. What for? A. I do not know.

HIS HONOR: Q. Where is it, in relation to your office? A. My office is the end room on the front of the passage-way. The passage-way runs down to the accountant's office -

Q. You would go out your door into a passage-way and go a little distance - A. To the next room.

10

MR. RATH: Q. You say you do not know what he went in there for? A. No.

Q. He did not go in there arising out of any talk between you and him? A. I do not know. I do not know why he went in there.

Q. You had, I gather, left Mr. Gulson before 2nd November? A. Yes.

Q. And you were aware there were some financial dealings between Webb and Hire Finance? A. No. I understood Webb was dealing with I.A.C.

20

Q. When had you met Mr. Gulson before 2nd November? A. On a couple of occasions. I would not remember when or why.

Q. What did you understand the arrangements to be between Webb and I.A.C.? A. I understand Webb put all his paper work through there.

Q. What do you mean by "paper work"? A. Every contract he wrote for the sale of a motor car, hire purchase contract, I understood, went to I.A.C.

30

Q. You were telling my friend, Mr. Street, about your normal routine of purchasing motor vehicles from Motordom, and you said in some instances you paid for them on the spot? A. That is correct.

Q. All the cheques of the defendant company are signed by two persons, are they not? A. Yes.

40

Q. So, when you paid for them on the spot, you either brought a cheque out already signed by one person, or brought somebody else out with you? A. Yes.

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Q. It would be a very uncommon thing for you to bring a cheque out already signed, would not it? A. Yes.

Q. And it would be very rare that you would bring out anybody else with you, who had authority to sign a cheque? A. When the cheques were signed on the spot - it goes back a bit, mainly when Norm Lowe was there.

I would take him with me. He was assistant manager at the time.

10

Q. How long ago was that? A. Twelve months or more.

Q. Going back into 1959, you mean? A. Yes.

Q. Did the defendant company have any financial trouble with Mr. Webb before October-November, 1960? A. Yes.

Q. When? A. It was before I took over the managership there.

Q. Were you there then? A. No.

Q. Do you know? A. No, I do not.

20

Q. Where did you hear about it from? A. It was general talk in the motor trade.

Q. So, there was general talk in the motor trade that there had been some financial trouble between Webb and Pacific Motor Auctions? Is that what you were saying? A. Yes.

Q. Was that talk general talk in 1959? A. Only within the auction group itself. It was a point made known amongst the different rooms, anybody whose cheque -

30

MR. RATH: I did not hear the last part.

ASSOCIATE: "As a dealer".

WITNESS: I, at the time, was at Debien's motor auctions and the point is made, if any dealer falters in any way, every auction room is notified. I was at Debien's when that happened, and I was notified as an employee in the organisation.

MR. RATH: Q. Do you know what the defendant company did when this default occurred on the part of Webb, in the past? A. No, I do not.

40

Q. Do I understand these purchases you made

in the ordinary course of business, from Webb, were mostly made on a Monday? A. No, on all days, but mainly Webb would contact me on Monday morning in reference to it, because it was after his weekend's trading.

Q. And you would go out and buy the vehicles from him personally? A. Yes.

10 Q. What time of the day would you normally go out for this purpose? A. It varied - at any time. If it was auction day it would be after the auction finished.

If I went up on Monday I would go up on Monday morning early, before the auction started.

Q. At what time did the auction finish on auction day? A. They varied according to the cars that were there.

20 Q. Give us the range of time. A. The complete range would be any time from half past three to half past five.

HIS HONOR: Q. Did they always start at the same time? A. They were advertised to start at 2 o'clock but in lots of cases they do not start until half past.

MR. RATH: Q. Do you remember how many vehicles you bought on 2nd November? A. I think it was 29.

30 Q. In the Parramatta yard, you told Mr. Street you took about 8 or 9? A. I would not be sure on these figures.

Q. But you left about 4 or 5 there? A. Yes.

Q. On what principle did you select your 8 or 9? A. I took the better class cars.

Q. Would the ones you did not take be described as heaps? A. Not necessarily. They were old motor cars. There was one vehicle, a utility, that Webb said he could not sell; it belonged to his father-in-law. That vehicle was not priced.

40 Q. You took all his vehicles at Parramatta, except his father-in-law's vehicle - A. I think it was his father in law - some relation.

Q. And a few older ones? A. Yes.

In the Supreme Court of New South Wales

No.4(k)

Transcript of Proceedings before His Honor Mr. Justice Walsh

Defendant's Evidence

Adrian George Guest  
Cross-examination continued  
5th March 1962

In the Supreme  
Court of New  
South Wales

No.4(k)

Transcript of  
Proceedings  
before His  
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Defendant's  
Evidence

Adrian George  
Guest  
Cross-  
examination  
continued  
5th March 1962

Q. You went from Parramatta yard to what yard next? A. Guildford.

Q. How many vehicles did you take there?  
A. A small number, 3 or 4.

Q. And how many vehicles were left?

A. There would be quite a few vehicles left there.

Q. Good types that you left? A. Yes, a couple of them would be. They were mainly Holden sedans in the yard, in display. 10

Q. Why didn't you take some more at Guildford? A. There were chaps from Motor Market there and they stated that some of the vehicles, the majority of the vehicles left there had been purchased from them the previous day.

Q. So you got all the ones there - A. I think we took the vehicles from there only that we had sold to Webb. There were not a lot of vehicles there. 20

Q. Was there a large number of people from Motor Market Auctions there? A. There was a car and it was loaded with chaps.

Q. And they said they had bought them the day before? A. Motor-dom had purchased them the day before.

Q. You mean Motor Market? A. Webb had purchased the vehicles from the Motor Market the day before.

Q. Why were you not prepared to buy those? A. Well, there were more vehicles that we had sold. The majority of vehicles were at Fairfield. He had just opened a new yard and he had a bigger number of vehicles there. 30

Q. You then went out to the Fairfield yard?  
A. Yes.

Q. Did you confine yourself there to vehicles that you had sold to Webb? A. We purchased, I think, every vehicle that we have sold - we purchased from Fairfield yard - and then we moved into vehicles that we had not sold. 40

Q. How many vehicles did you leave him at the Fairfield yard? A. There were a lot of vehicles.

Q. Good Types? A. All types.

Q. When you purchase vehicles from a dealer, do you always get this title declaration?

A. Always, yes.

Q. I mean the defendant company. While you were there, you always got it? A. They were always signed.

Q. It is the defendant company's own form, is not it? A. Yes.

10 Q. Did you enquire on this night of 2nd November, about Webb's title to these vehicles? Did you enquire beyond getting this title declaration from him? A. Well, I did not actually do those declarations that night.

As I said before, I was in the yard. I purchased the cars and the drivers would take them away.

Q. On these routine purchases of yours, in the course of 1960 - A. Yes.

20 Q. - did you obtain title declarations from Webb in respect of those? A. Every vehicle that ever I purchased, yes.

Q. And it was in reliance on Webb's filling in the title declaration that you bought the vehicles from him.

30 Do I gather that when you were with the defendant company, its general practice was not to enquire into the vendor's title, but to rely upon the vendor filling in this title declaration? Is that right? A. You would not enquire on every individual vehicle, when you are doing volume business like that.

Q. This was a scheme then, devised by the Pacific company, because they have such a big volume of business? A. I do not follow you.

40 Q. I will withdraw the question. On the night of 2nd November, did you see anything being done about a cheque? A. I entered the office at Motordom at one stage, when Mr. Crealey, Mr. Skinner and Mr. Webb were there, filling in the declarations, and Pacific Motor Auctions' cheque was on the table, but I was not actually there when the change-over was made.

I was directing drivers to deliver vehicles back to Pacific.

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Defendant's  
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Adrian George  
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Cross-  
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5th March 1962

In the Supreme  
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Defendant's  
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Adrian George  
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Cross-  
examination  
continued  
5th March 1962

Q. When you saw it, it was lying on the table?

A. Yes.

Q. Filled in? A. I would not be sure.

Q. Did you finally settle with Webb the prices you were to pay for these 29 cars?

A. Yes, that was why actually I entered the office with Webb, Crealey and Skinner, so that the actual prices we had to pay on the motor cars did not constitute the amount of money that had to be paid for it.

10

It was a case of settling with Webb, discussing price changes on some vehicles with Webb and figures on price changes for some vehicles -

Q. Were you there when these were being discussed (shown)? A. I did that with Webb.

Q. Have you looked at the list? A. Yes.

Q. (Approaches). This is a list which shows 29 vehicles that you purchased on that night. This is a list of the prices which the defendant company had sold them to Motordom. This is a list of prices that the defendant bought them for on that night.

20

I do not think you need concern yourself with the portion dealing with the later selling price. Looking down that list can you tell his Honor now which ones you adjusted with Webb - do you know before I show you this list, any ones you did adjust? A. Yes.

Q. Perhaps you might mention those first?

A. How that price changing actually came about was that -

30

Q. I want you to look at the ones and tell us which ones you adjusted? A. They were vehicles that came from the Fairfield yard.

Q. That was the last yard you went to?

A. Yes, that was the last yard. I have some recollection. Some declarations at that time had been signed and therefore could not be altered, and the price adjustment of certain vehicles left on unsigned declarations, they were shown to Webb and myself and Webb went through the forms and made them out and the re-adjusted price was struck and we did a bit of bargaining, a system of changing the price on these vehicles.

40

It would be cars only from the Fairfield yard in the great majority of cases because the vehicles were got there.

Q. Do you remember whether your total figure had to be brought down or lifted up" A. The total price I paid on the motor cars?

Q. Did you have to lift that up? A. Yes.

Q. Do you remember how much you had to lift it up? A. No I do not.

10 Q. Can you recollect any of the cars? A. I remember one we discussed the price on, a Chrysler sedan, a Chrysler Plymouth; a Holden ex taxi that was mentioned before.

Those two cars I do remember because we had quite a discussion about that ex taxi.

Q. You see the Holden No. BFF-935, the price of sale by the defendant company to Motordom, £425. The price which you paid for it on that night, £420.

20 Does that look like an adjusted price, one of the ones you adjusted? A. No, I do not think so. I think that would be one of the F.J. Holdens we got from Parramatta. Webb would say "I paid you £425 for it" and I mostly said "Oh no, £420 I think".

Q. You see there a 1957 Holden, BKR-894 and you sold it to Webb for £540. You bought it back for £550. Do you think that is one of the adjusted ones; you raised £10 on that price?

30 A. No, I do not think so. Most of the Holdens came from Parramatta and Guildford.

Q. Can you explain this 1957 Holden No. BKR-894 that is sold to him for £540 and bought back for £550, can you explain why that would be? A. Explain what?

Q. Explain why you paid more on the 2nd November, more than you sold him the car for?

A. It was agreed that we would buy back cars from him.

40 Q. At the same price? A. Yes.

Q. This one you say you sold the car for £540 and you bought it back for £550? A. I sold him hundreds of vehicles. I could have said "What did you pay for that?". And he

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5th March 1962

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Adrian George  
Guest  
Cross-  
examination  
continued  
5th March 1962

could have said "£550". And I could have thought to myself "Yes, that's right".

Q. To some extent you took his word on the price? A. Yes, and my memory of motor cars.

Q. You did not consult any books of his?

A. No, not when I purchased the first lot of cars that we did at Fairfield.

Q. This talk with Webb to adjust the price and arrive at a certain total figure, what sort of talk did you have with him about that? 10

A. I said to Webb that some of the cars he was offering for me to purchase I thought in my opinion were a little too dear.

Webb stated that I was wrong and that he was right in the value of the vehicle. In the instance of the Chrysler he stated it owed him something like about £900 and I was too light on my figure, the purchasing figure.

That was one vehicle that was adjusted and I came up on price quite a bit. That was an automatic Chrysler. 20

Q. That was not the vehicle - was that the vehicle (indicating)? A. That was not purchased from Pacific.

HIS HONOR: You say it was not? A. I do not think so. I do not recollect having seen the car before.

MR. RATH: Q. Did you know the amount which you had to arrive at as the purchase price? 30  
A. Yes.

Q. Who gave you that amount? A. Mr. Skinner.

HIS HONOR: Q. At your office at Pacific, did you or any of the staff have any practice of noting down the names of people who called on business or anything of that sort?

A. Phone calls.

Q. No, personal calls. Some offices have some sort of record? A. Only in the diaries. 40

Q. A notebook or something of the sort?

A. Only in the diaries.

Q. Did you keep diaries yourself? A. Not on calls, but on appointments I did. I used to



put my next day's appointments and so forth in business and so on before I left work that night - in the diary.

In the Supreme  
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10 Q. As far as you know there is no book, diary or other sort of book or pad or anything of the sort that would recall the names of any persons who called on any particular day to show the day on which he called? A. I could get the diary and sometimes I took notes of when I put them on the diary; it could have been there, but I did not know it.

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Transcript of  
Proceedings  
before His  
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Q. You have no check to see if there is any note? A. No but I still have the old diary.

Defendant's  
Evidence

RE-EXAMINATION

Adrian George  
Guest  
Cross-  
examination  
continued  
5th March 1962

20 MR. STREET: Q. You said that you were at Debiens when you first heard of some previous trouble that Webb had had with Pacific. Can you just recollect what that trouble was?  
A. I was sales manager at that time for Debiens and actually the first information I received was when Mr. Webb arrived at Debiens to purchase an automobile from Mr. Sturgess who was the manager, and Mr. Sturgess stated to Webb, "I cannot let you take the car on a cheque" and Webb replied "If you cannot let me take it I want the car, I will pay cash" and he drew money out of his pocket; something like £1,000 and gave it to Mr. Sturgess and also a cheque for the remaining amount, which was accepted with the cash.

Re-examination

30 Q. You were transferred from Debiens to Pacific at the beginning of 1960? A. Yes.

Q. So that would be back in 1959? A. Yes.

Q. Subsequently to that occasion do you know whether Debiens took any cheques from Webb?

A. Yes, we had sold him cars previously on cheques but it was just at that time I was told then by Sturgess that Webb was off credit.

40 Q. You were told that Webb had not met a cheque?

A. Yes, and he was off cheque.

Q. Did he subsequently come on credit again?

A. Yes.

Q. And remained on credit with Debiens and Pacific as far as you knew? A. All auctions.

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Transcript of  
Proceedings  
before His  
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Defendants  
Evidence

Adrian George  
Guest  
Re-examination  
continued  
5th March 1962

Q. You mean all those associated groups of auctions? A. Yes, that is Autos, Christies, Debiens and Pacific Motor Auctions. He had credit, a credit rating in the motor market.

Q. The first group you mentioned are under unified ownership? A. Central control, yes.

Q. Did you ever have any title trouble with any cars which Pacific acquired from Webb from Motordom apart from this one on the 2nd November? A. No. We never had any trouble with title at all.

10

Q. You said to Mr. Rath that you do not check the titles when you are buying cars and doing volume business. What did you mean by that? A. You do not check every individual vehicle; the title check is done from the office when the statutory declaration goes back.

20

Q. From whose office? A. From Pacific Motor Auctions. They have to complete the title check and the declaration. I take the declaration back and they check the title from the office.

Q. What about an auction that does a volume of business? A. Yes.

Q. What do you mean by that? A. A volume of business is any more than ten cars at a time.

30

Q. You mean a bulk purchase from one individual? A. Yes.

(Witness retired)

MR. STREET: There is a registration number which has been wrongly copied out in Exhibit "4", the list of vehicles purchased by Motordom from Pacific. It is on the last page but 2 of that exhibit under date 19.10.60. The second vehicle of that day, a 57 Zephyr sedan No. AOV-222, it was miscopied and should be BRW-333.

40

It is one of the cars in dispute. It is correct in the exhibit which was tendered this morning.

No.4(1)

ALBERT EDWIN SKINNER  
Sworn, examined, deposed:

In the Supreme  
Court of New  
South Wales

TO MR. STREET: My name is Albert Edwin  
Skinner and I reside at 70 Reynolds Avenue,  
Bankstown.

No.4(1)

Transcript of  
Proceedings  
before His  
Honor Mr.  
Justice Walsh

MR. STREET: The cross-action is not abandoned.  
It is still a matter I will be putting to your  
Honor as having some relevance in these pro-  
ceedings.

Defendant's  
Evidence

10

Q. What is your position with Pacific Motor  
Auctions? A. I am the accountant of the de-  
fendant company and I was the accountant during  
the latter part of 1960.

Q. You know Mr. Webb and Motordom? A. Yes.

Q. Your company both bought and sold cars  
with which Motordom was concerned? A. Yes.

Q. Do you recollect an occasion on the 2nd  
November when, in company with Mr. Crealey and  
Mr. Webb you went out to Mr. Webb's yards?

20

A. Yes.

Q. Had you spoken to Webb concerning his dis-  
honoured cheques before the 2nd November 1960?

A. No.

Q. Had you been in touch with any person con-  
cerning those dishonoured cheques on or before  
the 2nd November 1960? A. Yes, I had.

Q. With whom had you spoken? A. The bank.

Q. Whose bank? A. Our own bank, Pacific  
Motor Auctions Bank.

30

Q. Had you ever been in touch directly with  
Mr. Webb's bank? A. No, I did it through my  
own banker.

Q. On the night of the 2nd November 1960 do  
you remember going out to Webb's yards? A. Yes.

Q. Do you remember any documents being there  
which were before yourself and Webb and Mr.  
Crealey on this night of the 2nd? A. Yes, I  
do.

40

Q. What was the nature of those documents?

A. They were declarations of title, of the  
motor vehicles that Pacific Motor Auctions in-  
tended to purchase.

Albert Edwin  
Skinner  
Examination  
5th March 1962

In the Supreme  
Court of New  
South Wales

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Transcript of  
Proceedings  
before His  
Honor Mr.  
Justice Walsh

Defendant's  
Evidence

Albert Edwin  
Skinner  
Examination  
continued  
5th March 1962

Q. How did those documents come into existence? How were they filled in? A. I filled them in myself on that evening of the 2nd.

Q. When you were going round the yards?

A. As we went round the yards.

Q. Do you remember going back to Webb's office in one of the yards after all the inspections were over? A. Yes.

Q. What happened when you got back to Webb's office? A. Mr. Crealey was there and Mr. Crealey and Mr. Webb, and they were discussing prices on the cars. 10

When they agreed that all the cars they bought I drew up the documents, the declarations of title on the cars, added the prices up to equal the amount of £16,000 odd.

I drew the cheque up. I witnessed the signature of title on the cars -

Q. Witnessed Webb's signature? A. Yes, on the declaration of title. We drew the cheque up and endorsed the cheque back to Pacific Motor Auctions. 20

Q. Where had the cheque come from, had it been in a book? A. We had loose-leaf cheques. I had it in my pocket.

Q. When did you put the cheque in your pocket? A. When I left Pacific Motor Auctions.

Q. On this day the 2nd November? A. Yes. 30

HIS HONOR: Q. Was any part of it filled in at that time? A. None whatsoever. They are loose-leafed cheques.

Q. That would not prevent some of it being filled in? A. None was filled in till that night.

Q. Till you were at Webb's yards you mean? A. Yes.

MR. STREET: Q. Did you sign the cheque yourself? A. I did sign it. 40

Q. Did you see Mr. Crealey sign it? A. Yes.

Q. Where did he sign it? A. I am not sure whether it was under or below me. I am not too sure.

Q. Did you see Webb sign it on the back?  
A. Yes. Later I drew the endorsement on the back and the cheque was signed by Webb then.

In the Supreme Court of New South Wales

Q. You have said it was in Webb's office you signed it? A. Yes.

No.4(1)

Q. Whereabouts was it on the cheque, where physically was it that Mr. Crealey signed it?  
A. In the same office. We signed all together.

Transcript of Proceedings before His Honor Mr. Justice Walsh

10 Q. In Webb's office? A. Yes.

Q. Where did Webb sign it? A. On the back of the cheque in the same office, all together.

Defendant's Evidence

Q. (Approaches). I want to show you folio 489 of your purchases ledger and draw your attention to an entry relating to 29 cars and I want to show you a date which was originally 3.11.60 but which has been altered to 2.11.60?  
A. Yes.

Albert Edwin Skinner Examination continued 5th March 1962

20 Q. Do you know anything about that alteration? A. Yes, I made the alteration.

Q. What was the reason for making that alteration? A. Our cheques are a carbon form that goes over this. This represents a carbon copy of the cash book. The cheques were filled in away from this cash book and I did that next day.

30 Q. Did what next day? A. Filled all the details in in the cash book and that is why I put the 3rd on it and realised then it should have been the 2nd, the date of the purchase of the cars, and that is the reason for the alteration.

Q. Is there any doubt in your mind as to what date the cheque was in fact written out and signed? A. None whatsoever.

40 Q. On this night of the 2nd November 1960 did you hear any discussion at any stage about any of the vehicles being on a floor plan or a display plan or about Hire Finance owning them?  
A. No, I did not.

CROSS EXAMINATION

MR. RATH: Q. The day that you purchased these cars was the 2nd November? A. Yes.

Cross-examination

In the Supreme  
Court of New  
South Wales

No.4(1)

Transcript of  
Proceedings  
before His  
Honor Mr.  
Justice Walsh

Defendant's  
Evidence

Albert Edwin  
Skinner  
Cross-  
examination  
continued  
5th March 1962

Q. Do you remember on that day, in the afternoon of that day Mr. Crealey coming down to your office and asking you certain accounts questions? A. That is on the 2nd November?

Q. Yes, in the afternoon of the 2nd November round about 3 or 4 o'clock? A. What do you mean by refer to accounts questions.

Q. Did he come in and see you at all that afternoon? A. He did, yes.

Q. Did he say anything like this to you: "Have we bought any of these cars?" and showed you a list? A. No.

10

Q. What did he come in and see you about on that day? A. He came in and saw me and said we were going - would I mind staying back that evening as we were going to buy some cars from Mr. Webb and would I make available the necessary paper work with which to purchase these vehicles.

Q. You first knew that Webb's bank had dishonoured his cheque on the 25th October?

20

A. I cannot remember the date, it would be round about October -

Q. About a week before you went out on the 2nd November? A. Yes. It would be round about the 25th.

Q. Did you know that Webb had dealings with the Hire Finance Company? A. No.

Q. You knew nothing about that at all?

A. I knew nothing about that whatsoever.

30

Q. Are you a Justice of the Peace? A. No.

Q. These declarations that the defendant company gets are not proper statutory declarations; is that right? A. They are not called statutory declarations; they are only called declarations.

(Witness retired)

(CASE FOR THE DEFENDANT CLOSED)

(NO CASE IN REPLY)

(COUNSEL ADDRESSED)

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(During the course of the addresses it was agreed between counsel for the plaintiff and counsel for the defendant that the date of incorporation was 27th June 1960).

211.

No. 5.

REASONS FOR THE JUDGMENT OF HIS HONOUR  
MR. JUSTICE WALSH 14TH MAY, 1962.

In the Supreme  
Court of New  
South Wales

No. 5.

Reasons for  
the Judgment  
of His Honour  
Mr. Justice  
Walsh

14th May, 1962.

IN THE SUPREME COURT )  
OF NEW SOUTH WALES )  
IN COMMERCIAL CAUSES )

CORAM: WALSH J.

14th May, 1962.

MOTOR CREDITS (HIRE FINANCE) LTD

-v- PACIFIC MOTOR AUCTIONS PTY.  
LTD.

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JUDGMENT

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HIS HONOR: This action was commenced by a writ of summons in detinue. Subsequently points of claim were filed and, at the hearing, counsel for the plaintiff suggested that upon the evidence, the plaintiff, if it succeeded in the action, might perhaps succeed on the basis of conversion rather than of detinue. The points of claim allege that 20 motor vehicles therein listed were, on 2nd November 1960, and afterwards, the property of the plaintiff, but as to four of these the plaintiff conceded, at the hearing, that it could not establish a case. The claim went on to allege that, at the material time when a purported sale of the vehicles was made to the Defendant, that is on 2nd November 1960, they were in possession of a company called Motordom Pty. Ltd. "as bailee for the plaintiff and not otherwise". It was alleged that that company had no authority to sell them, that it purported to sell them to the defendant, which purported to pay for them by its cheque in favour of Motordom Pty. Ltd., which cheque was immediately endorsed to the defendant and re-delivered to it, and that the defendant took possession of the vehicles. It was alleged that demands had been made on the defendant for the

Judgment

In the Supreme Court of New South Wales

No. 5.

Reasons for the Judgment of His Honour Mr. Justice Walsh.

14th May, 1962.

Continued.

return of the vehicles and that there had been a failure and refusal on the part of the defendant to hand them over to the plaintiff. A claim was made for the return of the vehicles or for their value at the date of the refusal to return them, which was put at £12,760, and for damages for their detention, amounting to £6,590.

The points of defence put in issue the plaintiff's title and traversed most of the allegations in the points of claim. They raised also defences that the plaintiff is estopped from denying the authority of Motordom Pty. Ltd. to sell the vehicles, in that the plaintiff held out and represented that company as the owner of the vehicles or as the person having authority and power to sell them, and that Motordom was acting as the duly authorised agent of the plaintiff within the scope of its actual or apparent authority as such agent. There were further defences based on the Factors (Mercantile Agents) Act, 1923, and on the Bills of Sale Act, the latter Act being alleged to vitiate the title of the plaintiff to the vehicles. There was a cross-action based upon the allegation that a number of the vehicles had been bought from the defendant by the plaintiff through its agent, Motordom Pty. Ltd., and that the price thereof was owing by the plaintiff to the defendant.

In the evidence some questions of fact were in dispute, but it will be convenient to set out first some facts which are not in dispute or which appear to be clearly established. A man named Robert Webb was a motor dealer, under the business name of Motordom, and in February 1960, a written agreement with the plaintiff was signed by Webb but was not signed on behalf of the plaintiff. It was called a "display agreement". Its main terms were that Webb, who was called the agent, was to buy motor vehicles of such types and in such quantities as the plaintiff might from time to time authorise in writing. New vehicles were to be bought in the name of the plaintiff, but used vehicles might be bought in the name of the plaintiff or in the agent's own name without disclosing the agency. Goods so bought were to be on hire and the possession thereof by the agent was to be as bailee only, but the agent might sell them on behalf of the plaintiff and was then to account to

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the plaintiff the manner set out in the agreement, retaining for himself as commission, any surplus obtained on the sale over and above the amount for which he was to account. During the period that the agent held goods prior to selling them or returning them to the plaintiff, he was to pay a rental calculated by reference to the amount which had been paid by the plaintiff when they were acquired.

In the Supreme  
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Reasons for  
the Judgment  
of His Honour  
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14th May,  
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Continued.

10           Notwithstanding the provisions of this  
document it seems that the trading done by Webb in  
association with the plaintiff, took the course  
that Webb, without any prior written authority from  
the plaintiff, bought used vehicles in his own name  
and without disclosing any agency. Then he got in  
touch with the plaintiff and requested that they be  
"put on display plan", and the plaintiff, if it  
thought fit, acceded to that request. These  
communications were usually verbal and were sometimes  
20           made by telephone and sometimes made directly to a  
Mr. Patrick, an employee of the plaintiff, when he  
visited the yards of Motordom. From time to time  
an accounting took place, the plaintiff sending to  
Webb a voucher and a cheque. The voucher would  
usually contain credit and debit items, the former  
representing amounts payable by the plaintiff to  
Webb in respect of vehicles which it had put on  
display plan, these being 90% of the prices which  
had been paid for them, and the debits representing  
30           amounts for which Webb had to account, in respect  
of vehicles which had been previously put on the  
plan and had been sold. When a purchaser from  
Webb wanted to finance the purchase under a hire  
purchase agreement, he was sent to the plaintiff,  
who entered into such an agreement with him. In  
these cases the amount debited against Webb in the  
accounting, was the same amount as that which had  
previously been credited to him in respect of that  
car, but when a vehicle was re-sold by Webb for  
40           cash, there was added in the debiting, a charge for  
interest on the amount which had been advanced, for  
the period between the advance and the re-sale.

In June 1960 the company called Motordom  
Pty. Ltd., which is hereinafter called Motordom, was  
incorporated, and the business of Webb was thereafter  
carried on by that company, of which he was the  
manager, and, for practical purposes, the owner.  
The transactions concerning the vehicles in dispute

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in this case, took place after the incorporation of the company. No new agreement was signed. The trading between the plaintiff and the company continued in the same manner as before.

The business grew so that there were several yards in which vehicles were kept available for re-sale. Webb did not put all his vehicles on display plan with the plaintiff. From time to time he bought cars from the defendant and, on occasions, sold cars to it. These transactions and the payments made or received in respect of them, were in the name of the firm, or later the company called Motordom, and not in the name of the plaintiff. It happened that of the 16 cars now in dispute, no less than 11 had been purchased by Motordom from the defendant at some time prior to 2nd November 1960.

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At all times prior to 2nd November 1960, it seems clear that the course of business was such that when Motordom bought a vehicle it did so on its own account and not as agent for the plaintiff, so that title to that vehicle thereupon passed to Motordom. It is the claim of the plaintiff that when a request was made to it to put any such vehicle on display plan, this constituted an offer to sell that vehicle to the plaintiff upon the terms with which, by reason of the previous arrangements and the course of dealing, the parties were familiar, and that thereupon, when the plaintiff accepted this offer, the title passed to the plaintiff. It seems clear on the evidence that, assuming that the plaintiff then acquired a valid title to such a vehicle, Motordom had the right to retain it in its possession and had a general authority to re-sell it in its own name and at such price as it should decide, and a right to receive the purchase money and to retain it, subject only to its obligation to account to the plaintiff in the manner above indicated.

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The evidence relating to the terms of the arrangement between the plaintiff and Motordom is not very clear. The business was mainly transacted for the plaintiff by its Acceptance Manager, Mr. Stevens, who gave evidence, and whose evidence I accept as truthful. He gave evidence as to the manner in which the dealings with Webb and with Motordom were carried out, and I have set out above some account of this course of dealing. It is

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desirable to give some more detail as to how vehicles were placed on floor plan or display plan, as it was variously called. Speaking of the plaintiff's representative, Mr. Patrick, Stevens said:

10 "He would bring me a list of motor vehicles which he had discussed with Motordom and in some instances which he had examined, to replace vehicles which were previously placed on floor plan with the company and had been sold, in other words, they were to maintain a certain amount of motor vehicles in the dealer's yards, and when he had sold a number of them he would always replace them, and Mr. Patrick, on his call to the yard, would make these arrangements and get a list of the vehicles to replace those which had been sold, and give them to me. From that list I would then have a draft made up for a cheque to be drawn to make the necessary adjustment.

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30 Q. That is one method? A. The other method was that these matters would be occasionally adjusted by telephone call, in that Mr. Webb would ring me or Mrs. Bell would ring me on instructions from Mr. Webb, and advise me that some procedures were to be followed, that a number of vehicles had been sold, and that they required them to be replaced by a number of vehicles. I would go through them with her on the 'phone, take a list and correspondingly make the adjustment by cheque to Motordom.

40 HIS HONOR: Q. When you say they would telephone and tell you about a list, would you expand that a little? What would be said to you on the telephone? A. The conversation would probably go like this: 'We would like to make a floor plan arrangement. We have sold a number of cars which have been on your floor plan and these are they.' I would take a note of them on the 'phone and add the amount of money involved and so on.

MR. RATH: Q. Where did you get the amount of money from? A. I beg your pardon?

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Q. You say you added up an amount of money?  
A. I added up the total of the amounts of  
the individual motor vehicles previously on  
the floor plan. That totalled a certain  
amount.

Q. How about the new vehicles? Where  
did you get the amounts for them from?  
A. They would be advised to me by whoever  
I was talking to on the 'phone, Mr. Webb or  
Mrs. Bell.

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Q. What amount was it that you were being  
advised of? A. The actual cost price that  
the dealer, Motordom, had purchased the  
vehicle for. They would advise me the amount  
they had paid out and we would advance them  
90% of that amount."

Mr. Stevens was asked questions as to whether  
he understood that this trading was in accordance  
with the written agreement of February 1960. He  
stated that it was his belief that the dealings  
were, in most respects, consistent with the terms  
of that agreement, and any departure from them  
was inadvertent rather than deliberate. But there  
was, in fact, the important departures that no one  
troubled about a prior written authority from the  
plaintiff to Motordom to buy vehicles and that  
whereas the agreement, in Clause 5, provided that  
"the agent may sell goods on behalf of the company",  
it seems to have been accepted, as between the  
plaintiff and Motordom, in the actual course of  
dealing, that Motordom was really selling on its  
own behalf, at any rate in the sense that the  
plaintiff did not seek in any way to control or  
to interfere with its selling. According to the  
plaintiff's version of the arrangements and its  
understanding of them, Motordom was in another  
sense selling as agent, inasmuch as the plaintiff  
and not Motordom, owned the vehicles, so that a  
sale by Motordom brought about a transfer of title  
from the plaintiff to the purchaser.

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Mr. Gulson, who is the New South Wales Manager  
of the plaintiff, gave evidence that at about 4.15  
p.m. on 2nd November 1960, he rang Webb and revoked  
the authority of Motordom to deal with cars in  
which the plaintiff had an interest. He said,  
"The authority to handle our stock is withdrawn.

Do not touch our stock. Mr. Patrick and I will be at your yard at nine o'clock in the morning". I accept his evidence on this point. The transaction upon which the defendant relies to show that it bought the cars in dispute and obtained a good title to them, occurred later on that day. It seems then that if it be assumed that the plaintiff was the owner of the cars on 2nd November 1960, the express authority of Motordom to dispose of them had been revoked prior to that transaction. But there is nothing to suggest that the fact of this revocation of authority was communicated to the defendant prior to the transaction which took place that evening.

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For reasons which will appear from what is said later, I feel no doubt that if an ordinary customer in search of a car had gone to one of Motordom's yards at 5 p.m. on 2nd November 1960, and had bought one of the cars which (unknown to him) had been put on display plan, and had taken it away, the plaintiff could not successfully have raised any claim against that person in respect of the car. But it is necessary to consider whether a different view should be taken of the purchase of the disputed cars by the defendant on that evening, because of the nature and purpose of the transaction or because of knowledge which the defendant had of the association of the plaintiff with Motordom's business.

There is a conflict of evidence as to discussions between Mr. Gulson and Mr. Crealey, the General Manager of the defendant, concerning Webb and his business and the plaintiff's association with it. Generally I prefer the evidence of Gulson on this matter, to that of Crealey. I hold that Crealey knew that Webb had obtained "floor plan accommodation" from the plaintiff, and that he was told in the latter part of October 1960, that the limit of such accommodation was being increased by £5,000. It does not appear that Crealey was told what were the actual terms of the arrangements between the plaintiff and Motordom.

There is a conflict of evidence concerning a visit which Mr. Patrick says that he made to the defendant's premises on the afternoon of 2nd November. He says he saw Crealey and showed him a list setting out particulars of certain vehicles

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and inquired whether certain vehicles on that list had been bought by the defendant from Motordom. The reason for this was that Patrick had been to Motordom's yards to check the vehicles in the yards against the list of vehicles on display plan, and had found that some were missing and was seeking to find out what had become of them. The list, which is Exhibit "AA", has the words "Display plan" as part of its heading. Patrick says that Crealey went from the room and came back with the information that the particular vehicles mentioned in Patrick's inquiry had been sold to the defendant on 25th October. No further discussion occurred except that in answer to a question, Crealey said that Motordom did not owe the defendant any money. If this was said, it was false. I am not satisfied that it was said. But I accept Patrick's evidence that he did visit Crealey on that afternoon. Crealey denies any visit on that day, and states that on that afternoon, he was with Mr. Guest, then an employee of the defendant. Guest said in evidence that he did not see Patrick on that afternoon. Patrick said that Guest may have been there, but he was not sure of this. It appears from Guest's evidence that Crealey was not with him all the time, and it could well be that the visit to Crealey occurred without Patrick and Guest seeing each other.

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If this visit took place, as I think it did, it serves to reinforce what I would otherwise have found in any event, that is, that Crealey knew that Motordom had some vehicles on display plan or on floor plan with the plaintiff. But this does not establish that Crealey then obtained any detailed knowledge as to the particular vehicles which are now still in dispute, being included in the floor plan arrangements with the plaintiff. For Patrick's evidence does not show that Crealey had any occasion to study, or did in fact study the details of the vehicles on the list. He would have been concerned only with the particular vehicles about which Patrick was then enquiring. The incident has, I think, some significance, in a sense adverse to the plaintiff's case. By this time the plaintiff must have been suspicious about Webb. After leaving Crealey, Patrick says he went forthwith and telephoned to Gulson, and it was following this call that Gulson rang Webb and revoked his

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authority. But the defendant was not informed of this revocation. Now, whilst Patrick's visit brought it home to Crealey's mind that Motordom then had a substantial number of cars "on display plan" with the plaintiff, at the same time it conveyed no suggestion to him that the plaintiff was disputing Motordom's authority to deal with these vehicles. The inquiry directed to Crealey was concerning purchases by his company of certain cars on that list, from Motordom, and the information he gave was that a week before, on 25th October, his company had bought the seven cars mentioned, from Motordom, and this was accepted without query, by Patrick. If it is to be supposed that Crealey, either from prior conversations or because of that visit, knew that there was a display plan arrangement, his previous dealings with Motordom had been on the basis that Motordom had the right to dispose of the cars in its own name, and, up to that point of time, it undoubtedly did, in fact, have that right. Patrick's visit would serve to confirm this if Crealey entertained any doubts about it.

It is necessary now to give some account of what happened on the night of 2nd November 1960. -- Webb has disappeared and his version is not available. But broadly, there is no difficulty about accepting the evidence as to what took place on that evening between the defendant and Webb, representing Motordom. As I have mentioned, the defendant had been in the habit of selling cars from time to time, to Motordom, and usually these were paid for subsequently, by cheque. Shortly before 2nd November, three cheques of Motordom, in favour of the defendant, had been dishonoured. The dates and amounts of these cheques were 20th October, £6,965; 25th October, £2,535; and 28th October, £3,790 - a total of £13,290. Crealey says that he first had knowledge that a cheque had been dishonoured, about 25th October. He himself did not get in touch with Webb until 2nd November but, meanwhile, Guest had had some discussions with Webb and had been told that everything would be all right, and the cheques would be met. But on 2nd November Webb told Guest by telephone, that he was "in trouble", and would come out to the defendant's office. Guest got in touch with Crealey, who spoke to Webb by telephone, and Webb said that the cheques would be met the next day but, nevertheless, it was

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arranged that he would come out and see Crealey. He did so and Crealey said, "I want some satisfaction tonight", and proposed that Webb should sell some of his stock, "to offset the returned cheques". If the cheques were met, Crealey would return the cars, that is, re-sell them to Motordom. Webb agreed. A party from the plaintiff's office and Webb, then went to several yards, and cars were selected and listed, and prices put against them by Guest. After some discussion about the prices Webb said that he would definitely be taking the cars back, and Crealey then agreed to adopt the prices which Motordom had paid for the cars when it acquired them. There was an arrangement that the defendant would hold the cars, to re-deliver them to Motordom, if the money was found. The total amount due to the defendant had been calculated at £16,510. It seems that there was some additional debt, apart from the cheques abovementioned. After 29 cars had been listed, it seems that an upwards adjustment of the price assigned for some of them took place, in order that the total price would come up to £16,510. For each vehicle declarations were obtained, signed by Webb, reciting a sale of the vehicle at a specific price and stating that the vehicle was the seller's sold property, free from any other interest, and that the seller had good right and title to sell it. A cheque which the defendant's accountant, Skinner, had taken with him, was completed in favour of Motordom, for £16,510, and was signed for the defendant by Crealey and Skinner. On the back of it was written, "Please pay to order of Pacific Motor Auctions Ltd.", and this was signed by Webb. The cheque was handed back to the defendant's representatives. The cars were taken away and were subsequently re-sold by the defendant. The dishonoured cheques of Motordom were not met and on each of them is endorsed the words, "Payment stopped".

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On the same evening, representatives of another motor dealing firm were also present at the yards, and the evidence indicates that on that night, many of the cars which had been in the yards were disposed of, leaving only a relatively small number of the less valuable vehicles.



The transaction on the night of 2nd November differed from ordinary and typical trading between the two motor vehicle dealers, in that it took place out of ordinary business hours, it concerned a large number of cars, the payment of the price consisted, in effect, of the discharge of a debt due to the defendant, coupled with an arrangement that Motordom would nevertheless provide funds to meet the debt, and that this would be treated then as a re-purchase of the cars by it. But in spite of these features, I think it cannot be doubted that, as between the two companies concerned, that is the defendant and Motordom, the transaction must be regarded as one of sale and purchase of the cars. It was so treated by the parties in the declarations signed by Webb and also in the entries made in the defendant's purchases ledger. If the real purpose of the transaction was to provide security to the defendant for the debt due to it, nevertheless, the form in which the parties decided to effect this purpose was by way of a sale of the vehicles and there is no reason, I think, to deny that the parties intended it to have effect, or that it did take effect according to the form which was adopted. See Price -v- Parsons, 54 C.L.R. 332 at 348.

Mr. Street, for the defendant, has contended that even if the plaintiff had a good title to the cars, it cannot dispute the effectiveness of this transaction, and cannot assert its title against the defendant. He did not rest his argument on s. 5 of the Factors (Mercantile Agents) Act 1923, feeling that there was some difficulty in contending that this was a sale, "in the ordinary course of business of a mercantile agent". But he contended that, in accordance with common law principles, the plaintiff must fail, and that his argument is applicable, whether or not the sale was "in the ordinary course of business". The authorities relating to the circumstances in which an owner is prevented from asserting his title to goods against one who has dealt with a person in whose possession the plaintiff has allowed the goods to be, are not all consistent in their statement of the principles applicable, or in their statement of the basic concepts upon which the principles are founded. This may be seen by comparing the two Privy Council decisions of Mercantile Bank of India Limited -v- Central

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Bank of India Limited, 1938 A.C. 287, and Commonwealth Trust -v- Akotey, 1926 A.C. 72. The difficulties of the subject are illustrated also by the case of Farquharson -v- King, 1902 A.C. 325, in which the House of Lords reversed a unanimous decision of the Court of Appeal, and in which Lord Holsbury said that but for respect for those who had taken a different view, he would have said that it was "a particularly plain case in which no difficulty whatsoever arises". In Farquharson -v- King, 1902 A.C. 325, at 330, Lord Halsbury held that there was, in that case, no estoppel, and he went on to say of the plaintiffs:

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" .....if they had represented their clerk, Capon, to be invested with disposing power, and (note the importance of the next sentence) if anybody, supposing Capon to be invested with that power, had acted upon it to his own prejudice, then undoubtedly estoppel would have arisen. The person who had improperly and negligently allowed Capon to be apparently so invested with authority would be estopped from denying that Capon had authority".

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If the principle as stated in Commonwealth Trust -v- Akotey, 1926 A.C. 72 at 76, and quoted in Mercantile Bank of India Ltd. -v- Central Bank of India Limited, 1938 A.C. 287 at 298, is applied to the facts of the present case, it seems that the plaintiff would fail. That statement was:-

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"To permit goods to go into the possession of another, with all the insignia of possession thereof and of apparent title, and to leave it open to go behind that possession so given and accompanied, and upset a purchase of the goods made for full value and in good faith, would bring confusion into Mercantile transactions, and would be inconsistent with law and with the principles so often affirmed, following Lickbarrow -v- Mason."

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It is to be noticed that the principle as there stated requires that the purchase in question should be for full value and in good faith, but makes no reference to its being in the ordinary

course of business. But after the citation of that passage, Their Lordships went on, in the Mercantile Bank case, to say that "it is impossible to accept without qualification as a true statement of law the principles there broadly laid down." They referred with approval, to earlier authorities, and particularly to the statement of Blackburn J. in Swan -v- North British Australasian Co., 2 H. & C. 175 at 182, to the effect that it is necessary if an estoppel of this kind is to operate, that there must have been on the part of the person alleged to be estopped, a duty owed to the person who has been misled "or to the general public of whom the person is one", and a neglect of that duty, which neglect was the "proximate cause" of the person being misled.

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In the case just discussed, and in other cases, the problem is considered in language appropriate to the doctrine of estoppel. But it has not always been so considered as will appear in the references to be made later to the recent case of Eastern Distributors Limited -v- Goldring, (1957) 2 Q.B. 600.

It can be taken as settled that the much quoted statement of Ashurst J. in Lickbarrow -v- Mason, (1787) 2 T.R. 63, is too wide. That statement was, "Wherever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it." Whilst this is too widely stated, there have been differences of opinion in more modern cases, as to the basis upon which the Court must determine who it is who must bear the loss. But in the judgment given by Devlin J. for the Court of Appeal, in Eastern Distributors Limited -v- Goldring, (1957) 2 Q.B. 600, the whole matter is discussed at some length. But before adverting to the principles laid down by that judgment, it is desirable to make some reference to the manner in which the matter was debated by counsel in their addresses. For the defendant, Mr. Street sought to place reliance on s. 28 of the Sale of Goods Act, but he contended also that, independently of that provision, the plaintiff must fail. Mr. Rath, for the plaintiff, has submitted that the defendant cannot rely on s.28, because it is not pleaded and because, in any event, it is untenable. He

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contends that the possession of Motordom after it sold the cars to the plaintiff, was a possession as bailee and not as seller, and that in such a case s. 28 does not apply. See *Eastern Distributors Limited -v- Goldring*, (1957) 2 Q.B. 600 at 614: *Staffordshire Motor Guarantee Limited -v- British Wagon Co. Limited*, (1934) 2 K.B. 305.

In my opinion, this part of the case is to be determined upon the application of relevant common law principles, recognised but not fully enunciated in the Sale of Goods Act, which remain applicable notwithstanding the enactment of the Factors Act and of s. 28 of the Sale of Goods Act. S.26 (1) of the latter Act declares the general rule that the buyer gets no better title than the seller had, but adds "unless the owner is by his conduct precluded from denying the seller's authority to sell". This sub-section is expressed to be "subject to the provisions of this Act". In sub-section (2), reference is made to the Factors Act. There appears then to be a statutory recognition of a principle that an owner may be precluded by conduct, from denying the authority to sell of the actual seller, in cases which are not governed by s. 5 of the Factors Act or by s. 28 of the Sale of Goods Act, and that it is not only in cases so governed that the owner may have to suffer the loss caused by an unauthorised sale. For if this is not so, the words in s. 26 (1) beginning with the word "unless" would be unnecessary. The applicability of the general rule enacted by s.26 (1) would be, without those words, subject to s. 28 and to the provisions of the Factors Act. S. 26(1) does not, however, contain any definition of the circumstances in which an owner is to be regarded, by his conduct, as precluded from denying the validity of the transaction. This is left to be worked out under the general law. See s. 4 (2) of the Act.

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In *Eastern Distributors Limited -v- Goldring* the conclusion is reached that the exceptions recognised by the common law, in relation to contracts for the sale of goods, to the general principle expressed in the maxim *nemo dat quod non habet*, were based upon grounds of mercantile convenience, and that a buyer in good faith from

a person with apparent authority to dispose of the goods, does not merely acquire a title by estoppel, based on an implied representation by the owner that there was a right of disposition. He acquires a real title, good against the world. Devlin J. said that the solution of the difficulty created when an agent has been held out or represented as having an authority to sell which he has not, in fact, got, might have been found by the application of the doctrine of estoppel, "but in fact the Courts of common law approached the problem of the unauthorised sale from a different angle" (at p.607). His Lordship supports the foregoing propositions by reference to the cases of Pickering -v- Busk, 15 East 37: and Fuentes -v- Montis, L.R. 3 C.P. 268 at 276: and to the language used in the provisions based on the common law, contained in the Factors Acts and in s. 28 of the New South Wales Sale of Goods Act, which he says "is not the language of estoppel". He states that the reason for the Factors Act was that it was held that the relevant common law principle did not apply to pledges but only to sales. He goes on to say that where an agent is entrusted with goods, and where the only evidence of apparrent authority is the possession of the goods, the position must now be treated as governed by the Factors Acts which, in this respect, "codify as well as amplify the common law". But there may be cases where there is evidence, other than mere possession, showing that a man has been clothed with apparent ownership or apparent authority to sell, and to these the common law principle is still to be applied, and it applies to any form of representation or holding out of apparent ownership or the right to sell (at p.610), and this principle is preserved by s. 26(1) of the Sale of Goods Act. He then states, at p. 611:

"This section expresses the old principle that apparent authority to sell is an exception to the maxim nemo dat quod non habet; and it is plain from the wording that if the owner of the goods is precluded from denying authority, the buyer will in fact acquire a better title than the seller.

We doubt whether this principle, which is sometimes referred to - for example by Wright J. in Lawther -v- Harris - as common

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law estoppel, ought really to be regarded as part of the law of estoppel. At any rate it differs from what is sometimes called 'equitable estoppel' in this vital respect, that the effect of its application is to transfer a real title and not merely a metaphorical title by estoppel."

I think it would be difficult to reconcile the statements that have been made in some of the earlier decisions, with this analysis of the matter set out in the judgment of Devlin J. But as I do not think that the earlier decisions of high authority are directly applicable to the facts of the present case, I consider that it is right for me to accept this recent considered judgment of the Court of Appeal as a correct exposition of the relevant principles. 10

In the present case there was more than the mere circumstance that Motordom was in possession of the cars. It had for some time been trading in cars in its own name, both buying and selling them, and paying and being paid for them by cheques drawn by it or payable to it. Apart from any special knowledge that a particular person might have, any person dealing with Motordom who thought about it would naturally assume that that company was the owner or, if not the owner, had full authority to sell. By its course of conduct the plaintiff permitted those assumptions to be made. It invested Motordom with authority to sell in that manner and knew that it was doing so and, so far as the defendant was concerned, the plaintiff knew that the defendant had been dealing with Motordom in that manner. If it is necessary to find a duty owed to the defendant, as the Mercantile Bank case indicates, the duty was owed to all persons, including the defendant, who might be likely to deal with Motordom. When the plaintiff revoked the authority which it had given, it did not take possession of the cars, as it was entitled to do under its arrangement with Motordom. It did not post any notice at the yards of Motordom. It did not inform the principle car dealers, such as the defendant, of the changed position. In these circumstances, I am of opinion that the principles set out in the Eastern Distributors' case require that the sale made by Motordom to the defendant should be held 20 30 40

good as against the plaintiff.

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10 In my opinion, it is not material if the  
sale in dispute was not one "in the ordinary  
course of business". That is a limitation appli-  
cable where the only basis of the apparent  
authority is the possession of the goods, and  
where the Factors Act is applicable. But it is  
not an essential requirement for the application  
of the common law principle, as expounded in the  
Eastern Distributors' case. Nor do I think it  
20 matters that the transaction was for the purpose  
of satisfying the defendant's debt, or that payment  
was made in the way I have described. It is  
essential only that the dealing should have been  
in good faith, in the sense that it was not  
carried out for the purpose of defeating rights  
known by the defendant to be vested in the  
plaintiff. It may readily be accepted that the  
defendant sought to secure its position by getting  
30 control of assets, at a time when the stability of  
Motordom was highly suspect. But in my opinion,  
this does not suffice to show that the transaction  
was, in a relevant sense, lacking in good faith.

30 Having reached the conclusion stated, I must  
find against the plaintiff's claim. This makes it  
unnecessary to discuss in detail the other grounds  
upon which Mr. Street submitted that the plaintiff  
must fail. But I shall mention them. One was  
that the plaintiff failed to prove title to the  
goods, for the reason that the contract upon which  
it relied to establish its title was void for un-  
certainty. Mr. Street contended that the evidence  
failed to make clear, and left in the realm of  
speculation, what were the terms upon which the  
plaintiff and Motordom were dealing. As to this,  
I have said that I accept the evidence of Stevens,  
and I have said that the evidence as to the terms  
of the arrangement is not very clear. Nevertheless,  
40 I should have been prepared to hold that the  
contract was not void for uncertainty, and that  
under it the intention of the parties was, when  
cars were brought into the arrangement, that the  
general property in those cars should pass to the  
plaintiff.

The next submission of Mr. Street was that  
the plaintiff's claim to have obtained title to  
the cars was invalidated by the Bills of Sale Act,

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in particular by s. 5C thereof, relating to a "trader's bill of sale", an expression which is defined in s. 3. The argument is that the sale by Motordom to the plaintiff was not an independent transaction, but was part of an entire transaction which was really one of loan. Then it is said that the vouchers and cheques sent by the plaintiff to Motordom, constituted bills of sale. Further, in relation to some of the vehicles in dispute, it is said that there are additional documents, which, in the circumstances, constitute bills of sale, these being Exhibits 1 and 2. Exhibit 1 is a document purporting to come from Motordom and addressed to Mr. Stevens and stating, "In connection with our display plan, please find list of vehicles", under which is a list of vehicles "on" and a list of vehicles "off" as at 30th September 1960. Exhibit 2 is a list of vehicles under a heading "on - 12/7/60", on a sheet with the printed letterhead of Motordom. The latter list was written out by Patrick at the dictation of Webb. The former presumably was sent by Motordom to the plaintiff, although the document in evidence is an unsigned copy.

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Mr. Street sought to rely on Price -v- Parsons, 54 C.L.R. 332, in respect of his argument that the documents mentioned constituted bills of sale. I do not think there are any findings of fact, apart from facts already stated, which would require to be made in order that this question might be determined. In the circumstances I do not set out my reasons on this part of the case, but state merely that, in my opinion, none of the documents mentioned is a bill of sale to which the provisions of s. 5C apply, and that in this case, there is no document of the kind which was held, in Price -v- Parsons, to be a bill of sale.

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Finally, I should mention that the defendant did not seek to pursue the cross-action set out in the points of defence, except in the event that it should be held that the transaction between the defendant and Motordom on the night of 2nd November 1960 was of no effect and that the defendant is liable for conversion of the vehicles. In these events the defendant sought to contend that the plaintiff was liable, as principal, for the price of cars bought from the defendant by

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Motordom, as agent for the plaintiff. It sought to contend that otherwise than by means of the transaction of 2nd November, the price has never been paid and that, on the findings just assumed, that price is still due by the plaintiff. In the circumstances, having regard to my conclusions on the plaintiff's action, it is unnecessary to say anything more about the cross-action, except that there ought to be a formal finding thereon in favour of the plaintiff.

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I make a finding for the defendant in the plaintiff's action, and a finding for the plaintiff on the defendant's cross-action. I direct that judgment may be entered for the defendant.

- - -

I certify that this is a correct copy of the judgment of His Honour, Mr. Justice Walsh.

John Hogan  
Associate

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No. 6.

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ORDER OF HIS HONOUR MR. JUSTICE WALSH  
25TH JULY 1962.

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
COMMERCIAL CAUSES  
JURISDICTION

No. 10201 of 1961

BETWEEN MOTOR CREDITS (HIRE FINANCE)  
LIMITED Plaintiff  
AND PACIFIC MOTOR AUCTIONS PTY.  
LIMITED Defendant.

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WHEREAS this action was tried before His Honour Mr. Justice Cyril Ambrose Walsh sitting without a jury on the 27th day of November 1961 and the 7th day of March 1962 on which latter day the matter stood for Judgment and on the 14th day of May 1962 when a verdict was found for the abovenamed

Order

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In the Supreme  
Court of New  
South Wales

No. 6.

Order of His  
Honour, Mr.  
Justice Walsh

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Continued.

Defendant Pacific Motor Auctions Pty. Limited  
against the abovenamed Plaintiff Motor Credits  
(Hire Finance) Limited on the Plaintiff's claim  
against the Defendant and a verdict was found  
for the abovenamed Plaintiff on the Defendant's  
cross-action.

THEREFORE it is adjudged that the Plaintiff  
recover nothing against the said Defendant and  
that the Defendant recover against the Plaintiff  
its costs of Defence in respect of the Plaintiff's  
claim AND it is further adjudged that the said  
Defendant recover nothing against the Plaintiff  
in respect of the cross-action and that the  
Plaintiff recover against the Defendant its costs  
of Defence to the said cross-action.

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JUDGMENT signed this 25th day of July 1962.

For the Prothonotary,  
G. Casey  
CLERK OF THE SUPREME COURT  
Order of His Honour  
Mr. Justice Walsh

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In the High  
Court of  
Australia  
New South  
Wales Registry

No. 7.

Notice of  
Appeal.

31st May, 1962.

No. 7.

NOTICE OF APPEAL 31ST MAY 1962

IN THE HIGH COURT OF AUSTRALIA }  
NEW SOUTH WALES REGISTRY } No. 51 of 1962

ON APPEAL FROM THE SUPREME COURT  
OF NEW SOUTH WALES

BETWEEN

MOTOR CREDITS (HIRE FINANCE)  
LIMITED  
(Plaintiff)  
Appellant

30

AND

PACIFIC MOTOR AUCTIONS PTY.  
LIMITED  
(Defendant)  
Respondent

NOTICE OF APPEAL

TAKE NOTICE that the abovenamed appellant appeals 40

Notice of Appeal

to this Honourable Court against the whole of the Order and Judgment of the Supreme Court of New South Wales dated the fourteenth day of May, one thousand nine hundred and sixty-two, in which the Honourable Cyril Ambrose Walsh sitting without a jury on the twenty-seventh and twenty-eighth days of February last, and the first, fifth and sixth days of March last, on which latter day the matter stood for judgment, and on the fourteenth day of May last, when judgment was delivered and a verdict found for the defendant AND FOR AN ORDER that the said judgment and verdict be set aside AND FOR AN ORDER that verdict and judgment be entered for the plaintiff AND FOR SUCH FURTHER OR OTHER ORDER as to this Court may seem meet, upon the following grounds:-

1. That his Honor was in error in law in giving judgment for the defendant and should in law have found in favour of the plaintiff.
- 20 2. That his Honor was in error in holding that it was immaterial whether the sale of the motor vehicles the subject of the action by Motordom Pty. Limited to the defendant was or was not made in the ordinary course of business of Motordom Pty. Limited.
- 30 3. That his Honor should have held that the alleged sale referred to in (2) was not made in the ordinary course of business of Motordom Pty. Limited and that, in the circumstances, the property in the said motor vehicles did not pass from the plaintiff to the defendant, and the plaintiff was not estopped from denying that the property in the said motor vehicles had so passed.
4. That his Honor should have held that the alleged sale referred to in 2 above was not made by Motordom Pty. Limited with the express, implied or apparent authority of the plaintiff.
- 40 5. That his Honor was in error in holding that the defendant owed any duty to the plaintiff in relation to any apparent authority of Motordom Pty. Limited and should have held that, in the absence of such duty, any apparent authority of Motordom Pty. Limited could not be relied upon by the defendant in relation to the alleged

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sale referred to in 2 above.

- 6. That his Honor was in error in holding that the said alleged sale referred to in 2 above was in law a sale and that his Honor should have held that the said alleged sale was a merely colourable transaction.
- 7. That his Honor should have held that the defendant was at all material times aware that Motordom Pty. Limited had no authority from the plaintiff to sell the said motor vehicles.
- 8. That his Honor was in error in holding that the alleged purchase by the defendant of the said motor vehicle was made in good faith, and should have held that the said purchase was not in any relevant sence in good faith.

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DATED this                    day of    May,            1962.

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Counsel for the Appellant.

This Notice of Appeal is filed by Messrs. A.J.P. Hall & Hall, of 90 Pitt Street, Sydney, solicitors for the appellant.

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233.

No. 8 (a).

JUDGMENT OF HIS HONOUR MR. JUSTICE  
McTIERNAN. 28TH AUGUST 1963.

MOTOR CREDITS (HIRE FINANCE) LIMITED

V.

PACIFIC MOTOR AUCTIONS PTY. LIMITED

10 In this case I agree with the judgment of  
Mr. Justice Walsh and the findings of fact and  
decisions of law on which it is based. I do not  
think it is necessary to add anything to what the  
learned judge has said. Accordingly, I would  
dismiss the appeal and cross-appeal.

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Registry

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McTiernan

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1963.

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No. 8 (b)

JUDGMENT OF HIS HONOUR MR. JUSTICE TAYLOR  
28TH AUGUST 1963.

MOTOR CREDITS (HIRE FINANCE) LIMITED

V.

PACIFIC MOTOR AUCTIONS PTY. LIMITED

20 In the commercial cause set out of which  
this appeal arises the appellant sued the res-  
pondent for the return of twenty second-hand  
motor vehicles which it alleged had been wrongfully  
detained by the respondent. At the trial the  
appellant abandoned its claim with respect to  
four of the vehicles and, as an alternative to  
the return of the remaining sixteen, it claimed  
to recover their value and damages for detention.

30 The motor vehicles in question had never  
been in the possession of the appellant but the  
points of claim filed by it in the action show  
briefly how the claim arose. It was alleged that

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on 2nd November 1960 and at all material times the motor vehicles were the absolute property of the plaintiff and that, on that date, they were in the possession of a company, Motordom Pty. Limited (hereinafter referred to as Motordom) as bailee for the plaintiff and not otherwise. It was further alleged that on that date Motordom had no authority to sell the vehicles but that, nevertheless, it did, without any such authority, purport to sell them to the defendant whereupon the latter took possession of them. Subsequently the appellant made a demand for the return of the vehicles but the demand was not complied with. In answer to the claim the Respondent denied the appellant's title to the vehicles and also denied Motordom's alleged lack of authority to make the sale in question. Additionally, the respondent alleged, in effect, that the appellant had held out and represented Motordom as the owner of the vehicles or as a person having full power and authority to sell them to a purchaser and that the respondent dealt with Motordom on the faith of such representation. Other subsidiary matters were raised by way of defence and to these reference will presently be made.

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As its name implies, the appellant is a finance house and it was part of its business to provide accommodation to motor vehicle dealers pursuant to what we were told is called in the trade a "floor plan" or display agreement". It had entered into such an agreement in writing with a dealer named Webb who, in the course of his business, both bought from and sold to the respondent motor vehicles from time to time. Broadly the purpose of such agreements is to provide dealers with finance to enable them to carry on the business of buying and selling motor vehicles. The agreement which the appellant made with Webb seems to be more or less in a common form and in it the appellant is described as "the company" and the dealer is described as "the agent". It recites that the company, at the request of the agent, had agreed to permit the agent to acquire motor vehicles on its behalf and to sell such vehicles on behalf of the company upon the terms therein set out. The ensuing terms relate both to the purchase of new vehicles and second-hand vehicles but we need make no reference to the provisions of the agreement in so far as they are concerned solely

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Judgment of His Honour  
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with new vehicles. By clause 1 the agent was authorized to purchase such types of motor vehicles and cycles and in such quantity as the company might from time to time in writing authorize. The agent was to be at liberty to purchase used goods either in the name of the company or in the name of the agent without disclosing the agency. By clause 3 the company was bound to pay to the agent ninety per cent of the purchase price or trade-in-allowance paid or allowed in respect of any second-hand vehicle but this provision was subject to the company's right in any particular case to have an assessment made of the fair wholesale value of any such vehicles. Pending resale the agent was to keep all such vehicles in good order and condition and upon resale he was bound to account for the sale price in the manner specified by clause 5. By this clause the agent agreed that as from the date of the acquisition "any goods purchased in pursuance hereof shall be on hire and the possession of the agent shall be as bailee only". Nevertheless he was to be at liberty to sell such goods on behalf of the company. In respect of cash sales and hire purchase transactions not arranged through the company the agent was bound to account to the company immediately thereafter. In the case of hire purchase transactions arranged through and accepted by the company, the agent was bound to account for the deposit received in accordance with the terms of the clause. Clause 6 provided that the agent or the company might at any time respectively return or require the return of any vehicles and the agent undertook on demand forthwith to deliver up possession of the vehicles demanded. Further the company was to be at liberty to take possession of any vehicles subject to the agreement without previous notice. The final clause of the agreement related to what was called rental or hiring and it provided in effect for a stipulated interest charge on the amount paid or allowed by the company in connection with the purchase or trading-in of any particular vehicle calculated in respect of the period elapsing between its purchase or trade-in and its subsequent resale.

Prior to the transactions with which we are immediately concerned, Webb had carried on business for some time under the trade name of Motordom. But before the material date the company

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known as Motordom Pty. Limited was incorporated and it took over Webb's business. He, however, was in control of the company and he continued to manage and control the business. No fresh display agreement was entered into between Motordom and the appellant but there was abundant evidence to show, and the learned trial judge found, that the course of business between them indicated that they assumed a business association more or less on the basis of the arrangement which the earlier written agreement had created between Webb and the appellant. We should, however, mention that the terms of the written agreement seem never to have been strictly adhered to. Indeed, there was one important departure for Webb, and later Motordom, adopted the practice of purchasing vehicles without any prior authority from the appellant, in writing or otherwise, and according to the learned trial judge Webb, and Motordom after its incorporation, did not buy on behalf of the appellant but on their own behalf. The course of dealing between the appellant and Motordom was fully discussed by the learned trial judge and it is unnecessary to traverse the same ground in detail. But apparently what happened was that Motordom exercised its own judgment in selecting and purchasing motor vehicles and some of these never became subject to the display agreement. Nevertheless a great many of the vehicles were, subsequently to their purchase, said to be accepted as being subject to the display agreement. What happened was that as vehicles "on display" were sold they would be replaced by other vehicles which Motordom had purchased. Proposals for this purpose were sometimes made by telephone, sometimes in the course of a personal call by Webb at the offices of the appellant and sometimes personally when the appellant's representative visited Motordom's premises. The proposals would be reported to the acceptance manager of the appellant and upon any proposal being accepted a cheque would be made out and forwarded to Motordom accompanied by a list of the accepted vehicles. A number of these lists was tendered in evidence; they refer to the display plan, specify the make and registered numbers of the vehicles accepted and the amounts to be paid in respect of each. After a review of the evidence concerning the numerous dealings between the appellant and Motordom the learned trial judge said that he was satisfied that, at all times prior to 2nd November 1960, "it was clear that the course

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of business was such that when Motordom bought a vehicle it did so on its own account and not as agent for the plaintiff, so that title to that vehicle thereupon passed to Motordom". Upon a careful examination of the evidence this finding of fact was, we think, inevitable. However, the appellant sought to overcome the difficulty presented by this finding by contending that, upon the evidence, it was clear that when a vehicle was subsequently accepted as subject to the display plan and an advance or payment made in respect of it, the title passed to it. As his Honour said it was the claim of the appellant "that when a request was made to it to put any such vehicle on display plan, this constituted an offer to sell that vehicle to the plaintiff upon the terms with which, by reason of the previous arrangements and the course of dealing, the parties were familiar, and that thereupon, when the plaintiff accepted this offer, the title passed to the plaintiff". Nevertheless his Honour was of the opinion that "assuming that the plaintiff then acquired a valid title to such a vehicle, Motordom had the right to retain it in its possession and had a general authority to re-sell it in its own name and at such price as it should decide, and a right to receive the purchase money and to retain it, subject only to its obligation to account to the plaintiff in the manner specified in the display agreement". His Honour observed that the evidence relating to the terms of the arrangement between the appellant and Motordom was not very clear but, nevertheless, he was prepared to hold that it was "the intention of the parties, when cars were brought into the arrangement, that the general property in those cars should pass to the plaintiff".

With this brief account in mind it is convenient to come to the transaction or transactions which took place on the night of 2nd November 1960. During the previous week three cheques of Motordom which had been given by that company to the respondent in payment for vehicles purchased from it, had been dishonoured. These cheques were for £6,965, £2,535, and £3,790 respectively. For a few days the respondent appears to have thought that Motordom's difficulties were only of a temporary nature and that the total sum involved, namely £13,290, would shortly be paid. But by 2nd November 1960 it seemed to have become more or less

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generally known in the trade that Motordom was in serious financial trouble and on the afternoon of that day Webb was summoned to see the respondent's general manager, Crealey. Upon the evidence which the learned trial judge accepted it is quite clear that at this stage the respondent was intent upon obtaining satisfaction from Motordom that day. For this purpose the proposal was made to Webb that he should sell some of Motordom's stock at its various yards to the respondent and, if the outstanding cheques were met upon re-presentation, the respondent would return the cars to Motordom. Webb agreed and the details of what occurred that evening are set out in the learned trial judge's reasons:

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"A party from the defendant's office, and Webb, then went to several yards, and cars were selected and listed, and prices put against them by Guest. After some discussion about the prices Webb said that he would definitely be taking the cars back, and Crealey then agreed to adopt the prices which Motordom had paid for the cars when it acquired them. There was an arrangement that the defendant would hold the cars, to re-deliver them to Motordom, if the money was found. The total amount due to the defendant had been calculated at £16,510. It seems that there was some additional debt, apart from the cheques abovementioned. After 29 cars had been listed, it seems that an upwards adjustment of the price assigned for some of them took place, in order that the total price would come up to £16,510. For each vehicle declarations were obtained, signed by Webb, reciting a sale of the vehicle at a specific price and stating that the vehicle was the seller's sole property, free from any other interest, and that the seller had good right and title to sell it. A cheque which the defendant's accountant, Skinner, had taken with him, was completed in favour of Motordom, for £16,510 and was signed for the defendant by Crealey and Skinner. On the back of it was written, 'Please pay to order of Pacific Motor Auctions Ltd.', and this was signed by Webb. The cheque was handed back to the defendant's representatives. The cars were taken away and were subsequently re-sold by the defendant.

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The dishonoured cheques of Motordom were not met and on each of them is endorsed the words, 'Payment stopped'".

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10 The news of Motordom's difficulties had also reached the appellant during the afternoon of 2nd November and thereupon the appellant's manager communicated with Webb by telephone and expressly revoked his authority to deal with cars which were the property of the appellant. This occurred several hours before Webb's nocturnal dealings with the respondent. It should perhaps also be mentioned that the respondent was not the only motor dealer in attendance upon Webb's premises on that night; representatives of another motor-dealing firm were also present and there is evidence which shows that on that night many of the cars which had been in the yards were disposed of, leaving only a relatively small number of less valuable vehicles. Webb, it remains to be said, was not called as a witness at the trial and it was said during the course of argument that at the time of the trial his whereabouts were unknown.

20 In the result the learned trial judge dealt with the case on the assumption, which we think he rightly made, that the appellant had established its title to the subject vehicles and that it had, in the circumstances disclosed by the evidence, an immediate right to possession upon which to found its claim. However, he held that in the circumstances as they appeared to him the appellant was estopped from denying that Motordom had authority to sell the vehicles to the respondent. In so deciding his Honour appears to have felt constrained by the decision in Eastern Distributors Ltd. -v- Goldring (1957 2 Q.B. 600) and he concluded, upon the authority of that case, that it was an immaterial consideration that the transaction of the 2nd November 1960 was not in the ordinary course of Motordom's business and that its only purpose was to secure and ultimately to discharge Motordom's outstanding indebtedness to the respondent. But, with respect to the learned judge, I do not regard the Eastern Distributors' Case as requiring or leading to any such conclusion. In the first place there was not in that case any suggestion that the transaction there in question was not in the ordinary course of the dealer's business. But secondly, it is of vital importance to notice

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that that case was essentially one of ostensible ownership; it was a case where, in the language of Devlin L.J. (as he then was) "Coker (the dealer) represented that the car was his, and Murphy (the owner) was privy to that representation being made; so neither can be heard to say that Coker had not a good title to transfer to the plaintiffs". The italics are mine and serve to emphasise the fact that the case was primarily one of ostensible ownership and not one of ostensible agency. There has been, as is pointed out in Ewart on Estoppel (p.238 et seq.) considerable confusion between these two subject matters of estoppel and it is of importance to observe that if a person deals with an ostensible owner no question can arise concerning the extent of that person's authority to deal on behalf of a principal. On the contrary, if he deals with an ostensible agent the question of the extent of the latter's apparent authority is a very material matter. As Ewart puts it, in the former case "some person has appeared to be the owner of property when in reality he was not", whilst in the latter type of case "some person has appeared to have authority to do something, when in reality he has not". Accordingly, in the latter case, it is essential to determine what apparent authority an ostensible agent has.

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His Honour also felt some difficulty in reconciling the decisions in Commonwealth Trust Limited v. Akotey (1926 A.C. 72) and Mercantile Bank of India Limited v. Central Bank of India, Limited (1938 A.C. 287). I do not myself see any difference in principle between the two cases. The question in such cases must always be whether the circumstances disclosed by the evidence are such as to lead a person dealing with someone who is in possession of goods and of all the indicia of title to suppose that the latter is the owner. In the earlier case the Judicial Committee took the view that in the circumstances of that case that question should be answered in the affirmative whilst in the latter case it was answered in the negative. In the latter case "All that the respondents did was ... to deal with their own property, as pledgees, in the usual course of business which was well known to and had been followed both by the appellants and the respondents". Accordingly, possession by the firm of merchants of the goods and documents of title in

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question did not, in view of the practice followed by both banks, provide any foundation for a finding that the appellants had been lead by the respondents to suppose that the merchant was the owner of the goods in question.

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10 In my view the present case is not one of  
ostensible ownership. It is, of course, true  
that Webb, on behalf of Motordom, falsely repres-  
ented that the vehicles which he purported to sell  
to the respondent were Motordom's sole and absolute  
and unencumbered property and free from any charge  
or other adverse interest whatsoever and that no  
person or corporation had any right title or  
interest therein. But this was Webb's represen-  
tation and there is not the slightest evidence to  
suggest that he was authorised by the appellant to  
make the representation or to show that it was made  
with the latter's knowledge or consent. It is  
20 again true that the respondent was not informed of  
the revocation of Motordom's authority and that the  
appellant's vehicles still remained in the posses-  
sion of that company. But, as the learned trial  
judge found, the respondent knew that Motordom had  
obtained "floor plan accommodation" from the  
appellant and that the limit of such accommodation  
had in October 1960 been increased by £5,000. With  
its knowledge of the manner in which business was  
conducted in the trade this was the clearest  
30 intimation to the respondent that Motordom was  
dealing in cars which, although in its possession,  
were not its property and, that being so, I can  
see no ground upon which it can be asserted that  
Motordom's possession of the vehicles in question  
gave rise to a case of ostensible ownership. The  
mere fact that the goods of one person are seen to  
be in the possession of another does not, of itself,  
create a situation of ostensible ownership. If  
40 it were otherwise the owner of a vehicle who had  
lent it to another might find himself estopped from  
asserting his title against an innocent purchaser  
from the latter. The same situation would also  
arise where the hirer of goods under a hiring  
agreement had fraudulently disposed of the goods to  
an innocent purchaser. Many other illustrations  
might be given but, nevertheless, possession may be  
given in such circumstances as to make it appear  
that the person in possession is the owner. For  
instance, if a vehicle were delivered to a person  
50 who happened to be a dealer in motor vehicles in

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order that he might place it among his stock for sale he would appear to be the owner to any person not knowing the true facts. In the present case, however, it was about as clear as it could be to the respondent that Motordom was dealing in vehicles of which it had possession but which were not its property. Accordingly, the circumstances of its possession were not such as to lead the respondent to suppose that the vehicles in question were the property of Motordom.

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Subject to one matter which I shall presently mention, the case therefore comes back to one of ostensible authority. As was found below there is every reason for thinking that notwithstanding the revocation of its authority to deal with the appellant's cars, circumstances continued to exist at the relevant time which would have made it appear to any person dealing with Webb in the ordinary course of business that he continued to have authority to sell the vehicles which remained in his possession. But the transaction in this case was of a very special character and it is that transaction with which I am immediately concerned. As already appears it was not a transaction in the ordinary course of business; it was in effect a forced sale of a substantial part of Motordom's stock which, it seems, secured a limited right of redemption to Motordom and it was entered into purely for the purpose of providing security or ultimately discharging Motordom's debt to the respondent. To me it seems quite clear that if Webb's authority had not been revoked it would not have extended to authorise this present transaction and I can see no reason for supposing that, in the circumstances as they existed on the night of the 2nd November 1960, he appeared to have a wider authority than that which he would actually have possessed if his authority had not been revoked. This being so I am of the opinion that this issue should have been decided in favour of the appellant.

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Three subsidiary arguments were, however, raised on behalf of the respondent. The first was that the purported revocation of Motordom's authority was not effective. In my view there is no substance in this argument but even if it were accepted it would not advance the respondent's case for as I have already said Motordom's actual

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Mr. Justice Taylor.

authority, before revocation, would not have extended to a transaction of the character under consideration.

In the High  
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New South  
Wales  
Registry

No.8(b)

Judgment of  
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Taylor.

28th August,  
1963.

Continued.

10 The next matter was concerned with s. 28 of the Sale of Goods Act, the respondent contending that this was a case where Motordom having sold to the appellant the vehicles which were "accepted" for the purposes of the display plan continued in possession of them and that pursuant to that section the transaction of the 2nd November 1960 was effective to transfer the title to the vehicles to the respondent. There is, however, substantial authority for the proposition that this section has no application where the character of a seller's possession has changed and he does not remain in possession merely as seller but by virtue of his rights as a bailee (Staffs Motor Guarantee, Limited v. British Wagon Company, Limited (1934 2 K.B.305) and Eastern Distributors Ltd. v. Goldring (supra at pp. 613, 614)). I see no reason to dissent from the statement of the principle in those cases and this contention of the respondent must therefore be rejected.

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30 The final matter to be mentioned is the matter of the respondent's cross-action which was concerned with moneys owing to the respondent for vehicles purchased from it by Motordom. In my view the cross-action must fail for the evidence clearly shows, as I have already said, that the practice followed by Motordom was to purchase vehicles on its own behalf and not on behalf of the appellant.

For the reasons given the appeal should be allowed and a new trial ordered for the assessment of damages.

Judgment of his  
Honour Mr. Justice  
Taylor.

In the High  
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New South  
Wales  
Registry

No. 8 (c)

JUDGMENT OF HIS HONOUR MR. JUSTICE  
OWEN. 28TH AUGUST 1963

No.8(c)

MOTOR CREDITS (HIRE FINANCE) LIMITED

V.

Judgment of  
His Honour  
Mr. Justice  
Owen.

PACIFIC MOTOR AUCTIONS PTY. LIMITED

28th August,  
1963.

This action arose out of a transaction of an unusual kind which took place during the evening of 2nd November 1960 between a company called Motordom Pty. Ltd. and the defendant whereby the former purported to sell to the latter 29 motor cars which had been displayed for sale by Motordom on its business premises. Motordom, the affairs of which were conducted by a man named Webb, carried on business as a dealer in cars, buying and selling them in its own name. In order to finance its operations it had entered into what was described as a "floor plan" or display plan" arrangement with the plaintiff of a kind well known in the motor trade. The evidence as to the terms of this "display plan" arrangement was somewhat confused but, as found by the learned trial judge, the arrangement was to the following effect. Motordom bought cars in its own name as a principal and, when it wished to avail itself of the "display plan" arrangement in respect of cars purchased by it, it sought the plaintiff's approval to bring them under that arrangement. If the plaintiff approved, it would then pay Motordom 90% of the purchase price which had been paid by Motordom for whatever cars were so approved. The learned trial judge took the view - and I think rightly so - that the effect of the arrangement was that Motordom purchased all cars on its own account and that when any of them was approved by the plaintiff for the purposes of the "floor plan" arrangement and 90% of the original purchase price was paid over to Motordom the title to the car passed to the plaintiff and it was thereafter held by Motordom as a bailee from the plaintiff for the purpose of reselling it in accordance with the terms of the "display plan" arrangement. When a resale was effected, Motordom would repay to the plaintiff

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Mr. Justice Owen.



the amount earlier paid to it by the latter, together with what was called a "rental charge" for the period during which Motordom had held the car under the "plan". All resales of "display plan" cars were made by Motordom in its own name and at such prices as it thought fit and, when a resale was made, it was the practice of Motordom, as known to the plaintiff, to give the buyer an assurance that it was the owner of the car. This, it appears from the evidence, is the usual practice of dealers in the trade. In the course of its business Motordom frequently bought cars from the defendant which was aware at all material times that some of the cars displayed for sale on Motordom's premises were held under "display plan" arrangements with the plaintiff although at no time did it know which of the cars were so held.

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New South  
Wales  
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1963.

Continued.

Early in November 1960 Motordom found itself in financial straits and this soon became known to the trade. One result was that during the afternoon of 2nd November, the plaintiff revoked Motordom's authority to deal with any cars held by it under the "display plan" arrangement. Some hours later there occurred the transaction between the defendant and Motordom to which I have earlier referred. Motordom owed the defendant £16,510 for cars which it had bought from the latter and, on that day, three of its cheques totalling £13,290 given in part payment of the debt were dishonoured. Webb, on behalf of Motordom, assured the defendant that the cheques would be met on re-presentation on the following day but the defendant required immediate security for the payment of the debt. It was thereupon agreed between them that Motordom would sell to the defendant 29 cars out of the stock held by it for a total price of £16,510 and a cheque drawn by the defendant for that amount in favour of Motordom was handed to the latter. On the back of it was written "Please pay to the order of Pacific Motor Auctions Ltd.". This was signed by Webb on behalf of Motordom and the cheque was handed back to the defendant which undertook to return the cars if the dishonoured cheques were met on the following day. The cars were at once removed by the defendant and were later sold by it, the dishonoured cheques having again been dishonoured. In respect of each of the 29 cars the defendant obtained from Motordom a statutory declaration, signed by Webb on its

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behalf, to the effect that the car was Motordom's sole property and that it had good right and title to sell it. The 16 cars which are the subject of dispute in these proceedings were among the 29 cars covered by the above transaction.

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As stated above, the learned trial judge proceeded upon the basis that the effect of the "display plan" arrangement between the plaintiff and Motordom was to vest in the plaintiff as purchaser from Motordom the title to cars originally bought by Motordom on its own behalf and subsequently accepted by the plaintiff for inclusion in the "display plan" arrangement, such cars thereafter being held by Motordom as a bailee from the plaintiff for the purposes of resale on the terms of that arrangement. That being so, the question is whether the plaintiff, to adopt the words of s.26 (1) of the Sale of Goods Act, "is by its conduct precluded from denying" Motordom's authority to deal with the 16 cars in question in the way in which it did. There can be no doubt that had Motordom sold the cars in the ordinary course of its business, the defendant would have got a good title to them notwithstanding the fact that the plaintiff had revoked Motordom's authority to sell. The case would then have fallen within the terms of s. 5 of the Factors Act. But the transaction between Motordom and the defendant was not one in the ordinary course of Motordom's business as a dealer in cars and that section cannot therefore operate. Nor can the defendant rely upon s. 28 (1) of the Sale of Goods Act since Motordom was not in possession of the goods merely as the seller of them to the plaintiff but as a bailee under the "display plan" arrangement: Staffs Motor Guarantee Limited v. British Wagon Company Limited (1934 2 K.B. 305); Eastern Distributors Ltd. v. Goldring (1957 2 Q.B. 600). It was necessary, therefore, for the defendant to show that it had been induced by the plaintiff's conduct to believe that Motordom was entitled to deal with the cars in a manner which was outside the ordinary course of a dealer's business. Motordom professed to sell the cars as the owner of them but there is nothing in the evidence which would justify the conclusion that in the particular transaction with which this case is concerned the plaintiff was privy to that representation. In that respect the facts differ from those in the Eastern Distributors' Case (supra). There Murphy, the owner of the vehicle,

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Mr. Justice Owen.

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10 agreed that another person, Coker, should pretend to the plaintiff, a hire purchase company, that he, Coker, owned the vehicle in order to induce the plaintiff to buy it from Coker and the plaintiff, in reliance upon the representation that Coker was the owner, bought the vehicle. But that is not this case. By allowing the cars which it owned to be in the possession of Motordom the plaintiff unquestionably held that company out as having authority to sell them in the ordinary course of its business as a dealer and, for the purposes of such sales, to represent that it was the owner of cars sold. Any such sale would have been effective to pass title to an innocent purchaser notwithstanding the revocation of Motordom's authority since a purchaser of goods from one whose business it is to buy and sell goods of that description is entitled to assume that the seller has authority to sell, in the ordinary course of his business, goods of that description which are in his possession. But a purchaser is not entitled to assume that the seller has authority to deal with such goods otherwise than in the ordinary course of business unless there be some further act by the true owner leading the purchaser to believe that the seller is clothed with authority to enter into such a transaction.

30 In the present case I can see nothing to support such a conclusion and thus preclude the plaintiff from denying Motordom's authority to deal with the cars in the way in which it did. In other words, the plaintiff did no more than hold out Motordom as having authority to dispose of its cars in the ordinary course of its business as a dealer.

40 It should be added that counsel for the defendant submitted that under the terms of the "display plan" arrangement, the purported revocation by the defendant of Motordom's authority was ineffective. I am unable to agree with the submission but, even if it were so, the defendants position would not be thereby bettered since the actual authority conferred upon Motordom was, in my opinion, one which did no more than authorise sales in the ordinary course of Motordom's business as a dealer.

The cross-action pleaded by the defendant

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related to the price of a number of cars which Motordom had purchased from the defendant and brought under the "display plan" arrangement before 2nd November. The defendant claimed that payment for these cars had not been made by Motordom and that the plaintiff was liable for the price. But liability could attach to the plaintiff only if the cars in question had been bought by Motordom as agent for the plaintiff and not on its own account and, since Motordom's purchases were all made on its own account and not as an agent for the plaintiff, the cross-action cannot succeed.

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The appeal should be allowed and the cross-appeal dismissed.

No. 9.

Order on Appeal

28th August, 1963.

No. 9.

ORDER ON APPEAL - 28TH AUGUST 1963

IN THE HIGH COURT OF AUSTRALIA  
NEW SOUTH WALES REGISTRY

} No. 51 of 1962

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES

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BETWEEN:

MOTOR CREDITS (HIRE FINANCE) LIMITED

(Plaintiff)  
Appellant

AND

PACIFIC MOTOR AUCTIONS PTY. LIMITED

(Defendant)  
Respondent

BEFORE THEIR HONOURS MR. JUSTICE McTIERNAN,  
MR. JUSTICE TAYLOR AND MR. JUSTICE OWEN

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Wednesday the 28th day of August, 1963.

THIS APPEAL AND CROSS APPEAL from the whole of the judgment and order of the Supreme Court of New South Wales in its Commercial Causes Jurisdiction given and made on the 25th day of July, 1962, by his Honour

Order on Appeal

10 MR. JUSTICE WALSH whereby it was adjudged on the trial of an action in detinue that the Plaintiff recover nothing against the said Defendant and that the Defendant recover against the Plaintiff its costs of Defence in respect of the Plaintiff's claim AND it was further adjudged that the said Defendant recover nothing against the Plaintiff in respect of the cross-action and that the Plaintiff recover against the Defendant its costs of Defence to the said cross-action coming on for hearing before this Court at Sydney on the 23rd and 27th days of November, 1962 UPON READING the transcript record of proceedings herein AND UPON HEARING MR. NEWTON of Queen's Counsel and MR. JENKINS of Counsel for the Appellant and MR. STREET of Counsel for the Respondent THIS COURT DID ORDER on the said 27th day of November, 1962, that THIS APPEAL AND CROSS 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 allowed AND THIS COURT DOTH FURTHER ORDER that the cross appeal be and the same is hereby dismissed AND THIS COURT DOTH FURTHER ORDER that the verdict and judgment in favour of the Defendant, the Respondent herein on the Plaintiff's claim be and the same is hereby set aside AND THIS COURT DOTH FURTHER ORDER that the said action be remitted to the Supreme Court for assessment of the Appellant's damages on its claim AND THIS COURT DOTH FURTHER ORDER that it be referred to the proper officer of this Court to tax and certify the costs of the Appellant of this appeal and the cross appeal and that such costs when so taxed and certified be paid by the Respondent to the Appellant or to its Solicitors, Messrs. A.J.P. Hall & Hall.

In the High Court of Australia New South Wales Registry

No.9.

Order on Appeal.

28th August, 1963.

Continued.

BY THE COURT

DISTRICT REGISTRAR

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In the Privy  
Council

No. 10.

ORDER IN COUNCIL GRANTING LEAVE TO  
APPEAL TO HER MAJESTY IN COUNCIL  
20TH JANUARY 1964.

No.10.

Order in  
Council  
Granting  
Leave to  
Appeal to  
Her Majesty  
in Council.

AT THE COURT AT BUCKINGHAM PALACE

The 20th day of January, 1964

PRESENT

20th January,  
1964.

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. MARPLES

LORD MERTHYR

MR. BEVINS

MR. SECRETARY BROOKE

SIR PETER RAWLINSON

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WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 14th day of January 1964 in the words following viz.:-

"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 Pacific Motor Auctions Pty. Limited in the matter of an Appeal from the High Court of Australia between the Petitioner and Motor Credits (Hire Finance) Limited Respondent setting forth: that the Petitioner is desirous of obtaining special leave to appeal to Your Majesty in Council from a Judgment of the High Court of Australia allowing an Appeal from a Verdict and Judgment of the Supreme Court of New South Wales in Commercial Causes and remitting the action to the said Supreme Court for assessment of damages: that the action was brought by the Respondent as Plaintiff seeking a judgment in detinue in respect of motor cars or their value and damages for their detention: that the said Supreme Court found in favour of the Petitioner: that the High Court allowed the Respondent's Appeal on 28th August 1963: And humbly praying Your Majesty in Council to order that the Petitioner should have special leave to appeal from the said Judgment of the High Court of Australia

Order in Council granting  
leave to Appeal.

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dated 28th August 1963 or for further or other relief:

In the Privy Council

10       "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 no one appearing at the Bar on behalf of the Respondent 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 Judgment of the High Court of Australia dated the 28th day of August 1963 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

Order in Council Granting Leave to Appeal to Her Majesty in Council.

20th January, 1964.

20       "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".

30       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.

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.

W.G. AGNEW

Order in Council granting leave to Appeal.

IN THE PRIVY COUNCIL

No. 43 of 1964

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

BETWEEN:            PACIFIC MOTOR AUCTIONS PTY. LIMITED

(Defendant)    APPELLANT

AND:                MOTOR CREDITS (HIRE FINANCE) LIMITED

(Plaintiff)    RESPONDENT

RECORD OF PROCEEDINGS

V O L U M E I

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SOLICITORS FOR THE APPELLANT.

KINGSLEY WOOD & CO.,  
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SOLICITORS FOR THE RESPONDENT