

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 9TH FEBRUARY

2000 AT 10:30AM:

CHAIRMAN: Good morning.

MS. O'BRIEN: Mr. Patrick McCann please.

PATRICK MCCANN, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS

BY MS. O'BRIEN:

CHAIRMAN: You are already sworn from some considerable time ago. Thank you for your return.

Q. MS. O'BRIEN: Thank you McCann. You have previously given evidence to the Tribunal on occasions last year.

A. That's correct.

Q. And I think you are and were a partner of Mr. Sam Field-Corbett, is that correct?

A. That is correct.

Q. And that you were there for a, you had involvement in the business of Management Investment Services Limited?

A. Yes.

Q. And I think on this occasion the Tribunal has asked you to give evidence in relation to a transaction which appears across the No. 2 account of Management Investment Services Limited and dating from December of 1990?

A. Yes.

Q. And just to put the matter in context, Sir, you will recall that Ms. Kells gave evidence in relation to the withdrawal

from Mr. Foley's joint investment account in Guinness & Mahon of a sum of €24,005.95 which was withdrawn at the end of November of 1990 and it appears it is an exactly equivalent amount was subsequently lodged to an account of Kentford Securities Limited also in Guinness & Mahon on or about the 12th December 1990 and it's in that connection that Mr. McCann has been asked to give evidence.

I think Mr. McCann, you have provided the Tribunal with two Memoranda of Evidence at its request and perhaps if I could take you through those memoranda, there may be one or two matters I might ask you to clarify after that aspect of your evidence is complete.

A. Okay.

Q. In your first Memorandum of Evidence, you referred to a letter of the Tribunal of the 12th January 2000. I think that was a letter in which the Tribunal requested that you would provide certain information with regard to this transaction?

A. Yes.

Q. Paragraph 2 you have informed the Tribunal that you have examined the bank statements of Management Investment Services No. 2 Account which shows a lodgment on the 3rd December 1990 in the sum of €24,005.95 and a cheque debited on the said account on the 12th December of 1990 and I think we can see that on the screen, there's one there just to your right-hand side, you might see it there. We can see I think the credit to the account on the 3rd December

of 1990 of €24,005.95 and then a debit to the account of exactly the same amount on the 12th December of 1990 and I think the description on the account statement in respect of the debit is giro credit and in respect of the sorry in respect of the credit is giro credit and in respect of the debit is cheque. I think that would signify to you that the debit was in respect of a cheque drawn on the account?

A. That is correct.

Q. I take it the giro credit indicates that a lodgment was made perhaps at another branch of the same bank?

A. That is correct.

Q. You say in relation to this transaction that you have no recollection whatsoever of the particular transaction?

A. I can't recall the circumstances surrounding the transaction.

Q. You have also informed the Tribunal that you have examined the lodgment docket dated the 29th November 1990 which you accept is in your handwriting and signed by you, therefore Mr. Field-Corbett's assumption that the lodgment was made by the late Mr. Des Desmond Traynor, you knew that was an assumption that was made in a previous memorandum furnished to the Tribunal by Mr. Field-Corbett and perhaps if we could look at the front of the lodgment docket, I think you can see there it indicates it's paid in by you, Patrick McCann and the address is 3 Trinity Street, Dublin 2. I think that was the address of the Management Services at

the time?

A. That's correct.

Q. The date is the 29th November 1990 and I take it the numbers appearing above on the face of the lodgment docket, are they the numbers of the account to be credited?

A. They are the numbers of the No. 2 Account.

Q. Then on the right-hand side we see the total, œ24,005.95 so it's a little faint on the copy which is on the overhead screen. You state further that under no circumstances would Mr. Traynor had have access to the bank accounts of Management and Investments Services.

A. That is correct.

Q. You state that you have no recollection of the source of funds in respect of this lodgment?

A. I have no recollection of the source of funds. I have however written to the bank and asked them for a copy of the cheque making up the lodgment. As yet I haven't received a copy of the cheque but as soon as it comes to hand, I will make it available to the Tribunal.

Q. I think the Tribunal has been able to provide you with a photocopy, a copy taken from microfiche of the cheque so it's quite a poor quality but nonetheless, it is a copy of it.

A. I would refer you to the cheque in relation to the lodgment.

Q. Oh the cheque in relation to the lodgment. I think you are relying there on the particulars that appear on the reverse

side of the lodgment docket?

A. That's correct.

Q. If we just put up the reverse side of the lodgment docket on the screen. I think in that you would have set out particulars of the instrument you were lodging as part of that giro account?

A. That's correct.

Q. I think you can faintly see the name Foley.

A. Yes.

Q. I think you state with regard to that that you do not know nor have you ever known a Mr. D or a Mrs. M Foley.

A. That is correct.

Q. I think you further informed the Tribunal that you have examined the cheque stub 00055 dated the 6th December of 1990.

A. That is correct.

Q. I think we can see it there that it's payable, it appears that the cheque in relation to which it relates was payable to Kentford Securities.

A. Yes.

Q. And the amount is œ24,005.95?

A. That's correct.

Q. You see there's a small little symbol in manuscript at the base of the lodgment, it looks like a C with a line through it. What does that indicate?

A. That would indicate a contra transaction.

Q. Sorry?

A. A contra transaction.

Q. Who would have placed that symbol on the cheque stub?

A. I would have done it.

Q. At what stage would you have placed it on the cheque stub?

A. I would have placed it most likely when I was drawing the cheque.

Q. So it wouldn't have been at the stage that the auditors were coming in to prepare the accounts or books?

A. No.

Q. What would that have indicated to you at the time?

A. The contra.

Q. A contra transaction. Just to indicate to the Chairman what do you understand the term contra to mean?

A. It would mean that that debit on account would have been matched by the lodgment coming into the account.

Q. So there's no reduction in the actual funds of Management Investment Services itself?

A. Yes.

CHAIRMAN: It's what's called an in and out.

A. An in and out.

Q. MS. O'BRIEN: I think you then refer to the copy of the cheque which the Tribunal provided to you, this was on the screen a moment ago, if we can put this up on the screen and as I said, I think this is a copy taken from microfiche records which accounts for its poor quality. I think you have informed the Tribunal that the cheque is virtually

illegible, however from the details that you can read and the reference numbering thereon, you would accept that the cheque details are your handwriting and the signature is that of Mr. Sam Field-Corbett?

A. That is correct.

Q. I think you state that you have no knowledge of where the proceeds of this cheque were lodged?

A. Yes.

Q. I think you have also informed the Tribunal that to the best of your knowledge, from your examination of the records available to you at this late stage, that there are no similar contra transactions across the accounts of Management and Investment Services Limited, is that correct?

A. That is correct.

Q. And which were made on the instructions of the late Mr. Traynor or any other person?

A. That is correct.

Q. So do I take it therefore that you have made a full study of the statements of account of Management Investment Services Limited?

A. Of the No. 2 Account.

Q. The No. 2 Account and that you are satisfied from that that there are no other similar contra entries?

A. That is correct.

Q. On the instructions of Mr. Traynor. Now I think you have also provided the Tribunal with a short further Memorandum

dated the 21st January of 2000.

A. That is correct.

Q. I think you have provided that on foot of certain specific detailed queries raised by the Tribunal?

A. Yes.

Q. I think those queries related primarily to the persons with whom you had dealings in relation to this transaction, the manner or circumstances in which you received the monies that appear to have been lodged to the account, and any dealings that you had with regard to the cheque which is just there on the screen now subsequent to it being filled in by you and signed by Mr. Sam Field-Corbett?

A. Yes.

Q. And I think in the Memorandum that you furnished, you refer to the Tribunal's letter of the 19th January and you state that reference is made to the schedule attached to that letter and in the schedule I think the Tribunal has set out detailed queries of you with regard to the transaction?

A. Yes.

Q. You reiterate the content of paragraph 2 of your Memorandum in that you have no recollection whatsoever of this particular transaction, hence you cannot be of assistance in replying to items 1, 2, 3, 4, 5, 7, and 8 and in relation to item 6 and in item 6, the Tribunal asked you whether you wrote the Management Investment Services cheque dated the 6th December 1990 which is that cheque there.

You confirmed, which you had stated in your previous

Memorandum, that it appears that it was your writing.

A. It was my writing.

Q. Just in relation to the No. 2 Account, I think Mr. Sam Field-Corbett, who gave evidence yesterday, indicated that that was not an operating account of Management and Investments Services.

A. That would be correct.

Q. And in your experience of operating that account or using that account, what type of transactions was it used for?

A. We would have been in receipt of items such as dividend receipts on behalf of clients, that we would lodge to that No. 2 Account and then pay out to the clients.

Q. You would pay it out to the clients so it wasn't unusual for cheques to be paid in and then an equivalent sum to be paid out?

A. No.

Q. If we just put the statement back on the screen again, take it that if that was primarily used for dividend cheques, the transactions would be of a relatively modest size.

A. The amounts would vary but they would be mostly of a modest size.

Q. The sum of €24,005.95, that would be a substantial in and out transaction having regard to the pattern of drawings and lodgments to the account?

A. Yes.

Q. And would it be significantly more?

A. No, there would have been others, maybe not as much as that

but others of a sizable amount as well.

Q. I think you said also that you reviewed the account and that you are satisfied that there were no other similar contra transactions connected with Mr. Traynor?

A. There was no other transactions connected with Mr. Traynor.

Q. At the time that you were, that this matter took place in November and December of 1990, with whom might you have had dealings with regard to this? I accept that you have no specific recollection but at the time, were you having regular dealings with Mr. Traynor?

A. There would have been regular dealings with Mr. Traynor.

Q. I think

A. Not specifically in relation to this account but in general I would have had dealings with Mr. Traynor.

Q. Did you have any dealings or you say that you didn't know Mr. Denis Foley so can we take it that it couldn't have been Mr. Foley who you had dealings with regarding this transaction?

A. I wouldn't think so.

Q. Well if you didn't know him, I take it it couldn't be the case that it was Mr. Foley?

A. That is correct.

Q. In relation to this transaction or any other transactions, were you having dealings at the time with Mr. Collery?

A. Not that I can recall, no.

Q. Not that you recall. So that the only person it seems to be, while I accept you have no recollection of the matter,

isn't it the likelihood that it would have been Mr. Traynor from whom you would have received the cheque that was lodged to the account and to whom you would have given the cheque signed by Mr. Field-Corbett?

A. That would be most likely.

Q. Thank you, Mr. McCann.

CHAIRMAN: Anyone got any matters to raise with Mr. McCann? Mr. McCarthy? Thank you for your assistance, Mr. McCann.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. John Byrne please.

MR. JOHN BYRNE, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS

BY MR. HEALY:

CHAIRMAN: Thank you for the journey to give evidence, Mr. Byrne, you are of course already sworn from previously.

A. Thank you.

Q. MR. HEALY: Thank you, Mr. Byrne. You have provided two recent Memoranda of Evidence to the Tribunal in response to a number of queries from the Tribunal concerning Central Tourist Holdings and what I propose to do is to take you through those Memoranda just as you were taken through similar memoranda provided when you last gave evidence to the Tribunal. Do you have copies of them with you there?

A. I have a copy, yeah.

Q. What you were asked to do in your first Memorandum was to detail all of your knowledge, direct or indirect, of the loan to Central Tourist Holdings, the one we have been discussing in evidence in the last day or so, the manner in which that loan was secured and the manner in which it was repaid and all of your dealings regarding this matter with Guinness & Mahon, the late Mr. J Desmond Traynor, the auditors to Central Tourist Holdings, Mr. Denis Foley, the other directors of the company and any other person and then you were asked to address a number of more particular matters and I think that I am right in saying that your Memorandum contains your response to that request for information and your Supplemental Memorandum contains some further information you have provided Tribunal again in response to requests concerning what you know about Central Tourist Holdings, is that right?

A. That is right.

Q. You say that in or about 1972 you became aware that the Central Hotel Ballroom in Ballybunion had run into difficulties. "I am and was at the time a director and shareholder of Princes Investments Limited which owns and operates the Brandon Hotel in Tralee along with Tom Clifford and his brother the late William Clifford. In 1972 Denis Foley worked on a part time basis for the Brandon Hotel in relation to its ballroom operation. " You go on to say, "Together with the Cliffords, I discussed the idea of acquiring The Central hotel in Ballybunion and it

was agreed if Denis Foley would become actively involved, we might proceed. Denis Foley indicated that he was prepared to do so."

You say, "While I do not have a precise recollection of the details of the agreement arrived at between myself on the one hand, the Cliffords and Mr. Foley on the other hand, it is my recollection that all four of us became directors in Central Tourist Holdings which was formed for the purpose of purchasing and developing The Central Hotel and Ballroom in Ballybunion. I believe that each of the four shareholders put up €5,000 and a loan of approximately €70,000 was obtained from Guinness & Mahon, which borrowing was arranged through the late Mr. Desmond Traynor.

I recall that joint and several guarantees were required from each of the four directors. I do not recall any other security being requested and in particular, I do not recall any arrangements being put in place for a back-to-back deposit with Guinness Mahon Cayman Trust Limited. From my examination of the documents provided to me by the Tribunal, I can find no evidence to suggest that a back-to-back deposit was put in place in 1972.

The reference to the loan being suitably secured appears for the first time in 1976. While I accept this expression has been used as shorthand by Guinness & Mahon employees to indicate the presence of a back-to-back arrangement, I would have expected Guinness & Mahon to be able to furnish

some documentation to show that a back-to-back arrangement had been put in place. And I have written to them asking them to check their records in this regard.

I am quite happy to accept the fact that Mr. Traynor may have put in place some arrangement of a back-to-back nature but I do not recollect this happening, though I accept it could well have happened. From evidence supplied to me by the Tribunal, I am aware that in September of 1985, it would appear that the loan due by Central Tourist Holdings to Guinness & Mahon, which at the time had risen to approximately €135,000 was discharged by Guinness & Mahon Trust Limited between 1972 and 1985, I was not directly involved in the running or operation of the hotel. Very considerable work however was put into the same by Denis Foley and to a lesser extent, by the late William Clifford who died in 1981. By 1985 the hotel business

CHAIRMAN: A little slower.

MR. HEALY: "By 1985 the hotel business was doing very poorly and it was decided that the hotel and ballroom should be closed down and the premises sold off. To the best of my recollection, each of the shareholders provided a sum of €5,000 to discharge the liabilities to the company's trade creditors. I recall also that each of the four shareholders had to provide a further sum to discharge outstanding liabilities to the Revenue Commissioners.

I say that questions relating to my involvement with the Central Tourist Holdings and Ballroom in Ballybunion through Central Tourist Holdings were raised by the Tribunal on Wednesday, 26th January. Since that time, I have been making inquiries and I understand from my solicitor that the file of the late Mr. Joseph Grace has been found and my solicitor consented on my behalf to that file being furnished directly to the Tribunal, though neither I nor my solicitor have had an opportunity of seeing it. I assume that this file will indicate the details of the disposal of properties and the amount of the deficit in Central Tourist Holdings Limited in 1986. I have also made inquiries with the company's former auditors, Messrs. Haughey Boland, who advised me that they have accounts for each year up to September of 1982, which were the last accounts prepared for the company. They also hold the share register and minute book.

My solicitors have also written to Guinness & Mahon, whom I believe ought to have further information relating to the repayment of the loans. I have no recollection of requesting or arranging that the amount due to Guinness & Mahon by Central Tourist Holdings could be repaid by Guinness & Mahon Trust Limited sorry, could be repaid by Guinness Mahon Cayman Trust Limited and I assume that the late Mr. Desmond Traynor, who was a director of both Guinness Mahon Cayman Trust and Guinness & Mahon, must have

organised this. However, all my dealings in relation to Central Tourist Holdings were with Guinness & Mahon Dublin.

If the debt due to Guinness & Mahon Dublin was paid off by Guinness & Mahon Cayman Trust Limited, then this is quite possible that this money was debited by Mr. Traynor to the Cayman Trust which I had established in 1972. I have not yet been able to establish whether this was the case but I propose continuing my inquiries into this matter and would be happy to supplement this Memorandum if I can obtain further clarification.

If the monies were paid by the Cayman Trust, I believe that the proceeds of the sale of properties in Ballybunion, having deducted all prior claims, would have been lodged to Guinness & Mahon as a repayment to Guinness Mahon Cayman Trust. The Tribunal has drawn my attention to the fact that in 1986, Guinness & Mahon stated that the loan was still outstanding though their records would appear to have shown that it was repaid in September of 1985. I was not aware of this fact and know nothing about it."

Now in that statement, Mr. Byrne, you indicated that you were going to have some further inquiries carried out and I think that following some inquiries that you put in train, you made a further Supplemental Statement, isn't that right or Memorandum?

A. That is correct, Mr. Healy.

Q. And you say, "I refer to the Memorandum of Evidence furnished to the Tribunal in relation to this matter," meaning in relation to Central Tourist Holdings Limited. And you say, "As stated in that Memorandum, I have had inquiries made in an effort to establish if any amounts were debited to the trusts set up by me in the Cayman Islands in relation to the sum of £135,000, which the Tribunal has advised me was paid by Guinness Mahon Cayman Trust Limited to Guinness & Mahon Dublin Limited to pay off a loan due by Central Tourist Holdings Limited. My solicitor has spoken to the trustees and he has been advised by them that their records do not show any such debit and they are satisfied that no payment was made out of the trusts in relation to that matter.

The trustees have also indicated to my solicitor that the designation of Guinness & Mahon Cayman Trust/College indicated to them that monies would have been paid out of a Guinness Mahon Cayman Trust account for College Trustees Limited. They believe this company to have been at the time a subsidiary in the Channel Islands of Guinness & Mahon Dublin Limited. I have no knowledge whatsoever of College Trustees Limited and I have had no dealing with that company.

As stated in my earlier Memorandum, I wrote to Guinness & Mahon Limited for information that they may have which would enable me to assist the Tribunal in explaining this

transaction. I attach to the Memorandum copies of my letter to Guinness & Mahon Limited and confirm that on receipt of a response, I would be happy to provide further comments to the Tribunal."

Mr. Byrne, you have obviously had an opportunity of examining a large number of documents made available to you by the Tribunal in its request for information, is that right?

A. That is correct.

Q. And I presume that you have examined those documents with the benefit of the assistance of your advisors?

A. That is correct.

Q. And can I take it that you are familiar with some of the evidence given in relation to these matters by Ms. Sandra Kells and by Denis Foley?

A. That is correct.

Q. Now you say that in paragraph 3 of your first Memorandum, you say that you believe that each of the four shareholders who were interested in this purchase and development of The Central Hotel and Ballroom, that each of the four shareholders put up €5,000 and a loan of approximately €70,000 was obtained from Guinness & Mahon, which borrowing was arranged through the late Mr. Desmond Traynor."

Can you tell me what further assistance can you provide the Tribunal into the circumstances in which Mr. Traynor became involved in assisting you in getting finance for this

proposition or venture?

A. Mr. Traynor was approached by Mr. Billy Clifford and myself if he could provide the necessary funds to purchase it as Mr. O' Sullivan, who owned The Central Hotel at the time, he had just finished his major ballroom and I gathered that he got into some financial, maybe difficulties, and he wanted to clear up matters, and he wanted to he asked us if we would be interested in purchasing The Central Hotel and Ballroom. I approached Mr. Traynor with Billy Clifford, and he agreed that he had the funds available and would make them available.

Q. And I think the funds that you were looking for were for the purposes of providing working capital for the venture, is that right?

A. No, it was for to purchase the property outright.

Q. Well if I could just jump forward to the end of this story first and then we will come back to the beginning again.

A. Okay.

Q. Am I right that at the end of the day, once the property was sold, most of the sale price realised or a large portion of it went to the Bank of Ireland, is that right?

A. I believe some of it did go to the Bank of Ireland but I understood that when the property was sold, that the debt was cleared off with Guinness & Mahon.

Q. But is it not also the case that I am not sure of the amount but a substantial portion of the sale price realised on the disposal of the property went to the Bank of Ireland

in Listowel or in Kerry somewhere?

A. Listowel, I believe some it did go there.

Q. Did that seem to suggest that the Bank of Ireland in Listowel had a charge on the property of some kind?

A. Yes, I would think they had, yes.

Q. In the course of evidence given to Tribunal over the last few days, reference has been made to a number of internal loan decision memoranda generated in Guinness & Mahon and those internal memoranda referred to the purpose of this loan at various times as being for working capital. And wouldn't that seem to be consistent with the proposition that some of the money to buy the property must have come from some other source?

A. It came from no other source other than Guinness & Mahon, nobody else was involved.

Q. So is it possible then that having purchased the premises, that at some time after the purchase of the premises, the title deeds were lodged with the bank of Ireland in Listowel to raise further finance?

A. I cannot recollect that but I would assume that that is what happened and it probably was.

Q. Well had you had an opportunity in the last few days to read the original facility letter from Guinness & Mahon dated the 1st June 1972 and addressed to the secretary, Central Tourist Holdings Limited, 60-62 Amiens Street, Dublin, would that be the offices of Haughey Boland?

A. That would be Haughey Boland, yes.

Q. I don't know if you have a copy of that document and I am sure you will correct me if I am wrong but it doesn't refer to the purpose for which the advance was made?

A. From where?

Q. From Guinness & Mahon?

A. I suppose nothing else other than the purchase of the ballroom and the hotel.

Q. Am I right in thinking that if that was the purpose of the purchase as you saw it, no mortgage was created over the property in favour of Guinness & Mahon?

A. That is correct.

Q. And as a businessman and as a property developer of many many years experience, wouldn't you agree with me that it would be very unusual where monies are advanced for the purpose of the purchase for property not to take a security on that property?

A. I suppose you could say that but certainly Guinness & Mahon were adamant that there would be guarantees from the four directors and they considered that substantial and that's what they wanted and that's what they got.

Q. In your experience, Mr. Byrne, would you agree with me that it would be a highly unusual feature of any property transaction where a bank loans most of the purchase price for a property, for that bank not to take a charge over the property unless there was another security which was satisfactory one to the bank?

A. I would say that they could have considered that the

guarantees given by the directors was sufficient. That's the only thing I can think of it.

Q. That is possible, of course, but again, wouldn't you agree with me that that would again be a very unusual thing for a bank to simply take a personal guarantee from a person, however strong, to purchase a property without taking a charge on the property?

A. Well remember that when we approached Guinness & Mahon for this loan, it was supposed to be it was supposed to be a short-term loan, and Ballybunion at the time was very prosperous and I think the directors thought they'd be in and out of that borrowings very quickly.

Q. You see what the documentation in Guinness & Mahon seems to suggest, Mr. Byrne, is that the bank were not relying on somebody's personal guarantee and I suggest to you that no bank would rely on such a fragile security, such a difficult to enforce security where they had a better security and I suggest to you

MR. SHIPSEY: Sorry, Sir, I don't wish to interrupt, Mr. Healy but I have been here for the last number of days and I haven't seen any documentation which has been proffered and certainly nothing has been furnished to us to suggest that Guinness & Mahon weren't relying on, didn't consider that they could rely on the four personal guarantees.

CHAIRMAN: That may well be a matter of fact to be borne in mind, Mr. Shipsey, but it seems to me not unreasonable that

Mr. Healy explore the general banking practice in the context of Mr. Byrne's admitted long experience as a property developer in this country and abroad.

MR. SHIPSEY: I have no difficulty with that, Sir, it was the way the question was phrased suggested or made an assumption that from the documentation that was produced to the Tribunal, that it had been demonstrated that Guinness & Mahon were not relying upon the guarantees. That was my only point and I don't think there's any evidence to suggest from the documentary evidence that they weren't relying upon their personal guarantees or they didn't regard the personal guarantees as being of some worth. That was my only point, Sir.

CHAIRMAN: Oh that may well be the case, Mr. Shipsey, but I think nonetheless, the line of questioning is a proper one.

Q. MR. HEALY: I just want to put on the overhead projector, Mr. Byrne, a number of loan decision memoranda which have been furnished to the Tribunal by Guinness & Mahon and I think of which you have had copies made available to you through your advisors, is that right?

A. That is right.

Q. I think we have got one here of the 6th December of 1976. Now as you quite properly said in your statement, you could find no evidence, other than these documents which commenced in 1976, of any potential involvement of a

back-to-back arrangement in connection with this loan. The document on the overhead projector refers to a loan in the amount of €70,000 in favour of Central Tourist Holdings, the purpose of the loan is described as being working capital, the term and the source of repayments is described as "Extension required for a period of one year". It may be that the loan was being pushed out from year to year as the business wore on as you have suggested yourself a moment ago. It may have been originally envisaged as a short-term loan. The rate is described as 15 percent fixed. The drawdown is described as already drawn down in the form of a loan account. Mr. Byrne, there's a monitor in front of you, you may find it easier to read.

A. Thank you.

Q. The security is described as the joint and several guarantee signed by William Clifford, Thomas Clifford, Denis Foley and John Byrne which is the security that's described on the facility letter and then at the bottom of the page, there are two words in quotation marks, "suitably secured" and that is an expression which the Tribunal has been informed time and again indicates within Guinness & Mahon that the borrowing was backed by an offshore Cayman deposit or offshore Channel Islands deposit as the case might be. I think you are familiar with some of the evidence and the use of that expression, is that right?

A. Certainly I am not over familiar. That description is double-dutch me.

Q. Well what you said in your statement, if I could just read it out to you is, "While I accept that this expression has been used as shorthand by Guinness & Mahon employees to indicate the presence of a back-to-back arrangement, I would have expected Guinness & Mahon to be able to furnish some documentation to show that a back-to-back arrangement had been put in place and I have written to them asking them to check their records in this regard."

So can I take it that you accept that was an expression that was used to indicate a back-to-back arrangement but you are concerned and you have made inquiries to see if there's any other documentation backing up a back-to-back arrangement. Would that be a fair summary?

A. That would be a fair comment, yes.

Q. If you go on to the next available loan memoranda decision, I think it's December 1977. Most of the details are the same in that the loan is being extended for a further year. The security is described as a joint and several guarantee held, it doesn't say who the joint and several guarantors are but I suppose it's reasonable to assume if you look back to earlier loan decision memoranda and identify them and once again the expression "suitably secured" is used.

If you go onto the next loan decision or credit memorandum which I think it has come to be called by this time, it's some time in 1983, most of the details are again the same,

the loan is now increased to €120,000 so that by that stage, the loan had in the books amounted to €113,641 already drawn down. Do you see that at the bottom of the memorandum?

A. Yes.

Q. The amount being sought was €120,000, that is to say an increase on the present facility. We don't have the documentation for the earlier year so I think it's reasonable to assume that at some stage you must have sought some further facility to increase the size of the loan in as much as the loan drawn at that time was not equal to the amount of the loan, wouldn't that seem to follow?

A. I can't recollect anything.

Q. Now, the security is described as the joint and several guarantees of Messrs. Foley, Clifford and Byrne. Had one of the Cliffords died by that time, do you recall, Mr. Byrne?

A. Yes, I believe Billy would have died.

Q. Yes. And underneath that, there's an expression used, "considered adequate as to security."

A. Correct.

Q. The next available document is a document of 1984 as far as I can see. And again, most of the features of the loan are similar to what appears or what appeared on the earlier documents and this time the security is described once again as the joint and several guarantees and then the next

line contains the sentence "the security may be taken as adequate" . Now that expression, just like the expression "considered adequate as to security" has been used, so far as the Tribunal has been able to find out, as an indication within Guinness & Mahon that a borrowing is supported by a back-to-back arrangement.

Now, it's not just an indication of any back-to-back arrangement, Mr. Byrne. What it indicates, according to the evidence that's been made available to the Tribunal to date, is a not normal or an unusual back-to-back arrangement. A back-to-back arrangement which had no other documentation on the bank's ordinary files. Do you understand me?

A. I do understand you, yes.

Q. So that if you were to write to the bank today to seek other documentation concerning such a back-to-back arrangement, it is extremely unlikely, as far as we can judge, that you would ever get any other documentation and that that is the reason why the expression suitably secured is used. Do you understand?

A. Yes.

Q. What you say in your statement is that you are quite happy to accept that Mr. Traynor may have put in place some arrangement of a back-to-back nature but you do not recollect this happening, although you accept it could well have happened.

Are you saying that you accept it could well have happened because Mr. Traynor is someone you might have expected to do this or because Mr. Traynor would have had a considerable amount of latitude in dealing with your affairs?

A. No, I wouldn't say that Mr. Traynor had that amount of latitude but Mr. Traynor was my financial adviser and I would have to take into account that he might have done something, and I was not happy with saying that he had nothing to do with it until it was investigated and the only one that we, the only place we can go to is back to Guinness & Mahon to clear it up for us. We have done that and it's continuing, it's still continuing.

Q. You say that Mr. Traynor, as your financial advisor, is somebody who would have had, I think am I right in what you said, some latitude but not as much latitude as to put in place a security without your say so?

A. That is right.

Q. But in fact if Mr. Traynor had put such an arrangement in place, is it likely or not likely he would have got your consent but you may not now remember it?

A. Well he would I certainly would have remembered it if he had informed me.

Q. Well isn't it only one way or the other, isn't it something that you would have remembered if he had informed you and you don't remember it. Does that mean that either he didn't do it or if he did it, he did it without your

consent?

A. I'd be very disappointed and surprised if he did it without any consent.

Q. I think on one of the earlier occasions on which you gave evidence to this Tribunal, Mr. Byrne, you were asked about the routing of a large sum of money through the accounts of Carlisle Trust?

A. That is right.

Q. And the evidence suggested that Mr. Traynor had routed this money through Carlisle Trust?

A. That is right.

Q. In one side of the accounts and out the other side and your evidence was that you knew nothing about that.

A. That is right.

Q. And your evidence was that you had not been asked for your consent in relation to it?

A. That is correct.

Q. And I think you am I right in saying that you were disappointed to learn that it had happened?

A. I was, yes.

Q. Now, in this particular case, it seems that not only was there a back-to-back arrangement put in place, but the back-to-back arrangement was actually relied on in that money came from the back-to-back arrangement to pay off some of this loan.

A. I don't accept that, I don't accept that there was a back-to-back.

Q. You don't accept that there was a back-to-back because you don't have any recollection and in fact you say you did not consent to a back-to-back, is that why you say you don't accept it?

A. That is right.

Q. Are you saying that it is impossible that Mr. Traynor could have done it without your consent?

A. Yes, I would say so.

Q. Even though you do accept he did something else without your consent in connection with the Carlisle Trust?

A. Different circumstances. I mean, what he did previously was something that was it was no skin off my nose because it was, it cost me nothing, whereas this would have been a different circumstance.

Q. I think you heard some of the evidence or if you didn't hear the evidence, you certainly will have been, you will have learned of the evidence given concerning how this loan was discharged?

A. Yes.

Q. The loan ultimately reached \approx 135,000 odd. That was a substantial sum of money.

A. Yes.

Q. And that amount was outstanding in September of 1985?

A. Yes.

Q. And it would appear that the loan was repaid on the 4th September of 1985.

A. Yes.

Q. Is that something you can remember being released from a liability of €135,000?

A. The only thing I can remember is that the loan was paid off from the proceeds of the sale of the property and that is my only recollection of anything to do with the sale of the Central Ballroom in Ballybunion.

Q. Are you saying that €135,000 came out of the sale of the Central Ballroom and went into Guinness & Mahon to pay off the loan?

A. That is what I am saying, that the proceeds of the sale went to pay off the loan.

Q. But don't we know that the proceeds of the sale did not go to pay off the loan?

A. Well I

Q. Don't we know that some of the proceeds of the sale went to the Bank of Ireland and that the only balance that was left outstanding was €42,000 odd? I think it might be no harm, Mr. Byrne, if we went through some of the details of the loan. On the overhead projector, you will see on the screen in front of you, you can also see that in September of 1985, the account of Central Tourist Holdings in Guinness & Mahon, the resident loan account 02437007 was overdrawn in the sum of €131,000 odd. Do you see that?

A. Mm-hmm.

Q. Some interest of €4,000 odd is added as of I think the 4th September of 1985, can you see that sum, €4,102?

A. Yeah.

Q. And then there's a lodgment or a credit to the account of €135,000 odd to clear the account and to reduce the debit balance to zero?

A. Yeah.

Q. So as of that day, Central Tourist Holdings loan account was wiped out, isn't that right?

A. Looks like it.

Q. Now amn't I right in thinking that there was no sum of €135,000 realised from the proceeds of the sale of the property paid into Guinness & Mahon on that day?

A. I have no recollection of that.

Q. It never happened. The €135,000 did not come from the proceeds of the sale of the property.

A. Well I have no recollection whatsoever of that.

Q. You have no recollection of which now, Mr. Byrne?

A. Of that payment. And the only one that can throw any light on that as far as I am concerned, is Guinness & Mahon.

Q. Now what Guinness & Mahon did tell us in evidence yesterday is that the loan was cleared off and was deemed by its loans officer to have been fully repaid.

A. Who paid it?

Q. Well the amount to pay for it came from Guinness Mahon Cayman Trust. Now I don't unless you want me to, I don't think we need to go into the internal bank documentation but I think there can be no doubt about it that that is where the money came from to pay off this loan as of that date.

A. I don't know where it came from.

Q. So is it the position then that as of that date, no one told you that your loan had been repaid?

A. No, but I honestly and truthfully accept the fact that I thought that the loan was paid from the proceeds of the sale of Central Hotel. It was sold in two lots, as it was most difficult at the time to sell it and I was always under the impression that it was paid off from the proceeds of the sale.

Q. And how did you form that impression?

A. I just formed it.

Q. Did somebody tell you that?

A. I don't think so.

Q. Mr. Foley says he was extremely concerned about the whole thing. He was sick with worry about the whole thing, about the prospect of not

A. I wouldn't be surprised.

Q. The prospect that he wouldn't realise enough money to pay it off.

A. I know we were all asked to make a contribution, I think £5,000 each, to wrap up the whole business.

Q. Did you make such a contribution of £5,000?

A. I did, yes.

Q. And there was another payment made by Mr. Foley of some £2,000 to the Revenue.

A. That is correct.

Q. Did you make similar contributions?

A. I did, yes.

Q. Do you know what accounts you made those contributions from?

A. Don't know.

Q. Would those contributions have been made or organised for you by Mr. Traynor?

A. No.

Q. Was there somebody else looking after your bookkeeping affairs who would have organised those contributions?

A. I don't know who would have requested it, just can't recollect.

Q. Who would have arranged for those payments to have been made by you at that time? Who would have either asked you for a cheque or arranged for a cheque to be written on one of your accounts?

A. Can't recollect.

Q. Who was dealing with your affairs at that time in 1985?

A. At that time, it was Haughey Boland.

Q. They were dealing with your personal affairs as well as your business affairs?

A. Well, my business affairs.

Q. So would Messrs. Haughey Boland be in a position to furnish information to the Tribunal concerning your payment of œ5,000 and your payment of œ2,000 odd to meet some of the debts of this company?

A. I just would not know that but I know for certain that each of the directors were asked to make this contribution and I

do believe that the four directors made it.

Q. If this debt had to be paid off out of the proceeds of sale of property in Kerry, of hotel property, then somebody had to write a cheque to Guinness & Mahon for €135,000, isn't that right?

A. That is right.

Q. And in the ordinary way, if the property is sold, the person who usually gets the proceeds of sale is the solicitor, isn't that right?

A. That is correct.

Q. So you'd expect a cheque to be written by the solicitor to the bank discharging the amount due?

A. That would be normal.

Q. Now, there's no such cheque written in favour of Guinness & Mahon discharging this sum of money.

A. I have no recollection whatsoever of that transaction.

Q. The only cheque that is written to Guinness & Mahon in connection with this debt is a cheque for €42,680 which will, I'll put it on the overhead projector and I'll give you a copy if necessary. (Document handed to witness.)

A. Thank you.

Q. Now that cheque appears to have been signed by you, isn't that is right?

A. That is right.

Q. And by Mr. Foley, you see Mr. Foley's signature at the bottom - Denis Foley.

A. Yes.

Q. Now Mr. Foley told the Tribunal that the late Mr. Grace, the solicitor, asked him to sign that cheque and he told him that that cheque was being sent to Guinness & Mahon to settle the debt that Central Tourist Holdings had with Guinness & Mahon.

A. I don't recollect.

Q. Do you remember that Mr. Foley said in evidence that he was so upset by this, he was delighted to get out of it because he felt it had affected his health?

A. I wouldn't be surprised.

Q. Property prices were poor in the mid eighties, weren't they?

A. They were.

Q. The fact is that that is the only cheque payment written on Central Tourist Holdings account in respect of this indebtedness so the only money that was paid out of Central Tourist Holdings, as far as Central Tourist Holdings was concerned, to Guinness & Mahon is that sum and wouldn't you agree with me that that would not be enough to discharge a debt of €135,000 or more?

A. I have no idea.

Q. Well it just wouldn't be enough, so it wouldn't, there would be €90,000 left over, isn't that right?

A. Well, it certainly wouldn't be but I have no recollection of signing that cheque even though I do agree that I signed it.

Q. So the position, Mr. Byrne, is you don't recall how the

€135,000 was discharged?

A. I just haven't got a clue.

Q. You don't recall signing the cheque for €42,000?

A. I don't.

Q. You do recall that you did not give any consent to Desmond Traynor to put a backing arrangement in place.

A. Never gave him authority to put a backing in place.

Q. Why is it you feel that you can remember that and you cannot remember two, I would suggest to you, equally significant things, the fact that you owed the bank €135,000 and that you were only able to pay €40,000 odd?

A. It's a long time ago.

Q. Well was Mr. Traynor the person who would have handled the winding-up of your affairs in relation to Central Tourist Holdings?

A. Well he was at the time, I believe, general manager of Guinness & Mahon and he'd be the one that would have done it.

Q. He was also one of your advisors, isn't that right?

A. He was, yeah.

Q. He was an advisor of yours as well as being a director of Guinness & Mahon when you first embarked on this venture?

A. Yeah.

Q. So just as Mr. Traynor is the person who set this up, is it likely he was involved or would have been involved in winding it down or assisting you in repaying off what was due to Guinness & Mahon?

A. No, no recollection of that.

Q. Isn't it likely he was the person who was dealing with these matters on your behalf?

A. It would be most unusual if it wasn't.

Q. And isn't it likely as not that he was the person who arranged for you to sign that cheque for €40,000 odd?

A. I have no recollection of who arranged that.

Q. You say that you have had your solicitor speak to the trustees of your Cayman Trust to ask them whether they know anything about this?

A. That is correct.

Q. Your trustees apparently have records that have enabled them to provide certain information to their solicitors, is that right?

A. Yes, I would say that is correct.

Q. Well have you seen those records?

A. No.

Q. Has your solicitor seen them, do you know?

A. I know he has been on to their solicitors and the inquiry was negative. That's all I can tell you.

Q. Is there not something strange in the fact that it seems to be impossible to get any records out of the Cayman Islands?

A. I find it very difficult to get information ourselves.

Q. I can understand that. Am I right in thinking that although your solicitor may have spoken to the trustees, you have not been able to get any documents from them and they have not sent any documents in connection with this or

any other matter with which you have been involved to the Tribunal?

A. That is correct.

Q. And isn't it in fact the case that they will not send any documents?

A. Well, that is their policy.

Q. Doesn't that put the Tribunal in a situation where it is very hard to rely on anything these trustees may or may not have told your solicitor?

A. That's

CHAIRMAN: I think it's probably a legitimate objection to that question, Mr. Shipsey, because it is a matter of comment.

MR. SHIPSEY: It is, yes.

CHAIRMAN: But nonetheless, it is inevitably the type of hypothetical situations I have to address as one of the issues before me.

MR. SHIPSEY: Of course, Sir, but I'd like it to be clear, Sir, that I think it is on the record that Mr. Byrne has indicated so far as he is concerned, he does not object to the trustees making documentation available. It's another matter whether the trustees themselves will or will not make it available but I just would not want it to be assumed that Mr. Byrne himself was objecting to those documents being made available.

CHAIRMAN: All right.

MR. HEALY: Have you ever been involved in arrangements, in banking arrangements, Mr. Byrne, where back-to-back arrangements were put in place by Mr. Traynor on your behalf?

A. Never.

Q. Never.

A. Never.

Q. Involving your Cayman trust?

A. Never.

Q. Have you ever involved yourself with any other financial advisor in putting in place any back-to-back arrangements concerning borrowings by you or any other company with which you are associated?

A. Never.

Q. So would I be right in saying that what your evidence is that your trust, from your knowledge, was never used to back any borrowing?

A. That is correct.

Q. Certainly no borrowing that you were involved with?

A. Absolutely.

Q. Or any company with which you were associated?

A. Absolutely.

Q. And were any and was Mr. Traynor a trustee of your trust at any time?

A. Yes, he was.

Q. Up until what time?

A. Can't recall.

Q. Well was it the 1990s, the 1980s or when? When did he cease to be a trustee?

A. I can't recall but that could be checked.

Q. Well can you remember who the other trustees were, from time to time, while Mr. Traynor was also a trustee?

A. They were all resident in the Cayman.

Q. Yes. And who were they?

A. Well, there was I know John Furze was.

Q. Yes. Mr. Furze. Mr. Traynor, who else?

A. And Brian Bothewell.

Q. Would that be B-O-T-H-E-W-E-L-L ?

A. I think so.

MR. SHIPSEY: I think that there may be something of a misunderstanding here in that the Tribunal have been informed that at all stages the trustee of the trust was Guinness Mahon Cayman Trust. The individuals that are being mentioned, as I understand it, were at various times directors of Guinness Mahon Cayman Trust rather than being actually trustees of the trust.

CHAIRMAN: Well you can clarify that when you come to question your client, Mr. Shipsey.

Q. MR. HEALY: I think I understand what your counsel is saying, that Guinness Mahon Cayman Trust may have been the

trustees but the individuals, the personalities who were dealing with your trust were Mr. Furze, Mr. Traynor, Mr. Bothwell, is that right?

A. That is what I was trying to say, yes.

Q. And there are different personalities dealing with your trust now and perhaps also a different controlling trust company, would that be right?

A. That would be right.

Q. And when you say that you can check who the trustees or who the personalities dealing with your trust were from time to time, do you mean that you can check your own records or that you would have had to check the records in the Cayman Islands?

A. I'd have to check records in the

Q. Your own records?

A. In the Cayman Islands.

Q. And you anticipate that it would be possible to get that information?

A. We will we can certainly request it but they are not always forthcoming.

Q. Well that's what I am concerned about. That's what I am going to just press you a little about, Mr. Byrne, on when you think Mr. Traynor ceased to be involved as a personality dealing with your trust. Do you think it was in the nineties or do you think it was in the eighties, for instance?

A. I wouldn't have a clue.

Q. Mr. Traynor died in 1994.

A. Yes.

Q. Was he involved at that time?

A. I'd say he was.

Q. You think he was. And Mr. Furze?

A. Yes.

Q. Evidence was given by, I think it was Ms. Sandra Kells at yesterday's sittings of the Tribunal, concerning the manner in which the bank account of Central Tourist Holdings was operated in the period after this debt was repaid. Are you aware of that evidence, Mr. Byrne?

A. No.

Q. If I could summarise it. What the evidence seemed to indicate is that although the loan was paid off in 1985, September of 1985, bank documentation was created after that time suggesting that the loan was still in existence.

Do you understand me? I think there's a document on the overhead projector which this is a document which indicates that the loan was in existence in October and in November of 1985. Can you see that?

A. Yes.

Q. Now do you remember a moment ago we put on the overhead projector a document showing that the loan had been paid off and the debit balance reduced to zero in September of 1985. Do you remember that document? It's been put on the projector again.

A. Yes.

Q. Now if we can just go back to the November document. Here we are in November when the loan is supposed to have been paid and we find that an account in the name of Central Tourist Holdings is overdrawn to the tune of œ135,000 odd which was in fact the amount of the loan. This is a new account, not the previous account that was paid off with a new account number. Did you know anything about that?

A. Nothing.

Q. You weren't involved in creating any such new loan account?

A. Absolutely.

Q. And in the ordinary way I am sure you'd know as a director of several or many companies, that before a loan like that could be drawn down or a new account opened to draw down a loan like that, a bank would usually require a resolution from the directors authorising the taking out of the loan, is that right?

A. That would be right, yeah.

Q. Or some other authority from the company in any case authorising the taking out of the loan?

A. Yeah, that would be right.

Q. And you say that you knew nothing about any such loan?

A. Absolutely.

Q. But of course at that time you didn't know that the earlier loan had been repaid either, did you?

A. I didn't, no. Most mysterious.

Q. Well it is all most mysterious, isn't it?

A. It is.

Q. And at that time, your company's affairs were being handled partly by Mr. Desmond Traynor and partly by your accountants?

A. That's right.

Q. And I think one of the partners from the firm of accountants dealing with your affairs who will be here in a moment was Haughey Boland at that time, isn't that right?

A. That's right.

Q. And would you be surprised if mysterious dealings like this were occurring on your account and it wasn't brought to your attention?

A. I would be very delighted if somebody could answer the questions for me because I honestly don't know how. It's a mystery to me.

Q. What the evidence that was given yesterday suggested is that the documentation that was created in Guinness & Mahon in respect of the account for Central Tourist Holdings in late '85 and in 1986 was false documentation, that somebody set out to create a false impression using bank documentation. That's quite a serious matter, isn't it?

A. It's a very serious matter. Guinness & Mahon are the only people that can come up with your answer there.

Q. Well, the answer that they have come up with is that this documentation was created, was generated to create a false impression.

A. Well I know nothing about that.

Q. And the other answer they had come up with is the loan was

paid off by the Cayman Trust and it would seem to me that if you create documentation like this in 1985 and in 1986 after the loan has been paid off, that what you do is you distract attention from the paying off of the loan by the Cayman Trust backing deposit, do you understand that?

A. I do, yes.

Q. Somebody would be put off the trail.

Do you know whether Central Tourist Holdings had any indebtedness to Amiens Investments or any Amiens type company, a company with the name Amiens in it?

A. No recollection whatsoever.

Q. The cheque which you signed for œ42,680 on the 23rd October 1987 was lodged to an account of Amiens. Now those are accounts which, as far as we know, are under the control or were under the control of Mr. Desmond Traynor. Were you aware of that?

A. I don't know if I was aware of it then but I am now.

Q. But this was effectively your money at that time, isn't that right?

A. Yeah, yes.

Q. And you were writing a cheque to Guinness & Mahon?

A. That is correct.

Q. And it should have gone into the accounts of Guinness & Mahon to repay off the loan that the company had to Guinness & Mahon, isn't that right?

A. Yes.

Q. Now if you check all of the documentation of Guinness &

Mahon, you will find that that money did not go anywhere near a Central Tourist Holdings Limited account.

A. I nothing about it.

Q. Where it went was into an Amiens Account under the control of Mr. Traynor and you know nothing about that?

A. Nothing.

Q. Doesn't that seem to suggest that Mr. Traynor was handling your affairs in a way that was most irregular and that you knew nothing about?

A. No, I wouldn't accept that.

Q. You wouldn't accept that? Well can I just take it in two stages then. First of all, you weren't aware of how he was handling your affairs, would that be right? You weren't aware that that œ42,000 had gone into an account under his control, you weren't aware of that?

A. The cheque was made out, as far as I can see, to Guinness & Mahon and that was the end of it as far as I was concerned.

Q. But it didn't go into Guinness & Mahon and you weren't aware of that?

A. Nobody told me it didn't go into Guinness & Mahon.

Q. So you weren't aware of it?

A. I wasn't aware of it.

Q. And you weren't aware that the loan had been repaid in September of 1985, you weren't aware of that?

A. No.

Q. You weren't aware that it had been repaid out of a Cayman Trust account?

A. I wasn't aware.

Q. And you weren't aware there was a backing arrangement in place over the loan at least between '76 and '85, you weren't aware of that?

A. As far as I was concerned, there was no backing arrangement.

Q. As far as you were concerned?

A. Yeah.

Q. So you weren't aware of it?

A. I wasn't aware.

Q. Now if Mr. Traynor was doing all of these things, you weren't aware he was doing it?

A. That is correct.

Q. What you do think or the impression you do have is that in some way the loan of £130,000 odd was repaid. That's the impression you have, isn't that right?

A. That's the impression I have.

Q. But it was not repaid by any cheque written by Central Tourist Holdings or by you?

A. Can't recollect.

Q. Well don't we know it wasn't?

A. Well the evidence is there but I have no recollection of how it was paid.

Q. So borrowings that you had or that you were responsible for as a guarantor along with a number of other gentlemen disappeared even though the full amount of those borrowings was never paid by you or by the company with which you were

associated into the account of the bank in question. Isn't that the upshot of all of this?

A. The whole thing is a mystery, as far as I am concerned.

Q. Well somebody got the benefit of €93,000 because the loan was I beg your pardon, somebody got the benefit of €130,000 because the loan was wiped out. Looking at it from your perspective, the only amount you paid was €42,000 so wasn't that a benefit to you or to the company because you were a guarantor?

A. I just can't follow that.

Q. But it was a benefit to you, wasn't it? If you guarantee a company's indebtedness and that indebtedness was wiped out or most it was wiped out, wasn't that a benefit to you?

A. I never heard of anyone wiping out that type of debt.

Q. Absolutely. But the fact is it was wiped out. Nobody asked you to come up with €135,000 or your share of it?

A. No.

Q. And as far as we know, nobody asked Mr. Foley either.

A. I don't know.

Q. Mr. Foley told us that nobody asked him.

A. I accept that.

MR. SHIPSEY: Sir, other than the €5,000 that each of the persons were asked to contribute

CHAIRMAN: €5,000 and €2,000 after to the Revenue.

Q. MR. HEALY: So wouldn't it seem to be the case that there

was some mysterious benefactor who wiped out this debt on your behalf and on Mr. Foley's behalf?

A. It's beyond me. I just don't understand it.

Q. There's no reality in it. There's no mysterious benefactor who wiped out the debt.

A. This is true, I mean there's no question about that.

Q. Mr. Desmond Traynor was the person in the best position to carry out the transactions that we have seen described by the bank, isn't that right, and Mr. Desmond Traynor you think wouldn't do, wouldn't use any money you had without your consent, is that right?

A. That would be right.

Q. And if Mr. Desmond Traynor put in place a back-to-back arrangement and you weren't the person whose trust was used, what money was used? Whose money was used?

A. I wouldn't have a clue and I only wish that somebody would come up with the answer.

Q. So a Cayman trust paid money into a bank account to discharge an indebtedness that you were responsible for and that Mr. Foley was responsible for and that Mr. Clifford was responsible for, isn't that right? Isn't that the situation?

A. Well if that happened, that happened.

Q. Thanks, Mr. Byrne.

CHAIRMAN: Mr. Quinn?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. QUINN:

Q. MR. QUINN: Mr. Byrne, I wish to ask you one or two questions, if I may, on behalf of the Revenue Commissioners.

The Revenue Commissioners were creditors of this company, isn't that right?

A. That's right.

Q. And I think you have given evidence whilst you can't remember who it was, you were invited or asked as a director to make two payments, specific payment of €5,000 towards the creditors generally and a further sum of €2,000 odd towards the revenue debt together with the other directors, isn't that right?

A. That is correct.

Q. Now, you were of course a guarantor in relation to the debt with Guinness & Mahon, isn't that right, in other words, the €135,000 odd outstanding to Guinness & Mahon?

A. That's correct.

Q. But can I ask you why it was you felt you should make the further two payments to the general body of creditors and to the Revenue Commissioners as a director of this company?

A. Just don't recall, don't recall who asked for it but I would have assumed in the winding-up of the company, that's how it came about.

Q. Would you agree that under normal circumstances, you wouldn't have had any obligation, having regard to the

concept of limited liability, to make either of those payments, in other words, they were the debts of the company, they weren't your debts, isn't that right?

A. Well, one thing, I'm very conscious of paying debts down in Kerry and it was very important that I would look after it.

Q. That hasn't always been the case, Mr. Byrne, but you agree in this case, had you not made those payments, it's probably the Revenue would have been obliged to appoint a liquidator to the company to recover their debt?

A. That is

Q. Had a liquidator been appointed, he would have collected the books and records of the company, including the various bank statements we know were in the hands of Mr. Carty, the auditor to the company, isn't that right?

A. That would be correct.

Q. Thank you.

CHAIRMAN: Before I invite Mr. Shipsey, is there anyone else has any matter to raise? Mr. Barniville, Mr. Allen?

MR. ALLEN: Yes, Chairman, arising out of that matter, the last question put to this witness, perhaps I can deal with it when Mr. Carty gives evidence, but the suggestion that the books and records at the time of the liquidation were in the name of Mr. Carty's firm is factually incorrect.

That is not the situation. The witness no doubt innocently agreed or appeared to agree with that but that isn't the factual situation as I believe your own team can confirm to

you.

CHAIRMAN: We will be hearing from Mr. Carty very shortly.

MR. HEALY: Sorry, Sir, just before Mr. Shipsey takes up any matters with Mr. Byrne, there's one further matter I should have drawn to Mr. Byrne's attention and maybe I should do it before Mr. Shipsey asks any questions.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY MR. HEALY:

Q. MR. HEALY: Mr. Byrne, in your statement you mentioned that you could see no sign of a suitably secured code or any similar expression prior to 1976 and indeed the documentation that the Tribunal has managed to assemble does not include any reference to it prior to 1976, is that right?

A. That is correct, yes.

Q. Now, you did sign a guarantee in presumably sometime around 1972, when the loan was drawn down and if I could just put that guarantee on the overhead projector I'll give you a copy of it. (Document handed to witness.) If you could just put it up and show all the signatures if possible. I think your signature is the last signature?

A. Yes.

Q. Now, if you look at the bank statement of the company, I think it's page number I can't decipher the page number, I'll put it on the overhead projector. That's a bank statement of, I think it's June '76 and it shows an

indebtedness of £71,000 odd. Can you make that out?

A. Yes.

Q. Now the guarantee was only for £75,000, up to £75,000, isn't that right, and the loan continued to rise after 1976, right up to 130 odd thousand pounds so from 1976 onwards, the bank, even if they were relying on the guarantee, were only secured up to £75,000, isn't that right?

A. That seems to be right, yes.

Q. Wouldn't that seem to explain why the back-to-back documentation only begins to appear from 1976 onwards, the "suitably secured" expression only appears in the credit memoranda from '76 onwards. Would you agree with me that

A. I have no recollection whatsoever.

Q. I understand that but wouldn't you agree with me that the timing is more than a coincidence?

A. Yes, well, it is a coincidence.

Q. Well that's your evidence obviously.

MR. SHIPSEY: Sir, just in relation to that last observation, the document I have does make a provision for payment to be made on demand to include costs and interest. Now it may be a legal question as to whether the bank would have been entitled to claim the 75,000 plus interest but it is matter that appears on the guarantee to entitle the bank to claim that.

CHAIRMAN: Well it did virtually double by the time of the events of the payment that initially appears to resolve that, in any way, is that

MR. HEALY: That's it.

MR. SHIPSEY: I have no questions.

CHAIRMAN: Very good. Thank you, Mr. Byrne.

A. Thank you, Chairman.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Carty please.

MR. ALLEN: Chairman, as you are aware, I represent Mr. Carty, instructed by Mason Hayes & Curran. I just want to remind Mr. Coughlan.

CHAIRMAN: Yes indeed.

PAUL CARTY, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY

MR. COUGHLAN:

Q. MR. COUGHLAN: I think, Mr. Carty, you were asked by the Tribunal to have a look at the Central Tourist Holdings situation as being inquired into by the Tribunal?

A. Yes, Mr. Coughlan.

Q. I think you furnished a Memorandum of Evidence

A. That's correct.

Q. In respect of that and as on previous occasions, I will take you through that first and go back and ask you some

questions if I may.

A. Yes.

Q. I think you again identify that you were a partner in Deloitte & Touche and was previously a partner in Haughey Boland, a predecessor?

A. That's correct.

Q. And that the firm Haughey Boland were auditors, tax advisors to Central Tourist Holdings from its incorporation in 1972, is that correct?

A. That's correct.

Q. But the last accounts were for year ended the 30th September, 1982, is that correct?

A. That's correct.

Q. And the auditors' report was qualified and was issued on the 29th August, 1985?

A. That's correct.

Q. I think you have informed the Tribunal that the firm has no files in relation to the company other than two company's secretarial files and a share register?

A. That's correct.

Q. The company, that is the firm of accountants, has a copy of the last audited accounts to the 30th September 1982 and you furnished those to the Tribunal?

A. That's correct.

Q. And I think that you have informed the Tribunal that if earlier years are required, they are available, is that correct, that's of audited accounts?

A. That's correct.

Q. The company's secretarial files of the company mainly include copies of documents on public records in the Companies' Registration Office?

A. That's correct.

Q. I think you have informed the Tribunal that it appears from the company's file, in the company's register a facility letter from Guinness & Mahon dated 1st June 1972 offering a facility of €75,000 subject to the conditions set out in the facility letter?

A. That's correct.

Q. I think you have a minute of the directors meetings whereby it's recorded, dated 5th July 1982, it was unanimously resolved that the facility be accepted?

A. That's correct.

Q. I think you have furnished a copy of that?

A. I think I did, yes.

Q. To the Tribunal. Now I think you have informed the Tribunal that the late Mr. William Clifford was a director of the company and that he died in 1981?

A. That's correct.

Q. And that he was a 25 percent shareholder. I think that was the same in respect of all the directors?

A. That's correct.

Q. And that you were a joint executor trustee of his estate with Mr. Jack Stakelum?

A. That's correct.

Q. I think you have informed the Tribunal that in 1985/1986, the company was in financial difficulties and the three other shareholders personally guaranteed the borrowings in Guinness & Mahon?

A. That's correct.

Q. However no guarantee had been given by the estate to Guinness & Mahon. That's the estate of the late Mr. Clifford?

A. That's correct.

Q. And that you had no dealings with Guinness & Mahon in relation to the matter of the estate having any indebtedness?

A. That's correct.

Q. I think you have informed the Tribunal that you do recall at the time that the sale of the assets in 1986 and 1987, that the shareholders were anxious to establish the extent of the company's liabilities and based on information supplied by the directors, an approximate statement of affairs was prepared, is that correct?

A. That is correct.

Q. But that your firm does not have a copy of that statement of affairs?

A. That's correct.

Q. I think you have informed the Tribunal that each shareholder was asked to contribute to the settlement of the company's liabilities?

A. That's correct, Mr. Coughlan.

Q. The Cheque Payment Book of the Clifford estate has the following entries, so I take it that in that context, the estate of the late Mr. Clifford was taking its 25 percent liability along with the other shareholders?

A. That's correct.

Q. And the cheque for the estate records that on the 23rd October 1987, Haughey Boland contribution to VAT, PAYE for the company €2,787.58.

A. That's correct.

Q. I think that is the same as Mr. Foley and

A. It appears to be.

Q. And probably Mr. Byrne also. And then on the 5th February 1988, Guinness & Mahon Central Tourist Holdings Limited, €5,000.

A. That's correct, yes.

Q. You understand that each shareholder had similar payments and that an aggregate of these monies was sufficient to discharge the company's liability?

A. That's correct.

Q. I think you informed the Tribunal that you are not aware of the details or as to how Bank of Ireland and Guinness & Mahon were discharged?

A. That's correct.

Q. You were not asked for any other contribution on behalf of the estate?

A. That's correct.

Q. Haughey Boland finalise the company's tax affairs with the

Revenue Commissioners.

A. That's correct.

Q. I think you have informed the Tribunal that Mr. Davis, solicitor to the Tribunal, sent you a copy of a letter dated 26th November 1985 from you to P Collery at Guinness & Mahon requesting audit confirmation at 31st October 1985 in relation to the company and another company, is that right?

A. That's correct.

Q. I think you informed the Tribunal that the confirmation in relation to the company was ultimately not necessary as no audit was carried out?

A. That's correct.

Q. I think the solicitor, Mr. Davis for the Tribunal, also sent you a copy of an audit confirmation as of the 10th November 1986 in relation to the company for the 31st October 1986 and again, this ultimately was not necessary as no audit to that date was carried out?

A. That is correct.

Q. I think you have informed the Tribunal you were not aware of the settlement with Guinness & Mahon in 1985?

A. That's correct.

Q. That you have no recollection of receiving a cheque for €42,680 dated 20th October 1987 from Mr. Denis Foley?

A. That's correct.

Q. I suppose in the first instance, if I could just go back to that final portion of your Memorandum of Evidence, Mr.

Carty, about a cheque for œ42,680 which Mr. Foley believes he must have sent to the firm of Haughey Boland.

A. Yes.

Q. I think you know that that is the evidence that he gave to the Tribunal?

A. I am aware of that.

Q. And that the source of the cheque was an account which Mr. Grace, the solicitor to the company, had opened in the Bank of Ireland, Listowel, to receive any proceeds that were available to the company?

A. I understand that, yes.

Q. And it was to, as Mr. Foley understood it anyway, to discharge the indebtedness which he believed still existed in respect of the loan obtained from Guinness & Mahon. I think you understand that?

A. I understand that, yes.

Q. Now, can we ascertain from you whether Haughey Boland were involved in any negotiation on behalf of the company with Guinness & Mahon or any other creditors of the company?

A. No, other than the Revenue Commissioners.

Q. So Haughey Boland, can I take it, had dealings with the Revenue Commissioners as creditors of the company?

A. As I can recall, yes.

Q. Was there correspondence from the Revenue Commissioners in respect of the company?

A. I mentioned, Mr. Coughlan, we didn't have the files.

Q. I appreciate that.

A. But it would be totally unusual if there was not correspondence.

Q. Yes, I think that would be the way you'd you might have a phone call with somebody but you'd deal with the Revenue in correspondence,?

A. In writing.

Q. And whilst the company doesn't have it, maybe the Revenue Commissioners may have some correspondence?

A. Most certainly, yes.

Q. Now, I think you did or sorry, the Cheques Payment Book, that's the Haughey Boland Cheques Payment Book, is it in respect of the estate of the late Mr. Clifford?

A. No, sorry, Mr. Coughlan, I kept a separate Cheques Journal for the estate

Q. Of the late Mr. Clifford?

A. Of the late Mr. Clifford, so the source of the funds for the late Mr. Clifford's share would have been from the estate's cheque-book.

Q. From the estate's cheque-book?

A. Yes, the two cheques.

Q. Yes. Does that mean that there was a specific bank account

A. Yes.

Q. opened for the operation of the

A. The estate's bank account, signed by the executors.

Q. Signed by the executors. That was yourself and Mr. Stakelum.

A. Yes.

Q. And the purpose of that particular account was to receive in anything that was owing to the estate and discharge any liabilities which the estate might have?

A. That's correct.

Q. And if I could first of all deal with the second cheque which was drawn, which was on the 5th February 1988, for œ5,000. That was to deal with the ordinary creditors of the company?

A. As I recall, yes.

Q. Now, who was dealing I know you say that Haughey Boland would have dealt with the Revenue, who was dealing with the ordinary creditors? And I am leaving Guinness & Mahon out of this for the moment.

A. The directors.

Q. The directors were dealing directly, is that correct?

A. Yes, in terms of making well when I say directors, the operational aspect of signing cheques, paying off creditors would normally have been dealt with by Mr. Foley.

Q. Yes. And can I take it that as executors, yourself and Mr. Stakelum would have had to have had some regard to some form of statement or documentation indicating the nature of the indebtedness?

A. The statement of affairs was a rough statement of affairs that Haughey Boland had assisted and prepared would demonstrate the estimated financial position at that time.

Q. And would that have shown that there were various debts due

around Kerry?

A. Oh yes.

Q. And to the best of your knowledge, the €5,000 paid by the estate of the late Mr. Clifford was one quarter of what went to discharge indebtedness to local people?

A. As well as other cheques that would have been paid out of the bank account presumably. I mean the four €5,000s wouldn't be the only creditors. There was obviously other creditors. That was a supplementary payment to top-up as distinct from

Q. I see.

A. Sorry, I might have confused...

Q. That there would have been some money available to the company of its own.

A. Exactly.

Q. And that would be used to discharge creditors?

A. Yes.

Q. And the four directors and including the late Mr. Clifford in that, would have topped that up by paying €5,000 each?

A. That's correct.

Q. And well, it was the directors who did that and Haughey Boland didn't receive the cheques for the discharge of those creditors, is that correct?

A. That's correct.

Q. Now, Haughey Boland were dealing with the Revenue, is that correct?

A. That's correct.

Q. To the best of your recollection?

A. And the statement of affairs.

Q. So the payment made out of the estate for €2,700 odd as the late Mr. Clifford's share of VAT and PAYE indebtedness, was that paid into Haughey Boland?

A. I would I haven't specifically checked. I would think the way that was dealt with, that we would have agreed a liability with the Revenue Commissioners and we are going 14 years back now, so we would have agreed liability.

Usually in that case when we agreed the liability, the total liability of all taxes due, I would think what happened was four cheques from each of the participants would be paid and made payable to Haughey Boland.

Q. Yes.

A. And we would have lodged that to our Haughey Boland client account and out of the client account I'd pay the Revenue, we'd pay the Revenue.

Q. There would be nothing unusual about that.

A. No, that's the way.

Q. That's the way you'd do it.

CHAIRMAN: In other words, Mr. Carty, having regard to Mr. Quinn's question on behalf of the Revenue, there was no actual default by the company on foot of which the directors became liable but the directors sensibly anticipated events by paying what seemed to be the agreed shortfall themselves?

A. Paid in full.

CHAIRMAN: Yes.

Q. MR. COUGHLAN: Yes. So the Revenue were paid and

A. Yes.

Q. And the other creditors were paid.

A. Yes.

Q. By the directors?

A. By the directors, yes.

Q. And of course therefore there would have been nobody in the position to make any approaches to put a liquidator into the company, wouldn't that be correct to say, in those circumstances?

A. In those circumstances, yes.

Q. Now, in the preparation of the statement of affairs sorry, you prepared an approximate statement of affairs?

A. Yes.

Q. You say that the firm doesn't have a copy of that approximate statement of affairs?

A. No, sorry

Q. Where would that have gone?

A. Our file retention system doesn't go back 14 years.

Q. Yes.

A. So we don't retain all of our files.

Q. Yes. I can understand that.

A. You mean where the statement of affairs it would have

gone, in my view, in agreeing something with the Revenue Commissioners, you'd have to let them have sight of what was seen to be the financial position.

Q. Yes.

A. That's what I would have thought. So when you say where would it have gone? At this stage it's possible that the Revenue Commissioners have a copy.

Q. I am just trying to ascertain, because if we can get it some other way, it would be helpful.

A. Fine.

Q. I can understand there would be a policy of, over a certain period of time, destroying dead files or

A. Yes.

Q. And when it was being prepared, would it have been done in conjunction with the directors of the company?

A. Yeah, I recall Mr. Foley would be a person who would have a lot of information of the statements of the creditors.

Q. Yes.

A. And he would have operated from a list, a schedule of creditors, their names and their amounts and that would form part of the working paper in preparing the statements of affairs so the list would have mainly come from Mr. Foley because he was the person who dealt with the, when I said

Q. Yes, I think that's his own evidence as well, that he was the director who was mainly involved in the running of the business. I think that's and to a certain extent, that

he received the bank statements?

A. Yes.

Q. And probably

A. And the phone calls from creditors.

Q. Absolutely, and he was the man on the ground in Kerry dealing with it.

A. Yes.

Q. Now, when the approximate statement of affairs was prepared, would that have been given to any of the directors as well so they'd know what their position was?

A. I wouldn't recall them receiving it, but they would know what the financial position was.

Q. There are many reasons, including the fact that Mr. Foley himself was a member of the Oireachtas around this time, why a director mightn't wish to have a liquidator appointed to a company but the statement of affairs would have included the indebtedness to Guinness & Mahon, isn't that correct?

A. I'd imagine it would include an estimate of indebtedness to the banks, yes.

Q. And that would have been sometime you think, prepared sometime around '86 or '87?

A. Yes, I wasn't so sure, I am going on the basis of the sale, when the sale took place.

Q. Now, we know from the evidence which has been given at the Tribunal that, in fact, the debt to Guinness & Mahon had been cleared as of September 1985.

A. I heard that, yes.

Q. And I'll just show you and I'll just show you on the monitor the bank statement

CHAIRMAN: I suppose if we are getting into that in a more substantial manner now, Mr. Coughlan, you may be a little time and it's probably better if we break now, Mr. Carty, until ten to two if that suits you. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1:50PM:

CONTINUATION OF EXAMINATION OF MR. CARTY BY MR. COUGHLAN:

MR. COUGHLAN: Now I think, Mr. Carty, if I could just deal with the question of the loan which Central Tourist Holdings had from Guinness & Mahon from 1972.

A. Yes.

Q. And I think your firm kindly provided the minute of the directors' meeting of Central Tourist Holdings, isn't that correct?

A. That's correct.

Q. And it was a minute of a meeting held on the 5th June 1982, I think, isn't that correct?

A. That is correct.

Q. And that particular minute noted "A facility letter from Guinness & Mahon Limited dated 1st June 1972 was addressed to the company and was produced to the meeting."

A. Yes.

Q. "The facility offered was to the extent of €75,000 subject to the conditions set out in the facility letter."

A. Yes.

Q. And the facility letter dealt with interest and repayable on demand and matters of that nature.

A. Yes.

Q. It didn't set out the facility letter itself didn't set out the purpose for which the loan was obtained I think.

A. I understand that, yes.

Q. You understand that. And I think that after the minute goes on "After due consideration, it was unanimously resolved the facility be and is hereby accepted by the company on the terms embodied in the facility letter from Guinness & Mahon."

A. That's correct.

Q. And "Furthermore that Mr. Byrne and Mr. Field-Corbett, on behalf of Secretarial Trust Company..." they were the secretaries to the company, isn't that correct?

A. That is correct.

Q. And "And they are hereby authorised to sign the copy facility letter on behalf of the company signifying the company's acceptance."

A. That's correct.

Q. So I think that your firm would have been aware from this particular minute that there was this loan, isn't that correct?

A. Yes.

Q. From an early date of handling the affairs of the company?

A. Yes.

Q. And if I could just then take you through the history of the loan very briefly. Now, the facility letter is one which we have been through in evidence and were you here when Mr. Byrne gave evidence of that this morning?

A. I was, yes.

Q. I think you saw the facility letter which was up and the guarantee?

A. Yes.

Q. And the effect of the guarantee is that the four directors, the two Mr. Cliffords, Mr. Denis Foley and Mr. Byrne are personally guaranteeing the loan of €75,000?

A. Yes.

Q. I don't want to get into a legal argument about

A. I understand

Q. Whether the interest, whether the bank had called on it or that. Now, according to Ms. Kells, from the records of the bank, the interest it was drawn down to the extent of about €70,000-odd, I think. That's the loan was.

A. Yes.

Q. And the interest applied to the loan was paid regularly so that the level of borrowing was always kept at around €70,000?

A. Yes.

Q. And that was up to about 1982 when interest ceased to be paid and interest applied to the loan and it continued on

up although there may have been a further advance of
€10,000 or thereabouts.

A. Yes.

Q. Now, can I take it that you have furnished the Tribunal
with the accounts, audited accounts for the company for the
year ending 1982, is that right?

A. September '82.

Q. September '82. And that your firm, Haughey Boland, would
have prepared similar accounts in the preceding years?

A. Yes. Since incorporation.

Q. And the accounts you furnished for us for the end of
September 1982 shows the loan, it records the loan, isn't
that correct?

A. Yes, yes.

Q. As a long-term loan Guinness & Mahon Limited and at the
time in 1982, it was standing at around €89,000, or
thereabouts.

A. Yes.

Q. And can I take it that if we went to any of the accounts
for the company prepared by the firm of Haughey Boland for
the preceding years, that particular loan would have been
carried in the accounts?

A. Well, I would expect so.

Q. You'd expect so. And I think that that is I don't
think there is any great difficulty about that.

A. That is the case.

Q. Now, I think you have also seen in the course of

Mr. Byrne's evidence, Mr. Healy put up various memoranda of the credit committee of Guinness & Mahon.

A. I saw that, yes.

Q. And in fact it's just a new piece of evidence which has become available to the Tribunal. There was no credit committee before 1976 apparently, but that's neither here nor there. We have one for 1976 and it is showing the loan as being suitably secured and that continues on on similar type words, "considered adequate" and I think you are familiar from evidence you may have heard at this Tribunal that that is a designation that was used in Guinness & Mahon to indicate there was a back-to-back arrangement.

A. Yes.

Q. And can I ask you, did the firm of Haughey Boland know anything about that?

A. No.

Q. Could I just ask you for your opinion now as a senior accountant, how would would that be reflected in the accounts of the company or should it be reflected in the accounts of the company if there was a guarantee for the loan?

A. At that time, no would be the answer, unless it was charged on the assets of the company, on the assets of the company.

Q. On the assets of the company, yes, very good. In any event, Ms. Kells was able to trace monies coming out of

CHAIRMAN: Sorry, Mr. Coughlan, I just didn't quite understand your last question and reply. Just what was it you were saying?

A. Charged on the assets of the company. I think Mr. Coughlan was putting the question to me, you know, would you note that or take a note of that? Under the Companies Act in preparing the accounts, you have to the directors have responsibility to note the security if it's a charge on the assets of the company.

CHAIRMAN: Yes.

A. If it's a personal guarantee, you wouldn't have to note that. So

MR. COUGHLAN: So, could I just ask you there, if the liability the distinction here is the loan was guaranteed personally by the directors.

A. (Nods).

Q. It wasn't being guaranteed by the company, is that correct?

A. Correct.

Q. So the security was a security in respect of the directors?

A. Correct.

Q. Not in respect of an asset of the company.

A. Correct.

Q. Quite esoteric, isn't it?

A. Yes.

CHAIRMAN: But I think you'd immediately followed on from a question in regard to the possibility of a back-to-back

deposit being the substantive security.

MR. COUGHLAN: Yes, yes. And that was the substantive security, but there is an accountancy

A. Sorry, Chairman, I am sorry to interrupt

Q. It's interesting...

A. The auditors wouldn't be aware of the back-to-back unless they understood they wouldn't even see, you put something on the screen there of a credit committee. Well the auditors wouldn't see that and therefore

Q. Well, could I ask you this, if what would the position or what should the position be? Again I am asking you for your opinion in relation to this now and your understanding as an accountant of vast experience.

A. Sure.

Q. If there had been documentation, say, a letter of hypothecation in existence and if the guarantee, the true guarantee which would be the back-to-back nature of the guarantee was shown on the facility letter, is that something that the auditors would have regard to?

A. They'd have regard to it, yes.

Q. Would they record it?

A. Legally, legally in terms of the Companies Act, they wouldn't, but they'd be on notice to inquire the source, how did it come about, outside preparing the accounts or expressing an opinion of the accounts as regards a true and fair view of the company, but you'd be on inquiry as to

this other source, what was it, where it had come from.

Q. For example, an inquiry would have to be made as to whether it was some other asset of the company, for example, was being used to back the borrowing, would that be one inquiry that might be made?

A. That would be, yes that would be. Could be a second charge on the property.

Q. Yes, yes. But what you were drawing the distinction here is that if the backing existed and we know a backing did exist

A. I heard that this morning, yes.

Q. That that related to the personal guarantees of the directors and not, in very strict legal terms, related to the company itself.

A. Yes.

Q. In your experience, again, and I am asking you generally now, the type of facility which was granted here initially in 1972 and the form of guarantee which was furnished, the only security which appears is the personal guarantees of the directors. Was that usual or unusual?

A. I'd say usual, having regard to the substance of the shareholders.

Q. I see.

A. And I suppose, it's a banker's question really rather than an accountant's question, but

Q. I am just asking you from your experience of dealing

A. You could have situations like that with very, very wealthy

individuals where 130,000 or whatever in relation to their total weight was not considered significant and they might be a very, very important customer in terms of net worth and other business that they get and years of experience with them maybe.

Q. Again that's probably a banker's type of question as well. In real terms, if the only security was the personal guarantee of the directors from the bank granting the loan, it's, in effect, an unsecured loan, isn't it?

A. Legally, are you asking me that question legally now or from an accountancy point of view?

Q. I am asking from the security, the real security that the bank would have

A. Is the personal guarantees.

Q. But bearing in mind the bank's responsibility to deal with its business in a prudent way. Like, if the bank I will ask you this way, if the bank's auditors come to look at it

A. How is it secured?

Q. Yes.

A. I'd say, yes, it's secured by these people. They are very good customers of the bank. They are very, very wealthy. We have a lot of other business with them. At the level it's at, we'd be comfortable. But as it goes up maybe to half a million or one million, it's a judgement call by the bankers so like the auditors to the bankers getting a response like that would say, what other business

have they got? Can I have an idea of the net worth of these individuals? The auditors would probably ask them, give me a net worth of these individuals. So it's relative to the individuals and their net worth. I'd agree, Mr. Coughlan, there is a stage where you'd say this is not adequate from a prudent point of view.

Q. It's from the prudential point of view

A. There is a stage where a banker would have to say then at what stage that it would be dependent.

Q. Now, going back and trying to understand, if I may, the nature of the real security which was the back-to-back security and your understanding that that was backing the guarantees, the personal guarantees of the directors rather than having anything to do with the assets of the company.

A. That would be my view, yes.

Q. But it was the company which borrowed the money.

A. Correct, yes.

Q. The backing backed the loan?

A. The question would be, the backing backed the evidence for that, in other words, is it backing a company? Is it an individual? If there was legal documentation required, who is going to sign it? Is it going to be a company or an individual?

Q. Sure in this case, there was no legal documentation.

A. I know you are asking me to particularly I am trying to say you know, who is securing it? Whoever has

possession of the backing money, if it's in a company, a trust, or an individual.

Q. Yes.

A. It's either of those three would be acting as the security.

Q. Yes.

A. Sorry, Mr. Coughlan

Q. I am trying to understand it and

A. I am trying to explain it badly maybe.

Q. I am anxious for your assistance. But maybe I will come back and ask the question when I ask you tomorrow further questions about the company.

A. Certainly.

Q. In any event, let's just look at the history of this in any event. We know from Guinness & Mahon that the loan was paid off as a result of the equivalent sum of money coming out of Guinness Mahon Cayman Trust/College account. And it was topped up slightly out of an Amiens account which were accounts Mr. Traynor used. And that discharged the indebtedness as of September 1985 and perhaps that's where I was before lunch and I showed you the statement for the company's indebtedness I will just put it up now
Mr. Carty, if I can see it and that's the loan account.

A. Yes.

Q. And you can see there, it's a bit black, but you can see there that in August, the debit balance is standing at

€131,000-odd and then interest is posted to the account and that brings it to €135,510.68 and there is a credit to the account on that date at the end of sorry, the 5th September, is it 4th September, I beg your pardon, and then there is a zero balance on it.

A. I see that, yes.

Q. And Guinness & Mahon have been able to track the money into that showing exactly how it was paid off from a Cayman trust account held with them.

A. I see that, yes.

Q. Now I will deal with the rest of the transaction then showing that on the 4th November of 1985, a transaction two transactions or a series of transactions took place in Guinness & Mahon. The first one is and we had evidence from Ms. Sandra Kells yesterday, all of these took place on 4th November because she can see from the daily input log that showing these transactions is BV, which is back value to the 29th October. So they all took place. They are dated 4th November on the day of the input log, so you will just understand, and that shows that what is purported to happen here is that there is a debit to a resident loan account which is opened in a new number. That's for Central Tourist Holdings. It's 023, the other one was 007. And at the same time a current account was also opened. You can see the debit and you can see that there on the 29th October, that the debit to the account, can't you?

A. I see, that Mr. Coughlan, yes.

Q. And on the 4th November, the current account was opened I will just get it now in a moment a current account was opened, you can see that.

A. Yes.

Q. And the sum which has been debited on the loan account is credited to the current account.

A. Yes.

Q. Do you see that?

A. Yes.

Q. On the same date. Then the reverse happens. The record purports to show that on the 4th November, the current account is debited leaving a zero balance on the current account. And if we can put up the loan account then the loan account is credited showing a zero balance.

A. Yes.

Q. You can see that?

A. Yes.

Q. Now the Tribunal has been informed by Mr. Foley and I think it will be Mr. Byrne's view also, and perhaps you could assist us here, on behalf of the firm of Haughey Boland, that the only loan which Central Tourist Holdings took out with Guinness & Mahon was the original loan back in 1972.

A. Based on our audited accounts to the 30th September '82, that appears to be the case, yes.

Q. And the directors know of no new loan being created?

A. That's what I am saying.

Q. That's what they are saying. I think there is no reason to believe to the contrary. There is no facility letter, there is no new guarantee, there is no correspondence in relation to it.

A. Yes.

Q. So what happened here was a record was created which purported to show that as of between the dates 29th October 1985 and the 4th November 1985, that there was a loan outstanding by Central Tourist Holdings, would you agree?

A. Yes.

Q. Now, the next document that the Tribunal has is a letter from your firm addressed to Mr. Pdraig Collery, who was the accounts manager at Guinness & Mahon. They refer to two companies anyway, one of them is Central Tourist Holdings, isn't that correct?

A. Yes.

Q. I think you have seen that. I'll put it up in a moment My Friend doesn't mind. We can put them both up because they are both companies referable to Mr. Byrne and Mr. Shipsey says he has no and I think he mentioned it in his own statement. Anyway, they are two one is Central Tourist Holdings, the other one is out now. I won't mention it for the moment, but it's addressed to Mr. Collery. "Dear Pdraig, I received from Mr. Traynor two statements relating to the above company's account as

at the 4th November 1985.

"I should be obliged if you would kindly let me have an audit confirmation of the balances for each of the companies as at the 31st October 1985 which is both companies' audit date.

Kind regards." Then it's signed by somebody in your office on your behalf, is that correct?

A. Yes.

Q. Now, could I ask you, you received from Mr. Traynor a statement in relation to Central Tourist Holdings, is that correct?

A. Yes.

Q. Is that a bank statement?

A. I'd say it was a bank statement, yes.

Q. And if you received a statement from Mr. Traynor and you were looking for it relating to the company's account as at the 4th November 1985 do you see that date?

A. Yes.

Q. Might I suggest to you that the only statement which you the only statements you could have received from Mr. Traynor in respect of the company as of that date were the statements relating to the current company and the loan account which purported to show the £135,000 as a debit balance.

A. Well can I just make the point?

Q. Yes, indeed.

A. You say two statements.

Q. There are two companies.

A. Oh yes, sorry. One company one statement in relation to that company.

Q. Very good. All right.

A. Can we just go back to identify that statement?

Q. Absolutely.

A. Please.

Q. Let's go back and identify

A. Central Tourist Holdings statements.

Q. There are two statements relating to the 4th November. I am going to ask you which statement, if any, did you receive of these two in the first instance.

A. Okay.

Q. That's a loan account statement.

A. Can I make just one point? It might be irrelevant.

Q. Yes?

A. The date of that statement is the 5th November. The date of the letter said 4th November.

Q. Well let's go back and look at the letter.

A. It's probably the same thing, is it?

Q. Let's go back and look at the letter.

A. That one is 4th November, is it?

Q. That shows

A. The statement date

Q. "I received from Mr. Traynor two statements...that's one statement..."relating to the above company account as at

the 4th November 1985." So let's go back to the statement now.

A. Yes.

Q. And there is the loan showing the account statement as at the 4th November, would you agree?

A. Yes sorry, I was looking at the statement date on the ledger above it's probably the same thing. It's likely to be the same thing.

Q. Yes. So there is a loan account statement as at the 4th November 1985. Now there is another statement for Central Tourist Holdings in Guinness & Mahon showing an account as at the 4th November 1985 and that is a current account statement.

A. Yes.

Q. Which you have already seen. Could you say if you received either of these statements and if so, which one?

A. It's likely that I received one.

Q. Yes.

A. And the one one has money in the bank and one has money overdrawn. So I would say it's likely to be the one overdrawn.

Q. Very good. Well let's put that up so. And I'll come back and ask you something about it in a moment, but as a result of the letter in any event, the audit period, and you were legitimately interested in the state of the account as of the 31st October, yes, the end of October, you are looking for the account, the state of the balances

on the account. And that's what you are looking for

A. Yes.

Q. And that would be the sort of thing that accountants would be looking for in thousands of cases

A. Yes.

Q. And banks issue thousands of certificates.

A. That's it.

Q. And in any event, Guinness & Mahon issue a standard form certificate.

A. Yes.

Q. I'll just show it to you now. It's a standard printed letter in the first instance.

A. Yes.

Q. And then we are told that an accounts clerk or somebody would access the computer and get the information to furnish it to the auditors.

A. Yes.

Q. And it's understood in the bank that this is an important document, because it's relied upon by auditors, isn't that correct?

A. Yes.

Q. And that shows the overdrawn state of Central Tourist Holdings' account as of the 31st October 1985 at £135,000-odd. It's the correct figure.

A. Yes.

Q. Now, as regards practice, I know you say that no accounts were audited for the period.

A. Yes.

Q. Why was that?

A. I would say the last accounts were the 30th September 1982

and there were three years in arrears and the directors

never progressed right up to the statement of affairs to

prepare accounts.

Q. Yes, but there must have been some intervention because Mr.

Traynor has given you a statement, at least a statement.

A. Yes.

Q. Isn't that correct?

A. Yes.

Q. So something must have been happening.

A. Yes, I think if I might explain that, Mr. Coughlan.

Q. Yes indeed.

A. I would think what takes place, this company was dealt with

in our small business section this is fourteen years

ago, we were a smaller firm and this company would be

dealt with by small business section before the last

accounts were 30th September, before the accounting date

was going to be changed to the 31st October. Normally we

would write a letter to the client saying get your books

and whatever up to date and so forth and arising from that,

it would appear to me then that information came in from

Mr. Traynor.

Q. Yes.

A. Now, why it was not acted upon was merely the directors

never progressed the preparation of accounts until the

crisis came when we were asked to do a statement of affairs.

Q. I know that. You had a statement from Mr. Traynor.

A. Yes.

Q. Would that have been sufficient for your purposes of preparing something?

A. You'd want your bank sheets. You'd want the bank sheets if you are going to prepare a set of accounts.

Q. And what would this particular certificate in normal circumstances enable you to do? Would it be to enable to you sign off on the accounts?

A. Well no, I think you'd have to check on the actual bank sheet itself.

Q. If we go back to the bank statement.

A. Yes.

Q. If an auditor received that particular bank statement, wouldn't an enormous explosion go off in his head?

A. Well you'd make inquiry, certainly.

Q. Because from the previous accounts, it would have been known to the auditors that there was a longstanding loan to Guinness & Mahon or from Guinness & Mahon, isn't that right?

A. Yes.

Q. And you now have a statement which shows it's statement 1, page 1, it's an account which has just been opened, isn't that right?

A. Yes.

Q. It opens with a zero balance.

A. Yes.

Q. And it purports to show that on the 29th October 1985, a loan of £135,510 was obtained.

A. Yes.

Q. Then it shows that on the 4th November, that loan was repaid.

A. Yes.

Q. What inquiries should an auditor make in those circumstances, do you think?

A. Well I think one would go back and see the other bank statements where the original loan was. What brought about this? And I should mention that would have passed to my desk and I would have passed it down to the audit department. But they didn't commence any audit. They didn't prepare any audit so it didn't come up for close examination or scrutiny.

Q. Well I am neither an auditor or an accountant and I suppose most members of the public aren't, but if you looked at statement 1, page 1, I think to anyone

A. Are you speaking during the course of the audit?

Q. I am saying from your firm, I am just asking what should have been done. From your firm, as a result of receiving this statement, a letter is written to the accounts department of Guinness & Mahon looking for an audit certificate showing the balances as of a specific date.

A. Mm-hmm.

Q. Would that have been done without any inquiries being made?

A. Receiving this?

Q. No. As a result of receiving this, a letter is written.

A. Yes, right.

Q. Informing the person to whom the letter is addressed that this particular statement has been seen.

A. Yes.

Q. And a certificate is requested?

A. Yes.

Q. So whoever prepared the letter had to see the particular statement, would you agree?

A. In Guinness & Mahon?

Q. No. In Haughey Boland.

A. Oh, whoever prepared the statement?

Q. Prepared the letter looking for the certificate had to see that statement?

A. Of course, of course.

Q. Because there is a specific reference made to it?

A. Yes, of course.

Q. And why would a certificate for audit purposes be requested or would it perhaps I should phrase the question this way, before an inquiry is made about the state of this account?

A. I don't understand the question, Mr. Coughlan.

Q. Okay. A cursory perusal of that particular statement would cause any accountant, I suggest, or anyone working in an accountant's office to ask questions, would it?

A. Well if the purpose was to the letter comes in like a statement. You write for the confirmation, without giving much thought to the content of the letter and pass it down to the audit department. What we are talking about here, the correspondence coming in, the whole purpose of the audit is the important point. The preparation of the audit when the staff start to look at the audit and then start raising questions about the activity. This turns out this could be three weeks or four weeks before the audit would start.

Q. I think that is so. Like, we are talking about the letter seeking the certificate is some weeks subsequent to this particular date. But if I could go to the letter that was sent to Guinness & Mahon by Haughey Boland which says "I received from Mr. Traynor a statement" I am just reading it "relating to this company's account as at the 4th November 1985."

Do you believe that that is indicating that this just came in by letter to Haughey Boland?

A. Yes, yes.

Q. I see. And it would have been a letter from Mr. Des Traynor?

A. Yes, I would think so.

Q. Why?

A. I am just trying to interpret "I received from Mr. Traynor" so you can only get it by letter or compliment slip or some way.

Q. Or handed to you?

A. Well it

Q. Or handed?

A. Well it wasn't handed.

Q. Well, can you explain to me so, or perhaps you can't, Mr.

Traynor was not a director of Central Tourist Holdings.

He had no involvement in it?

A. Correct.

Q. At that time, Mr. Traynor was the head man in Guinness & Mahon, isn't that correct?

A. Yes.

Q. Could you understand why Mr. Traynor would be sending a, what purported to be a true bank statement to your firm Mr. Traynor?

A. Only insofar as I explained to you, when a letter goes out saying we are preparing accounts to the 31st October '85 to the owners of the business, can we have statements of account and so on up to date, arising from that, it would appear that this statement came in.

Q. I see. But obviously Messrs Haughey Boland, carrying on their normal business would know who the appropriate person in the various banks to write to

A. Yes.

Q. For certificates for audit purposes.

A. Yes.

Q. But the letter is sent then not back to Mr. Traynor, but to Mr. Collery in the accounts department.

A. Yes.

Q. And was that fairly standard in Haughey Boland in their dealings with the company's affairs, it was always to Mr. Collery in the accounts department.

A. Yes.

Q. Very good. The certificate that is on the 26th November 1985, that letter goes out?

A. Yes.

Q. The certificate comes then from Mr. Collery or under Mr. Collery's name a few days later.

A. Yes.

Q. And what was done or what would have been done with it?

A. It would be passed down to the business services division, as we call it, for those people who are going to be involved in the audit of it. They have to have possession of it when the audit commences proper.

Q. Very good. The next document that we have been able to obtain is a statement from a bank statement for the following year and it is only in respect of the loan account that is with the new number on it, and we are missing the middle page. This is statement 3, page 1.

A. Yes.

Q. And it has been explained to us by Ms. Kells you can see that there is, interest has been applied to it as of October 1986, €7,000-odd and that brings the debit balance up to €149,500 or thereabouts?

A. Yes.

Q. And what we are missing is the middle page which, she has given evidence of, had to be physically removed because it is not microfiched in their run of documents and it had to be generated in some way because when it says statement number 3 on the top, the computer wouldn't have clicked up 3 unless a 2 had been in there. Now, there are only two things that could have gone on to that page 2. The first one is that a new indebtedness or debit was created of €135,000-odd and the appropriate interest of around €7,000 was added to bring the balance up to 142,000 to allow it come forward on to page 3.

A. Yes.

Q. Or statement 3. Or alternatively, somebody had to create a debit balance of €142,000-odd on it. That's all that could have happened?

A. I see.

Q. Now, again the directors tell us or those directors we have spoken to and Mr. Foley was the one dealing with the affairs of the company, isn't that correct, more than most, that no other loan was created with Guinness & Mahon. There is no facility letter. There is no guarantee. And notwithstanding that, as of the 4th November of 1985, which was the previous year, the fictitious loan account stood at a zero balance. Do you remember that?

A. Yes.

Q. We now have another statement a year later purporting to show that there is a loan outstanding of €149,500. Are

you with me on that?

A. Yes.

Q. Now, the next document we have is a certificate being furnished to Central Tourist Holdings being sent to, I understand, the correct pronunciation is Staughtons Road, Tralee, County Kerry, and it is showing that debit balance.

A. Yes.

Q. Did your firm ever receive that, do you know?

A. I think it's possible, yes.

Q. And that would have been furnished by one of the directors, I presume

A. Yes.

Q. But again there were no there was no audit carried out?

A. No audit, no.

Q. And can we take it that your firm, if they received that, would probably have received the statement that we have just put up?

A. I would think so, yes.

Q. Now, I appreciate that no audit was carried out. But for the purpose of dealing with the creditors and the Revenue, an approximate statement of affairs was prepared, is that correct?

A. That's correct.

Q. And can I take it that these documents would have been referred to for the purpose of that?

A. If they were made available to us, yes.

Q. Well, if they were in first of all, we know from what you have told us

A. Yes.

Q. That the first statement purporting to show an indebtedness of €135,000 was in your firm, isn't that correct?

A. Yes.

Q. The letter went to Guinness & Mahon from your firm, isn't that correct?

A. Yes, correct.

Q. And the certificate was issued?

A. Yes.

Q. So they were in your possession.

A. Yes.

Q. And you believe that this particular certificate was probably furnished to your firm?

A. I would say that was reflected in the statement of affairs.

Q. Yes. And that the bank statement reflecting that indebtedness would also probably have been

A. Yes, yes.

Q. Now, in preparing a statement and, again, I want to be fair, you don't say it is a statement of affairs, it's an approximate statement of affairs. In preparing that approximate statement of affairs, could you first of all indicate to us what approximate means in those circumstances?

A. Well approximate would mean that you didn't audit.

Q. You didn't audit?

A. You didn't audit. As well as that, you might have taken provisions or round sums. You didn't audit or verify.

You took for granted what information was given to you, like statements from suppliers

Q. I see. You didn't do a sampling of particular

A. No, you took what the directors gave you, you took effectively.

Q. And any documentation that you had?

A. Yes.

Q. And somebody, in preparing it, would have looked at this documentation?

A. Yes.

Q. So, what you are talking about is, when you say an approximate, you are saying it's roughly correct?

A. Yes.

Q. Roughly correct, we are not signing

A. Yes, roughly.

Q. Roughly correct. And would somebody have questioned the directors about the particular bank statements?

A. Insofar as it wasn't an audit, I would just think it was a statement of affairs put together to see what the rough financial position was. There'd be no verification work done.

Q. So it's all the stuff all the documentation and all the information is just given to your firm and it's put together giving a rough estimate of what the position is?

A. Yes, without any opinion being expressed.

Q. Without any opinion being expressed.

A. It's effectively a directors' statement of affairs.

Q. Yes. Well in doing that, would anybody ask themselves a question about the bank statements?

A. Insofar as the liability is wrong, do you mean?

Q. Insofar let's just look at the bank statement now. For any reason, let's start off as broad as possible,

Mr. Carty. For any reason would somebody ask anything of themselves about the bank statements?

A. Can I just make one point here that you haven't drawn out, Mr. Coughlan, I find difficult to understand.

Q. Very good.

A. If one is saying, which seems to be what was said this morning which I wasn't aware of, that you are saying that this loan account was paid off, if you are saying that it was paid off by Guinness Mahon Cayman Trust for €135,000, then Guinness Mahon Cayman Trust, if that's the name of the company, stands in the shoes of Guinness & Mahon who had the loan in the first place. So in effect, the 149,000 or the 135,000 doesn't appear doesn't disappear off the face of the earth.

Q. How do you know that, Mr. Carty? Sorry, I want to ask you this, how do you know that?

A. You told me this morning that Guinness Mahon Cayman Trust

Q. Yes.

A. paid the debt.

Q. Yes.

A. If it paid the debt, then it has a liability.

Q. How do you know?

A. The company has a liability.

Q. How do you know? How do you know that, Mr. Carty?

A. Well if it's not Guinness Mahon Cayman Trust, whoever pays the debt must stand in the shoes from an accountants' point of view.

Q. How do you know, you didn't have any questions?

A. I don't know.

Q. Why are you offering that particular opinion?

A. Because you are questioning me as if to question that the liability is not correct.

Q. It isn't correct, isn't that right? Isn't that right?

A. No, what you are saying I don't know what you are saying. What you are saying is it's misrepresented maybe. It's misrepresented

Q. Yes.

A. Insofar as that it's a debt due to Guinness & Mahon is what you are saying. You are saying that's not possible.

Q. That's not what I am asking you at all, Mr. Carty. I am not asking you technical accountancy questions at all here. I am asking you what would an accountant do if they saw a statement and it's the first one I am more interested in no, that shows the debt being cleared. If we put the first fictitious one up.

We know from evidence given here how this debt was created. How this document, sorry, this document

A. Yes.

Q. Which was, on the evidence of Ms. Kells, purporting to falsify the bank record in respect of the loan here.

A. Yes, but we don't know that.

Q. Listen to the evidence, Mr. Carty, now. Just listen to the evidence. A current account and a loan account were opened on the 4th November 1985 and a little ring-a-ring-a-rosy played. The same money in the same accounts. That's what happened. That's what happened to create that document. Now, that's what happened, Mr. Carty, and that shows, if we look at it, that there is an indebtedness to Guinness & Mahon Limited at College Green, Dublin 2, isn't that right?

A. That's correct.

Q. But more significantly, what I am asking you is that if an accountant saw that document, wouldn't he know immediately that that indebtedness had to be created, just looking at the face of the document, only on the 29th October 1985, isn't that right?

A. If an audit was being done, yes.

Q. No, if an accountant looked at it, what would he think?

What would he think? What would you think?

A. I am trying to relate this to the statement of affairs.

Q. I am asking you what you would you think if you looked at that document.

A. You'd raise questions about it, yes.

Q. On the face of it, wouldn't it appear to you that a loan had been obtained on that date?

A. Yes, yes.

Q. Very good. And wouldn't it also appear to you that the loan had been repaid four days or six days later and

A. Yes.

Q. And that there was no interest charged?

A. Yes.

Q. Now, knowing that, armed with that piece of information preparing the statement of affairs, you then have another statement, bank statement, which is the same account number and it's page 3 statement 3, page 1, the same account number, and it now shows now you know that there is a zero balance as at the 4th November and there is now a loan showing of 149, nearly œ150,000, isn't that right?

A. Yeah.

Q. Just looking at it.

A. Yes.

Q. Just looking at the document, wouldn't it appear to you another loan, taking the two documents now, another loan has been taken out?

A. That appears to be the case, yes.

Q. When was it decided, may I ask you this, that an audit wouldn't be done?

A. I'd say numerous attempts or inquiries were made to get the directors to prepare the accounts, or have them prepared

from 1985.

Q. When was the approximate statement of affairs?

A. I'd say '86 or '87.

Q. When do you think?

A. I don't know. I don't have the statement of affairs as I said, Mr. Coughlan.

Q. And because it's a statement of affairs, or an approximate statement of affairs, to be fair, no questions were asked of the directors, is that what is being

A. I am not saying that. The directors would have seen the statement. The directors would have seen this

statement. At this point, 15 years 14 years later or

whatever it is, I wouldn't know what was available to the

person to whom the statement of affairs is all he'd be

interested in is roughly the closing balance. He wouldn't

be going investigating every transaction going through the

bank account. He'd look, what's the closing balance?

That's what the statement of affairs means. The statement

of affairs at a given date. What's the closing balance?

Not what's all the transactions that went before? The same

with the creditors statement. What's the closing

balance? You don't go back and say if it's Beamish and

Crawford, what's the transaction coming up before it?

Q. Very good. So you wouldn't really be interested in the audit date when you are preparing the statement of affairs?

A. No, no.

Q. Very good. So can we take it that the fact that somebody

in Haughey Boland knew as of the 4th November 1985 or soon
there afterwards, that there was no indebtedness even on
this particular

A. I would not accept that, Mr. Coughlan.

Q. You wouldn't accept that?

A. That there is no indebtedness.

Q. Let's look at it. As of the 4th November, is there an
indebtedness there?

A. Well that's you have to find out, what has Haughey
Boland got?

Q. That.

A. That's a resident current account.

Q. Sorry, the loan account

A. So we haven't got that, Mr. Coughlan.

Q. But we have this. Let's be clear now. What has Haughey
Boland got now, Mr. Carty? Tell us. They have that,
haven't they?

A. They have that and

Q. Okay, have they got that, Mr. Carty?

A. They have.

Q. What does that show as of the 4th November?

A. 4th November it shows nil.

Q. No indebtedness?

A. Yes.

Q. Now, you just said to me a moment ago you did not accept
that there was no indebtedness as of the 4th November,
isn't that correct, Mr. Carty? Is that correct?

A. That I said there was no indebtedness at the 4th

Q. You said to me when he started off this, to put this document up, that you did not accept that there was no indebtedness as of the 4th November 1985. Now do you wish to correct that?

A. Well, I am totally confused with all the statements that were seen

Q. Ah Mr. Carty, just look at this statement. Just look at that statement.

A. In answer to your question to that, yes, it's a nil balance.

Q. Why did you say to me you didn't accept that there was no indebtedness? Do you know of something else?

A. We know of other statements that appear to have come up.

Q. What other

A. The 149,000

Q. No. I said as of the 4th November 1985, Mr. Carty.

A. Yes.

Q. You see, you didn't accept it. Do you accept it now? Do you accept it?

A. I accept at the 4th November, I accept at the 4th November. But the 31st October is the date that the balances were given.

Q. I didn't ask you about the 31st

A. Oh 4th November, certainly.

Q. I asked you as at the 4th November.

A. I accept that, yes.

Q. So somebody in Haughey Boland had that document?

A. Somewhere, yes.

Q. Very good. Now, forget about the certificate, because I am not interested in the audit date because no audit was being done.

A. Yes, that's the point, yes.

Q. Was there a decision not to do an audit in 1985?

A. By Haughey Boland?

Q. By the company?

A. By the directors?

Q. Was there a decision not to do an audit?

A. The directors have the responsibility to prepare. That's a question for the directors. They did not prepare the accounts. We didn't do an audit because the directors didn't give us the information to prepare the accounts.

Q. What information would you have needed?

A. We'd have needed all the books of account, all the books relevant to the company.

Q. Did you ask for them, do you know?

A. Yes.

Q. Do you remember that?

A. Well, as I said to you, we would have written a letter in 1985 for all the information to come in. I did say that to you, yes.

Q. Now, in 1986, we can see that a certificate is sent to one of the directors or to the directors or the company. And you believe that that particular certificate would also

have been furnished to Haughey Boland.

A. Yes.

Q. Can I ask you this, in your experience, are these certificates issued automatically or

A. Certainly not.

Q. Or on request?

A. On request.

Q. So somebody must have requested the certificate?

A. Yes.

Q. And can I ask you this, I know anyone can request something, what is the more usual practice? Is it for the auditors to request the certificate or for the company to request the certificate?

A. The auditors usually.

Q. And you believe that this would have been given to Haughey Boland? Do you believe it?

A. Yes.

Q. And the bank statement purporting to show an indebtedness of €149,000, isn't that correct?

A. Yes.

Q. So all of those would have been available, together with other information of course, when the statement of affairs was being prepared, isn't that right?

A. Yes. But can I just qualify that?

Q. Yes indeed.

A. I would say when the statement of affairs was being put together, it was put together by information supplied by

the directors in terms of creditors' statements, whatever bank sheet there was from the Bank of Ireland or Guinness & Mahon. It wouldn't necessarily mean that one would have gone down to the business service division and say give me all the information you have in relation to this company.

The information that would have been prepared for the statement of affairs would have been what was supplied and brought probably by Mr. Foley, give me everything that you have and we will get somebody to see if we can put something together. I wouldn't necessarily say one goes back and gathers everything in relation to this company because it was a very rough and approximate and I would say done in a rush.

Q. Fair enough, I can understand how that would be so. And it was after the statement of affairs was prepared or the approximate statement of affairs was prepared that the Revenue were dealt with, was it?

A. It would be afterwards, certainly. You wouldn't do it beforehand.

Q. And the other creditors, that is the creditors other than Guinness & Mahon?

A. I'd say afterwards.

Q. Afterwards.

A. I mean we are going back 14 years.

Q. I appreciate that, but that would seem logical.

A. I think so, yes.

Q. Now, what happened to the company after that?

A. What happened to the company? As far as I can recall, it was dissolved.

Q. How?

A. However you dissolve a company, by advising the Companies' Registration Office or they striking you off.

Q. For not making returns?

A. For not making returns.

Q. Well let's be clear about one thing, there was never a liquidator appointed to this company?

A. Oh that's true, yes.

Q. And from the statement of affairs, which you must have seen as the executor of the late Mr. Clifford

A. Yes.

Q. they would have been showing an indebtedness to the Revenue, isn't that correct?

A. When was the Revenue paid? There should be, yes, there should be, sorry

Q. I will give you

A. Sorry, there should be, yes.

Q. The Revenue your cheque is the 23rd October '87.

A. Yes, yes, the indebtedness should be in the statement of affairs.

Q. Whatever the indebtedness or whatever figure was agreed to the Revenue?

A. Yes, that should be in it, yeah.

Q. And the statement of affairs would also have shown the indebtedness of the general creditors, would it?

A. Yes.

Q. And the statement of affairs would have shown œ150,000-odd outstanding to Guinness & Mahon?

A. Whatever payment they had, yes, I would think so.

Q. And, of course, as far as you would have been you would have been concerned, although you weren't, because there was no demand made of the late Mr. Clifford's estate, is that correct?

A. That's correct.

Q. Interest should have been accruing if the debt to Guinness & Mahon wasn't discharged, isn't that right?

A. I'd say so, yes.

Q. Now, over the years, up top 1982, your company had been preparing the audited accounts for Central Tourist Holdings, isn't that correct?

A. Yes.

Q. Was it a profitable company?

A. No. I think there was a deficit on the '82 accounts. I didn't look at earlier years, but I think in '82 that you have there, I think there was a deficit.

Q. I am just asking over the years, would you remember it was a profitable company?

A. Judging by the last accounts that you have there, I think the answer would be very marginal.

Q. And to prepare the accounts, you'd have had to have access to all of the information of the company, isn't that correct?

A. Yes.

Q. Including all the working bank accounts of the company?

A. Yes.

Q. And can I take it that the general nature of the business, being the dancehall business and the amusement business, as Mr. Foley has told us, with a small hotel business tacked on it, that it would have been primarily a cash business?

A. Yes.

Q. And as far as you were concerned, or your firm were concerned, there was inadequate response in relation to the record-keeping of cash receipts, is that correct?

A. I think we gave our opinion in the accounts to the 30th September 1982 that it was a qualified opinion, but in fairness to the company, normally that was a standard opinion where businesses had mainly cash operation. It wasn't exceptional to that particular company.

Q. Now, you and Mr. Stakelum, acting on behalf of the estate of the late Mr. Billy Clifford, is that right?

A. That's correct, yes.

Q. Paid œ2,787.58 being a quarter share to the Revenue, isn't that right?

A. That's correct.

Q. And then on the 5th February 1988 paid œ5,000, being a quarter of the balance which was due to the ordinary creditors.

A. That's correct.

Q. Now, can I take it that there was no personal liability of

Mr. Clifford to either the Revenue or to the ordinary

creditors?

A. Not that I am aware of.

Q. There was a personal guarantee to Guinness & Mahon, isn't that correct?

A. By whom?

Q. By Mr. Billy Clifford.

A. No.

Q. Was there not?

A. No.

Q. Never?

A. Never? Not at that time.

Q. In 1972, the loan was personally guaranteed by all of the directors?

A. I appreciate that, sorry, Mr. Coughlan, I thought you were talking about the date of the statement of affairs. I am sorry. There was no guarantee that I am aware of, at the date of the statement of affairs by Mr. Billy Clifford, deceased.

Q. As executors, you and Mr. Stakelum were acting on behalf of the beneficiaries of that estate, isn't that correct?

A. Correct.

Q. Why when there was no personal liability on Mr. Clifford which could have been attributable to his estate, did you and Mr. Stakelum agree to make the two payments, one to the Revenue and the other for the ordinary creditors of the company?

A. That was a decision that was made insofar as as executor, I was dealing in Tralee with a lot of Mr. Billy Clifford and his family's other companies. They were very active down there, it was a well-known family down there and certainly I didn't want any of the existing creditors of the companies that I was operating or trying to run the business to be in any way, have any criticism, so we both thought commercially it was the responsible thing to do, because it could affect the other parts of the Billy Clifford estate business and the family also came into consideration. Walking away from, or being seen to be even though legally you didn't have to.

Q. Sure wasn't there the man with the broadest back in Tralee there, Mr. Carty? Now let's be real about this.

A. Well I am being real.

Q. Let's be real about this. You had Mr. Denis Foley, the local TD. You had Mr. John Byrne, who was probably the big man in Tralee, wasn't he?

A. He was a successful man, yes.

Q. And you had Mr. Clifford's brother?

A. Yes.

Q. Now, none of them had a personal not one of them had a personal liability to the Revenue, isn't that correct? It was the company's liability?

A. It was the company's liability, yes.

Q. Not one of them, as far as you know, had a personal liability to any of the ordinary creditors, isn't that

right? Isn't that right?

A. Personally, I can only tell you about the company.

Q. I beg your pardon?

A. I can only speak about the company. When you say personally did Mr. Clifford have any personal liabilities, I am talking about the company had liabilities that the executors decided we should meet the Revenue liability of 2,700 and we should contribute with the other directors or the shareholders to the top-up of œ5,000 on the basis of keeping the credibility, I would have thought, of the name of the Cliffords and John Byrne intact with all the other business activities that were going on down there.

Q. Well let's look at the objective effect of it. The objective effect of it. The objective effect of that was nobody sought to have a liquidator appointed to the company, isn't that correct?

A. I don't think in fairness at the time from what I knew, certainly that never struck me as an executor that never struck me not to have a liquidator that objective that you are saying that never struck me. I think the honourable thing was to do was to meet their debts.

Q. What about the thing with Guinness & Mahon?

A. I don't know in the end what happened with Guinness & Mahon. At the end of day, Billy Clifford had no liability, as far as I was concerned, as an executor, to Guinness & Mahon.

Q. That's why you decided that you shouldn't do anything?

A. Because there was no guarantee.

Q. And what liability did he have to any of the other creditors? What liability did he have?

A. Well what you are saying is he should have walked away or we should have walked away from everything. In terms of I don't think that would be responsible and moral.

Q. I see.

A. Yes. If I was in business myself like that, I would have acted the same way.

Q. I see. The same considerations did not apply to the bank, Guinness & Mahon, is that right?

A. I don't know the position with Guinness & Mahon.

Q. Well, you knew

A. We had no guarantee

Q. You knew, you knew that there was an indebtedness of œ150,000-odd.

A. Yes.

Q. The statement of affairs had been prepared.

A. Yes.

Q. If you felt that there was a moral obligation to satisfy the Revenue debt and the ordinary creditors' debt, did it not occur to you that there might be a moral obligation to satisfy Guinness & Mahon debt?

A. No, Mr. Coughlan, because at one stage as executor, as far as I can recall, we were asked were we going to sign a guarantee, and we refused, declined.

Q. What guarantee would you have had to sign?

A. Because at one stage the three as executors to the estate, as far as I can recall, Billy Clifford had signed guarantees for many years up to the date of his death and that continued on the estate, as I understand, until new guarantees got signed where only the three remaining directors signed.

Q. New guarantees were signed in Guinness & Mahon you believe?

A. I think three directors signed guarantees.

Q. New guarantees in Guinness & Mahon?

A. I don't know if new guarantees are the same. I am just saying they signed

Q. No, Mr. Carty, as far as we can ascertain, as far as Mr. Foley has given evidence, and Mr. Byrne has given evidence, there was one guarantee signed by four directors in 1972.

A. One guarantee? Forever.

Q. Forever?

A. I see, okay.

Q. That's the evidence. Do you believe there were other guarantees?

A. I think that guarantee ran from year to year and I thought the bank had a concern when Mr. Clifford dies, what happens the next executors? They were going to be on the rack.

And certainly my recollection, I know it's a long time ago, my recollection is I know, I didn't want to be on the rack for the guarantee.

Q. So did you have a conversation with Guinness & Mahon about

this?

A. No, I think it was the other directors because I think we were asked would we sign. I think we were asked.

Q. Who asked you?

A. By the directors.

Q. Which director?

A. I can't recall which director.

Q. Which director?

A. Mr. Coughlan, I can't recall.

Q. Which director did you normally deal with the business?

A. I dealt with Mr. Foley and I dealt with Mr. Byrne. But can I just answer ask a question? You have all these

facility letters and guarantees, have you?

Q. And there are no other guarantees.

A. That is something is signed every year or was signed every year.

Q. No, Mr. Carty?

A. Maybe I am mistaken then.

Q. You remember having a conversation?

A. Yes, because I was asked about joining in on the guarantee. Because I think, I don't know how a bank works when an estate, they rule the account or they do something, but as far as I was concerned, the estate was not liable for the bank guarantee.

Q. That's legally you mean.

A. Pardon me?

Q. Legally. Is that what you mean?

A. Yes.

Q. And the estate wasn't legally liable for anyone else's debts either?

A. And I don't see anything wrong with paying the debt. The tax

Q. But sure you felt that there was a moral obligation. I am asking you did you address it in respect of Guinness & Mahon and if not, what was the difference, from a moral point of view?

A. I am giving you my interpretation. The guarantee didn't fall on us. And equally it might have been the sums might have been likely to have been different, I don't know.

Q. Mr. Carty, I asked you before, would you just comment on this as an accountant. Objectively, the effect of paying off the local creditors and the Revenue whatever figure was agreed, the objective effect of that was nobody moved to put in a liquidator, isn't that right? That was the objective effect of it.

A. Well that's a matter for the directors to answer that question.

Q. The company was never liquidated, was it?

A. No.

Q. It was allowed lapse and be struck off the register because there were no returns made, isn't that right?

A. Well

Q. Is that right?

A. Struck off it could have been dissolved or struck off, I

am not sure. There is a difference.

Q. But there were no returns made, isn't that correct?

A. Well who said there was no returns made?

Q. Were there?

A. Yes. Annual returns were made for many, many years to the Companies Office.

Q. I am saying from the time that this situation arose, the company from 1982 there were no returns made, isn't that right?

A. I wouldn't agree with that.

Q. Maybe there were.

A. Yes.

Q. You say there were.

A. There might have been, because I don't know if they have been until I check the file in the Companies Office.

Q. And up to when do you think returns were made?

A. I would be surprised if they weren't made up at least up to and after 1982 for a few years. You didn't have to file accounts at that time, Mr. Coughlan. That's maybe where the confusion is. You didn't have to file accounts. You just had to file the annual returns. I think it was the 1993 I don't know which Companies Act that brought it in

Q. I see. Did you ever hear what happened to the debt in Guinness & Mahon?

A. No.

Q. Not even as a matter of interest?

A. No.

Q. Never heard from Mr. Byrne?

A. No.

Q. Never heard from Mr. Clifford's brother?

A. No.

Q. Never heard from Mr. Foley?

A. No.

Q. And as far as you were concerned, when you paid this money on behalf of Mr. Billy Clifford, the other directors or the company or somebody was going to look after Guinness & Mahon, is that right?

A. Well I would have assumed those who had the guarantees were going to look after Guinness & Mahon.

Q. Now, Mr. Foley said that he sent you or sent your firm a cheque for £42,000-odd. Do you have any recollection of that?

A. No.

Q. He said that your firm, he believed, negotiated the settlement of the indebtedness with Guinness & Mahon, as far as he was concerned. Do you know anything about that?

A. No.

Q. When you were dealing, or did you or your firm deal with the Revenue on behalf of the company?

A. I understand, yes we did, yes. I wouldn't have personally done that.

Q. Very good. And how long do you know did that particular exercise take?

A. I'd say quite a few months.

Q. Can I ask you this as an accountant, in dealing with the Revenue, and can I take it that the statement of affairs would have been furnished to the Revenue or would at least have been used for the purposes of discussion with the Revenue?

A. I said this morning, I'd be surprised if it wasn't given to them.

Q. If, as we now know, there was no debt in Guinness & Mahon to the company, objectively the Revenue would have been dealt with on an erroneous basis, isn't that correct?

A. No.

Q. I see. Why do you say no?

A. Because if the liability was not due to Guinness & Mahon, it was due to somebody else.

Q. How do you know that? How do you know that?

A. If a company has a liability and somebody pays off the liability, I would have thought subrogation takes place.

Q. Mr. Carty, what if one of the directors just said I am paying off the debt. I am not looking for it back

A. You could say that, yes, but equally he could say I want

Q. Mr. Carty, I am asking you now, you are raising spectres in relation to the dealings with the Revenue, all I am asking you is to look at the situation objectively. You say you didn't know the debt had been cleared off?

A. I did not know.

Q. So it's none of your business, good, bad or indifferent

whether there existed a corresponding liability to somebody else

MR. ALLEN: Chairman, I have deliberately not interrupted My Friend in the course of his cross-examination of I beg your pardon, his examination of Mr. Carty. I do feel however the time has come when I should simply put this point to you, Sir. It appears, and I don't say this in any, I hope, in any pejorative way, but it appears if Mr. Carty gives an answer which does not find favour with Mr. Coughlan, Mr. Coughlan proceeds to a point of almost badgering the man. He is here. He has been asked to speculate on a very considerable variety of hypotheses and he is now accused by Mr. Coughlan of raising spectres in relation to the Revenue. I really do feel, Sir, that unless you believe that Mr. Carty is being in some way obstructive or deliberately unhelpful, and I suggest that the record of his attendances and his cooperation with this Tribunal demonstrates to the contrary, that it isn't fair that he be treated in this way by Mr. Coughlan and I accept that Mr. Coughlan has been on his feet for a long time, not just today but over the last week or ten days, but I would ask that perhaps a slightly more measured and more temperate approach be adopted to Mr. Carty who, after all, is only here attempting, at a remove of fifteen years, to answer questions which, some of which, with the greatest of respect, I have very considerable difficulty in

understanding.

CHAIRMAN: It is too late in the day and we have too much work to do to get into undue quibbles over the precise tenure or tone of what takes place which, I think in general terms in this Tribunal, has virtually unfailingly been to seek to accord to witnesses due courtesy and proper process. If, in relation to this particular point, Mr. Carty, there was one response or one particular matter that you may not have been fully or fairly heard on, then please by all means develop your answer.

A. Thank you, Chairman.

CHAIRMAN: Mr. Coughlan.

MR. COUGHLAN: Now, Mr. Carty. Let's go back. The statement of affairs was prepared which, on the face of the statements, the bank statements, reflected a balance of œ150,000 indebtedness, isn't that correct, to Guinness & Mahon?

A. I would expect it did include something to that effect, yes.

Q. Or there or thereabouts, yes. There was no such indebtedness to Guinness & Mahon, you accept that now.

A. Yes, now, from what you are saying, yes.

Q. You didn't know that at the time, isn't that right?

A. That's correct.

Q. You don't know how it was cleared off?

A. That's correct.

Q. You don't

A. Sorry, other than you telling me this morning how it was cleared off.

Q. That it was paid from an account in Guinness Mahon Cayman Trust, isn't that right?

A. Yes.

Q. So you don't know whether there was any liability in respect of that indebtedness, isn't that correct? You don't know, isn't that correct?

A. Yes.

Q. Now, that being the state of affairs, Mr. Carty, would you accept that, objectively, the statement of affairs furnished to the Revenue, if it was furnished to the Revenue, created an erroneous impression?

A. I am afraid, Mr. Coughlan, I can't accept your prognosis there. I cannot accept it.

Q. Tell me exactly what you don't accept and what prognosis you don't accept, Mr. Carty.

A. Because, Mr. Coughlan, if I can just put it if I owe somebody €150,000 and some white knight comes down and pays the €150,000 for me, I'd expect to owe the white knight the €150,000 unless I have got some, I don't know, very generous benefactor floating around. And it's in that way I am saying the liability stays in the company's balance sheet. Now you say to me, "but you don't know" but I didn't know the Guinness & Mahon bank account was cleared off.

Q. That's precisely what I am asking you. You didn't know the Guinness & Mahon bank account was cleared off, isn't that right?

A. That's why it's on the statement of affairs.

Q. Are you listening to the question, Mr. Carty?

A. I am trying to, Mr. Coughlan.

Q. Well please listen to it carefully. You didn't know it was cleared off.

A. Correct.

Q. It was cleared off.

A. So you say, yes.

Q. It was cleared off.

A. Yes, I accept that now.

Q. Your firm was furnished with a document or information whereby it included in the statement of affairs an indebtedness. Would you accept that?

A. It included?

Q. An indebtedness to Guinness & Mahon.

A. Yes, correct.

Q. No such indebtedness existed.

A. To Guinness & Mahon.

Q. Or as far as we know, to anyone else?

A. How do you know that, Mr. Coughlan?

Q. No, how do you know it?

A. How do you know it?

Q. Sorry, Mr. Carty now Mr. Carty, you are an experienced and serious

A. Sorry, Chairman, I don't mean disrespect. Mr. Chairman, I don't mean to be disrespectful and I know, Mr. Coughlan, some of the questions were robust, but I apologise.

Q. Two directors that have given evidence here from the company know nothing about this. No indebtedness was created. Mr. Byrne and Mr. Foley, right? There is no indebtedness. Nobody knows about an indebtedness. Any new indebtedness being created, right? Now, do you accept that? This is what they have told us, so there was no new indebtedness. Do you accept that? Do you, Mr. Carty, do you accept it?

A. It's very easy for me to walk away from here and say yes, Mr. Coughlan. But whoever paid the debt, surely they are owed the money, are they not?

Q. Mr. Carty. Mr. Carty

A. I'd love to say yes to you, Mr. Coughlan, I'd really love to say yes

Q. Somebody paid the debt. They are owed the money.

A. Yes, that's my point.

Q. Were you told that?

A. No.

Q. Was anyone in Haughey Boland told that?

A. No.

Q. And as far as we know, nobody in Central Tourist Holdings knows who paid the debt. Nobody.

A. I take the point you are making.

Q. You see the point I am making?

A. I take the point you are making.

Q. So there is no indebtedness being created?

A. Mr. Coughlan, I am very respectful to you. You and I can be sitting here all day and what you say legally is correct, but I cannot understand anybody paying off a debt of €150,000 and not wanting it back on the balance sheet as a company liability. They might never accept it or take it.

Q. Nobody has asked for it.

A. Correct.

Q. Nobody has applied to any of the directors?

A. But this is, Mr. Coughlan, this is the year 2000, 14 years later. It's easy to say that now.

Q. But the directors have told us that nobody in the intervening period have ever looked for it. That's what the directors tell us.

A. I see the point you are making, Mr. Coughlan.

Q. I hope you see point I am making, Mr. Carty. Yes, Mr. Carty. What I want you to ask you is that there has been no evidence of any indebtedness created. That's the state of the evidence. Would you accept that? That's the evidence.

A. Because you are saying to me I can't demonstrate or you can't demonstrate to me who paid off the debt.

Q. No. No. Because nobody has suggested that there is an indebtedness in the intervening period. Nobody has suggested there is an indebtedness.

A. Okay.

CHAIRMAN: Well I think you have agreed, Mr. Carty, there were three stages, were there not, that first of all there was a historically long-running debt that started to go up very substantially from 1982 onwards.

A. Yes, Chairman.

CHAIRMAN: It then appears to have been very suddenly it appears to have been paid off and that appears to be in a format whereby a new statement of account has indicated an equivalent debt has suddenly been incurred and has been paid off very abruptly within a week. Then the following year, a further statement purports to recite that an account equivalent to the old debt with further accrued interest is then in the red again.

A. I accept that, Chairman. My only point I was making, I know we have dwelt on it too long maybe, if somebody pays off a debt, then do they not stand, whoever that might be, do they not stand in the shoes of the original creditor?

CHAIRMAN: I certainly note that as a matter of law, Mr. Carty, but merely as regards the facts, I mean those were the various stages

A. I see, I understand what you are saying.

Q. MR. COUGHLAN: What I am asking you, Mr. Carty, do you accept now that if all of that information was known to

you, or to whoever prepared the statement of affairs, a different picture would have been painted for the Revenue?

A. A liability, a liability might have been taken out of the balance sheet, yes.

Q. A liability of €149,000?

A. Would appear to be so, yes.

Q. That is what I wanted to get at from the moment we started this, Mr. Carty, and so I am saying to you that objectively I am not saying that there was any suggestion of anything subjective being done by anyone in Haughey Boland, but that objectively, the Revenue were dealing with the matter on an erroneous basis, objectively, isn't that correct?

A. Well, Mr. Coughlan, I am not here to answer for the directors. Because this question has been put to me and, you know, I am not a director and I don't think it would be appropriate for me to be answering that question saying that the Revenue were misled.

Q. I didn't ask you that.

A. Erroneously, you used the word erroneously.

Q. Erroneous. Would you accept that the Revenue proceeded on an erroneous basis. Would you accept that?

A. On the basis of the information you are putting forward, yes.

Q. Exactly. Would you agree that that is so?

A. On the basis of the information you are putting forward, yes.

Q. Yes.

A. But the next point

Q. The next point

A. How are the Revenue affected by this, I am trying to think.

Q. I don't know. What's the purpose of giving the Revenue a statement of affairs?

A. Because there was no accounts prepared between 1982 was it '82 was the last accounts you had?

Q. Yes.

A. And the date of the statements of affairs. Therefore for corporation tax purposes, you'd have to satisfy them, presumably, of either there was an increase in the net tangible assets or a reduction in the net tangible assets so as to ascertain was there a trading loss and I would presume if you go from '82 to '85, there was probably a deficit, there was probably a trading loss, that establishes therefore on that basis in practice you would normally agree with the Revenue, no profit, no loss and there'd be no tax liability. It usually develops that way from my experience.

Q. And would the £150,000 be material in that particular

A. You'd have off the top of my head, it would be significant in relation to whether taking it out gives rise to a tax liability, I wouldn't know.

Q. But it would be a matter of significance?

A. Significance, yes.

Q. Now well, could I ask you this again, to put on your accountant's hat and to express a view on this one. We know that at the end of the day, from the evidence of Mr. Foley, that €42,000 seems to have been accumulated as a result of disposing of various assets of the company.

A. Yes.

Q. The Bank of Ireland was paid off, as far as we know. You can put that out of the equation altogether. The debt in Guinness & Mahon had been paid off since 1985.

A. You say that, yes. Yes, I accept that.

Q. This €42,000 didn't go into any Guinness Mahon account referable to Central Tourist Holdings, as far as we know.

A. Yes.

Q. So it wasn't used to discharge any of the indebtedness to Guinness & Mahon. The statement of affairs would have reflected an indebtedness to Guinness & Mahon of €150,000-odd, isn't that correct?

A. Yes, that's correct.

Q. If that could have been removed as a liability from the company's affairs, if the true situation had been known to Haughey Boland and the directors, in fact, could you express a view as to how that €42,000 might have been dealt with? Would it have been an asset, a profit, or what, of the company at the end of day?

A. It would have an asset.

Q. An asset. And if all of the indebtedness had been dealt with, how would you have viewed that as an accountant?

A. Sorry, I don't understand the question, Mr. Coughlan.

Q. Well all indebtedness, the company pays all its debt, the debt to Guinness & Mahon, the general creditors, the Revenue

A. Then I imagine the shareholders would have to contribute a significant sum of money, an injection.

Q. No, I am asking you first of all about this €42,000. The company would now have €42,000.

A. Sorry, yes, the company would have the €42,000 to spend, yes.

Q. And I suppose it's a matter for the Revenue, but that might have presented a different picture to them, would you agree?

A. That's correct.

Q. And could I ask you just from your general experience over many years in practice, that if the Revenue had seen over many years a debt being carried in the accounts of the company, and then might see the debt discharged at some stage

A. Yes.

Q. In a situation where they were dealing with a company that was effectively in trouble, do you think the Revenue, in those circumstances, would raise an inquiry as to how the debt had been discharged?

A. Yes.

Q. And of course the effect of that would have been to open up, not that this is any concern of yours, the back-to-back

nature of the security, isn't that correct?

A. Yes, it could have, yes.

Q. And the whole thing, in those circumstances, would have been open to Revenue scrutiny within Guinness & Mahon?

A. Yes.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. QUINN:

Q. MR. QUINN: Chairman, Mr. Coughlan has dealt largely with the matters I had intended to deal with. If I could just clarify one issue if I may, Mr. Carty, with you.

A. Yes, certainly.

Q. As auditors to the company, we know that you know that by 1985, €135,000 was owed by the company to Guinness & Mahon. In September 1985, it appears that that money was paid. Now, the point I think that you are making to Mr. Coughlan is that whoever paid that money may have been substituted as a creditor of the company, is that right?

A. Yes.

Q. Can I ask you, when you came to draw the statement of affairs, did you record the €150,000 which appears to have been due to Guinness & Mahon, did you record any other large creditor at that time?

A. Sorry, when you quantify that figure, do you have the statement of affairs?

Q. I don't have it before me right now.

A. Did you have sight of it?

Q. Yes

A. Well you have me at a disadvantage there and I think I should have been told that, Mr. Chairman.

CHAIRMAN: Yes, I accept that, Mr. Carty. It's a long time ago.

MR. QUINN: The point I am putting to you, Mr. Carty, if as we see from the bank statements, we have a debt being discharged in 1985 of €135,000, isn't that correct?

A. Yes.

Q. And then in October 1985 and November 1986, we have a debt being created and discharged for €135,000.

A. Yes.

Q. And then in 1986, we have an outstanding indebtedness of €147,000-odd to Guinness & Mahon, isn't that right?

A. Yes, yes.

Q. Now assuming there is legitimacy to all three transactions, it would appear that the company owed, not just the 149 or €150,000 to Guinness & Mahon when the statement of affairs came to be drawn up in 1987, but in addition the €135,000 which somebody had discharged on its behalf back in 1985, making a total indebtedness of €185,000 if your theory is to be

A. No, I wouldn't think that's correct.

Q. Well you see, you were suggesting to Mr. Coughlan that whoever discharged the €135,000 substituted themselves as possible creditors of the company in September 1985, isn't

that right?

A. Yes, but I think that was disputed in the end.

Q. Sorry?

A. I think that was disputed in the end. I think I lost that argument.

Q. Then it's unnecessary for me to pursue it either, Mr. Carty. Thank you.

MR. SHIPSEY: Chairman, I just have a concern in relation to an existence of a statement of affairs. Now this comes as news to me in relation to the existence of a statement of affairs and I certainly would like to have sight of it. I am not sure if it's something in the Tribunal's possession or the Revenue Commissioner's possession.

MR. COUGHLAN: Perhaps I should explain. I understand the only ones with a copy of it is the Revenue Commissioners and they are prohibited from disclosing the contents of the taxpayer's affairs. And I think what we are hoping to achieve is, of course, that the directors of the company would have an opportunity of looking at it and we will deal with them and deal with Messrs Deloitte and Touche and the Revenue to see if it can be obtained and made available to everybody.

CHAIRMAN: I think that's probably the preferable course, Mr. Shipsey, that the various legal representatives can liaise and discussions can be had with Mr. Quinn and Mr. Connolly in the context of surviving directors,

perhaps, being prepared to afford consent and perhaps consensual progress can be made in that regard.

MR. SHIPSEY: May it please you, Sir. I have just a few questions, very few questions for Mr. Carty.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SHIPSEY:

Q. Mr. Carty, it's in relation to the sequence of events of payments that were made at the very end of the life of this company. You have said, and I think you are in agreement with both Mr. Foley and Mr. Byrne, in saying that you weren't aware of the payment in 1985

A. That's correct.

Q. In September of 1985. And at that stage you were in, I won't say a unique position, but you were in a position of not only your firm was acting as the auditor to the company, but you also were an executor for one of the directors, or former directors of the company, isn't that correct?

A. That's correct.

Q. And you have been shown a cheque for œ42,680 which you don't have any recollection of receiving?

A. That's correct.

Q. I think you have heard the evidence. Mr. Foley's recollection was that was furnished to you, but we do know it was made out to Guinness & Mahon, is that correct, from what you have seen?

A. From what I have seen on the screen, yes.

Q. That's dated the 20th October of 1987, which is actually three days before you write the first cheque to the Revenue Commissioners for €2,787-odd from the estate of the late Mr. Clifford, isn't that correct?

A. Yes.

Q. And then some months subsequent to that, a cheque is written to Guinness & Mahon for €5,000?

A. Yes.

Q. The fact that that cheque is made out to Guinness & Mahon, would that suggest to you that that was deposited in Guinness & Mahon?

A. On the face of it, yes.

Q. And if that's the case, the likelihood is that it wasn't used to pay the ordinary creditors of the company because the company didn't have a current account, certainly that it knew about with Guinness & Mahon?

A. That's possible.

Q. Thank you.

MR. BARNIVILLE: Sorry, just one or two questions for Mr. Carty on behalf of Mr. Foley.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. BARNIVILLE:

Q. I think perhaps just to clarify a point in relation to the cheque for €42,680. Mr. Foley's evidence was that he was asked by Mr. Grace to draw the cheque and he believes it was either given to yourself or to Mr. Grace and he is not

sure which. I think you have no recollection in any event of receiving a cheque?

A. I have no recollection.

Q. And I think you have had limited access to documents before you have come to give evidence in relation to this issue?

A. Certainly so, yes.

Q. I think you have indicated that the files available to you at this stage are very limited, is that right?

A. Yes, correct.

Q. As regards the two cheques for €5,000 and €2,787, I think as regards firstly the €2,700 cheque, insofar as you paid that cheque for the Clifford estate, that was made payable to Haughey Boland?

A. That's correct.

Q. It's Mr. Foley's recollection that, and he has been able to verify this, that his cheque for that amount was also made payable to Haughey Boland on the 28th October 1987.

A. Yes.

Q. The second cheque is a cheque for €5,000 and I think you have indicated that the €5,000 cheque, insofar as Mr. Clifford's estate was concerned, was made payable to Guinness & Mahon.

A. Yes.

Q. Mr. Foley's recollection, and again he has been able to establish that his €5,000 cheque was made payable to Haughey Boland.

A. Okay.

Q. Is that a possibility?

A. That's a possibility, yes.

Q. Now, as regards the evidence that you gave that there may have been a discussion concerning a further guarantee being entered into, you recall giving that evidence to

Mr. Coughlan?

A. Maybe I am mistaken

Q. Certainly that's not Mr. Foley's recollection and Mr. Foley's recollection is there was one guarantee and that was the guarantee back in 1972.

A. Okay.

Q. Finally, Mr. Carty, I think you had a number of dealings with Mr. Foley towards the end of the life of this company, isn't that right?

A. That's correct, yes.

Q. And during the course of those dealings, did you ever get the impression that Mr. Foley was aware that the loan the company had obtained from Guinness & Mahon had been paid off in September

A. No, I never got that impression.

Q. Did you get the contrary impression in fact?

A. In my view, there was a debt due to Guinness & Mahon.

Q. Thanks, Mr. Carty.

CHAIRMAN: No one else before Mr. Allen? Mr. Allen.

MR. ALLEN: Just very briefly, Chairman, if I may.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. ALLEN:

Q. Just a few questions, Mr. Carty. We know, because you have told the Tribunal, that you were unaware of the settlement with Guinness & Mahon in 1985, isn't that correct?

A. That's correct.

Q. And in fact you only became aware of that settlement as a result of recent communications from the Tribunal, isn't that the position?

A. That's correct.

Q. So that's the factual situation in regard to your knowledge as to the settlement of that particular debt in whatever circumstances it arose.

A. That's correct.

Q. Isn't that the position? Now, you also told the Tribunal in your response to a question from Mr. Coughlan that you have no recollection of receiving a cheque for €42,680 dated 20th October 1987 from Mr. Denis Foley.

A. I have no recollection of that cheque.

Q. I just want to ask you in relation to that, Mr. Carty. Do you believe that if you had received a cheque from Mr. Foley in that amount of money at that particular point in time, that it is likely that you would have or unlikely that you would recall it?

A. I would say I did not receive that cheque.

Q. The reason I asked you that, Mr. Carty, was because Mr. Barniville has just elicited from you the fact that you

were aware or that you could recollect conversations at that time with Mr. Foley, isn't that correct?

A. Sorry, I didn't think he was talking about the €42,000

Q. He wasn't, he wasn't. No. No. Just bear with me for a moment, Mr. Carty. He wasn't talking about the 42,000, Mr. Carty, but what he did establish in his questioning of you was, he put it to you and you agreed with him that you had a number of discussions at the time with Mr. Denis Foley, isn't that correct?

A. That's correct.

Q. And that's the reason that I was asking you or not really asking you, but putting it to you that you would, as a matter of probability, have remembered receiving a cheque in the sum of €42,680 from Mr. Foley if that had ever happened.

A. Yes.

Q. Isn't that correct?

A. That's correct.

Q. And you have now told the Tribunal that you don't believe you ever received that cheque from Mr. Foley?

A. That's correct.

Q. Now, just one or two other matters that I would wish to cover with you, Mr. Carty.

Firstly, am I correct in my understanding of the situation that it is the obligation of the directors to prepare and present accounts?

A. That's correct.

Q. And that that is not an obligation which in any way attaches to a firm of auditors?

A. That's correct.

Q. Or an auditor acting on a stand-alone basis?

A. That's correct.

Q. Isn't that the situation?

A. That's correct.

Q. Equally, in order for the accounts to be approved, for annual accounts to be approved, a meeting of the company has to be called, isn't that correct?

A. That's correct.

Q. And the only people who can call such a meeting are the directors of a company, isn't that correct?

A. That's correct.

Q. It is a statutory entitlement or indeed obligation which is imposed upon the directors and which is not in any way vested in an auditor

A. That's correct.

Q. And again, for the avoidance of doubt, could we just very briefly touch upon precisely what is involved in an audit and I do assure you, Sir, that I will be brief in relation to this. Am I correct in my understanding that in relation to an audit, to the auditing of accounts as presented pursuant to statutory obligation by the directors to the auditors of this particular company, for example, that what the audit involves is the expression of an opinion by the auditor following settled guidelines,

professional guidelines and settled practice of an opinion as to whether or not the accounts, as presented to the auditors, show a true and fair position?

A. That's correct, yes.

Q. Is that the position?

A. That's correct.

Q. And in for the auditor so in delivering or in furnishing such an opinion, questions of judgement arise, is that not correct?

A. Most certainly, yes.

Q. And the standard of care in relation to the exercise of that judgement will depend on the particular circumstances of the company?

A. Correct, yes.

Q. Isn't that correct?

A. Right.

Q. And you have already told the Chairman that this was this is not in dispute this was a company whose income was largely generated by way of cash?

A. Yes.

Q. Isn't that correct? And you have said that because of that, the last set of accounts which were audited and that was for a period of three years, as I understand it, carried a qualification?

A. That's correct.

Q. But you did enter you said that that would be a normal as I understand it, a normal accountancy

procedure to adopt, without necessarily implying any

criticism of the directors, isn't that correct?

A. That is correct.

Q. Now the other matter that I want to touch upon with you is

the question arises from the questions which were put to

you by Mr. Coughlan not qua your role as an accountant or

auditor, but in your in relation to your role as a joint

executor of the estate of the late William Clifford. Do

you follow me?

A. Yes.

Q. Now, correct me if I am wrong, but I understand that the

factual situation, and I am not inviting you and don't

propose to invite you to indulge in any surmise, nor do I

intend to put any hypothetical situation to you, am I

correct in my assumption that the factual situation as of

the time of the making of the payments which were made from

the cheque payment book of the Clifford estate was that

there was in place in relation to what you believe to be

the Guinness & Mahon indebtedness situation, a guarantee of

three directors?

A. That was what I thought, yes.

Q. And that it was also your belief that this guarantee did

not catch the estate of the late William Clifford?

A. That was my opinion, yes.

Q. And you have also told us of the fact that, as I understand

it, that in exercising your judgement as to, leading to the

contribution from the Clifford estate in respect of VAT and

PAYE for the company in a sum of €2,787.58 which was on the 23rd October of 1987, and the subsequent payment of €5,000 to Guinness & Mahon/Central Tourist Holdings Limited on the 5th February of 1988, that you were guided and exercised your judgement with your joint executor in relation to the making of those payments by a number of factors. One was the fact that the Clifford family and members of the deceased Mr. Clifford's immediate family conducted extensive business in and around Kerry?

A. That's correct.

Q. And Tralee, isn't that correct?

A. That's correct.

Q. And do I understand it that this is something the making of these payments is a matter which you would have, amongst other things, done, is that you would have discussed them and discussed these issues with the beneficiaries of the estate?

A. I certainly did discuss it with the beneficiaries of the estate, most certainly.

Q. And with your joint executor?

A. That is correct.

Q. And that it was following upon those discussions, both with the beneficiaries of the estate and a consideration and discussions between yourself and your joint executor, and in light of the circumstances that there were personal there was a personal guarantee, three personal guarantees in place in relation to the indebtedness to, or

perceived indebtedness, however one likes to characterise it, to Guinness & Mahon, that the payments which we know were made were made?

A. That's correct.

Q. And for the avoidance of doubt, Mr. Carty, when you and Mr. Stakelum, your joint executor, made those payments, did you in any way, shape or form have in your mind or within your contemplation the fact that by making these payments, you would create a situation either objectively, as Mr. Coughlan seeks to not seeks to, but puts it or however, did you have any thought to the possibility that in so doing, or were you in any way motivated in the making of those payments by a contribution that this would involve that this, I beg your pardon, that this would not involve and indeed would preclude a liquidation of the company?

A. Certainly not.

Q. Thank you very much.

CHAIRMAN: Just as regards the actual amount of those latter payments, Mr. Carty, the €2,787 to the Revenue and the subsequent general creditors' amount of €5,000, am I correct that your recollection was that your office would have negotiated with the Revenue to finalise and presumably minimise as best you could the commitment to Revenue?

A. And my understanding was, Chairman, the debt due to the Revenue was paid in full.

CHAIRMAN: Yes.

A. And included, I'd imagine, some interest outstanding too.

CHAIRMAN: Quite. And that but you had dealt with that but you hadn't been concerned with the general creditors. Was that Mr. Grace, to the best of your understanding?

A. That's my understanding, yes.

CHAIRMAN: And it would seem to have represented some form of compromise or composition, would it, if it was a round sum of $\text{œ}5,000$ amongst the three surviving directors and the deceased gentlemen to whom you were executor?

A. Correct.

CHAIRMAN: Thank you very much for your assistance, Mr. Carty.

A. Thank you.

THE WITNESS THEN WITHDREW.

MR. HEALY: Well, I had envisaged calling another witness, but there seems little point at five to four when that witness will not be available to continue with it on Friday. So we'd be taking five minutes now and the balance of it on Friday, which seems to be not sense.

CHAIRMAN: I had been of a mind I would sit for a half an hour if the witness was going to sit tomorrow, but if it is a situation that the arrangements are that the witness will

not be available until Friday, there will little to be gained and accordingly we will take that evidence at the usual time on Friday. Very good.

MR. HEALY: There will be other witnesses tomorrow, obviously.

CHAIRMAN: Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL FOLLOWING DAY, THURSDAY
10TH FEBRUARY 2000, AT 10:30AM.