

14, 1958

IN THE PRIVY COUNCIL

No. 7 of 1958

ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N

LAURI JOSEPH NEWTON, LIONEL NEWTON,
FRANCIE UNA CHRISTIAN, HENRY JAMES LANE,
EXECUTORS OF THE ESTATE OF ROBERT NATHAN,
deceased, STELLA MAUD ADELINE LANE and
LEONARD ALFRED FENTON (Respondents) Appellants

- and -

THE COMMISSIONER OF TAXATION OF THE
COMMONWEALTH OF AUSTRALIA (Appellant)
Respondent

(Consolidated Appeals)

RECORD OF PROCEEDINGS
(IN THREE VOLUMES)

VOLUME III.

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LANE, EXECUTORS OF THE ESTATE OF
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FENTON (Respondents)

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	(except in the case of Lauri Joseph Newton where the documents mentioned in 1, 2 and 3 above have been inserted for both the relevant years of income.)
4.	The undermentioned annexures to the Mutual Admissions of Fact (namely) :-
	1. Memorandum and Articles of Lane's Motors Pty. Ltd.
	2. Profit and Loss Account of Lane's Motors Pty. Ltd.
	4. Memorandum and Articles of Neal's Motors Pty. Ltd.
	5. Profit and Loss Account of Neal's Motors Pty. Ltd.
	7. Memorandum and Articles of Melford Motors Pty. Ltd.
	8. Profit and Loss Account of Melford Motors Pty. Ltd.
	10. Memorandum and Articles of Pactolus Pty. Ltd.
	11. Memorandum and Articles of Pactolus Investments.
	13. Shareholdings in subsidiaries of Lane's Motors Pty. Ltd. and Neal's Motors Pty. Ltd.
	16. Letter from L.B. Wallace to the Commonwealth Actuary, Capital Issues Board, re Neal's Motors Pty. Ltd.
	17. Application by Neal's Motors Pty. Ltd. for consent to issue capital.
	18. Letter from L. B. Wallace to the Commonwealth Actuary, Capital Issues Board, re Melford Motors Pty. Ltd.

No.	Description of Document
19.	Application by Melford Motors Pty. Ltd. for consent to issue capital.
21.	Consent by Delegate of Treasurer to issue of capital by Neal's Motors Pty. Ltd.
22.	Consent by Delegate of Treasurer to issue of capital by Melford Motors Pty. Ltd.
24.	Options granted to Pactolus Pty. Ltd. by all the "A" ordinary shareholders in Lane's Motors Pty. Ltd. except the option granted by Lauri Joseph Newton which is reproduced in the Record.
28.	Profit and Loss Account of Lane's Motors Pty. Ltd.
29.	Balance Sheet of Lane's Motors Pty. Ltd.
31.	Options granted to Pactolus Pty. Ltd. by all the "A" ordinary shareholders in Neal's Motors Pty. Ltd. except in the case of the option granted by Henry James Lane which is reproduced in the Record.
35.	Profit and Loss Account of Neal's Motors Pty. Ltd.
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42.	Profit and Loss Account of Melford Motors Pty. Ltd.
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50.	Options granted to Pactolus Pty. Ltd. by all the "C" ordinary shareholders in Melford Motors Pty. Ltd., except the option granted by Leonard Alfred Fenton which is reproduced in the Record.
51.	Transfers to Pactolus Pty. Ltd. of "C" ordinary shares in Melford Motors Pty. Ltd.
52.	Applications for new "B" ordinary shares in Melford Motors Pty. Ltd. except the application by Leonard Alfred Fenton which is reproduced in the Record.

No.	Description of Document
53.	Profit and Loss Account of Melford Motors Pty. Ltd.
54.	Balance Sheet of Melford Motors Pty. Ltd.
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60.	Transfers to Pactolus Pty. Ltd. of "C" Ordinary shares in Neal's Motors Pty. Ltd.
61.	Profit and Loss Account of Neal's Motors Pty. Ltd.
62.	Balance Sheet of Neal's Motors Pty. Ltd.
5.	The following exhibits tendered on behalf of the Respondent (namely) :-
"R.1."	This is the original letter and memorandum marked as exhibit "A.7".
"R.3."	Prospectus of Lane's Motors (Holdings) Limited on conversion to a Public Company.
"R.5."	These are cheques and pay-in slips.
"R.6."	Share transfers referred to in Mutual Admissions of Fact.
6.	Orders of his Honour Mr. Justice Kitto dated 15th August 1956 in Appeals Nos. 28 to 40 of 1956.
7.	Notices of Appeal in Appeals Nos.29 to 40 of 1956.
8.	Orders of the Full Court dated 31st May 1957 in Appeals Nos. 29 to 40 of 1956.

REASONS FOR JUDGMENT OF HIS HONOUR
MR. JUSTICE KITTO

In the High
Court of
Australia

No.53.

Reasons for
Judgment of
His Honour Mr.
Justice Kitto.

8th August 1956.

10 Fourteen appeals under s. 197 of the Income Tax and Social Services Contribution Act 1936 (C'wealth) against assessments amended in exercise of the power given to the Commissioner by s.170(2) of that Act have been heard together. The Appel-
lants are Lauri Joseph Newton, Lionel Newton, Henry James Lane, Leonard Alfred Fenton, Stella Maud Ade-
line Lane, Francie Una Christian, and the trustees of the estate of Robert Nathan deceased. Each Ap-
pellant (counting the trustees as one) appeals
against two amended assessments, one being in re-
spect of income derived in the year ended 30th
June 1950 and the other in respect of income de-
rived in the year ended 30th June 1951.

20 In each case the amendment increased the lia-
bility of the taxpayer by including in assessable
income, as income derived from property, certain
amounts which were described, in an alteration
sheet accompanying the notice of amended assess-
ment, as the taxpayer's proportion of distributions
made by three companies, Lane's Motors Proprietary
Limited, Neal's Motors Proprietary Limited and Mel-
ford Motors Proprietary Limited. (In this judgment
these companies will be referred to as Lane's,
Neal's and Melford respectively, and together they
will be referred to as the motor companies). In
30 some cases income from estates which were treated
as having participated in such distributions was
also included. In each case the amendment also
assessed the taxpayer to additional tax under
s.226(2), on the footing that the taxpayer had
omitted these amounts from his return. Objections
upon a number of grounds were duly lodged, and,
having been disallowed by the Commissioner, they
were forwarded at the taxpayers' request to this
Court as appeals.

40 The grounds of objection in each case in ef-
fect denied that the amounts included in assess-
able income by the amendment to the assessment had
been derived by the taxpayer in fact, and denied
that on any other ground those amounts were to be
treated as forming part of the taxpayer's assess-
able income. Other grounds also were taken, but

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8th August 1956
- continued.

they have not been pressed. The facts concerning the distributions referred to in the alteration sheets were not disclosed to the Commissioner before he made the original assessments. If the Commissioner is right in his view that the Appellants derived, or must be considered to have derived, assessable income in respect of those distributions, it is clear that in each original assessment there was an avoidance of tax, and that accordingly the Commissioner had power under s. 170(2) to amend the assessment. It is also clear that on the same hypothesis the Commissioner was justified by s. 226(2) in assessing the taxpayer to additional tax. The arithmetical correctness of the amended assessment is not disputed. The only issue is whether the hypothesis is correct. 10

The distributions were made as dividends upon shares which were held at the respective dates on which the dividends were declared, by a company called Pactolus Pty., Ltd., (which will be referred to as Pactolus), and it was to that company that the dividends were paid by the motor companies. The nature of the case may be indicated broadly by saying that the shares had been acquired by Pactolus from the Appellants (or the shareholders whom they represent), and that according to the Commissioner's view the facts surrounding the transfers of the shares to Pactolus entitle him by virtue of s. 260 to treat the Appellants as having received the dividends. 20 30

The history of the matter is complicated, and a detailed investigation of it has been necessary. It will make for clarity if, when referring to the persons whose shares Pactolus purchased, I speak generally of "the original shareholders" in relation to each of the three motor companies, though the members of those companies at relevant times were not identical. In Lane's, at the earliest material date, 30th June 1949, the largest shareholder was Robert Nathan. The next largest was the estate of Robert Lane deceased, of which the Appellants Henry J. Lane and Stella M. A. Lane were the trustees. Then there were the respective estates of Joseph Nathan deceased and Catherine M. Nathan deceased, the trustees of both these estates being the Appellants Lauri J. Newton, Lionel Newton and Francie U. Christian. In addition, shares were held in his or her own right by each 40

of the Appellants Lauri J. Newton, Lionel Newton, Francie U. Christian, Stella M.A. Lane and Henry J. Lane. All the shares held by these persons were ordinary shares, and the only other issued capital consisted of 5,000 preference shares held by one W.B. Thomas who was the manager and secretary of the company. In Neal's, Robert Nathan held at that date a large number of ordinary shares and the rest were held by the trustees (already mentioned) of the respective estates of Robert T. Lane deceased, Joseph Nathan deceased and Catherine M. Nathan deceased, and the Appellants Lauri J. Newton, Lionel Newton, Francie U. Christian and Henry J. Lane. There were 5,000 preference shares, held by one Cedric Broomhall, the manager of the company. In Melford, Henry J. Lane and Stella M. A. Lane held shares as trustees of the estate of Robert T. Lane deceased, the Appellants Stella M. Lane and Leonard A. Fenton (the manager of the company) each held shares beneficially, and one Lionel B. Wallace held the balance in trust for the respective estates of Robert Nathan and Joseph Nathan. There were no preference shares in Melford.

With the exception of the three managers, and of Mr. Wallace who had no beneficial interest of his own, the persons who have been named belonged to two family groups, for Lauri J. Newton, Lionel Newton and Francie Una Christian were children of Joseph and Catherine Nathan and nephews and niece respectively of Robert Nathan, while Henry J. Lane was a brother, and Stella M.A. Lane was the widow, of Robert T. Lane, deceased. The businesses of Lane's and Melford had been started by Robert T. Lane, and the business of Neal's by Henry J. Lane. By the time with which we are concerned in this case, the oversight of the affairs of all three companies had devolved mainly upon Henry J. Lane. On the side of the Nathan family, Lauri Newton was the only one who was taking much active interest, and he was more closely concerned with a furniture business carried on by a firm known as Maples. Robert Nathan was taking little part in the motor businesses - he died in June 1950 - and Lionel Newton was abroad.

The three motor companies carried on business in Melbourne as distributors and sellers of motor cars, and similar businesses were carried on there by subsidiaries; including British Service Pty.,

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Reasons for
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Justice Kitto.

8th August 1956
- continued.

Ltd., which was a subsidiary of Lane's, Allcars Pty., Ltd., and Overland (Victoria) Pty., Ltd., which were subsidiaries of Neal's, and Devon Motors Pty., Ltd., which was a subsidiary of Overland. The motor-car selling business had been severely affected by conditions existing in the community during and immediately after the war; but in the year ended 30th June 1949 the three principal companies were able to pay large dividends on their ordinary shares. Although some of the profits they distributed were tax-free by virtue of Division 7 to which reference will be made later, a large proportion was taxable as income in the hands of the recipient shareholders. This placed the shareholders under a heavy tax liability, for they were all persons whose incomes attracted income tax at the highest rate, at that time 15/- in the pound, and under the provisional tax system in force, any increase in one year's income over the income of the preceding year meant that the amount of the increase attracted not only ordinary income tax in excess of that which was covered by the provisional tax paid in the previous year but also provisional tax assessed on the assumption that the income of the next year would be maintained at the same level. Consequently the distribution of fully-taxable dividends amongst the shareholders in the year ended 30th June 1949 involved them in finding amounts equal to 30/- in the pound on their respective proportions. It would seem that this result had not been brought home to them by the tax advisers whom they were consulting when the dividends were declared, but the unwisdom of making the distributions was to be emphasised to them later by a new consultant.

Business in the motor trade was markedly improving as the year ending 30th June 1949 advanced. The number of cars delivered by Lane's, for example, was to reach 4519 by the end of that year and 6479 by the end of the year next following. The total in the preceding year had been only 2714, and only 1008 in the year before that. Taxation difficulties due to rising private incomes were being felt acutely. This may be seen in cables which passed in April 1949 between Mr. Lauri Newton and his brother Lionel, who, as I have said, was abroad. Mr. Lauri Newton referred to difficulty he was having in getting bank accommodation for them both to meet their taxes. He indicated that

he was being asked for an undertaking to float public companies within the next few months, and he mentioned the possibility of having to realise assets on behalf of Lionel. The latter replied stating a preference for floating the motor companies, presumably because so long as they remained private companies, in the sense that they were not listed on the stock exchange, realisation of shares at anything like their value was not likely to be easy. But by no means was the desire for public flotations unanimously supported. Mr. Harry Lane, in particular, had sentimental objections, and no doubt practical objections also, to an abandonment of the family character of the companies. But he was weakening in his opposition to the idea, and it provided a reason, in addition to others that existed, for considering whether the capital structure of the companies, including their dependence upon accumulated profits and loans for adequate working capital, ought to be substantially reformed. In any such consideration problems concerning taxation must necessarily have loomed large. In this situation, in June of 1949 there came a move on the part of Lauri Newton and Harry Lane which culminated in the transactions upon an examination of which the fate of these appeals must depend.

By those transactions, profits of the three principal companies were dealt with, and, in most though not all instances, the paid-up capital of the companies was increased. The first step towards understanding what was done must be to consider the financial situation of each company as at the close of the year ended 30th June 1949, and see what were the difficulties inherent in it.

Lane's. The volume of business being done by this company as the post-war boom in motor car sales got under way may be seen from its gross sales figure of £3,442,565, which gave it a net operating profit for the year of £376,121. For a company doing so large a business, Lane's had a small paid-up capital: only £242,321 divided into 237,321 ordinary shares of £1 each and the 5,000 preference £1 shares held by W.B. Thomas. But its shareholder's funds of other kinds were large: in addition to a tax-paid profit reserve of £250, there were undistributed profits amounting to £387,125 (including £302,799 being the profit of the year just ended after deducting income tax), and loans

In the High Court of Australia.

No.53.

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(including dividend moneys undrawn or re-deposited by shareholders) amounting to £164,009. The total shareholders' funds in the company therefore amounted to nearly £800,000. Its assets included Commonwealth bonds and money in the bank, but if these be treated as set off against sundry creditors it will be found that the whole of the shareholder's funds were represented by assets which, though almost all tangible and conservatively valued, were in use in the company's business.

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Neal's. This company also was in a large way of business. Its gross sales figure for the year amounted to £2,197,227, and its net profit to £195,241. Yet its paid-up share capital was only £114,332, including the £5,000 paid-up on the preference shares held by Broochall. The credit balance in its profit and loss appropriation account was £268,438 (including the net profit of the year); it had a tax-paid profits reserve of £26,103, and its loan account stood at £239,749. The total of its shareholders' funds was £648,622; and this amount was represented by assets consisting of cash in the bank which may be taken (after deducting sundry creditors) at £86,000, Commonwealth bonds £54,565, and other assets, mainly tangible and all conservatively valued, but in use in the company's business.

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Melford. This company also had large sales, the gross figure for the year being £1,586,731. Its paid-up capital was only £16,506, represented by 16,506 ordinary shares of £1 each. Other shareholders' funds consisted of a taxed-profits reserve of £192,449, shareholders' undrawn dividends £51,800, and the credit balance in the profit and loss appropriation account £134,629. The external liabilities, which (including income tax reserve) amounted to £74,342, were greater than the total of the cash in the bank and on hand plus Commonwealth loans; and the rest of the assets, though almost all tangible and conservatively valued, were employed in the business.

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It will be seen from this that each of the three companies, facing a period of evidently increasing activity in the motor trade, could hardly do with much less money in its business than it had as shareholders' funds of one sort and another. It certainly could not pay out to shareholders the

whole of its distributable profits without serious embarrassment, unless it replaced the whole or a substantial part with other moneys. In more primitive times a sensible course would have been to capitalize a sufficient part of the profits by means of dividends satisfied by an issue of paid-up shares; but that would have involved the shareholders individually in liability for income tax on the amount capitalized: cf. Nicholas v. Commissioner of Taxes, Victoria (1940) A.C. 744, a liability similar in kind to that to which the distribution of untaxed profits in the year before had exposed them, but considerably greater in amount. What in fact was done is said by Counsel for the Commissioner to have produced exactly this result, except for the interposition of certain steps which should be treated as void by virtue of s. 260 of the Income Tax etc. Assessment Act. It is important, in view of this contention, to make clear what was the tax position which called for the attention of anyone considering, say in the second half of 1949, what course it was expedient for the companies and their shareholders to pursue.

By annual taxing Acts there had been imposed, and was likely to continue to be imposed, what may be called ordinary company tax at the rate of 5/- in the pound on the first £5,000 of taxable income derived during the preceding year and 6/- in the pound on the excess: see Act No.2 of 1949, s.4(7) and cl. 1 of the Seventh Schedule, and Act No. 49 of 1950, s.9 and cl. 1 of the Sixth Schedule. This was subject to a rebate, under s. 46 of the Assessment Act (the Income Tax and Social Services Contribution Assessment Act 1936-1949), of (roughly) the amount of tax assessed on so much of the taxable income as consisted of dividends from other companies. In addition, taxes were annually imposed which differed according as a company was or was not a "private company" as defined in s.103 of the Assessment Act. A company not being a "private company" was subject to a super-tax and an undistributed profits tax. The super-tax was at the rate of 1/- in the pound on the excess of its taxable income over £5,000: Act No.2 of 1949, s. 5; Act No. 49 of 1950, s. 10. The undistributed profits tax, provided for by Part IIIA of the Assessment Act, was at the rate of 2/- in the pound on that portion of the taxable income which had not been distributed as dividends, ascertained by making

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from taxable income the deductions provided for in s. 160C of the Assessment Act: see Act No. 2 of 1949, s. 4(7) and cl. 4 of the Sixth Schedule, and Act No. 49 of 1950, s. 9 and cl. 4 of the Sixth Schedule. On the other hand, a company which was a "private company", (and Lane's, Neal's and Mel-ford were such), though not subject to either the super-tax or the undistributed profits tax imposed upon other companies, was subject to a tax which will be referred to as Division 7 tax, being the tax provided for by Division 7 of Part III of the Assessment Act. S.104 in that Division, as it applied to the three motor companies, provided in effect that where a private company had not made a sufficient distribution of its income of the year of income by the ensuing 31st December, The Commissioner might assess the aggregate additional amount of tax which would have been payable by its shareholders if the company had, on the last day of the year of income, paid the undistributed amount as a dividend to the shareholders who would have been entitled to receive it, and that the company should be liable to pay the tax so assessed. What was "a sufficient distribution of its income of the year of income" was defined in s.103(2)(e) as a payment in dividends, out of the taxable income of that year, of an amount not less than the aggregate of certain stated percentages of defined portions of the distributable income. This left an amount (a comparatively small amount in the case of the three motor companies) which could be left undistributed without attracting Division 7 tax, and this amount will be referred to as the retention amount. As has been mentioned already, the shareholders of the motor companies all had incomes of such a level that the tax payable by them on any amounts distributed to them by those companies would be at the rate of 15/- in the pound. Consequently, when the operations of the year ended 30th June 1949 produced, as they did, a large distributable profit, the tax liability of each company consisted of a liability to pay ordinary company tax and, in addition, 15/- in the pound on so much of a sufficient distribution as it failed to distribute in dividends by the 31st December. Dividends subsequently paid wholly and exclusively out of the amount so left undistributed were tax-paid, in the sense that the recipients were entitled in respect of them to a rebate of tax as provided in s.107. It is accurate enough for present

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purposes to say that the rebate was of the amount by which the proceeds of the dividends increased the income tax of a person who derived them, either directly or through any interposed company, trustee or partnership, by virtue of shares in respect of which a distribution was supposed to have been made for the purposes of the assessment of the Division 7 tax on the company.

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10 It will be seen that the end of a profitable
year of income presented a "private company" with
a choice: broadly speaking, in so far as it re-
frained from distributing to its members, by the
following 31st December, dividends absorbing its
taxable income of the year of income (except the
retention amount) - a course which would involve
its members in liability to pay tax on the amounts
received by them individually - it would be liable
itself to pay Division 7 tax equal in amount to the
20 aggregate tax which the members would have paid if
the distribution had been made. The present ap-
peals relate to five transactions, each of which,
according to the Commissioner's contention, was an
arrangement entered into in view of this taxation
position and for the purpose of avoiding both Scylla
and Charybdis, that is to say the purpose of enab-
ling a company to avoid incurring Division 7 tax
(by making in time a sufficient distribution of
its income of the year ended 30th June 1949 and
also of the year ending 30th June 1950), and yet
30 of enabling those who were the shareholders at the
beginning of the arrangement to say that they re-
ceived from the distribution no income involving
them in liability to pay income tax. Three of the
transactions, one with respect to each of the three
motor companies, took place in December 1949. A
second transaction concerning Melford took place in
December 1950, and a second concerning Neal's in
June 1951. All five transactions were proposed
by Mr. J.V. Ratcliffe, a consulting accountant of
40 wide experience in financial and taxation problems,
who had been called into consultation by Mr. Harry
Lane and Mr. Lauri Newton in circumstances to
which I shall later refer. It will be convenient
to describe at once the main steps comprised in
these transactions and to indicate the results
which they achieved, assuming them for the moment
to be unaffected by s.260.

Lane's Transaction.

On 14th December 1949, special resolutions

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were passed which increased the capital of Lane's from £250,000 divided into £1 shares to £750,000 similarly divided. They created four classes of shares. The 5,000 preference shares held by Thomas were made A preference shares: the 237,321 issued ordinary shares were made as to one-third (79,107) A ordinary shares and as to two-thirds (158,214) B ordinary shares; 62,679 unissued shares were made B ordinary shares; and 445,000 unissued shares were made B preference shares. (The subdivision of the issued ordinary shares into the A and B classes was effected ratably, so that Lauri Newton (for example), who had held in his own right 15,072 ordinary shares, now held 5,024 A ordinary shares and 10,048 B ordinary shares). The rights attached to Thomas' 5,000 preference shares remained unaffected when they became A preference shares. Subject to these rights, the A ordinary shares were made to entitle the holders to the whole of the dividends thereafter to be declared by the company until they should amount in the aggregate to £5.15.10 per A ordinary share (i.e. £458,161.7.6. in all), including 2/2 per share tax-paid under Division 7. Beyond this, the A ordinary shareholders were given no right to participation in the company's profits except to the extent of a fixed cumulative preferential dividend of 5 per cent. They were given the same voting rights as the B ordinary shares until the dividends aggregating £5.15.10 (which I shall call the special dividends) should be paid. but thereafter only voting rights of the kind ordinarily found in the case of preference shares, viz. to vote when their 5 per cent. dividends should be in arrear for six months or on any proposal for reduction of capital, winding up, or sanctioning a sale of the undertaking, or directly affecting their rights. The B preference shares were made to confer a right (subject to the rights of the A preference and the A ordinary shareholders) to receive a 5 per cent. fixed cumulative preference dividend, and other rights typical of preference shares. Thus the B ordinary shares were left as the only ordinary shares in the usual sense of the term.

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On the next day, 15th December 1949, each of the ordinary shareholders gave to a company called Pactolus Pty., Ltd., an option in writing to purchase his or her A ordinary shares in Lane's at the

price of £5.16.0. per share. Pactolus Pty., Ltd. (which will be referred to as Pactolus) was a company which had been formed by Mr. Ratcliffe in the preceding March. He was the only substantial shareholder in it. This company, it is important to note, appears to have been carrying on business as a dealer in shares, though until then in a small way only.

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10 On 16th December 1949, the directors of Lane's resolved that 402,679 of the B preference shares be made available for issue at par and be offered to the person or persons entitled to the dividends from the A ordinary shares on or after 19th December 1949. By letter of the same date, Pactolus was informed that this had been done.

20 On 19th December 1949, Pactolus exercised the options to purchase the A ordinary shares, and handed cheques for the appropriate amounts of purchase money (totalling £458,820.12.0) to the authorised agent of the vendors, a Mr. Ross, in exchange for completed transfers and the relevant share certificates. The transfers were immediately registered, and new share certificates were issued to Pactolus. On the same day Pactolus applied to Lane's for the 402,679 B preference shares which had been made available to be taken up, and gave Lane's a cheque for the amount payable therefor (£402,679).

30 Next day, 20th December 1949, the directors of Lane's declared three dividends on the A ordinary shares: £8,569.18.6 (or 2/2 per share) out of profits tax-paid under Division 7, £262,232 out of the profits of the year ended 30th June 1949, and £175,493.8.0. out of profits of the year ending 30th June 1950. The total was £446,295. 6. 6. which was at the rate of £5.12.10 per A ordinary share. This was only 3/- per share short of the amount of the special dividend rights which had to be satisfied before the A ordinary shares would become, in effect, 5 per cent. preference shares. 40 A cheque in favour of Pactolus for the amount of the dividends thus declared was handed to Ross on behalf of Pactolus. Later on the same day, the directors of Lane's allotted to Pactolus the B preference shares for which it had applied, and Pactolus gave Lane's a cheque for the full amount of these shares, £402,679. On the same day,

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Pactolus sold the whole of the newly-issued B Preference shares at £1 per share to the original shareholders (now the holders of the B Ordinary shares) in the proportions in which they held B ordinary shares; and transfers thereof were on that day exchanged for cheques drawn by the transferees, totalling £402,679.

On 21st December 1949, all the cheques that have been mentioned were banked simultaneously at the South Melbourne Branch of the English Scottish and Australian Bank Ltd. Lane's and the shareholders had all had accounts there for some time, and an account had been opened there for Pactolus a few days before, with a deposit of £19,000.

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Three months later, on 22nd March 1950, the directors of Lane's declared out of the profit of the year ending 30th June 1950 a further dividend of £11,866.1.0. on the A ordinary shares. This was 3/- per share. It brought the total dividends to £5.15.10 per share or £458,161.7.6. in all, and the special rights attached to the A ordinary shares thus became exhausted. The amount of the new dividend was paid to the credit of Pactolus' bank account at the South Melbourne branch of the E.S. & A. Bank Ltd.

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On 12th May 1950, Pactolus sold the whole of the A ordinary shares in Lane's to a company called Pactolus Investments Pty., Ltd., which will be referred to as Pactolus Investments and in which Mr. Ratcliffe and members of his family were the only shareholders. This sale was at £1 per share, which was the full value of the A ordinary shares as they then stood, that is to say as virtually 5 per cent. preference shares.

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These steps had the following results: (1) in Lane's Accounts, £402,679 of profits went out and was replaced by paid-up capital of the same amount represented by B preference shares in the hands of the original shareholders; (2) the difference between that figure and the total of the special dividends paid (£458,161) viz: £55,482, was contained in the sum of £56,141 which, as will be mentioned in a moment, was kept by the original shareholders in cash, (the remaining £659 of the latter sum being put in by Pactolus); (3) the original shareholders, although they received

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nothing directly from the distribution of Lane's profits, received between them £458,820 as the price of their A ordinary shares, keeping £56,141 of that amount in cash and applying the balance in the purchase of B preference shares from Pactolus; and (4) although Pactolus had to put in £659 in cash, being the amount by which the special dividends fell short of the price paid for the A ordinary shares, it sold those shares for £79,107 and thus made an over-all profit of £78,448. To put Pactolus' result in another way, it lost on the resale of the A ordinary shares £379,713, but the dividends it received amounted to £458,161, so that on the whole it made a profit of £78,448. On the footing, which has been assumed to be correct for the purposes of the argument, that Pactolus was a trader in shares, its taxable income would include, in respect of the Lane's transaction, only the last mentioned amount and not the full amount of the dividends which Pactolus derived from the A ordinary shares.

First Neal's Transaction.

This transaction followed the same pattern as the Lane's transaction and was carried through contemporaneously with it. Of the ordinary shares in Neal's, 36,444 became A ordinary shares carrying a right to all dividends declared until they should reach not less than £13.7.0 per share (i.e. £486,527) of which not less than £1 was to be out of profits tax-paid under Division 7. Thereafter they were to become in effect 5 per cent. preference shares. On 15th December 1949, options were given to Pactolus to purchase all the A ordinary shares at £12.8.4. per share (or £452,513 in all). On 16th December 1949, 403,314 B preference shares were made available for issue, to be offered to the person or persons entitled to the dividends from the A ordinary shares on or after 19th December 1949 and Pactolus was so informed. On the latter date, Pactolus exercised the options to purchase the A ordinary shares, and handed over cheques for the purchase money in exchange for transfers which were thereupon registered. On the same day Pactolus applied for the new issue of B preference shares and handed its cheque to Neal's for the amount thereof. On 20th December 1949 dividends were declared by Neal's: 36,444 (or £1 per share) tax-paid under Division 7, £137,086 out of profits

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of the year ended 30th June 1949, £121,556 out of profits of the year ending 30th June 1950, and £154,997.8.0. out of dividends declared by the subsidiary Overland (Victoria) Pty., Ltd., (which included dividends from the sub-subsidiary Devon Motors Pty., Ltd.). These four dividends totalled £450,083.8.0. which is £12.7.0 per share. Later on the same day, the 403,314 B preference shares were allotted to Pactolus at par, and Pactolus thereupon sold them to the original ordinary shareholders for £1 per share. On 21st December 1949, the cheques were all banked simultaneously at the South Melbourne Branch of the E.S. & A. Bank: Pactolus' cheques in favour of the original shareholders for the price of the A ordinary shares (totalling £452,513). Pactolus' cheque in favour of Neal's for the amount to be paid up on the B preference shares (£403,314), Neal's cheque in favour of Pactolus for the amount of the dividends declared on the A ordinary shares (£450,083.8.0), and the shareholders' cheques in favour of Pactolus for the price of the B preference shares (£403,314). Then, on 22nd March 1950, a further dividend of £1 per share (£36,444) was declared and paid on the A ordinary shares to Pactolus out of Neal's profits for the year ending 30th June 1950, the special dividend rights being thereby exhausted. On 12th May 1950, Pactolus sold the A ordinary shares to Pactolus Investments for £1 per share.

The results achieved by these steps were: (1) £403,314 of Neal's profits was replaced in its accounts by paid-up capital of the same amount represented by B preference shares in the hands of the original ordinary shareholders: (2) the difference between that figure and the total of the special dividends paid (£486,517) viz. £83,203, was represented by £49,199 kept by the original shareholders in cash and £34,004 kept by Pactolus in cash; (3) the original shareholders, although they received nothing directly from the distribution of Neal's profits, received between them £452,513 as the price of their A ordinary shares, keeping £49,199 of that amount in cash and applying the balance in the purchase of B preference shares from Pactolus: and (4) Pactolus kept for itself the difference between the amount of the special dividends (£486,517) and the price it had paid for the A ordinary shares (£452,513), viz. £34,004, as well as the price it got on reselling

those shares (£36,444), a total profit of £70,448. To put Pactolus' result in another way, it lost on the resale of the A ordinary shares £416,069, but the dividends it received were £486,517, so that on the whole it made a profit of £70,448.

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10 The first Melford transaction occurred, as I have said, simultaneously with the Lane's transaction and the first Noal's transaction, and it followed the same general pattern, though with differences in detail. The 16,506 issued ordinary shares were divided into A ordinary and B ordinary shares in equal proportions, and 200,000 preference shares (unissued) were created. (There were no preference shares in this company previously). The amount of the special dividends to be declared on the 8,253 A ordinary shares was in this instance £26.11.0. per share, of which not less than £3 was to be out of profits tax-paid under Division 7.

20 On 15th December 1949, Pactolus was given options to purchase all the A ordinary shares at £24 per share (or £198,072 in all). On 16th December 1949, 189,819 preference shares were made available for issue, and were offered to the person or persons entitled to the dividends from the A ordinary shares on or after 19th December 1949. On the latter date, Pactolus exercised the options to purchase the A ordinary shares, and handed over cheques for the purchase money in exchange for transfers which were thereupon registered. On the same day, Pactolus applied for the new issue of preference shares and gave Melford its cheque for the requisite amount. On 20th December 1949, dividends were declared by Melford: £3 per share (totalling £24,759) out of tax-paid profits, £97,200 out of profits of the year ended 30th June, 1949, and £72,399 out of profits of the year ending 30th June 1950. These totalled £23.11.0 per A ordinary share, or £194,358. Later on the same day, the 189,819 preference shares were allotted to Pactolus at par, and Pactolus thereupon sold them to the original ordinary shareholders for £1 per share. On 21st December 1949, the cheques were all banked simultaneously at the South Melbourne Branch of the E.S. & A. Bank: Pactolus' cheque in favour of the original shareholders for the price of the A Ordinary shares (totalling £198,072), Pactolus' cheque in favour of Melford for the amount to be paid up

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on the preference shares (£189,819), Melford's cheque in favour of Pactolus for the amount of the dividends declared on the A ordinary shares (£194,358), and the shareholders' cheques in favour of Pactolus for the price of the preference shares (£189,819). Then, on 22nd March, 1950 a further dividend of £3 per share (£24,759) was declared and paid on the A ordinary shares to Pactolus out of Melford's profits of the year ending 30th June 1950. This brought the total special dividends paid to £219,117, which exhausted the special dividend rights. On 12th May 1950 Pactolus sold the A ordinary shares to Pactolus Investments for £1 per share. 10

The results achieved by these steps were:
(1) £189,819 of Melford's profits was replaced in its accounts by a corresponding amount of paid-up capital represented by preference shares in the hands of the original shareholders; (2) the difference between that figure and the total of the special dividends (£219,117), viz. £29,298, was represented by £8,253 kept by the original shareholders in cash and £21,045 kept by Pactolus in cash; (3) the original shareholders, although they received nothing directly from the distribution of Melford's profits, received between them £198,072 as the price of their A ordinary shares, keeping £8,253 of that amount in cash and applying the balance in the purchase of the preference shares from Pactolus; and (4) Pactolus got for itself the difference between the amount of the special dividends (£219,117) and the price it had paid for the A ordinary shares (£198,072), viz. £21,045, as well as the price it got on reselling those shares (£8,253): a total profit of £29,298. 20 30

Second Melford Transaction.

On 29th November 1950 after £80,000 of tax-paid profits had been distributed to the original shareholders as dividends on the B ordinary shares, the capital structure of Melford was altered again. The 8,253 issued B ordinary shares were made C ordinary shares; and the 200,000 preference shares (of which 189,819 had been issued) became B ordinary shares, making (with the previously existing unissued B ordinary shares) a total of 383,494. The new C ordinary shares were given rights similar to those which in the preceding year had been given 40

to the A ordinary shares, the amount of the special dividends being fixed on this occasion at £26.11.0 per share, of which not less than £3 per share was to be out of income tax-paid under Division 7. On 30th November, 1950, the C shareholders gave Pactolus options to purchase the C ordinary shares at £24 per share, totalling £198,072. On 4th December 1950 dividends of £19 per share out of profits of the year ended 30th June 1950 and £3 per share out of tax-paid profits were declared by Melford on the C ordinary shares. These dividends totalled £181,566. On the same day the directors of Melford resolved to allot 189,819 of the unissued B ordinary shares at par to the holders of the B ordinary shares already issued, thus doubling their holdings of such shares; and the shareholders' cheques for the amounts required to pay in full for the new issue were handed to Melford on that day. On 6th December, 1950 the various cheques were banked simultaneously at the South Melbourne Branch of the E.S. & A. Bank Ltd.: Pactolus' cheques in favour of the shareholders for the price of the C ordinary shares (£198,072); the shareholders' cheques in favour of Melford for the amount to be paid up on the new issue of B ordinary shares (totalling £198,819); and Melford's cheque in favour of Pactolus for the dividends on the C ordinary shares (£181,566). On 30th January 1951, Melford declared and paid a further dividend of £37,551 (at £4.11.0 per share) on the C ordinary shares, bringing the total dividends on those shares to £219,117 (or £26.11.0 per share) and thereby exhausting the special dividend rights. Pactolus did not sell the C ordinary shares to Pactolus Investments.

The results achieved by these steps were as follows:- (1) £189,819 of Melford's profits was replaced in its accounts by paid-up capital of the same amount represented by newly-issued B ordinary shares in the hands of the original shareholders; (2) the difference between that figure and the total special dividends (£219,117), viz. £29,298, was represented by £8,253 kept by the old shareholders in cash and £21,045 kept by Pactolus in cash; (3) the original shareholders, although they received nothing directly from the distribution of Melford's profits, received between them £198,072 as the price of their C ordinary shares, keeping £8,253 of that amount in cash and applying the

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remainder in taking up the new B ordinary shares; and (4) Pactolus got for itself the difference between what it paid for the C ordinary shares (£198,072) and the amount of the special dividends (£219,117) viz. £21,045, and it retained in addition the C ordinary shares then worth £8,253. It will be noticed that in this second Melford transaction the new shares were taken up by the old shareholders directly; they were not taken up by Pactolus and sold by it to the old shareholders. The significance of this point of difference will be referred to later. 10

Second Neal's Transaction.

On 12th June 1951 the capital structure of Neal's was altered for the second time, 29,156 of the issued B ordinary shares being made C ordinary shares. This left 43,732 issued B ordinary shares. The C ordinary shares were given rights similar to those which in 1949 had been attached to the A ordinary shares, the amount of the special dividends being fixed on this occasion at £13.1.6. per share, of which not less than 12/11 was to be out of income tax-paid under Division 7. On 21st June the C shareholders gave Pactolus options to purchase the C ordinary shares at £12.8.0 per share. On 25th June 1950, Pactolus exercised the options, the C ordinary shares were transferred to it in exchange for cheques, and dividends of 14/6 out of tax-paid profits and £12.7.0 out of the profits of the year ending 30th June 1951 were declared on those shares. These dividends (at £13.1.6. per share) totalled £381,214. On 27th June 1951 the cheques were banked simultaneously: Pactolus' cheques in favour of the shareholders for the price of the C ordinary shares (£354,245.8.0), and Neal's cheque in favour of Pactolus for the amount of the dividends (£381,214). Pactolus sold the C ordinary shares to Pactolus Investments for £1 per share. It will be seen that this time there was no increase in the paid-up capital of Neal's. That company distributed £381,214 of its profits; but it was Pactolus which received them. If there be set off against that sum the loss which Pactolus made on the re-sale of the C ordinary shares, viz. £325,089, Pactolus will be seen to have made an overall profit of £56,125. The original holders of the C ordinary shares received £354,245 in cash, and this amount came to them as a capital receipt and not as income. 20 30 40

Such were the five transactions which took place. It is plain that, apart from S. 260, the original shareholders cannot be said to have derived from the dividends which were declared and paid in the course of these transactions anything that can be treated as assessable income in the assessment of their respective taxes. Every step taken was genuinely intended to have full effect; there was nothing in the nature of a sham or pretence. The original shareholders really and effectually divested themselves of all legal and beneficial interest in the A ordinary shares and the C ordinary shares, in consideration of the respective prices for which they stipulated in the options granted to Pactolus. So much the Commissioner concedes. His case depends entirely upon an application of s.260, which is in the following terms:-

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" 260. Every contract, agreement, or arrangement made or entered into, orally or in writing, whether before or after the commencement of this Act, shall so far as it has or purports to have the purpose or effect of in any way, directly or indirectly -

- (a) altering the incidence of any income tax;
- (b) relieving any person from liability to pay any income tax or make any return;
- (c) defeating, evading, or avoiding any duty or liability imposed on any person by this Act; or
- (d) preventing the operation of this Act in any respect,

be absolutely void, as against the Commissioner, or in regard to any proceeding under this Act, but without prejudice to such validity as it may have in any other respect or for any other purpose."

For the Commissioner it is contended that each of the five transactions was, within the meaning of the section, an arrangement which, to the extent of the change in ownership of the A and C ordinary shares, had both the purpose and the effect of altering the incidence of income tax on the special dividends, of relieving the original shareholders from liability to pay income tax thereon, or of avoiding a liability imposed by the Assessment

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Act on the original shareholders to pay tax on taxable incomes assessed by including in their assessable incomes the amounts of the special dividends. This being so (the contention proceeds), the transfers of the A and C ordinary shares to Pactolus must be treated as void for the purposes of these proceedings, and the amended assessments should be sustained on the footing that the special dividends were derived in their entirety by the original shareholders, a portion of each such dividend having been actually received by them, and the remainder having been paid to Pactolus at their instance and retained by Pactolus with their consent and for its own benefit as something in the nature of a remuneration or a reward for its co-operation in the transactions.

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Section 260 is a difficult provision, inherited from earlier legislation, and long overdue for reform by someone who will take the trouble to analyse his ideas and define his intentions with precision before putting pen to paper. There have not been many cases in which the meaning of the section has been considered, but some points must now be taken as settled. One is that, although the word "arrangement" does not include a conveyance or transfer of property as such, it does include any kind of concerted action by which persons may arrange their affairs for the stated purpose or so as to produce the stated effect; and that a conveyance or transfer may be void as against the Commissioner as forming part of a course of action which constitutes an arrangement in this sense: Bell v. Federal Commissioner of Taxation (1953)

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87 C.L.R. 548 at p. 573. It is also settled that since "this Act" (i.e. the Assessment Act as distinguished from the Acts which impose taxation at rates which they prescribe) imposes by s.17 a general liability to pay tax at the rates declared by the Parliament upon the taxable income derived during the year of income by any person (subject to an exception), an arrangement having the purpose or effect of avoiding that liability in the case of any particular person is within the operation of s.260(c): ibid. at p.574. A third point which is settled is that the section is an annihilating provision only, so that it avails the Commissioner where, and only where, the result of its rendering an arrangement void to the extent which it mentions is to leave standing a state of affairs in which a challenged assessment is justified: ibid. at pp. 572-3.

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On this third point there seemed in the course of the argument in the present case to be what I regard as a misunderstanding, for some of the submissions that were made appeared to assume that the operation of the section upon any particular arrangement is to eliminate from consideration, as if it had never occurred, either everything that was done, or some severable part of the things that were done, in the course of the arrangement. Perhaps this comes from attributing to the word "annihilate", as used in the earlier cases, the sense of blotting out and deeming never to have existed. The word has been used, however, only to emphasise the fact that the section has merely a destructive, and never a constructive, operation; that it renders a contract, agreement or arrangement void to the stated extent, but never supplies any element which is absent and is necessary for a valid assessment. It must not be overlooked that what is meant by "void" is simply devoid of legal effect or significance. (Hence the courts have been constrained to reject, as inapplicable in the construction of s.260, the meaning which "arrangement" has in some contexts, namely a consensus, generally of a more or less unformulated character, lacking in legally operative effect). The section leaves all the facts of a case exactly as it finds them, requiring neither that anything which was not done shall be deemed to have been done nor that anything which was done shall be deemed not to have been done. As applied to a transfer of shares, for example, it leaves standing the fact that the transfer was executed and was registered, and merely requires that the title to the shares be considered as remaining nevertheless unchanged.

Then, too, it must be observed that the section is drawn on the footing that where the stated purpose or effect exists, it may be only to a limited extent that the arrangement is to be described as having or purporting to have that purpose or effect. In one sense, of course, if an arrangement has that purpose or effect to any extent, it is true to say that the whole arrangement has that purpose or effect; but the section looks at the matter differently. It recognizes that the arrangement considered as a whole may have other purposes and effects as well; and it requires that out of the legal consequences of everything that constitutes the arrangement those legal consequences

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be selected and treated as void which have the purpose or effect of themselves producing any of the results described in paras. (a), (b), (c) and (d) of the section, that is to say those consequences which are intended to form or in fact form the decisive or operative factors in bringing about such a result. And even such legal consequences are to be treated as void to the extent only that they have that purpose or effect. So, if it is the operation of a conveyance that is void (under para. (c) for example), it is void only in relation to the particular liability which it has the purpose or effect of defeating, evading or avoiding: it is not void, for example, in relation to all the future income of the property, but is void in relation to that income only which, but for its efficacy, would be assessable income of the conveyor.

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The expression "the purpose or effect" is not without its difficulty. Only the actual legal effect of a thing can be made void, not an effect which, though aimed at, is not achieved even if the section does not apply. The meaning seems to be that if you find that an arrangement has such a purpose as the section describes, you must treat it as void as against the Commissioner and you need not stay to inquire into its general validity; but that if you find that it is effectual apart from the section, then you must treat it as void as against the Commissioner whether it had such a purpose or not. The expression "has or purports to have" seems to carry out the same idea. In other words, the meaning which I should place upon the expression "so far as it has or purports to have the purpose or effect of altering" (etc.) may be expressed by some such paraphrase as: "so far as its validity would have the consequence of altering (etc.), whether that was the purpose of the parties in entering into it or is only its de facto result, and whether such a purpose or result is or is not to be found acknowledged in the course of the transaction".

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Now, it is clear that in each of the five transactions with which the present appeals are concerned a company made a distribution of its profits. It is also clear that none of the taxpayers concerned participated directly in any of the distributions, for every penny went directly

to Pactolus. It is equally clear that each of the taxpayers received money or both money and fully-paid preference shares from Pactolus, and that neither the money they received nor that which had been used to pay for the preference shares can be treated as their assessable income unless it has that character for income tax purposes in consequence of the operation of s.260. I must now examine the history of the transactions - not so much to find whether they had one or more of the purposes mentioned in s.260, but in order to discover whether, if the sales and transfers of the A and C shares be treated as void in law, a consideration of all that remains should lead to the conclusion that the moneys and shares received by the original shareholders, either alone or together with the moneys retained by Pactolus for itself, were derived by those shareholders as income.

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20 The first step was taken in June 1949, when Mr. Ratcliffe was consulted. It had become apparent to those in charge of the motor companies' affairs that business was increasing, and that, as soon as restrictions such as petrol rationing were lifted and goods were in better supply, there would be (as Mr. Lane put it in evidence) "a lot of difficulty for us with our capital". The difficulties referred to included, of course, the need to keep sufficient working funds in the businesses, bearing in mind that, as Mr. Lane said: "in the motor business everything you touch is a thousand pounds and a million pounds goes nowhere". In addition, there was the fact that bank accommodation, if it should be required at any time, would be harder to get with balance sheets which showed so much of the working capital in the form of withdrawable funds, and the further fact that it would be difficult, with those balance sheets, to float public companies, and thereby to move out of the area of liability to Division 7 tax and at the same time to place shareholders who might need cash in a position to sell shares readily. That these considerations were seen as difficulties, however, was due to the fact that the companies' profits could neither be retained as profits nor converted into paid-up share capital without taxes being incurred which would absorb a large part of them (or amounts equal to a large part of them). It is easy, therefore, to understand that, when Mr. Harry

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Lane was asked in cross-examination whether he was not concerned at the time that something should be done so that the tax liability which loomed should never arrive, he replied: "That is one of the reasons that we consulted Mr. Ratcliffe in regard to the formation of a public company, so we could remove from the private company tax". And he went on to say that that was made clear to Mr. Ratcliffe. Mr. Ratcliffe was well known to Mr. Lane and Mr. Newton, for at an earlier date he had given advice concerning the Melbourne furniture firm of Maples, in which the Newtons and Mr. Harry Lane were interested. He was also associated with Mr. Lauri Newton, Mr. Harry Lane and Mr. Fenton on the board of a Sydney furniture company, Bebarfalds Ltd. It was at the close of a meeting of that Board that Mr. Newton asked Mr. Ratcliffe to discuss the motor companies with Mr. Harry Lane. This he did, and they talked in general terms of the difficulties likely to confront the motor companies in relation to their capital, and of the question of forming them into public companies. Mr. Ratcliffe asked to be supplied with the accounts. When he had received and examined them, he saw that each company was seriously under-capitalised, and in August 1949 he had a discussion, confined to Lane's and Neal's, with Mr. Harry Lane and Mr. Newton. Mr. Ratcliffe suggested that the capital of Lane's should be increased to £800,000, and the capital of Neal's to £750,000. Mr. Lane did not favour a higher figure than £600,000 for Lane's, and in any case he made evident his personal feeling against converting the companies into public companies. Mr. Ratcliffe then put forward a preliminary outline of another plan. This, as he described it in his evidence, was that "they could divide their shares into two classes, giving one class special dividend rights and thereby deferring the second class, that they could sell the class I first referred to and that they could use that money to take up a large number of shares at par, and that would raise their capital". Being asked where they could sell the shares, he said he had a company which would be prepared to make an offer.

The matter was carried a stage further at a meeting in Melbourne in September, at which Mr. Ratcliffe developed his proposal in the presence of Mr. Robert Nathan, Mr. Harry Lane, Mr. Lauri Newton, the accountant of Maples named Atcheson, a public

accountant named Wallace (a trustee shareholder in Melford), and Mr. F.E. Bunny, a solicitor who was acting for the motor companies and their shareholders. It is evident that at this discussion the problem of private company tax draining away undistributed profits was very much wrapped up with the question of the companies' capital situation, for Mr. Ratcliffe, realizing that the idea of listing the companies on the stock exchange was too controversial to be worth pursuing, mentioned as an alternative to that, the possible course of bringing in a few new shareholders and so arranging the voting power that the companies could be made to be no longer private companies within the meaning of the Income Tax Assessment Act. This would mean that they would have to pay (in addition to ordinary company tax) super-tax and Part IIIA tax on undistributed profits, amounting together to about 14 $\frac{1}{2}$ %, instead of Division 7 tax amounting to 7%. In this suggestion he found that they were "really not interested", because it had nothing to do with their capital but "was directly on the question of tax saving only." (It was too late to do this so as to take effect with respect to the profits of the year ended 1949, but even as to those profits there was a course which would be effective, namely to form holding companies and let each motor company distribute its profits before 31st December, 1949 to its holding company, the latter being, or becoming before the ensuing 30th June, a non-private company). The main elements in the problem as they saw it were the need of each company for an increased share capital, the desirability of getting the increase from the company's own resources and without bringing in new money, and the apparent impossibility of getting it out of profits because income tax would in effect absorb the greater part of each year's profits either in the companies' hands or in the hands of the shareholders. The possibility of writing up assets and issuing shares for the amount of the increase was discussed, and so was the possibility of satisfying the existing loans by an issue of shares; but these courses together would not have provided the capital which Mr. Ratcliffe thought necessary and they were rejected. Most of the discussion seems accordingly to have been devoted to the plan Mr. Ratcliffe had propounded for a sale of shares with special dividend rights; and two questions about it assumed importance: whether the price obtained on the sale

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would be taxable in the hands of the Vendors, and how the amount of the price would be determined. Mr. Ratcliffe, and apparently Mr. Bunny and the accountants, having ascertained that none of the shareholders had acquired his shares for resale at a profit, expressed the opinion that the price paid to them would be a capital receipt and not taxable, and that (to use words of Mr. Lane's) "such taxation as applied was Pactolus', the obligation of Pactolus as the recipient of the dividends." The method suggested for arriving at the price was based on the view that probably no buyer could be found except a public company, that such a company would have to pay (in addition to the ordinary company tax which was a liability of private and non-private companies alike) approximately 14 $\frac{1}{2}$ % tax on the dividends it received (taking super-tax at 1/- in the pound and Part IIIA tax at 2/- in the pound on the balance), and that such a company would be likely (according to an experience Mr. Ratcliffe had had) to want to keep the price low enough to allow both for these taxes and for a considerable margin above it, perhaps as much again, by way of profit on the deal. Mr. Ratcliffe said in effect, as I understand his evidence, that his company (Pactolus), being a trader in shares and able to re-sell the shares purchased under the plan and set off a loss so incurred against dividends received, could afford to offer a price equal to the amount of the dividends less only the 14 $\frac{1}{2}$ % for taxes and a profit margin of £5,000. One other matter was mentioned in the discussion, namely the necessity which existed at that time to get official consent under the Capital Issues Regulations to the issue of the new shares. Mr. Ratcliffe told the meeting, in effect, that in order to get the consent granted with expedition as a formal matter the application should make it clear that the new shares would be paid for, not by new money, but out of "current resources". At this stage, however, it seems not to have been contemplated that Pactolus would take up the new shares, for Mr. Bunny's evidence satisfies me it was proposed that the purchase money for the shares with special dividend rights should be used by the Vendors to take up the new shares.

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Mr. Ratcliffe was asked to put his proposal in writing. He did not do exactly that, but he wrote to Mr. Wallace a letter dated 30th September, 1949

for consideration by all concerned. It dealt with the three motor companies, and also with a fourth company in which the same people were interested, Ajax Insurance Co., Ltd., as to which the proposal was eventually dropped. It enclosed three memoranda. The first dealt with the alterations required in the articles of association of the several companies, particularly for the purpose of creating the special dividend rights for a segregated class of shares to be called A shares. The second memorandum dealt with the matters to be covered in a proposed contract for the sale of the A shares to Pactolus, and it included a provision, (ultimately not the subject of any written agreement but nevertheless quite distinctly agreed between all parties) that Pactolus would take up new preference shares and that "immediately those shares are fully paid" (without stipulating how they should be fully paid) Pactolus would sell them to the original shareholders in proportion to their holdings.

The third memorandum set out Mr. Ratcliffe's method of calculating the prices to be paid by Pactolus for the A shares and of the number of new shares to be issued and taken up by Pactolus. This memorandum used figures which were the actual figures for the year ended 30th June 1949, but were necessarily only rough estimates for the year ending 30th June 1950. I shall take the portion dealing with Lane's, as sufficient to show the nature of the document. It showed Mr. Ratcliffe's workings and was not in narrative form; but what it conveyed to those for whom it was intended may be described briefly as follows: First, there was a calculation of the amounts which the company would need to distribute out of the profits of each of the two years in order not to be liable for Division 7 tax. These (together with amounts similarly calculated in relation to a subsidiary company) came to £410,000. It followed that if Pactolus were to purchase from the shareholders a proportion of their shares carrying special dividends amounting to that sum, and that sum were thereafter distributed to Pactolus, Lane's would save Division 7 tax amounting (at 15/- in the pound) to £307,500. That amount of tax might have been saved in another way, namely by the company ceasing to be a "private company", either by becoming listed on a stock exchange or by so altering its membership and control

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as to get outside the definition of "private company"; but this could only have been done at the cost of becoming liable to pay super-tax and Part IIIA tax, which would have amounted in all to £72,524. The net saving to the company by the distribution to Pactolus might be taken as the difference between these two figures, namely £235,000. Suppose, then, that the A shares bought by Pactolus were one-third of the issued ordinary shares, viz. 79,107, (enough to protect Pactolus' interest from interference by a special resolution but not enough to affect the general control of the company). 10

Suppose, too, that the special dividends to which these shares entitled Pactolus were made to include a small amount of tax-paid profits (taken for convenience at £2,684), and that they would be worth £1 per share when the special dividends had been paid in full and the only rights remaining attached to them were a right to a 5% cumulative preferential dividend and protective voting rights. 20

On these hypotheses the A shares would be worth to Pactolus a gross amount of £491,791, made up of taxable dividends (£410,000) tax-paid dividends (£2,684) and capital value (£79,107). That would enable Pactolus to pay £419,267, or £5.6.0. per share, and get as its profit an amount equal to the £72,524 which, as mentioned above, Lane's would have had to pay in super-tax and Part IIIA tax if it had been a public company and had made no distribution. The figure of £419,267 was described as "net price", the £5,000 margin for which Mr. Ratcliffe was stipulating being omitted from this memorandum because (as he explained in evidence) he wanted to show only the approximate equivalence between the three possible methods, namely listing on the stock exchange, ceasing by other means to be a "private company", and adopting his Pactolus plan. The document went on to show that in order to pay the dividends, taxable and tax-paid, which would thus be required, amounting to £412,684, Lane's would need to find only £10,005 in cash, assuming that enough of the dividends were turned into capital paid up on the new shares to bring the total paid-up ordinary capital to £640,000 viz. £402,679. This cash amount of £10,005 would go to the shareholders, together with a cash amount of £6,583 to be supplied by Pactolus, making £16,588 in all, to make the difference between the amount of new share capital in the company (£402,679) and the price Pactolus would be paying for the A shares (£419,267). 30 40 50

As I have said, the figures used in this memorandum were hypothetical, but the course indicated was in substance that which was pursued in the three transactions of December 1949; and a study of the memorandum shows what the practical effect of those transactions was to be. It was to enable the motor companies, (a) while parting with comparatively little cash, to replace the greater part of their 1949 and 1950 profits by paid-up share capital, (b) to make the distributions required in order to exonerate themselves from Division 7 tax, and (c) at the same time to avoid involving the original shareholders, though they became the holders of the new share capital, in an income tax liability on the footing that they had participated in a distribution of profits. What those in charge of the motor companies' affairs had to consider in September, with Mr. Ratcliffe's memorandum before them, was whether it was good enough business to achieve this desirable result at the cost of letting Pactolus reap a profit broadly equal to the sum of the amount which would have gone to the Taxation Department if the companies had been public companies and had retained their profits undistributed, plus £5,000 of which some part at least would have been expended in the process of converting the companies to public companies.

By the end of that month it had become apparent to Mr. Ratcliffe, from communications which had passed, that the proposition he had submitted would probably be agreed to. He therefore set about providing Pactolus with sufficient funds to purchase the shares carrying special dividend rights. Pactolus had, or could raise from its shareholders, little more than £20,000. and another £125,000 seemed likely to be needed to tide over the interval between the purchase of the A ordinary shares and the receipt of the full amount of the special dividends. To obtain this amount, Mr. Ratcliffe applied in writing to his bank, the Commercial Banking Company of Sydney Ltd., for an overdraft. The figure was arrived at on the assumption that the Ajax proposal as well as the others would proceed; and as regards the motor companies it was based on more recent figures than had been available when the letter of the 12th September was written. In calculating the amount Mr. Ratcliffe worked on an anticipation that the special dividends

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on the A shares would probably be declared as follows: Lane's, £373,130 immediately after sale and £39,554 in March 1950; Neal's, £358,366 immediately after sale and £81,999 in March 1950; Melford, £177,854 immediately after sale and £41,265 in March 1950. The purchase prices for the A shares were taken at £419,267 for Lane's, £412,425 for Neal's and £198,072 for Melford. Although the amount of cash accommodation required was worked out by setting off the immediate dividends from the price to be paid for the A shares, the document said that the special dividends would be used to take up the new shares, totalling: Lane's 402,679; Neal's 405,668; and Melford 189,819. All these new shares, it was shown, would be sold at par to the Vendors of the A shares for cash as soon as taken up. The application was not proceeded with, for two reasons. One was that the Ajax proposal fell through. The other was that the motor companies' profits exceeded Mr. Ratcliffe's expectations to such an extent that it proved possible, simultaneously with the purchase of the A shares by Pactolus, to pay dividends sufficient in amount to enable Pactolus to take up and pay for all the new shares without having to find more cash than it had available from its own resources. The written application was admitted in evidence without objection. It does not purport to state anything as having been agreed. The expectations it reflects are not shown by it to have been the expectations of anyone but Mr. Ratcliffe; and the use of the dividends to the necessary extent, as and when declared, to take up the new shares, is shown as intended (by him) but not as obligatory. 10 20 30

On 12th and 13th October 1949, the motor companies sent to the Capital Issues Board applications (with covering letters) for consent to the issue of cumulative preference shares: 402,679 in Lane's; 405,668 in Neal's; and 200,000 in Melford. Each covering letter said that it was proposed that these shares should be "taken up by the shareholders and paid for by them out of funds obtained through the declaration by the Company of tax-free and taxable dividends", Lane's and Neal's letters adding "or in part by the use of dividends previously declared and still owing". The letters added: "The Company does not wish to directly capitalise any profits but prefers to declare dividends and allow the shareholders to make application for the shares and use the funds from the 40 50

dividends to pay for them". The application form in each case contained a statement that the proposed issue was "for the Company's business as the present paid-up capital is inadequate"; and it added: "It is not intended to capitalise any amount but is intended to distribute tax-paid and taxable dividends at least equal to the amount paid on the new shares". On 14th November in the case of Melford, and on the 17th November in the cases of Lane's and Neal's, the consent applied for was given; and in each instance a note was added, stating that the approval had been given on the undertaking that all the conditions pertaining to the issue of capital as set out on the application would be observed.

Correspondence ensued between Mr. Ratcliffe and the companies' legal advisers, Messrs. Corr and Corr, Solicitors, of Melbourne. The topics dealt with included the amendments to be made in the respective articles of association, the application of the National Security (Capital Issues) Regulations, and the establishment of branch share registers in the Australian Capital Territory - a refinement introduced into the proposal to avoid difficulties of valuation and consequential delays which were thought likely to occur if the stamp duty laws of the States were encountered. One outcome of this was that, instead of having a contract executed by all parties for the sale and purchase of the A shares as Mr. Ratcliffe's letter of 30th September had proposed, it was decided to have options given by the shareholders to Pactolus, to be exercised in Canberra by a notice to Mr. Ross, as agent for the shareholders, and that Mr. Ross should be authorised both to accept the purchase money for the A shares and to pay Pactolus the purchase money for the new shares taken up by it. Only one other point discussed in the letters need be mentioned. Mr. Bunny, of Corr and Corr, showed that he understood the transactions to be preliminary to the ultimate conversion of the companies into listed public companies, for he proposed to make it a term of the transactions that if that should not happen within a stipulated period the Vendors of the A ordinary shares should repurchase them at £1 each. Mr. Ratcliffe strongly opposed anything in the nature of a string to the purchase, mainly on the ground that it would enable the Commissioner of Taxation to contend that the Vendors

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were engaged in a profit-making scheme. In a letter to Mr. Harry Lane he said that the adoption of Mr. Bunny's suggestion might "result in the loss of the advantage sought to be obtained"; and he added: "If the sale includes a 'string' to the shares, opinion both official and public would be against us and the Commissioner might seek an amendment of the law to tax the transaction. If there is no 'string' there is then only a sale of an investment which would be very difficult to legislate for, either retrospectively or otherwise". Plainly enough, the "advantage" referred to was the immunity of the profits from a drain of 15/- in the pound in favour of the Commissioner of Taxation; and, equally plainly, the transactions which were being evolved were regarded as ensuring that immunity by reason of their being sales of investments and nothing more. With his letter of 18th October 1949, Mr. Bunny submitted to Mr. Ratcliffe a draft option agreement for the sale of the A ordinary shares. This included a covenant by the purchaser to apply for a number of new shares, to pay for them in full (without saying with what moneys), and to sell them to the original shareholder at £1 per share. It also contained an authority to Ross as the original shareholder's agent (inter alia) to receive the purchase money for the A shares and to pay out of it any amount payable by the original shareholder on his purchase of the new shares. The option agreements ultimately executed did not contain the second part of this authorisation.

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The details of the proposed transactions were dealt with in a number of letters, and in the meantime Mr. Ratcliffe was being given the monthly figures of the motor companies. He was asked in November to draft the dividend resolutions and the drafts he prepared were ultimately varied in the light of the latest figures and the conclusions drawn from those figures as to the amounts that could be distributed. Mr. Ross prepared what he called a check sheet, setting out in detail all that had to be done to carry through the transactions. This was not agreed between the parties in the sense of becoming any part of the bargain, though Mr. Ratcliffe did see it and make the comment that it seemed to cover everything. On 8th December 1949, Mr. Ratcliffe wrote to Mr. Ross, referring to the account he had arranged to open for Pactolus with the South Melbourne branch of the

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E.S. & A. Bank Ltd., and saying (inter alia): "I have calculated that Pactolus Pty., Limited will need something less than £19,000 to meet the cheques which it will give on this new account, and I am, therefore, paying this amount into the Sydney Office of the I.A.C. today and would be glad if you would arrange with your (i.e. I.A.C.'s) Melbourne Office to draw a cheque for the same amount and pay it into the Bank when you open the Account".

10 The calculation which Mr. Ratcliffe had made he checked against a statement supplied by Mr. Ross, which set out in schedule form exactly how each shareholder in the three motor companies would fare in consequence of the transactions and for what amounts each of them would have to provide cheques to be used in the carrying out of the transactions. The receipt of this statement, embodying final figures as it did, made it clear to Mr. Ratcliffe that the shareholders had finally decided to go on

20 with his proposal; but there was never anything more specific by way of assent to it. Everyone concerned proceeded to carry out the transactions which I have described at an earlier stage of this judgment, all the details being attended to as worked out in Mr. Ross' check sheet.

Counsel for the Commissioner sought to show at the hearing, particularly by cross-examination of Mr. Harry Lane, that it was a term of the bargain that the special dividends, when paid to

30 Pactolus, should be applied by that company in paying the purchase price of the A shares. On the whole of the evidence I do not think that it was. No doubt it was obvious to everyone that the amount to be paid upon the B preference shares would be balanced by the sale price of those shares, and that Mr. Ratcliffe would not be so foolish as to get cash for Pactolus from other sources and use it to pay for the A shares, except in so far as the dividends received by it up to the time of making

40 the payment might fall short of the purchase moneys required. But it was uncertain whether they would fall short permanently (as proved to be the case in the Lane's transaction) or only for a brief period (as occurred in the other two cases), and I do not find that any stipulation on the subject was made. What was in fact done about the simultaneous banking of cheques was simply adopted as the obvious businesslike method of dealing with cross payments. I should add also that none of the original share-

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holders concerned himself with Pactolus' tax position. They assumed that Pactolus would have to meet substantial taxation by reason of its participation in the transactions; but what its tax liability would be was never the subject of negotiation. Moreover, although Pactolus was left free to re-sell the A ordinary shares if it chose, it was never made a part of the bargain that Pactolus should sell them to Pactolus Investments.

The transactions thus effected in December 1949 raised the paid-up share capital of Lane's and Neal's to amounts which were considered by all concerned to be sufficient, but they raised the capital of Melford to no more than half the amount which Mr. Ratcliffe had suggested. In the case of Lane's, the next step, the public flotation of a holding company, was eventually taken. Lane's Holdings Limited was incorporated in November 1950 and the flotation was in May 1951. This step was not taken with respect to Neal's, for reasons connected with the franchises held by that company and by its subsidiary Devon Motors. It was not taken with respect to Melford either; but in 1950 there occurred the second Melford transaction, by which the share capital of that company was raised by the same amount as in 1949. The proposal for this transaction was set out by Mr. Ratcliffe in a memorandum attached to a letter of 13th October, 1950, and it followed the same general lines as its predecessor, with one important variation. The Capital Issues consent was applied for and obtained on the basis of cash subscription for the new C shares, and, as I have already shown, these shares were taken up, not by Pactolus, but by the original shareholders themselves. This point of difference was accounted for by the fact that by that time consents under the Capital Issues Regulations were being given for the asking, and no advantage in that connection was to be gained by having the new shares issued to Pactolus as the holder of the shares on which the special dividends were to be paid. The C shares were re-sold by Pactolus, not to Pactolus Investments Ltd., but to two daughters of Mr. Fenton.

Then, in April 1951, Mr. Ratcliffe put forward a proposal for the second Neal's transaction. There was no question on this occasion of increasing the paid-up share capital of the company. Mr.

Ratcliffe knew, having done work recently for the estate of the late Robert Nathan, that that estate needed a large sum of ready money for death duties, and he understood, as the fact was, that others of the shareholders also needed money. The proposal was for a sale of a class, to be newly created, of C ordinary shares carrying special dividend rights. It was accepted, after the shareholders had been advised by Mr. Bunny that (in Mr. Lane's words) "it was a sound legal transaction which would not attract tax to us". The matter was carried to completion in June 1951, in the manner I have already described.

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It is convenient to deal with this last mentioned transaction first, because of the comparative simplicity of its facts. The Commissioner contends that the transaction was an arrangement, in the sense attributed to that word in Bell's Case, and that a legal consequence of the sales and transfers of the C ordinary shares to Pactolus as part of the arrangement was that one or more of the results mentioned in s.260 occurred. This, it is said, may be seen by observing what consequences in relation to the special dividend moneys would flow from treating the sales and transfers as void.

Two views favouring the Commissioner are possible. One is that there would be left in the transaction a declaration of the dividend by Neal's a debt thereby created in favour of the original shareholders as notionally being still the holders of the C shares, a payment of the amount of that debt by Neal's to Pactolus with the assent of the original shareholders, a passing on of portion of the amount by Pactolus to the original shareholders, and a retention of the remainder by Pactolus by way of reward or remuneration for its co-operation in the transaction. On this view, it may be said that there would be discovered a receipt by Pactolus amounting to a derivation of the dividend, and therefore a derivation of income, by the original shareholders; and that, this being so, the arrangement under which Pactolus was enabled to receive the dividend for itself as beneficial owner of the shares may properly be described as having, so far as it did so, the purpose and effect, or at least the effect, of altering the incidence of income tax, of relieving the original shareholders from liability to pay income tax on the dividend, and

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of avoiding the liability of the original shareholders to pay such tax.

In my opinion, in this way of looking at the matter there is a fatal flaw at the point at which the payment by Neal's is treated as a payment to Pactolus, with the assent of the original shareholders, of an amount owing to them. The preceding step is logical enough: the declaration of the special dividend created a debt owing to the person or persons who in law were the holders of the C shares, and if the sales and transfers made by the original shareholders are to be considered void it must follow that the debt should be treated as having become payable to them and not to Pactolus. But what is the justification for the next step, that the payment of the dividend to Pactolus was made with the assent of the original shareholders, in a sense which justifies the conclusion that the receipt of the dividend by Pactolus was a derivation of it by the original shareholders? The statement that the payment was made with their assent is true in the very different sense (and only in the sense) that they intended, when they executed the transfers, that as a consequence of acquiring the shares Pactolus should become entitled to receive and should receive the special dividend for its own benefit. But they knew that Pactolus' right to receive payment when the dividend should be declared would arise from the fact of its being the registered holder of the shares, and not from any continuing assent of theirs. Indeed it must have been obvious to them, if they had adverted to the question at all, that once the transfers were registered Pactolus' right to the payment could not be affected even by the most explicit dissent on their part. Nothing was further from their minds than the possibility that the special dividend might be regarded, for some purpose, as becoming payable to them notwithstanding their alienation of the shares, and they certainly did not at any time agree, or intend, or even contemplate, that any debt becoming payable to themselves should be discharged by the making of a payment to Pactolus. The contention I am considering would therefore need to rely upon s.260, not only to annihilate the legal effect of the sales and transfers of the C ordinary shares, but to add to the facts of the case a fictional agreement by the original shareholders to the effect

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that, in the event of the transaction being regarded for any purpose as void so far as it vested in Pactolus the right to receive the special dividend, then their own right to receive that dividend (a right to be deemed for that purpose to exist) should be satisfied by a payment of the amount by Neal's to Pactolus. The short answer is that s.260 cannot perform this feat, for as I have earlier pointed out it concerns itself only with the legal efficacy of contracts, agreements and arrangements to which it applies, never creating notional acts or events, but leaving the facts of every case exactly as it finds them.

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The other possible view favourable to the Commissioner, as to the consequences of treating the sales and transfers of the C ordinary shares as void, is that the money paid by Pactolus to the original shareholders must be considered not to have been a price paid for the shares, and therefore not to have been capital; that the receipt of it should accordingly be held a receipt of income; and that, this being so, the arrangement which brought in that money to them, but with the character of capital, may be described as having to that extent the purpose and effect or at least the effect, mentioned in one or more of the paragraphs of s. 260. There is here, however, a patent non sequitur. It does not necessarily follow, from the fact that the amount referred to is not to be considered as the price received on the sale of a capital asset, that it is to be considered as income. A receipt cannot be held either capital or income unless circumstances are found to exist which justify its being described as the one or the other. To remove from a case an existing reason for holding a receipt to be of a capital nature is one thing; to find in what is left of the circumstances a sufficient reason for holding the receipt to be of an income nature is quite another. The first is within the competence of a statutory provision having a voiding operation only, but the second is not. In the present case, there is nothing whatever in the proved circumstances which can be relied upon to give the money paid by Pactolus to the original shareholders the character of income in their hands, even if its actual role of a price be ignored. It is here that the case differs fundamentally from Bell's Case, and it is important that the contrast between the two should

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be clearly brought out. The decision in Bell's Case proceeded from two main findings. One was that a sum of money consisting of profits, having been withdrawn from a company's bank account, passed into the taxpayer's bank account, indirectly but by steps which were clearly traceable on the face of the bank's ledgers. This, if it stood alone, would obviously have been insufficient. It would only have shown that money which started as a payment out of the company's profits could be traced until it reached the taxpayer; but the fact that a person receives a payment out of another's income gives no clue to the problem whether the receipt is income or capital of the payee. It is a truism that the nature of a receipt is not determined by the nature of the fund out of which the money received is taken. It was the other finding in the case which showed why, if the transfer of the shares were to be regarded as void, the taxpayer's receipt of the money was to be considered a derivation of income. The arrangement was found, in purpose and effect, to be nothing but a method of impressing a dividend with the character of capital in the process of passing it from the company to the taxpayer. The purpose and effect of the arrangement were important at this point of the case, not only because of the reference to them in s.260, but because they were the elements in the arrangement which enabled it to be seen as an agreed means of dealing with the dividend as a specific fund, and of ensuring that, with its character changed but its identity preserved, it should reach the hands which would have received it if the arrangement had not been made. No more was needed to justify the conclusion that a voiding of the sales and transfers of the shares would remove the only obstacle to recognizing the receipt as being of an income nature. 10 20 30

In the present case it is not possible on the evidence to make similar findings. Neal's cheque for the special dividend moneys was paid to the credit of a bank account of Pactolus in which there was already a credit balance, apparently considerable in amount. The payments made to the shareholders are therefore not shown to have been made wholly, or to any ascertained extent, out of the dividend moneys. It seems clear, however, that they were made out of those moneys to some extent. Let it be supposed that the extent is ascertained. 40

Still there remains the important difference between this case and Bell's Case, that in using the dividend to meet the purchase price of the C ordinary shares Pactolus was simply adopting by its own choice the method which it found convenient for making a payment out of its own money. There was no term in the agreement for the sale and purchase of the C ordinary shares that the price should be paid out of the dividend. Of course it must have been well understood by all concerned that Pactolus contemplated relying upon the dividend to put its account sufficiently in funds to meet the cheques drawn upon it for the purchase moneys. It may be right to infer (though there is no direct evidence of it) that the Vendor shareholders promised as part of the bargain that they would not present Pactolus' cheques before the dividend cheque was paid into Pactolus' account. But if they did, the promise was for the benefit of Pactolus, and the Vendors for their part did not exact from Pactolus any promise to pay over the dividend (or any part of it) to them. It therefore cannot be found on the evidence that, from their point of view, the arrangement was a means of getting some of the company's distributable profits transferred to themselves. They sold their shares for a price, and it was of no consequence in the transaction to what funds Pactolus might resort in order to pay the price. The agreement required nothing more, as to the money to be used as the price, than that it should be Pactolus' money; and the money which was in the event used was received by the Vendors as Pactolus' money, and not as a fund with any particular nature, attributes or history.

These considerations lead me to hold that s. 260 does not assist the Commissioner in relation to the second Neal's transaction. The argument to the contrary could not be sustained except by holding that s. 260 operates as a statutory reversal of the doctrine of the Duke of Westminster's Case (1936) A.C.1, operating to bring into a taxpayer's assessable income any amount received by him under an arrangement which is considered to produce broadly, or substantially, or practically, the same results as another transaction would have produced under which the taxpayer would have received assessable income. The section cannot be so interpreted. "Where circumstances are such

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that a choice is presented to a prospective taxpayer between two courses of which one will, and the other will not, expose him to liability to taxation, his deliberate choice of the second course cannot readily be made a ground of the application of the provision. In such a case it cannot be said that, but for the contract, agreement or arrangement impeached, a liability under the Act would exist. To invalidate the transaction into which the prospective taxpayer in fact entered is not enough to impose upon him a liability which could only arise out of another transaction into which he might have entered but in fact did not enter": Clarke v. Federal Commissioner of Taxation (1932) 48 C.L.R. 56 at p. 77.

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The other four transactions in question in these appeals, though more complicated, appear to me to be governed by similar considerations. The only difference in the case of the second Melford transaction is that the original shareholders applied the greater part of the price they received from Pactolus for the C ordinary shares in paying in full for the new B shares which they took up. This point of difference is immaterial to any question in the case.

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The three transactions of December 1949 differed from the second Melford transaction chiefly in this, that it was Pactolus which took up the new B preference shares and that the original shareholders acquired them from Pactolus. The true analysis of these transactions so far as the payments were concerned is, I think, (i) that Pactolus paid for the new B preference shares out of the special dividend moneys, in accordance with the third memorandum enclosed with Mr. Ratcliffe's letter of 30th September 1949, with the undertaking on which capital issues consent to the new issue had been obtained, and with Mr. Ratcliffe's understanding of the matter as shown in his application to the Commercial Banking Co., of Sydney Ltd., for overdraft accommodation; (ii) that the original shareholders paid Pactolus the purchase price for the B preference shares out of the price they got from Pactolus for the A ordinary shares; and (iii) that the excess of the special dividends over the amount paid up on the B preference shares was used by Pactolus (with an addition from its own moneys in the case of Lane's but leaving a balance in its

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own hands in the cases of Neal's and Melford) to make up the difference between the price it had to pay for the A ordinary shares and the price it got for the B preference shares. This means that when Pactolus transferred the B preference shares to the original shareholders it transferred assets which, from its point of view, were simply an investment of a portion of the special dividends. But, clear though it is that the purpose of the original shareholders was to bring about a distribution of profits by the companies and an increase in the paid-up capital of the companies (to be represented by fully-paid B preference shares in their own hands), and to achieve these ends without adopting a course which would bring down any income tax liability upon their own heads, it remains true in these cases, as it is in the other two, that the original shareholders did not stipulate that they should receive the special dividend moneys. The transaction was not a procedure adopted for the common purpose of getting the special dividends to the original shareholders. It was a transaction on a purely commercial basis, in the sense that Pactolus' purpose was only to get something for itself, and the purpose of the original shareholders was only to get something for themselves coupled with an advantage for their companies. What Pactolus wanted was the A ordinary shares, and, by virtue of owning them, the special dividends. What the shareholders wanted for themselves was the B preference shares and cash, together equivalent to the amount they thought it reasonable to accept for the entirety of the rights contained in the A ordinary shares; and what they wanted for the companies was freedom from liability for Division 7 tax (to be achieved by making a distribution of profits within the statutory period) and an increase in the amount of the paid-up share capital. Pactolus was left free to decide for itself what funds it would use for the purposes of the transaction, the common intention being exactly that which was stated in the application for the capital issues consent, namely "not ... to capitalise any amount but ... to distribute tax-paid and taxable dividends at least equal to the amount paid on the new shares".

In these circumstances it would not be sufficient, for the Commissioner's success, to hold that by virtue of s.260 the money and B preference

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shares which the original shareholders received should not be regarded as the price of the A ordinary shares. He must still fail, because, even with the sales and transfers of the A Ordinary shares made void, it would not be possible to find that the money and shares reached the original shareholders with any attribute which would justify their being classed as income. It is not to the point that business men might loosely describe what was done in each company as substantially equivalent to a different transaction, namely a capitalization of profits effected by a procedure involving a liability upon the original shareholders to pay income tax on the amount of the profits capitalized. The fact is that it was not such a capitalization, and s. 260 cannot operate to justify an assessment made on the basis that notionally it was.

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Nor is it material, though it is true, that the original shareholders found the proposition doubly attractive because, on the one hand, it provided the companies with new share capital to take the place of the profits which they could not have retained much longer without incurring liability for Division 7 tax, and, on the other hand, it neither involved the original shareholders in income tax on the distributions nor admitted new shareholders to participate in the general conduct of the companies' affairs. Nothing at all was received by the original shareholders as distributed profits. It is true that they chose the course they adopted in preference to other possible courses because Mr. Ratcliffe satisfied them that it was the most advantageous course for themselves and their companies, having regard to the way in which the income tax law would operate. But the choice they made, and what they actually did, was to take the price they were offered for a parcel of shares carrying special rights with respect to distributable profits, and not to take the distributable profits; and it would require more than a merely voiding provision to reverse the choice.

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In the result I am of opinion that the amended assessments cannot be sustained, and that the appeals must be allowed.

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IN THE HIGH COURT OF AUSTRALIA)
PRINCIPAL REGISTRY)

Ct. Bk. No. 3 of 1954

No. 54.

BETWEEN: LAURI JOSEPH NEWTON

Appellant

Order of His
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Justice Kitto
on the Appeal
of Lauri
Joseph Newton.

- and -

THE COMMISSIONER OF TAXATION OF
THE COMMONWEALTH OF AUSTRALIA

Respondent

15th August,
1956.

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BEFORE HIS HONOUR MR. JUSTICE KITTO

WEDNESDAY THE 15th DAY OF AUGUST, 1956.

THIS APPEAL pursuant to Section 197 of the Income Tax Assessment Act 1936-1949 with respect to an amended assessment dated the 9th day of January, 1953 coming on for hearing before this Court together with thirteen other appeals of a similar nature at Melbourne on the 29th, 30th and 31st days of May 1956 and the 1st, 5th, 6th, 7th, 8th, 11th, 12th and 13th days of June 1956 UPON READING the Notice of Objection herein dated the 4th day of March 1953 and the documents transmitted to this Court on the 22nd day of January 1954 AND UPON READING the exhibits tendered on behalf of the parties AND UPON HEARING the oral evidence of John Vincent Ratcliffe, Henry James Lane, Lauri Joseph Newton, Frederic Ernest Bunny and Donald Hugh Ross, called on behalf of the above-named Appellant AND UPON HEARING Mr. Eggleston, Mr. Macfarlan and Mr. Kerrigan all of Queen's Counsel and Mr. Nimmo of Counsel for the said Appellant and Mr. Tait and Mr. D.I. Menzies of Queen's Counsel and Mr. Aickin of Counsel for the above-named Respondent THIS COURT DID ORDER on the said 13th day of June 1956 that the appeal should stand for judgment and the appeal standing for judgment accordingly this day at Sydney THIS COURT DOTH ORDER that the said appeal be and the same is hereby allowed AND THIS COURT DOTH FURTHER ORDER that the Respondent do further amend the said

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amended assessment by excluding from the Appellant's assessable income the amount shown as added thereto in the alteration sheet accompanying the notice of amended assessment and by making all consequential amendments AND THIS COURT DOETH ALSO ORDER that the costs of the Appellant of this appeal be taxed by the proper officer of this Court and when so taxed and allowed be paid by the Respondent to the Appellant.

BY THE COURT

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N. GAMBLE

DEPUTY REGISTRAR.

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Appellant

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LAURI JOSEPH NEWTON

Respondent

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TAKE NOTICE that the Full Court of the High Court of Australia will be moved by way of appeal at the first sittings of the High Court for hearing Appeals to be held in Melbourne after the expiration of one month from the due institution of this Appeal or so soon thereafter as Counsel may be heard by Counsel on behalf of the above-named Appellant the Commissioner of Taxation of the Commonwealth of Australia for an Order that the Order of His Honour Mr. Justice Kitto made on the 8th day of August 1956 whereby an Appeal by the above-named Respondent against an Amended Assessment to Income Tax and Social Services Contribution in respect of the year of income ended 30th June 1950 coming before this Court upon an objection against the said Amended Assessment treated as an Appeal to this Court and referred thereto upon the request

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of the said Respondent was allowed and by which His Honour ordered that the Appellant should further amend the said Amended Assessment by excluding from the assessable income of the Respondent the amounts shown as added thereto by the alteration sheet accompanying the said Amended Assessment and by making all consequential amendments thereto should be set aside and in lieu thereof an order made that the said appeal against the said Amended Assessment be dismissed with costs and for an Order that the Respondent pay the costs of this Appeal. AND TAKE FURTHER NOTICE that the grounds upon which the Appellant intends to rely are -

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1. That the said Order was wrong in fact and in law.
2. That the learned Judge should have held upon the evidence or alternatively upon the facts as found that there was a contract agreement or arrangement within the meaning of Section 260 of the Income Tax Assessment Act 1936-1949 having or purporting to have the purpose or effect of
 - (a) altering the incidence of Income Tax,
 - (b) relieving the Respondent from liability to pay income tax, or
 - (c) defeating evading or avoiding a duty or liability imposed on the Respondent by the said Act.
3. That upon the evidence the learned Judge should have held that there was an arrangement between the Respondent, Lanes Motors Pty., Ltd., Neals Motors Pty., Ltd., Melford Motors Pty., Ltd., the other shareholders in the said Companies, Pactolus Pty., Ltd., and J.V.Ratcliffe or some of them, that the respective dividends to be received by Pactolus Pty., Ltd., on the A ordinary shares in the said Companies sold to it by the Respondent should be applied in paying to the Respondent the purchase price of the respective A ordinary shares in the said Companies.
4. That the learned Judge was wrong in holding that upon its proper construction Section 260

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of the said Act requires in its application to a set of facts that nothing which was done shall be deemed not to have been done and wrong in holding that as applied to a transfer of shares Section 260 leaves standing the fact that the transfer was executed and registered.

5. That the learned Judge was wrong in holding that the payments in December 1949 and March 1950 to Pactolus Pty., Ltd., of the dividends on the A ordinary shares in Lanes Motors Pty., Ltd., Neals Motors Pty., Ltd., and Melford Motors Pty., Ltd., sold and transferred or purported to have been sold and transferred by the Respondent to Pactolus Pty., Ltd., were not made with the assent of the Respondent so as to justify the conclusion that the receipt of such dividends by Pactolus Pty., Ltd., was a derivation thereof by the Respondent. 10
6. The learned Judge was wrong in holding the said Amended Assessment in order to be justified under Section 260 of the said Act would require not merely the avoidance of sale and transfer of the A ordinary shares in Lanes Motors Pty., Ltd., Neals Motors Pty., Ltd., and Melford Motors Pty., Ltd., by the Respondent to Pactolus Pty., Ltd., but the addition to the facts of a fictional agreement by the Respondent that in the event of the transaction being regarded for any purpose as void so far as it vested in Pactolus Pty., Ltd., the right to receive the dividends on the said shares, then his own right to receive such dividends should be satisfied by payment of the amounts by the respective Companies to Pactolus Pty., Ltd. 20
7. The learned Judge was wrong in holding that if the amounts received by the Respondent from Pactolus Pty., Ltd., upon the sale or purported sale of the A ordinary shares in Lanes Motors Pty., Ltd., Neals Motors Pty., Ltd., and Melford Motors Pty., Ltd., were not to be considered as the price received upon the same of a capital asset, then it did not follow therefrom that such amounts should be treated as income. 30
8. The learned Judge should have held on the evidence that the payments made to the Respondent by Pactolus Pty., Ltd., for the A ordinary 40

shares in Lanes Motors Pty., Ltd., Neals Motors Pty., Ltd., and Melford Motors Pty., Ltd., respectively were made wholly or substantially out of the dividends received by Pactolus Pty. Ltd., from the respective Companies, and should have held that it was part of an arrangement between the Respondent, the other shareholders in the said Companies, the said Companies, Pactolus Pty., Ltd., and J.V. Ratcliffe or some of them, that Pactolus Pty., Ltd., would pay over to the Respondent the dividends received on the said shares or alternatively part of such dividends or alternatively apply such dividends (so far as it may have been required or was sufficient) in paying to the Respondent the purchase price of the said shares.

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9. That the learned Judge should have held on the evidence that there was a contract agreement or arrangement made or entered into between the Respondent, the other shareholders in the said Companies, the said Companies, Pactolus Pty., Ltd., and J.V. Ratcliffe or some of them, as a means of getting part of the distributable profits of each of the said Companies transferred to the Respondent.
10. On the evidence the learned Judge should have held that the amounts included in the Amended Assessment or alternatively some part thereof were, or should be deemed to be, part of the assessable income of the Respondent for the purposes of the Income Tax Assessment Act 1939-1949 and the Social Services Contribution Assessment Act 1945-1948.
11. Upon the facts as found by the learned Judge he should have held that the amounts included in the Amended Assessment or alternatively some part thereof were, or should be deemed to be, part of the assessable income of the Respondent for the purposes of the Income Tax Assessment Act 1936-1949 and the Social Services Contribution Assessment Act 1945-1948.
12. The learned Judge should have held that upon its proper construction Section 260 of the Income Tax Assessment Act 1936-1949 has the effect of making -

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- (a) the amounts included in the Amended Assessment part of the assessable income of the Respondent, or
- (b) the amounts received by Pactolus Pty., Ltd., as dividends on the A ordinary shares in Lanes Motors Pty., Ltd., Neals Motors Pty., Ltd., and Melford Motors Pty., Ltd., (save and except so much thereof as were paid wholly and exclusively out of the profits which had borne tax under Division 7) part of the assessable income of the Respondent, or 10
- (c) the amount paid by Pactolus Pty., Ltd., to the Respondent purporting to be, or as and for, the purchase price of the A ordinary shares in the said Companies part of the assessable income of the Respondent.
13. The learned Judge should have held that there was a contract agreement or arrangement within the meaning of Section 260 of the Income Tax Assessment Act 1936-1949 made or entered into by the Respondent with Lanes Motors Pty., Ltd., Neals Motors Pty., Ltd., Melford Motors Pty., Ltd., and other shareholders in the said Companies, Pactolus Pty., Ltd., and J.V.Ratcliffe or some of them having the purpose and effect or alternatively the effect in some way directly or indirectly of - 20
- (a) altering the incidence of Income Tax, 30
- (b) relieving the Respondent from liability to pay income tax, or
- (c) defeating evading or avoiding a duty or liability imposed on the Respondent by the said Act.
14. The learned Judge should have held that by virtue of Section 260 of the Income Tax Assessment Act 1936-1949 the transfer of A ordinary shares in Lanes Motors Pty., Ltd., Neals Motors Pty., Ltd., and Melford Motors Pty., Ltd., by the Respondent to Pactolus Pty., Ltd., dated 19th December 1949 was absolutely void as against the Appellant. 40

15. The learned Judge was wrong in holding that on the evidence or alternatively on the facts as found that the avoidance of the said transfers of A ordinary shares pursuant to Section 260 did not leave exposed a state of facts, bringing the amounts included in the Amended Assessment or alternatively some part of them into the assessable income of the Respondent.

In the Full Court of the High Court of Australia.

No.55.

Notices of Appeal in the case of Lauri Joseph Newton.

28th August, 1956 - continued.

10 16. Upon the evidence or alternatively upon the facts as found the learned Judge should have held that the amounts included in the assessable income of the Respondent by the said Amended Assessment and the Alteration Sheet accompanying the same as having been received by him from the Estates of Joseph Nathan (deceased) and Catherine M. Nathan (deceased) were, or should be deemed to be, part of the assessable income of the Respondent: and the learned Judge was wrong in failing so to hold
20 on the several grounds set out above mutatis mutandis.

DATED this 28th day of August 1956.

(Signed) H.E. RENFREE

Crown Solicitor for the Commonwealth
and Solicitor for the Appellant.

TO: The Principal Registrar,
High Court of Australia.

and

30 TO: Messrs. Corr and Corr,
104, Queen Street,
Melbourne.

Solicitors for the Respondent.

THE COMMISSIONER OF TAXATION OF
THE COMMONWEALTH OF AUSTRALIA Appellant

- and -

LAURI JOSEPH NEWTON

Respondent

TAKE NOTICE that the Full Court of the High Court of Australia will be moved by way of appeal at the first sittings of the High Court for hearing Appeals

In the Full
Court of the
High Court of
Australia.

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No.55.

Notices of
Appeal in the
case of Lauri
Joseph Newton.

28th August,
1956 -
continued.

to be held in Melbourne after the expiration of one month from the due institution of this Appeal or so soon thereafter as Counsel may be heard by Counsel on behalf of the above-named Appellant the Commissioner of Taxation of the Commonwealth of Australia for an Order that the Order of His Honour Mr. Justice Kitto made on the 8th day of August, 1956 whereby an Appeal by the above-named Respondent against an Amended Assessment to Income Tax and Social Services Contribution in respect of the year of income ended 30th June 1951 coming before this Court upon an objection against the said Amended Assessment treated as an Appeal to this Court and referred thereto upon the request of the said Respondent was allowed and by which His Honour ordered that the Appellant should further amend the said Amended Assessment by excluding from the assessable income of the Respondent the amounts shown as added thereto by the alteration sheet accompanying the said Amended Assessment and by making all consequential amendments thereto should be set aside and in lieu thereof an order made that the said Appeal against the said Amended Assessment be dismissed with costs and for an Order that the Respondent pay the costs of this Appeal AND TAKE FURTHER NOTICE that the grounds upon which the Appellant intends to rely are -

1. That the said Order was wrong in fact and in law.
2. That the learned Judge should have held upon the evidence or alternatively upon the facts as found that there was a contract agreement or arrangement within the meaning of Section 260 of the Income Tax and Social Services Contribution Assessment Act 1936-1949 having or purporting to have the purpose or effect of
 - (a) altering the incidence of Income Tax,
 - (b) relieving the Respondent from liability to pay income tax, or
 - (c) defeating evading or avoiding a duty or liability imposed on the Respondent by the said Act.
3. That upon the evidence the learned Judge should have held that there was an arrangement between

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the Respondent, Melford Motors Pty., Ltd., Neals Motors Pty., Ltd., the other shareholders in the said Companies, Pactolus Pty., Ltd., and J.V. Ratcliffe or some of them, that the respective dividends to be received by Pactolus Pty., Ltd., on the C ordinary shares in the said Companies sold to it by the Respondent should be applied in paying to the Respondent the purchase price of the respective C ordinary shares in the said Companies.

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No.55.

Notices of Appeal in the case of Lauri Joseph Newton.

28th August, 1956 - continued.

10 4. That the learned Judge was wrong in holding that upon its proper construction Section 260 of the said Act requires in its application to a set of facts that nothing which was done shall be deemed not to have been done and wrong in holding that as applied to a transfer of shares Section 260 leaves standing the fact that the transfer was executed and registered.

20 5. That the learned Judge was wrong in holding that the payments in December 1950, February 1951 and June 1951 to Pactolus Pty., Ltd., of the dividends on the C ordinary shares in Melford Motors Pty., Ltd., and Neals Motors Pty., Ltd., sold and transferred or purported to have been sold and transferred by the Respondent to Pactolus Pty., Ltd., were not made with the assent of the Respondent so as to justify the conclusion that the receipt of such dividends by Pactolus Pty., Ltd., was a derivation thereof by the Respondent.

30 6. The learned Judge was wrong in holding the said Amended Assessment in order to be justified under Section 260 of the said Act would require not merely the avoidance of sale and transfer of the C ordinary shares in Melford Motors Pty., Ltd., and Neals Motors Pty., Ltd., by the Respondent to Pactolus Pty., Ltd., but the addition to the facts of a fictional agreement by the Respondent that in the event of the transaction being regarded for any purpose as void so far as it vested in Pactolus Pty., Ltd., the right to receive the dividends on the said shares, then his own right to receive such dividends should be satisfied by payment of the amounts by the respective Companies to Pactolus Pty., Ltd.

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Court of the
High Court of
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No.55.

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Appeal in the
case of Lauri
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1956 -
continued.

7. The learned Judge was wrong in holding that if the amounts received by the Respondent from Pactolus Pty., Ltd., upon the sale or purported sale of the C ordinary shares in Melford Motors Pty., Ltd., and Neals Motors Pty., Ltd., were not to be considered as the price received upon the sale of a capital asset, then it did not follow therefrom that such amounts should be treated as income.
8. The learned Judge should have held on the evidence that the payments made to the Respondent by Pactolus Pty., Ltd., for the C ordinary shares in Melford Motors Pty., Ltd., and Neals Motors Pty., Ltd., respectively were made wholly or substantially out of the dividends received by Pactolus Pty., Ltd., from the respective Companies, and should have held that it was part of an arrangement between the Respondent, the other shareholders in the said Companies, the said Companies, Pactolus Pty., Ltd., and J.V. Ratcliffe or some of them, that Pactolus Pty., Ltd., would pay over to the Respondent the dividends received on the said shares or alternatively part of such dividends or alternatively apply such dividends (so far as it may have been required or was sufficient) in paying to the Respondent the purchase price of the said shares. 10
9. That the learned Judge should have held on the evidence that there was a contract agreement or arrangement made or entered into between the Respondent, the other shareholders in the said Companies, the said Companies, Pactolus Pty., Ltd., and J.V. Ratcliffe or some of them, as a means of getting part of the distributable profits of each of the said Companies transferred to the Respondent. 30
10. On the evidence the learned Judge should have held that the amounts included in the Amended Assessment or alternatively some part thereof were, or should be deemed to be, part of the assessable income of the Respondent for the purposes of the Income Tax and Social Services Contribution Assessment Act 1936-1950. 40
11. Upon the facts as found by the learned Judge he should have held that the amounts included in the Amended Assessment or alternatively

some part thereof were, or should be deemed to be, part of the assessable income of the Respondent for the purposes of the Income Tax and Social Services Contribution Assessment Act 1936-1950.

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28th August, 1956 - continued.

12. The learned Judge should have held that upon its proper construction Section 260 of the Income Tax and Social Services Contribution Assessment Act 1936-1950 has the effect of making

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(a) the amounts included in the Amended Assessment part of the assessable income of the Respondent, or

(b) the amounts received by Pactolus Pty., Ltd., as dividends on the C ordinary shares in Melford Motors Pty., Ltd., and Neals Motors Pty., Ltd., (save and except so much thereof as were paid wholly and exclusively out of the profits which had borne tax under Division 7) part of the assessable income of the Respondent, or

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(c) the amount paid by Pactolus Pty., Ltd., to the Respondent purporting to be, or as and for, the purchase price of the C ordinary shares in the said Companies part of the assessable income of the Respondent.

13. The learned Judge should have held that there was a contract agreement or arrangement within the meaning of Section 260 of the Income Tax and Social Services Contribution Assessment Act 1936-1950 made or entered into by the Respondent with Melford Motors Pty., Ltd., Neals Motors Pty., Ltd., the other shareholders in the said Companies, Pactolus Pty., Ltd., and J.V. Ratcliffe or some of them having the purpose and effect or alternatively the effect in some way directly or indirectly of -

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(a) altering the incidence of Income Tax,

(b) relieving the Respondent from liability to pay income tax, or

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(c) defeating evading or avoiding a duty or liability imposed on the Respondent by the said Act.

In the Full Court of the High Court of Australia.

No.55.

Notices of Appeal in the case of Lauri Joseph Newton.

28th August, 1956 - continued.

- 14. The learned Judge should have held that by virtue of Section 260 of the Income Tax and Social Services Contribution Assessment Act 1936-1950 the transfer of C ordinary shares in Melford Motors Pty., Ltd., and Neals Motors Pty., Ltd., by the Respondent to Pactolus Pty., Ltd., dated 4th December 1950 and 25th June 1951 respectively was absolutely void as against the Appellant.
- 15. The learned Judge was wrong in holding that on the evidence or alternatively on the facts as found that the avoidance of the said transfers of C ordinary shares pursuant to Section 260 did not leave exposed a state of facts, bringing the amounts included in the Amended Assessment or alternatively some part of them into the assessable income of the Respondent. 10
- 16. Upon the evidence or alternatively upon the facts as found the learned Judge should have held that the amounts included in the assessable income of the Respondent by the said Amended Assessment and the Alteration Sheet accompanying the same as having been received by him from the Estates of Joseph Nathan (deceased) and Catherine M. Nathan (deceased) were, or should be deemed to be, part of the assessable income of the Respondent and the learned Judge was wrong in failing so to hold on the several grounds set out above mutatis mutandis. 20

DATED this 28th day of August 1956. 30

(Sgd.) H. E. RENFREE.

Crown Solicitor for the Commonwealth and Solicitor for the Appellant.

TO: The Principal Registrar, High Court of Australia.

and

TO: Messrs. Corr and Corr, 104, Queen Street, MELBOURNE.

Solicitors for the Respondent. 40

No. 56.

REASONS FOR JUDGMENT OF THE FULL COURT
JUDGMENT OF HIS HONOUR THE CHIEF JUSTICE
(SIR OWEN DIXON)

THE COMMISSIONER OF TAXATION

v.

NEWTON & OTHERS

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Court of the
High Court of
Australia.

No.56

Reasons for
Judgment of His
Honour The
Chief Justice
(Sir Owen
Dixon)

31st May 1957.

10 I have had the advantage of reading the reasons prepared by Williams J. and those prepared by Fullagar J. and I agree in all substantial respects with the view expressed by their Honours.

In my opinion the appeals should be allowed, the orders under appeal set aside and the appeal from the assessments of the Commissioner dismissed.

(et seq)

- p.104

JUDGMENT OF HIS HONOUR MR. JUSTICE McTIERNAN

THE COMMISSIONER OF TAXATION
OF THE COMMONWEALTH OF AUSTRALIA

v.

LAURI JOSEPH NEWTON AND OTHERS

Reasons for
Judgment of His
Honour Mr.
Justice
McTiernan.

31st May 1957.

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JUDGMENT

McTIERNAN J.

30 The question in each of these matters is whether the Respondent is liable to tax on dividends declared and paid by one or more of the companies, which have been called Lanes', Neal's and Melford, out of its taxable income. The case of each Respondent is that he had sold and transferred to Pactolus Pty., Ltd., the shares on which the dividends were declared and that company received the whole of the dividends. The Commissioner does not dispute these facts. But he relies upon Section 260 of the Income Tax Assessment Act 1936-1949 so far as the amended assessments for the year ended 30th June 1950 are concerned. Strictly, in

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- continued.

the cases of those for the next year it is Section 260 of the Income Tax and Social Services Contribution Assessment Act 1936-1950, but the provisions of the two sections are the same.

The Commissioner's case is that the sale and transfer in each case were part of an arrangement within the meaning of the section and that such transactions are "absolutely void as against the Commissioner". He maintains that the result of the operation of the section is that each Respondent must be deemed to have derived as income the dividends paid on the shares which he had in fact sold and transferred. All the dividends in question were distributions made by the companies to Pactolus Pty., Ltd. Each of these distributions came within the definition of dividend; to be found in Section 6(1) of the Act. Section 44 provides that the assessable income of a shareholder shall, subject to this section, include dividends paid to him by the Company out of profits derived by it.

The amended assessment in each case excluded amounts subject to the rebate provided by Section 107. The proportions of the distributions included in the amended assessment of each Respondent would clearly have been part of his taxable income if such distributions had been made directly to him by the company. Was there in these matters an "arrangement" within the meaning of Section 260? The connotation of the word is as Isaacs J. said in Jaques' Case, "elastic". Its meaning includes settlement of details made in anticipation of some event; also, the action taken as fulfilment of a plan. In Bell's Case, the Full Court decided that such action would be an "arrangement" if its character and consequences are as defined in Section 260. An "arrangement" is struck at by this section "so far as it has or purports to have the purpose or effect of in any way, directly or indirectly" contriving any of the things enumerated in (a), (b), (c) or (d). I think that in this context "purpose" means the object aimed at and accomplished, and "effect" means the end attained irrespective of the motive. The object of the section is to limit for the common good a freedom on which Lord Simon L.C. commented in Latilla v. Inland Revenue Commissioners 143 A.C. 377, 381. He there said: "My Lords, of recent years much ingenuity has been expended in certain quarters in attempting to devise methods of disposition of income by which those who were prepared

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to adopt them might enjoy the benefits of residence
in this country while receiving the equivalent of
such income without sharing in the appropriate
burden of British taxation. Judicial dicta may
be cited which point out that, however elaborate
and artificial such methods may be, those who adopt
them are 'entitled' to do so. There is, of course,
no doubt that they are within their legal rights,
but that is no reason why their efforts, or those
of the professional gentlemen who assist them in
the matter, should be regarded as a commendable
exercise of ingenuity or as a discharge of the
duties of good citizenship. On the contrary, one
result of such methods, if they succeed is, of
course, to increase pro tanto the load of tax on
the shoulders of the great body of good citizens
who do not desire, or do not know how, to adopt
these manoeuvres". The provisions which are now
Section 260 were introduced into the taxation laws
of this country long before Lord Simon uttered
these words. Knox C.J. in Purcell's Case 29
C.L.R. 464 at p. 463 explained the scope of the
section corresponding with Section 260. He said:
"The section, if construed literally, would extend
to every transaction whether voluntary or for value
which had the effect of reducing the income of any
taxpayer; but, in my opinion, its provisions are
intended to and do extend to cover cases in which
the transaction in question, if recognised as valid,
would enable the taxpayer to avoid payment of in-
come tax on what is really and in truth his income.
It does not extend to the case of a bona fide dis-
position by virtue of which the right to receive
income arising from a source which theretofore be-
longed to the taxpayer is transferred to and vested
in some other person. The section is intended to
protect the revenue against any attempted evasions
of the liability to income tax imposed by the Act -
that liability is imposed on the taxpayer in re-
spect only of his income (sec. 10(1)); and the bona
fide gift or sale by a taxpayer of assets producing
income is therefore in no sense an attempt to evade
his liability to income tax". Isaacs J. made some
observations in Jaques' Case 34 C.L.R. at p. 359
which are, I think, to the same effect. These
are - "The section does not include a con-
veyance or transfer of property, legal or
equitable, as such. It pre-supposes that apart
from the 'contract, agreement, or arrangement' a
taxpayer would bear a certain liability either to

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make a return, or to pay tax in respect of certain income. Then, assuming that the income (if any) still remains that of the taxpayer (because sec. 53 does not contemplate an instrument actually changing the real ownership), the section supposes some 'contract, agreement, or arrangement' which apart from the provisions of the section itself would legally operate or purport to operate in one or more of the ways set out in para. (a), (b), (c) and (d). Then, says the section, such a 'contract, agreement, or arrangement' shall be 'absolutely void' for any such purpose, but is not otherwise affected. The effect is that the taxpayer's liability to make a return, or in respect of any other liability under the Act, remains just as if there were no such 'contract, agreement, or arrangement'." A Transfer of shares before payment of a dividend thereon results in the previous owner being free from tax on the dividend: that tax is payable by the new owner to whom the dividend is paid. Such a transfer may be a re-arrangement of the previous owner's affairs. But it is not within Section 260 because neither the dividend nor any part of it is income derived by him. But in the present matters there are schemes involving very much more than mere sales and transfers of the shares in question. The Commissioner was entitled to rely upon Section 260, if the proportion of the dividend included in the taxable income of each Respondent was "really and truly his income". If it was, Section 260 removes the curtain which the carrying out of Mr. Ratcliffe's schemes erected in order to cover up this fact. The curtain was provided by the forms of sale and transfer of the shares. These elements of the schemes clearly had the effect of relieving each Respondent from liability to which he would have been exposed had he continued to be the shareholder when the companies paid the dividends in question. The schemes were undoubtedly designed to secure that purpose, and their execution attained that end if the sales and transfers can stand against the Commissioner. The artificial routine used in carrying out the sales and transfers carries its tax avoiding purposes and effect on its face. The series of steps taken to carry out each scheme, in my opinion, constituted an "arrangement". Bell's Case 87 C.L.R. 548. It is not necessary in order to arrive at this result to find in any of the schemes a binding stipulation that Pactolus Pty., Ltd., would use the

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dividends as the fund out of which to pay for the shares transferred to it. I think that the mutual admissions of facts establish that Pactolus Pty., Ltd., acting in concert with the Respondents and their companies, really and substantially "as a hard practical matter of fact" - used the dividends to pay for such shares, to provide the cash which it retained and to complete the transactions between itself and each company, involving the other shares subscribed for, transferred back by Pactolus Pty., Ltd., to each Respondent. It is important to observe how insignificant were the moneys to the credit of Pactolus Pty., Ltd., before the companies paid the dividends to it, in comparison with the enormous amounts for which Pactolus Pty., Ltd., drew cheques in favour of the Respondents by way of payment for the shares; and that all the cheques were paid.

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I agree with the argument advanced for the Commissioner that the circumstances are analogous to those in Bell's Case, as determined by the Full Court, and call for a similar application of Section 260. Proceeding on the basis of this authority, I think that the transfers of the shares must be deemed to be absolutely void as against the Commissioner. When they are set aside for the purposes of taxation, none of the Respondents has any support for his plea that what he received from Pactolus Pty., Ltd., was the price of his shares and as such capital. This way of applying the section leaves standing the facts that the companies made these distributions out of their profits. If the distributions were void as against the Commissioner, the companies might be exposed to liability to additional tax under Section 104. The Act, however, allows a "private company" to escape such taxation by making a sufficient distribution of its income. It follows that it would not be reasonable to suppose that any such distribution was void for purposes of taxation. Indeed, it is within the scope of Section 260 to prevent shareholders escaping liability to the tax that may result from a distribution made to avoid "additional tax"; that, in my view, is what these Respondents attempted to accomplish.

Section 260 having operated, the next question is whether it is correct to assess each Respondent on the basis that he received a full amount of

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dividend, as if he had been a shareholder. In fact he did not, as Pactolus Pty., Ltd., was entitled, under the "arrangement", to a portion and pursuant to the "arrangement", in effect, intercepted it. This company was entitled to keep the shares acquired by sale and transfer. If the transfers are absolutely void for purposes of taxation, the result is that, in the contemplation of the Act, the taxpayers were always sub modo the shareholders and as such derived the whole of the dividends as income. It is entirely consistent with this hypothesis to tax each Respondent on the full amount of his proportion of the distribution. But, as Section 260 only sets aside the transfers in favour of the Commissioner so far as is necessary to preserve the liability of the Respondents to tax and no further, the ownership of the shares by Pactolus Pty., Ltd., is not otherwise affected. 10

The hypothesis that each Respondent really and truly participated in the distributions made by the companies in cash involves the conclusion, in the case of the Respondents who received shares back from Pactolus, that the purchase of those shares was a step subsequent to their deriving the dividends. This conclusion does not affect the question of their liability to taxation because the acquisition of such shares must be regarded as nothing but the utilization of the portion of the assessable income which they did not desire to retain in cash. 20 30

I would allow the appeals and restore all the assessments which were set aside by Kitto J.

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JUDGMENT OF HIS HONOUR MR. JUSTICE WILLIAMS

THE COMMISSIONER OF TAXATION
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JUDGMENT

WILLIAMS J.

These are fourteen appeals by the Commissioner of Taxation of the Commonwealth of Australia from orders of Kitto J. allowing appeals to this Court 40

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from amended assessments of the Appellants for In-
come tax under the provisions of the Income Tax
and Social Services Contribution Assessment Act
1936-1950 (hereinafter called the Assessment Act).
The appeals were ordered to be heard together be-
cause they all depend upon substantially similar
facts and circumstances, the Appellants or some of
them being, until a company, Pactolus Pty., Ltd.,
became a shareholder, all the shareholders in three
10 private companies - Lane's Motors Pty., Limited,
Neal's Motors Pty., Limited and Melford Motors Pty.,
Limited. The facts are very voluminous, Kitto J.
has taken a great deal of trouble to set them out
and I do not propose to attempt to go over all this
ground again. I shall confine myself to dealing
as shortly as I can with what appear to me to be
the crucial facts. The material years of income
are those ending on 30th June 1949 and 30th June
20 1950. In 1949 all three companies were carrying
on the business of selling motor vehicles and other
activities incidental thereto and were making very
large and increasing profits. They were all pri-
vate companies within the meaning of Part III
Division 7 of the Assessment Act and were there-
fore all companies which, unless they distributed
the distributable parts of their taxable incomes
of the year ending 30th June 1949 before 31st De-
cember 1949, would become liable to pay additional
tax under this division. All the shareholders
30 were persons who were liable to pay income tax and
social services contribution at the highest rates
on their taxable incomes and these total rates
reached a maximum of 15/- in the pound. The direc-
tors of the companies were anxious to increase
their working capital in order to have sufficient
funds to finance businesses that were expanding
and to use the profits the companies were making
for this purpose, but they found themselves in this
position that if they decided not to distribute
40 the distributable amounts of their taxable incomes
the companies would become liable to pay additional
tax at the same rates and therefore of the same
total amount as the shareholders would have to pay
if these amounts were distributed to them. If this
course was adopted only approximately 5/- in the
pound would be available for capitalisation.

This fund could, of course, be capitalised
without the shareholders incurring tax but it would
not go very far. Various plans were discussed.

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If additional tax was not to be incurred in respect of the distributable amounts of the taxable incomes of the year ending 30th June, 1949, it was necessary for the companies to distribute this amount before 31st December 1949 and it was also necessary for the companies to be converted into non private companies prior to 30th June 1950 if they did not wish to be taxed as private companies in respect of the income of that year. If the Companies were converted into non private companies additional tax on the distributable amounts of the taxable incomes of the year of income ending 30th June 1950 would not be incurred but all the taxes payable by non private companies would be incurred, further shareholders would have had to be admitted, and several of the directors and shareholders did not want strangers as shareholders in the companies or public companies to be formed. The plan finally agreed upon was intended to overcome all these disadvantages. It meant the admission of one new shareholder, Pactolus Pty., Limited (hereinafter called Pactolus) but that company was in effect Ratcliffe, and the plan was not going to cost the companies any more monies out of pocket than they would have had to pay in tax as non private companies because Pactolus was willing to play its part in the plan for a remuneration which was substantially equivalent to the amount of tax the companies would have had to pay as non private companies. Pactolus was a dealer in shares so that any loss that company incurred by investing in shares in the companies would be an allowable deduction from its assessable income. A lot was said about the alternative courses that were open to the companies to pursue in lieu of the plan finally adopted. It was submitted that a study of these alternative courses was relevant on the question whether this plan could be said to have been adopted for the purpose of avoiding income tax. But such a study is, in my opinion, quite irrelevant to the solution of the real issue. Even if it could be relevant it does not appear to me to lend any aid to that solution. Accordingly I find it only necessary to examine the plan that was finally adopted.

As appears from the judgment of Kitto J. there were five distributions of profits by the companies which form the basis of the assessment - one by Lane, two by Neal and two by Melford. There was a

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simultaneous distribution by each of the companies
in December 1949, a second distribution by Melford
in December 1950 and a second distribution by Neal
in June 1951. Until steps were taken to effect
the initial distributions in December 1949, the
three companies were all companies in which the
whole of the issued capital, apart from a compara-
tively few preference shares in Lane and Neal,
consisted of ordinary shares. In order to give
effect to the plan radical alterations had to be
made to the capital structure of the companies.
This was done by special resolutions. The rights
attached to the existing preference shares were
retained, the shares being renamed A preference
shares. But the authorised capitals of the com-
panies were increased and new B preference shares
were created. The existing ordinary shares were
divided into A ordinary shares and B ordinary
shares. The holders of the existing ordinary
shares converted them into the new A ordinary
shares and B ordinary shares respectively so that
they each received the same rateable proportion of
the new A or B ordinary shares. But the A ordi-
nary shares were not in truth ordinary shares. They
were shares which, subject to the payment of the
dividend on the A preference shares, were entitled
to receive the whole of the dividends declared by
the companies up to certain specified amounts.
From 1st January 1950 they were entitled to re-
ceive a preference dividend of 5%. Subject there-
fore to the payment of special dividends, they were
really a form of preference shares. Only the B
ordinary shares could be said to remain ordinary
shares. The amounts of the special dividends the
A ordinary shares were to receive were carefully
calculated. They included some tax-free profits,
no doubt because Pactolus was interested in tax-
free profits. But they included mainly the amounts
of their taxable incomes in respect of the year
ending 30th June 1949 which the companies had to
distribute before 31st December 1949 to escape
additional tax under Division 7 and amounts payable
out of the anticipated profits of the year ending
30th June 1950. The latter amounts were part of
the profits which the course of business indicated
the companies were sure to make in that period
which would later have to be distributed before
31st December 1950 if the companies wished to avoid
having to pay additional tax under Division 7 on
the distributable amounts of their taxable incomes

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of the year ending 30th June 1950. The holders of the A ordinary shares gave Pactolus options to purchase these shares for sums in the case of Lane's 2d. more than the amount of the special dividend, but in the case of Neal's and Melford for sums well below the amounts of the special dividends so that, when all the special dividends had been paid in full, the total amount Pactolus would receive would exceed the sums Pactolus would have to pay to purchase the A ordinary shares by £55,000. Pactolus exercised the options, gave the representative of the shareholders cheques for the purchase money and the shares were transferred to Pactolus. At the same time the companies made the B preference shares available for issue and Pactolus applied for these shares and gave the companies a cheque to pay for them in full. These shares were allotted to Pactolus and purchased from Pactolus by the shareholders who had sold the A ordinary shares to Pactolus rateably according to the number they had sold and Pactolus received cheques from the representative of the shareholders for the purchase money. The dividends declared by the companies in December 1949 comprise three separate dividends the one out of the tax-free profits and the others out of the profits already mentioned, the dividends out of the profits derived during the year ending 30th June 1949 being the full amount the companies had to distribute to avoid having to pay additional tax under Division 7 and the dividends out of the anticipated profits of the year ending 30th June 1950 representing such profits as were then available for distribution. The stage was now reached when all the cheques could be banked and banked they were, all in the same bank - the South Melbourne branch of the English Scottish & Australian Bank - where Pactolus had opened a new account for this very purpose. To enable all the cheques to be cleared pending the declarations of the further sums required to satisfy the special dividends out of the anticipated profits of the company of the year ending 30th June 1950 Pactolus had temporarily to contribute the sum of £19,000 and this amount was deposited to the credit of its account. But Pactolus was not to be out of pocket for long. It was as commercially certain as anything could be that profits to meet the further dividends required to recoup Pactolus would very shortly be available and that they would be declared within three months.

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The payments of these dividends was assumed to be so certain that the preference dividends on the A ordinary shares commenced to accrue from 1st January 1950. In March 1950 the companies declared the necessary further dividends to satisfy the special rights attached to the A ordinary shares leaving those shares for the future entitled only to the preference dividend of 5%. The second Melford transaction and the second Neal transaction were carried out on the same basis. To effect them a surgical operation similar to that performed on the original shares of the Company was repeated. In the case of Melford the issued B ordinary shares were made into C ordinary shares to which special dividend rights were attached similar to those attached to the A ordinary shares in the initial transactions and the existing preference shares were converted into A ordinary shares. In the case of Neal's part of the Issued B ordinary shares were converted into C ordinary shares and similar special dividend rights were attached to these shares. A similar procedure was then followed commencing with the shareholders giving Pactolus an option of purchase over the C ordinary shares at a price less than the amount of the special dividend rights, Pactolus exercising this option, and the shares being transferred to Pactolus before the dividends were declared. In the case of the second Melford transaction the shareholders applied directly for the new issue of shares instead of Pactolus applying for them and then selling them to the shareholders, and in the case of the second Neal transaction no new shares were applied for, so that the shareholders retained the whole of the cash they received from Pactolus for the purchase of the C ordinary shares. But this cash was received on its face, like the shares and the cash in the other transactions, as capital. The cheques drawn by the companies, by Pactolus and by the shareholders to give effect to these two later transactions were again all banked together in the South Melbourne branch of the E.S. & A. Bank so that they would operate as cross cheques. The total special dividends in the five transactions amounted to £1,764,000 of which Pactolus retained £102,000 in cash. It also acquired 161,000 A and C shares.

It will be convenient I think to state shortly the chronological sequence of events in the initial

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transactions. As I have said, in order that the three companies should avoid tax on the distributable amounts of their taxable incomes derived during the year ending 30th June 1949, it was necessary that these amounts should be distributed prior to 31st December 1949. There was no time to be lost so arrangements were made to transfer the A ordinary shares from the shareholders to Pactolus at Canberra. This would save any delay that might take place if the shares were transferred in Victoria or New South Wales because they might have to be valued in order to determine the amount of duty payable. So that the transfers could be executed in Canberra, where there would be no duty payable, and there would therefore be no delay, branch registers of the three companies were established there and the A ordinary shares were transferred to that register. The special resolutions reorganising the capital of the companies were passed on 14th December 1949. On 15th December 1949 the holders of the A ordinary shares gave Pactolus the options to purchase these shares. On 16th December 1949 the directors of the three companies resolved that the requisite number of B preference shares should be made available for issue at par and be offered to the person or persons entitled to the dividends from the A ordinary shares on or after 19th December 1949. By letter of the same date Pactolus was told that this was done. On 19th December 1949 Pactolus exercised the options and handed cheques for the purchase money to the representative of the Vendors in exchange for completed transfers and the relevant share certificates. The transfers were registered in Canberra on the same day. On the same day Pactolus applied to the companies for the new B preference shares and gave the companies cheques to pay for them in full. The total amount of all these cheques drawn by Pactolus on 19th December 1949 to pay the purchase moneys on the A ordinary shares and to pay for the new B preference shares was approximately £2,104,000. At that time Pactolus only had £19,000 in its new bank account. On 20th December 1949 the directors of the companies declared the dividends on the A ordinary shares amounting to £1,164,000 and gave Pactolus cheques for the dividends. They also allotted the B preference shares for which Pactolus had applied. The same day Pactolus sold the B preference shares to the shareholders in the three companies and

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received their cheques for the purchase money. Pactolus now had the necessary cheques, except for £19,000, to set off against the cheques it had given the previous day. On 21st December 1949 all the cheques were banked simultaneously in the South Melbourne branch of the E.S. & A. Bank. The 19th 20th and 21st December 1949 were therefore three very busy days. But they were also fruitful for the plan was now completely executed except for the further dividends to be paid in March to complete the special dividend rights on the A ordinary shares. The plan was cleverly conceived. All the steps necessary to carry it out were taken quite openly. There was nothing unlawful about them. They were all intended to have the legal effect they purported to have. But the only monies used to effectuate the whole of the transactions, apart from the £19,000 temporarily provided by Pactolus, were the monies of the companies which were to be distributed to satisfy the special dividend rights of the A ordinary shares. The original shareholders remained the only shareholders in the companies except for Pactolus which had become the holder of the A ordinary shares. For these shares Pactolus had in truth paid nothing out of its own pocket apart from the £659 in the case of Lane to provide the 2d. per share already mentioned because the purchase monies it had paid for them were more than provided by the dividends declared or to be declared to satisfy the special rights attached to these shares. These special dividends were, of course, assessable income of Pactolus. But Pactolus was a dealer in shares and the A ordinary shares were bound to fall in value from the amounts Pactolus had paid for them to what could confidently be expected to be £1 and it could claim this loss as a deduction from its assessable income. The Companies had the working capital they so urgently required. It had been provided by the capitalisation of the profits required to make the B preference shares fully paid. The shareholders had received large sums in cash and were the holders of these shares. The Companies had avoided additional tax under Division 7 because they had distributed the distributable amounts of their taxable income of the year ending 30th June 1949 by 31st December 1949 and the shareholders had avoided income tax because all the benefits they had received were of a capital nature.

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But for sec. 260 the plan must have succeeded.

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This is admitted by the Commissioner. The Commissioner invokes this section and this section alone to support the assessment. It is advisable to set it out in full: "Every contract, agreement or arrangement made or entered into, orally or in writing, whether before or after the commencement of this Act, shall so far as it has or purports to have the purpose or effect of in any way, directly or indirectly - (a) altering the incidence of any income tax; (b) relieving any person from liability to pay any income tax or make any return; (c) defeating, evading, or avoiding any duty or liability imposed on any person by this Act; or (d) preventing the operation of this Act in any respect, be absolutely void, as against the Commissioner, or in regard to any proceeding under this Act, but without prejudice to such validity as it may have in any other respect or for any other purpose." The meaning of the section has been discussed in three cases in this Court: Jaques v. Federal Commissioner of Taxation 34 C.L.R. 328, Clarke v. Federal Commissioner of Taxation 43 C.L.R. 56 and Bell v. Federal Commissioner of Taxation 87 C.L.R. 548. During the argument of the present appeals the meaning of the words "purpose or effect" received considerable discussion. These words are in the alternative but they do not appear to me to have any real difference in meaning. The purpose of a contract, agreement or arrangement must be what it is intended to effect and that intention must be ascertained from its terms. These terms may be oral or written or may have to be inferred from the circumstances but, when they have been ascertained, their purpose must be what they effect. Sec. 260 strikes as a contract, agreement or arrangement so far as it has the purpose or effect of altering the incidence of income tax etc. and to that extent the contract, agreement or arrangement is absolutely void as against the Commissioner. "Contract" is a technical word and implies an agreement enforceable by law but the words "agreement" and "arrangement" and in particular the word "arrangement" are apt to describe bargains of a looser kind. In Bell's Case at p.573 it is said: "In Jaques v. Federal Commissioner of Taxation (1924) 34 C.L.R. at p. 359 Isaacs J. said of the word 'arrangement' that in this collocation it is the third in a descending series, and means an arrangement which is in the nature of a bargain but may not legally or formally amount to a contract

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or agreement. It must be remembered, however, that the section is concerned only with contracts, agreements and arrangements which have an effect in law and accordingly are capable of statutory avoidance. With this in mind, it may be said that the word 'arrangement' is the third in a series which as regards comprehensiveness is an ascending series, and that the word extends beyond contracts and agreements so as to embrace all kinds of concerted action by which persons may arrange their affairs for a particular purpose or so as to produce a particular effect". It was submitted for the Commissioner in the present case that there was an arrangement within the meaning of sec.260 having the purpose or effect of producing one or more of the objects set out in paragraphs (a), (b) or (c) of sec. 260. (As I understood the argument (d) was not relied upon). Of the objects described by the first three paragraphs those in paragraph (c) would appear to be the most appropriate. It was an arrangement entered into between the three companies, their directors, shareholders, and Pactolus to dispose of income of the companies which income would have to pay additional tax under Division 7 if not distributed or become assessable income of the shareholders if distributed in such a way that the major part of this income would be retained by the companies as working capital by the issue of new shares to the shareholders as fully paid, and the balance would be received by the shareholders as cash, but the companies would not become liable to pay additional tax because they would have distributed the distributable amounts of their taxable incomes and the shareholders would not become liable to pay income tax on either the shares or the cash as part of their taxable incomes. That such an arrangement was made I have no doubt and I also have no doubt that it was an arrangement the purpose of which was directly or indirectly to defeat, evade or avoid a liability imposed on the shareholders by the act. The income in the shape of the special dividends was in fact distributed; these distributions, except for the sums that went to Pactolus, reached the hands of the shareholders; part of the distributions which reached them was applied to pay for the new B preference shares which became their property and the balance was retained by them as cash. The whole of the income comprised in the special dividends, except the tax-free funds, would

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have been assessable income of the shareholders but for the steps that were interposed by the concerted action of the companies, their directors, shareholders and Pactolus. The Companies wanted and no doubt badly wanted to increase their working capital but they did this, not by attracting fresh capital, but by capitalising income which they had already earned. Pactolus did not contribute any fresh capital. In form it applied and paid for the new preference shares but in fact it was never intended that they should be paid for otherwise than out of the monies that were to be distributed as special dividends. The arrangement is one to be inferred from all the circumstances and from them the inference is irresistible that all the parties intended that the monies required to finance the whole of the steps that were taken, commencing with the passing of the special resolutions and ending with the shareholders becoming possessed of the new B preference shares and large sums of cash, were to be provided out of the income of the companies intended to be distributed by the special dividends declared on the A ordinary shares. The steps taken to carry out the arrangement have already been detailed. The Commissioner seeks primarily to avoid these steps at the stage where the A ordinary shares were transferred to Pactolus so as to leave the shareholders the holders of these shares and entitled to the special dividends that were declared upon them. He does not seek to avoid the previous steps because they have not the purpose or effect of defeating, evading or avoiding any liability imposed on the shareholders by the Act. This liability would not be defeated, evaded or avoided by the companies reorganising their capital or declaring dividends on the A ordinary shares. It was quite lawful for the companies to distribute the distributable amounts of their taxable incomes required to avoid additional tax under Division 7. To do this it was necessary for the companies to declare dividends because this is the proper way for a company to distribute its profits. The arrangement only commenced to have the prescribed purpose or effect when the A ordinary shares were transferred to Pactolus before the dividends were declared, whereby Pactolus became the shareholder entitled to the dividends in lieu of the original shareholders, when all along it was intended that the purchase money Pactolus was to pay the shareholders for the purchase of the

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A ordinary shares was to be provided out of the dividends to be declared in favour of Pactolus. This is one way of putting the case for the Commissioner but it could be put equally well, I think, and perhaps better, by impeaching the whole of the steps commencing with the passing of the special resolutions. In Bell's Case it is said, following Clarke's Case, at pp. 572-573: "The section is, of course, an annihilating provision only. It has no further or other operation than to eliminate from consideration for tax purposes such contracts, agreements and arrangements as fall within the descriptions it contains. It assists the commissioner, in a case like the present, only if, when all contracts, agreements and arrangements having such a purpose or effect as the section mentions are obliterated, the facts which remain justify the Commissioner's assessment". The section is there said to be an annihilating provision only.

10 If all the steps under discussion are avoided the facts that remain are that the monies of the companies identified as the monies distributed as special dividends on the A ordinary shares except for Pactolus' share reached the hands of the shareholders and these monies were partly retained by them as cash but mostly used to pay for the new B preference shares of which they became the holders. But, whichever course is adopted, the result appears to me to be same. The liability to pay income tax

20 on income of the companies which reached the shareholders in the shape of fully paid shares or cash and which should have been part of their assessable income was avoided. Pactolus was under no legal obligation to use the special dividends declared on the A ordinary shares to purchase these shares from the shareholders but this is what the arrangement clearly contemplated. All the parties to it knew perfectly well that, when Pactolus purchased the A ordinary shares and applied for the B preference

30 shares and gave its cheque to the companies on 19th December 1949, these cheques would not be presented for payment until the companies had declared the dividends on the A ordinary shares and given Pactolus their cheques for these dividends and the shareholders had given Pactolus their cheques to pay for the purchase of the B preference shares. Pactolus' cheques could not have been met, except to the extent of £19,000 until it had been put in funds by the companies, and the shareholders were never intended to become liable to pay

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Pactolus for the purchase of the B preference shares until they had been paid for the purchase of the A ordinary shares by Pactolus, and the cheques that were set off against each other were set off for one purpose and one purpose only and that was to split the income in question between the companies, the shareholders and Pactolus. Steps of a precise legal character were required to carry out the arrangement such as the passing of the necessary special resolutions, the transfers and allotments of the shares and the declarations of dividends. But the arrangement itself was not of a precise legal character. It consisted of quite clear commercial understandings between the parties as to the concerted action that was necessary to carry it out and everyone was completely confident that each would perform his or its part in doing so. Everything was done and intended to be done on the footing that, as Mr. Menzies said, the only real money to be used would come from the companies and most of it would go back to the companies as share capital and, in the meantime, on the way round would be used as the purchase price for the A and C ordinary shares. The arrangement was followed, as he said, because everybody intended that it should be followed, and it might be added, because it appeared to be to everybody's interest that it should be followed (and nobody appears to have seen the shadow of sec. 260 lurking round the corner). During the argument the decision in Bell's Case was much canvassed. I regard that case like every other case as primarily a decision on its own particular facts but, so far as it bears on the present case, it appears to me strongly to support the Commissioner. There Bell received as a result of an arrangement made between Bell and his co-shareholders and White and his six clients a sum of money which the steps taken to implement the arrangement had converted into capital, but which was held by the operation of sec.260 to be income because the money that was really disposed of was the distributable profits of the Company. Bell's share of these profits which he received, apart from the arrangement appearing to convert them into capital, could only have been received as profits. It was held that the arrangement, to quote from the judgment, "both in purpose and in effect, represented nothing but a method of impressing upon the moneys which came to the hands of Bell and his colleagues the character

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of a capital receipt and of depriving it of the
character of a distribution by a company out of
profits". This passage, mutatis mutandis, aptly
applies to the present facts. Emphasis was sought
to be laid on the statement that the arrangements
there represented nothing but a method of impress-
ing upon the monies the character of a capital
receipt as indicating that the doing of what is
prescribed by sec. 260 must be the sole purpose
and effect of the arrangement, and that in Bell's
10 Case the Company had come to an end of its business
life and the distribution of its accumulated profits
was all that was left for it to do whereas in the
present case the companies are, of course, still
very much alive. That statement made in relation
to the particular facts cannot be relied upon as
an authority for the proposition that the sole
purpose and effect of an arrangement that comes
within sec. 260 must be to carry out one of the
20 prescribed objects. The section only avoids an
arrangement insofar as it has that purpose or
effect. Accordingly it is sufficient if the ar-
rangement has in part that purpose or effect al-
though the arrangement may have other purposes or
effects as well. In the present case I would be
prepared if necessary to hold that the sole pur-
pose and effect of the arrangement was to defeat,
evade or avoid the liability imposed upon the
shareholders by the Act. Pactolus could not have
30 come into the arrangement for any other purpose.
The companies wanted to convert into capital as
much of the income that was distributed by the
special dividends on the A ordinary share as pos-
sible, but not a single step that was taken to
carry out the arrangement would have been necessary
if they had not at the same time wanted to avoid
having to pay tax on those profits, either them-
selves or their shareholders. Pactolus' sole role
was that of the great transformer of particular
40 income into capital. As I have said, it contri-
buted nothing to the assets of the companies. It
deprived the companies and their shareholders of
quite a large proportion of those assets. The pas-
sage is therefore quite apt to apply to the present
case. Perhaps I might add that, to be completely
accurate, for the words "having such a purpose or
effect" (at the top of p.573) there should be sub-
stituted the words "so far as they have such a
purpose or effect".

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The Commissioner has assessed the shareholders on the basis that their assessable income does not include the tax-free dividends that were declared as part of the special dividends on the A and C ordinary shares. That appears to me to have been correct because when sec. 260 has done its work it is the monies represented by the special dividends that the shareholders must be considered to have received. There is also the question of the cash and of the A and C ordinary shares in the companies which Pactolus received. The Commissioner contends, rightly I think, that the shareholders must be held to have consented to Pactolus acquiring the cash and shares as part of its remuneration for carrying out the arrangement. After sec.260 has done its work the whole of the special dividends must be considered to be for the purposes of income tax the property of the shareholders. Accordingly any portion of these distributions Pactolus received must be considered to have been paid to it with their consent. In the course of the transactions the A and C ordinary shares became the property of Pactolus. But the loss of these shares, if it is a loss, would be a loss of capital and not of income.

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In my opinion the appeals should be allowed with costs. The orders under appeal should be set aside and in lieu of each such order an order should be made that the appeal from the amended assessment to which it refers should be dismissed with costs.

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COMMISSIONER OF TAXATION

v.

NEWTON & OTHERS

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JUDGMENT

FULLAGAR J.

These are appeals by the Commissioner of Taxation of the Commonwealth from orders made by Kitto J. The respondents, whom I will call the taxpayers, are Lauri Joseph Newton, Lionel Newton, Henry James Lane, Leonard Alfred Fenton, Stella Maud Adeline Lane, Francis Una Christian, and the trustees of the estate of Robert Nathan deceased, who

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died in June 1950. Each of these seven taxpayers (counting Robert Nathan's trustees as one) appealed to this Court under sec. 197 of the Income Tax and Social Services Contribution Assessment Act 1936-1951 (C/wlth.) against two amended assessments to income tax - one in respect of income derived in the year ended 30th June 1950, and the other in respect of income derived in the year ended 30th June 1951. There were thus fourteen appeals. All, however, raised precisely the same considerations, and they were heard together by Kitto J. His Honour allowed the taxpayer's appeals, and ordered, in effect, that the fourteen amended assessments be quashed. The fourteen appeals to this Court were also heard together. The total of the amounts involved is very large.

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The effect of the amended assessments was in each case to include in the assessable income of the taxpayer what the Commissioner described as the taxpayer's "proportion" of certain "distributions" made by three companies in which the taxpayers (and, up to the date of his death in June 1950, Robert Nathan) were shareholders. It will conduce to simplicity, and be in no way misleading, to follow the course adopted by Kitto J., and to speak of the taxpayers as the original shareholders, although in fact the shareholders were not the same in all the companies, and by reason of the death of Robert Nathan, changes took place in the actual holdings of shares. Some of the shares were held in trust. The actual position is explained in the mutual admissions made by the parties. The taxpayers have not challenged the apportionment, or the arithmetical correctness of the Commissioner's calculations. They have maintained that what they received was not income derived by them. The three companies concerned, all of which carry on the business of trading in motor vehicles, are Lane's Motors Pty., Ltd., Neal's Motors Pty., Ltd., and Melford Motors Pty., Ltd. It will be convenient to refer to them collectively as "the motor companies", and individually as "Lanes", "Neals" and "Melford" respectively. Two other companies, Pactolus Pty., Ltd., and Pactolus Investments Pty., Ltd., were also concerned in the relevant transactions. It will be convenient to refer to these respectively as "Pactolus" and "Pactolus Investments". They were, as will be seen, aptly named. The three motor companies were incorporated in

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Victoria. Pactolus and Pactolus Investments were incorporated in New South Wales. Actually three other companies enter into the picture - British Service Pty., Ltd., which was a subsidiary of Lanes, and Overland (Victoria) Pty., Ltd., and Devon Motors Pty., Ltd., which were subsidiaries of Neals. Apart, however, from the fact that they declared certain dividends, which went to swell at material times the available funds of Lanes and Neals, these companies played no part in the transactions in question, and need not be further considered. The facts relating to the transactions in question were not disclosed to the Commissioner before he made his original assessments of income derived by the taxpayers in the two relevant years, and the Commissioner, when he made his amended assessments, in addition to assessing tax in respect of the "distributions", assessed substantial sums by way of "additional tax" under sec. 226(2) of the Assessment Act. If he is right in his contention that the taxpayers are taxable in respect of the "distributions", no question arises either as to his power to make the amended assessments under sec. 170(2) or as to his power to assess "additional tax" under sec. 226(2). 10

The transactions in question - although the fundamental idea behind them may be thought to be quite simple - are of a very complicated character. They were five in number - one in relation to Lanes, two in relation to Neals, and two in relation to Melford. They took place between December 1949 and June 1951. In order that the nature of the question arising may be understood at the outset, it should be said that they culminated in the receipt by the taxpayers of large sums in cash and a large number of fully paid shares in each of the three motor companies. The Commissioner concedes that, if full face value, so to speak, must be given to the various steps which led up to this culmination, these receipts were not income receipts but capital receipts. While, however, he does not deny the genuineness of those steps in the sense that they were legally effective as between the parties he maintains that sec. 260 of the Assessment Act applies to the case, and that the result of the application of the section is to give, for income tax purposes, the character of dividends to the cash and shares which came into the hands of the taxpayers. Sec. 260 is in the following 30 40

terms:- "Every contract agreement, or arrangement made or entered into, orally or in writing, whether before or after the commencement of this Act, shall so far as it has or purports to have the purpose of effect of in any way, directly or indirectly - (a) altering the incidence of any income tax; (b) relieving any person from liability to pay any income tax or make any return; (c) defeating, evading, or avoiding any duty or liability imposed on any person by this Act; or (d) preventing the operation of this Act in any respect, be absolutely void as against the Commissioner, or in regard to any proceeding under this Act, but without prejudice to such validity as it may have in any other respect or for any other purpose". The effect of this provision will have to be considered after the facts relating to the transactions in question have been investigated.

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20 In investigating those facts we have the advantage, in the reasons given by Kitto J. for the orders under appeal, of a clear and detailed statement of the circumstances which led up to the transactions in question, of the discussions and negotiations which preceded the formulation of the plan of action finally adopted, and of the steps taken in the carrying out of that plan. It is not necessary to repeat here all that his Honour said. It will be sufficient merely to refer to that statement, to set out briefly the circumstances in

30 which the motor companies and their shareholders found themselves in the latter part of 1949, and to state in detail only the steps taken in relation to one of the companies, Lanes. One comment, however, must be made at this stage. His Honour, as has been mentioned, considered fully, and apparently attached much importance to, certain discussions which preceded the final formulation of what may be called a plan of action. Those took place between directors of the motor companies and their

40 advisers and in particular Mr. J.V. Ratcliffe, a taxation expert and consultant. A great deal of evidence was given with regard to these discussions. His Honour said that he looked at this evidence not so much with the object of ascertaining whether the purpose of those concerned was one of the purposes mentioned in sec. 260, but rather with the object of ascertaining whether the receipts in question were capital or income receipts. I am, with respect, unable to agree with this approach. The

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evidence in question could, of course, be relevant to the question of the purpose of which those concerned had in view - was it one of the purposes mentioned in sec. 260, or was it some other and different purpose? (As will be seen, I do not think that this question could be the subject of any reasonable doubt). That evidence could also be relevant if a question were raised as to the reality of the steps taken - was it really and truly intended that the legal position of those concerned should be governed by, and dependent on, those steps? (Actually the reality of the transactions in this sense was never challenged). But the evidence in question could throw no light on the question whether the receipts of cash and shares ought to be regarded for income tax purposes as income receipts or capital receipts. That was the ultimate question in the case, and it was a question of law depending on the construction and effect of sec. 260.

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The position with regard to the taxation of companies in the two relevant years is fully explained in the reasons for judgment of Kitto J. The really important element in the situation - the element which clearly, in my opinion, dictated the form which the transactions now in question took - is to be found in Division 7 of Part III of the Assessment Act. Division 7 (as it may be shortly called) related to "Private companies" as defined in the Act, and the three motor companies were private companies as so defined. Such a company, like all other companies, was liable, under the general provisions of the Act, to pay income tax at a flat rate on its taxable income. If it paid a dividend out of its taxable income, that dividend was assessable income in the hands of the shareholders who received it (sec. 44). This would be so whether the distribution was made in cash or by way of "bonus" shares representing a capitalisation of profits (see definition of "dividend" in sec. 6(1)). Division 7 was designed to deal with the case where a private company made no distribution or only a partial distribution of its taxable income of any year. Its provisions were necessarily somewhat complicated, but, for present purposes, their substance may be stated shortly. It defined what should be deemed to be a "sufficient distribution" of a private company's taxable income, and it provided that, if the company had not made

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a "sufficient distribution" within a prescribed period after the close of its financial year, it should be liable to pay, on the amount by which any distribution fell short of a "sufficient distribution", the income tax which would have been payable by its shareholders if that amount had been distributed to them by way of dividend. It is evident that the intention was to create a true dilemma.

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In cases to which Division 7 applied, the Act said to a private company: "Either you distribute such and such a proportion of your taxable income, or you do not distribute it. If you do distribute it, your shareholders will pay £x by way of income tax. If you do not, you, the company, will pay £x by way of income tax". It need only be added that, if the company paid tax under Division 7, and later paid a dividend to its shareholders out of an amount on which tax had been so paid, the shareholder was entitled to a rebate in his assessment of this proportion of the tax so paid by the company. It is usual to refer to a dividend so paid as a "tax-free dividend", and to a fund in the hands of a company available for the payment of such a dividend as a "tax-free fund" or a "tax-free reserve".

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The business in which the motor companies were engaged had been adversely affected by conditions existing during the war and in the immediately following years. In 1948, however, a very marked improvement set in, and in the year ending 30th June 1949 very large profits indeed were made. Confining attention for the time being to Lanes, the position of that company, as disclosed by its balance sheet at that date, and so far as material, was briefly this: The company's nominal capital was £250,000, divided into 5,000 5% Cumulative preference shares of £1, and 245,000 Ordinary shares of £1. The paid up capital consisted of 5,000 Preference shares (held by Mr. W.B. Thomas, the company's manager) and 237,321 ordinary shares, which were held by the taxpayers and Robert Nathan. Standing to the credit of profit and loss appropriation account was the large sum of £387,125, of which £302,799 represented profits of the year ended 30th June 1949. A proportion, but only a very small proportion, of the accumulated profits of previous years had paid tax under Division 7 and constituted therefore a "tax-free fund". On the liabilities side of the balance sheet appeared also

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a sum of £164,069, which represented "loans" (presumably at call) by the tax-payers and two other persons to the company. The assets side, although it included Commonwealth bonds of the value of £31,508 and a bank credit of £169,172, showed, as Kitto J. observed, that the greater part of the "shareholders' funds" was used in the business.

While, from one point of view, this balance sheet might well have brought a glow of pride and pleasure to the cheeks of all concerned, the capital position which it disclosed was, from other points of view, highly unsatisfactory. Several considerations were involved, one of them being that the paid up capital of £242,321 was out of all proportion to the size of the company's business. In what Kitto J. aptly called "more primitive times" no real difficulty would have arisen. A substantial dividend in cash would have been paid to shareholders, and the greater part of what was left of the accumulated profits would have been capitalised and shares representing the increased capital issued to the shareholders. The Company, however, was not living in a taxpayer's golden age. Its shareholders, or most of them, desired to receive a substantial cash distribution, and would doubtless have been happy to receive a large allotment of "bonus" shares. But all of them were wealthy persons, and any distribution made by the Company to them, whether it were of cash or of shares, would have involved each of them in liability to pay income tax on what he or she received at the then maximum rate of 15/- in the £. Nor was this all, for there was the liability to pay "provisional" tax under Division 3 of Part VI of the Assessment Act. On the other hand, the period within which the Company had to make a distribution, if it was to avoid paying the same amount of tax under Division 7, would expire on 31st December 1949. The position was exactly the same in relation to the other two motor companies. Moreover, it had become apparent that the profits of all three motor companies for the year commencing on 1st July 1949 were likely also to be very large and to equal or exceed those of the year to 30th June 1949.

In and after June 1949 much discussion of the position took place orally and by correspondence between the directors and Mr. Ratcliffe and other

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advisers of the motor companies. The position was, of course, considered from a "long term" point of view. Among other things, the conversion of those companies into public companies was considered, and in fact Lanes was at a later date converted into a public company. But these discussions do not appear to me to be of importance. It is beyond question that the immediate purpose and object of all concerned was to find some way of escape from what to an unenterprising mind would have seemed to be the plain dilemma created by Division 7. It was Mr. Ratcliffe's mind which evolved the plan which was ultimately adopted.

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In this plan the two companies which have already been mentioned, Pactolus and Pactolus Investments, played an important part. Pactolus had been incorporated on 23rd March 1949. The part actually played later by that company may or may not have been in contemplation at the time of its incorporation. Mr. Ratcliffe was aware at the time that the motor companies had their problems. Its issued capital consisted of 5,000 Ordinary shares of £1. Mr. Ratcliffe held 4,999 of these, the remaining share being held by his son. The objects stated in its memorandum of association included "to purchase ... and sell ... or otherwise deal in shares and other securities". Pactolus Investments was incorporated on 25th October 1949. Its issued capital consisted of 15,000 Ordinary shares of £1, all of which were held by Mr. Ratcliffe and persons of the same name - presumably members of his family.

It was necessary to attend to two preliminary matters. In the first place, the motor companies' share registers were in Melbourne, and the carrying out of the plan would involve the bringing into existence of certain share transfers, which, it was thought, might be subject to stamp duty under the Stamps Act 1946 of Victoria. The submission of these to the Comptroller of Stamps under the Act would have involved a delay which might have been fatal. The Comptroller would certainly have given much thought to them. The necessary steps were therefore taken to establish branch registers of shareholders in the Australian Capital Territory, in which there is no Stamps Act, and all the share transfers which in fact were made were transfers of shares on registers situate in Canberra. In

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the second place, the carrying out of the plan would involve the issue of large numbers of new shares by the motor companies, and it was at that time unlawful for a company to make any new issue of capital without the consent of the Treasurer of the Commonwealth under the National Security (Capital Issues) Regulations. Application was therefore made for the consent of the Treasurer to the proposed new issues. The applications were made on 13th October 1949, and the consent of the Delegate of the Treasurer was given on 17th November 1949. It is interesting to note that in letters accompanying the applications the following passages occur: "It is proposed that the shares shall be taken up by the shareholders and paid for by them out of funds obtained through the declaration by the Company of tax-free and taxable dividends Your consent is desired to the issue of the shares to be paid for with cash provided by tax-free and taxable dividends declared or to be declared by the company". These things were said because it was known that the consent of the Treasurer was not likely to be withheld if he were satisfied that no outside capital was to be invested in the business of any of the companies. The letters, however, invite two comments. The first is that they contain a very incomplete statement of what was intended. If what was intended had been fully stated, it may indeed be doubted whether the consent of the Treasurer would have been given. On the other hand, ironically enough, they come very near to stating precisely what the Commissioner says is in substance left after the application of sec. 260.

The plan, in the case of Lanos, was carried out by means of the following steps:-

1. 1st November 1949. The nominal capital of the Company was increased from £250,000 to £750,000 divided into shares of £1. At the same time the articles of the Company were amended so as to divide the shares (issued and unissued) into four classes instead of two. Mr. Thomas's 5,000 preference shares became A preference shares: their rights were not altered, and they need not be mentioned again. Next, a class of 445,000 5% B preference shares was created. These carried the same rights as, but ranked subject to, the A preference shares. These were all unissued shares.

but, as will be seen, a large number of them were issued a little later. The remainder of the shares (300,000) were divided into 79,107 A ordinary shares and 220,893 B ordinary shares. Of the 237,321 ordinary shares which had been issued, 79,107 (one-third) became A ordinary shares. These carried a right (subject to the rights of the A preference shares) to the whole of the dividends declared by the Company on or after 14th December 1949 until the dividends should reach a total of £5.15.10 in respect of each share, and thereafter no right to participate in profits other than a right (subject to the rights of the A and B preference shares) to a fixed cumulative preferential dividend of 5% per annum as from 1st January 1950. The remaining two-thirds of the issued ordinary shares (158,214) became B ordinary shares, which were ordinary shares of the usual type. The balance of the B ordinary shares which had been created (62,769) remained unissued. The aggregate amount of the "special dividend" attached to the A ordinary shares was £458,161. 7. 6. In the light of what followed, it would seem clear that the amount of £5.15.10 per share was approximately the amount which it was thought desirable that the company should distribute in cash and shares in the immediate or near future.

2. 15th December 1949. Each of the shareholders holding A ordinary shares by instrument under seal granted to Pactolus an option, exercisable by notice in writing on or before 31st December 1949, to purchase his or her A ordinary shares at the price of £5.16.0 per share, i.e. 2d. per share more than the amount of the "special dividend" attached to those shares.

3. 16th December 1949. A meeting of directors resolved that 402,679 of the B preference shares be made available for issue at par, and that such shares be offered to the person or persons entitled to the dividends on the A ordinary shares on or after 19th December 1949. Pactolus was informed immediately of the passing of this resolution.

4. 19th December 1949. (a) Pactolus by notices in writing exercised all the options, and handed to one Donald Ross, on behalf of the A ordinary shareholders, in exchange for transfers which were forthwith registered, cheques for the amounts

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payable to those shareholders in respect of their respective holdings. The aggregate amount of the several cheques so given was £458,820.12. 0. The cheques were drawn on the South Melbourne Branch of the English Scottish and Australian Bank, in which Pactolus had very recently opened a current account, paying in shortly afterwards a sum of £19,000.

(b) Pactolus lodged with Lanes an application for the 402,679 B preference shares, together with a cheque for £402,679 drawn in favour of Lanes on the South Melbourne Branch of the E.S. & A. Bank. 10

5. 20th December 1949 (a) The directors declared a dividend at the rate of £5.12.10 per share on the A ordinary shares. The total amount involved was £446,295.6.6. Of this total a sum of £8,569.18.6 was appropriated out of tax-free profits, a sum of £262,232.0.0 out of taxable profits of the year ended 30th June 1949, and the balance of £175,493.8.0 out of taxable profits of the current year, i.e. the year ending 30th June 1950. A cheque for the total amount of £446,295.6.6, was drawn by Lanes in favour of Pactolus on the company's account in the South Melbourne Branch of the E.S. & A. Bank, was handed to Mr. Ross on behalf of Pactolus. 20

(b) The directors allotted the 402,679 B preference shares to Pactolus.

(c) Pactolus sold and transferred the 402,679 B preference shares, for the price of £1 per share, to the holders of the B ordinary shares (who were the original ordinary shareholders) in proportion to their holdings of B ordinary shares. The transferees handed to Mr. Ross, on behalf of Pactolus, cheques for the respective amounts payable by them drawn in favour of Pactolus on accounts in the South Melbourne Branch of the E.S. & A. Bank. 30

6. 21st December 1949. All the cheques mentioned in the foregoing paragraphs were deposited in the accounts of the respective payees at the South Melbourne Branch of the E.S. & A. Bank, and were debited to the accounts of the respective drawers. 40

7. 22nd March 1950. Up to this stage the

amount of the "special dividend" declared and paid on the A ordinary shares (£5.12.10 per share) fell short by 3/- per share of the special dividend to which those shares were entitled under the amended Articles. On 22nd March 1950 the directors declared a further dividend of 3/- per share on the A ordinaries out of profits of the year ending 30th June 1950. The total amount involved was £11,866.1.0, and this amount was paid to Pactolus forthwith. The special rights attached to the A ordinaries were now exhausted, and those shares, although apparently still to be called "A ordinary" shares, became henceforth in reality preference shares having the same rights as, but ranking subject to, the A and B preference shares. The B ordinaries, all of which were still held by the original shareholders, were now the only true "ordinary" shares.

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8. 12th May 1950. Pactolus sold and transferred the 79,107 A ordinary shares (now in reality a third class of preference shares) to Pactolus Investments for the price of £1 per share. This sale does not seem to have been essential to the scheme. (It is a step which was omitted in one of the other four transactions). Its object, or one of its objects, was possibly to make the income tax position of Pactolus itself appear quite clear. It will help to clear the ground if that position (as it existed on paper at any rate) is explained before an attempt is made to examine the net result of the operations described above. Pactolus had received, by way of dividends on the A ordinary shares, a total sum of £458,161. That sum was, of course assessable income in its hands. On the other hand it had paid £458,820 for those shares, when they carried special dividend rights, and it had sold them, when they had really become 5% preference shares, for £79,107. It had thus made a loss on the purchase and sale of £379,613. On the footing that it was a company having for one of its objects dealing in shares, it would be prima facie entitled, for income tax purposes, to deduct the loss on the sale from the dividends received. The part which it had played in the Lanes transactions, therefore, left it with a net profit of only £78,548. This net profit, of course, in the last analysis, really represented a remuneration or reward to Mr. Ratcliffe for his services in connexion with the Lanes transactions.

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It has already been said that the Commissioner concedes that all the steps in the series described above were real and legally effective as between the parties. This, however, does not carry the taxpayers very far. It means no more than that (so far as the evidence goes) all parties intended each such step to have the legal effect which it purported to have. It means only that there was, so far as appears, no secret understanding or trust, by virtue of which the ostensible effect of any of those steps was actually or potentially negatived or qualified. The mere fact that a transaction is real and effective will not, of itself, take a case outside sec. 260. I shall return to this point later.

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Before considering sec. 260, it is to be observed that, although the transaction must be taken to have been genuine in the sense explained above, the entire series of steps was intended to take effect as a whole. There was a preconceived end in view, and, if, at any stage before the depositing of the cheques on 21st December, any good reason had appeared for not proceeding to the end, it cannot be doubted that it was understood that what had been done should be undone. The whole series of planned steps was, however, in fact carried out to the end, and it is necessary to look at the end result. The end result is to be regarded from two points of view. From the point of view of Lanes, a sum of £458,161 had gone out of the accumulated profits of that company, and a sum of £402,679 had been added to its issued capital, and was represented by 402,679 B preference shares, which were fully paid. From the point of view of the original shareholders, they had acquired 402,679 B preference shares, and they had also received a sum of £56,141 in cash. This sum was the difference between the amount of the "special dividend" (£458,161) and the amount paid for the preference shares (£402,679) plus a sum of £659, which represented the difference of 2d. per share between the amount paid by Pactolus for the A ordinary shares (£458,820) and the amount of the "special dividend" (£458,161). At the same time Pactolus was left with 79,107 A ordinary shares which had become transmuted into 5% preference shares, and which may be taken to have been worth approximately par.

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Sec. 260 has been regarded as a difficult

section. It should be mentioned that before the Act of 1936 the section did not contain the words "as against the Commissioner or in regard to any proceeding under the Act". The added words make it quite clear that there is avoidance only for the purposes of the Act. But there is difficulty with regard to the construction of the section, and there is difficulty with regard to its operation. In the first place, the "purposes" or "effects" which will attract its operation are stated very vaguely. If we interpret it very literally, it will seem to apply to cases which it is hardly conceivable that the legislature should have had in mind. On the other hand, any limitation which we may seek to imply may appear to deprive the section of all practical effect. In the second place, even when we have discovered one of the "purposes" or "effects" which bring a case within the section, the actual effect of the section on the vitiated transaction is not immediately obvious. Something is "avoided", though only against the Commissioner - i.e. only so far as it affects ostensibly the incidence or quantum of income tax. But is anything left, and, if so, what, when effect has been given to the "avoidance"? Fortunately, however, these difficulties have not now to be faced for the first time.

We begin, of course, with one fact, which is as important as it is obvious. The plain object of sec. 260 is to defeat "tax avoidance" - an expression which Mr. G.S.A. Wheatcroft in a recent article ((1955) 18 Mod. L.R. 209) has defined as meaning "the art of dodging tax without actually breaking the law". The section is not aimed at fraudulent conduct, or at pretended, as distinct from real, transactions. Such cases need no special statutory provision. It is aimed at transactions which are, in themselves, real and lawful, but which the legislature desires to nullify so far, and only so far, as they may operate to avoid tax. For this purpose it was necessary to adopt a criterion. The primary criterion adopted - though the section adds *ex abundanti cautela* a reference to "purported effect" - is the purpose which the particular transaction in question was designed to effect. If it is found that the transaction has taken a particular form because the purpose in view was one of the purposes mentioned in the section, then the section strikes at

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it. It is interesting to note that Mr. Wheatcroft mentions in his article certain recent English legislation, having the same object as our sec. 260, which takes intention or purpose as the criterion. For the rest, four decisions of this Court have, in my opinion, sufficiently and satisfactorily explained the true construction and operation of the section.

The first case is Commissioner of Taxation v. Purcell (1920) 29 C.L.R. 464. This case was concerned with sec. 53 of the Income Tax Assessment Act 1915-1916, which did not differ materially from sec. 260 of the Act of 1936-1951. It was a case in which a transaction of a familiar kind was held not to fall within the section. The owner of a pastoral property and live stock depastured thereon declared himself a trustee of the land and stock for himself and his wife and his daughter in equal shares, reserving to himself wide powers of management, control and investment. Knox C.J. was satisfied on the evidence that, although he was "influenced to some extent by a desire to lessen the burden of taxation", the taxpayer really did intend to benefit his wife and daughter, and he rejected the Commissioner's contention that the settlement was avoided by sec. 53. He said:- "The section, if construed literally, would extend to every transaction whether voluntary or for value which had the effect of reducing the income of any taxpayer; but, in my opinion, its provisions are intended to and do extend to cover cases in which the transaction in question, if recognized as valid, would enable the taxpayer to avoid payment of income tax on what is really and in truth his income". The decision of Knox C.J. was upheld on appeal. Rich J. said: "It would be unreasonable to construe it" (sec. 53) "so as to include a genuine gift which had the incidental effect of diminishing the donor's assets and income". In Purcell's Case there was no "contract, agreement or arrangement" lying behind the actual disposition of property, and having one of the purposes mentioned in sec. 260.

The next case is Jaques v. Commissioner of Taxation (1924) 34 C.L.R. 328. Sec. 18 (1)(i) of the Income Tax Assessment Act 1915-1918 allowed a deduction from assessable income of the total amount of calls paid by a taxpayer on shares in a

mining company operating in Australia. The facts are accurately stated in the headnote, which reads as follows:- "A company which carried on the businesses of coal mining and of cement making, having decided to reconstruct, went into voluntary liquidation, and the liquidator entered into agreements with two new companies to one of which he agreed to transfer the colliery business and to the other the cement business, the consideration to the old company being paid-up shares in the new companies, which were to be distributed among the shareholders of the old company. After the agreements had been executed and the transaction had been otherwise partly completed, for the admitted purpose of enabling the shareholders of the new companies to obtain under the Income Tax Assessment Act 1915 - 1918 deductions from their incomes in respect of calls paid, a new scheme was adopted and carried into effect, under which in substance, the old company sold its assets to the new companies respectively for specified sums, contributing shares were issued by each of the new companies to the shareholders of the old company, and upon those contributing shares calls were made of a sufficient amount to satisfy the purchase money, which calls were to be paid out of the shareholders' respective interests in the assets of the old company. The payment of the calls and of the purchase money was affected by an exchange of cheques between the liquidator of the old company and the new companies". Rich J. held that a shareholder in one of the new companies was not entitled to a deduction of calls paid, and his decision was upheld on appeal. Knox C.J. was of opinion that the taxpayer had not established that the transaction involving the calls was a "genuine bona fide transaction", but he thought that in any case sec. 53 "prevented the appellant from availing himself of the devious methods employed". Rich J. and the other two members of the Full Court (Isaacs J. and Starke J.) regarded the course taken as genuine in the sense that a real liability to pay calls would result from the acceptance of contributing shares, but they were of opinion that, for income tax purposes, sec. 53 annihilated the "agreement or arrangement" which provided for the issue of contributing shares and the payment of calls, with the result that the Commissioner need have regard only to the pre-existing reconstruction plan, which did not involve the payment of calls. Rich J. (34 C.L.R. at p.

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338) said:- "Sec. 53 regards the 'contract agree-
ment or arrangement' as possibly a very real one,
but attaches consequences to its purpose or effect".
From one point of view it may be said that Jaques's
Case is a particularly clear case. For, when once
the agreement or arrangement was avoided by reason
of its purpose or purported effect, there were seen
to be left pre-existing express contracts which
contained nothing relating to the making of calls. 10
Two things, however, are to be noted about Jaques's
Case, which are made plainer by the two later
cases. Firstly, although the "purpose" was not
seriously denied by the taxpayer in that case, it
is made clear that the "purpose" may be readily
inferred from the very form itself which the trans-
action assumes. This, of course, must obviously
be so. Secondly, the effect of sec.53 (sec.260)
is to avoid, for the limited purpose in hand, not
merely the "contract agreement or arrangement",
which lies behind the actual things done, but the 20
actual things done themselves. This is perhaps
not quite so obvious, but a moment's reflection is
enough to satisfy one that it must be so. The
section would indeed be vain and useless if it
avoided an executory contract but left standing
everything done in execution of the contract, or
avoided an "arrangement" while leaving untouched
the carrying out of everything that had been "ar-
ranged". The word "arrangement" is in truth apt 30
- and was doubtless intended - to cover both the a
priori formulation of a plan and the carrying out
of the plan in the arranged form. There is a
passage in the judgment of Isaacs J. (34 C.L.R. at
p.359) in the course of which His Honour says that
sec. 53 "does not include a conveyance or transfer
of property as such" and "does not contemplate an
instrument actually changing the real ownership".
But as is in effect pointed out in a later case,
such statements cannot be taken to mean that the 40
section cannot affect a conveyance or transfer
which is an integral part of the machinery for
carrying out a contract agreement or arrangement
of the character described.

The next case is Clarke v. Commissioner of
Taxation (1932) 48 C.L.R. 56. Sec. 16(d) of the
Income Tax Assessment Act 1922-1925 brought into
the assessable income of a taxpayer "premiums de-
manded and given in connexion with leasehold

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estates". The section which corresponded to the present sec. 260 was sec. 93. The case involved a somewhat protracted and intricate series of negotiations and transactions, on which several questions arose, but for present purposes the essential facts can be stated quite shortly. The appellant taxpayer was the owner in fee simple of certain licensed premises known as the Burwood Hotel. He agreed to grant to one McDonough a lease of the hotel for five years from 1st July 1924, at a weekly rent of £30, for which lease a premium of £20,000 was to be paid in two instalments. Some months previously the appellant had formed a company named The Burwood Hotel Ltd., in which he was the sole beneficial shareholder. The transaction with McDonough was not carried out according to its terms, but the taxpayer granted a lease to the Company, which forthwith assigned the lease to McDonough in consideration of a premium of £20,000 payable in two instalments. The Company very shortly afterwards went into voluntary liquidation. The first instalment only of the premium (£10,000) came in question. That instalment appears to have been in fact paid to the appellant, but in its accounts the company treated itself as entitled (as in fact it was) to receive the instalment, and debited the appellant with the amount thereof. It then distributed its surplus assets to the appellant. The Court, consisting of Rich, Dixon and Evatt JJ., delivered a single judgment, in which it held that the case was covered by sec. 93, and that the instalment of the premium was assessable income of the taxpayer. Speaking generally of the section, their Honours (48 C.L.R. at p.77) said:-

"Where circumstances are such that a choice is presented to a prospective taxpayer between two courses of which one will and the other will not, expose him to liability to taxation, his deliberate choice of the second course cannot readily be made a ground of the application of the provision. In such a case it cannot be said that, but for the contract, agreement or arrangement impeached, a liability under the Act would exist. To invalidate the transaction into which the prospective taxpayer in fact entered is not enough to impose upon him a liability which could only arise out of another transaction into which he might have entered but in fact did not enter. Where, however, the annihilation of an agreement or arrangement, so far as it has the purpose or effect of avoiding

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liability to income tax, leaves exposed a set of actual facts from which that liability does arise, the provision effectively operates to remove the obstacle from the path of the Commissioner and to enable him to enforce the liability". (The italics are mine). It is, of course, a striking feature of this case that the instalment of the premium was in fact paid into the hands of the taxpayer himself, although on paper it would appear to have been payable to the company. One feels that there was some carelessness somewhere! At the same time, I find it impossible to think that the position would have been held to be different if the payment had been made to the Company. The "arrangement" would have disguised the receipt, making it appear to be not an income receipt but a capital receipt. But, when the arrangement had been so to speak, stripped away under sec. 93, it would have become manifest that a premium had really found its way (albeit a devious way) into the pocket of the taxpayer. The Court (48 C.L.R. at pp.79-80) said:- "The grant of the lease to the Company, his automaton, and its immediate assignment to the intending lessée, and the subsequent liquidation of the Company, and the entries in the books of the Company narrating the taxpayer's accountability to it for the money and the accountability of himself as the Company's liquidator in a like sum, all amount to an arrangement adopted for the sole purpose of intercepting the liability to income tax which would otherwise flow from the payment to him of a consideration actually demanded and actually given in connection with a leasehold".

The latest and most important case is Bell v. Commissioner of Taxation (1953) 87 C.L.R. 548. This case, like the present case, involved the carrying out of a very elaborate plan, which had been carefully worked out beforehand for the benefit of the taxpayers by persons expert in taxation matters. The facts are fully set out both in the judgment of McTiernan J. and in the single judgment of five justices delivered on an appeal from McTiernan J., which failed. The details are, of course, important, but they need not be repeated here. A brief statement will suffice. The appellant taxpayer, Bell, was a member of a partnership of seven persons, which had been formed in Sydney about October 1946, and which had acquired from the Commonwealth Disposals Commission a

quantity of surplus war material lying on Torokina Island in the Territory of Papua. In January 1947 they caused to be formed two companies. One, Torokina Disposals Pty., Ltd., was incorporated in New South Wales, the partners being the shareholders. The other was incorporated in Papua. The seven signatories to the memorandum of the latter company were Mr. White, a solicitor of Port Moresby, and six other residents of Papua, whose co-operation was obtained by Mr. White. Each subscribed for one share of £1: no other shares were ever allotted. In March 1947 the signatories to the memorandum transferred their shares to the partners, each partner acquiring for £1 one fully paid share. The intention was that the partnership should sell the goods bought from the Commissioner to the Papuan Company at cost, and that that Company should then sell the goods at a profit to the Australian Company. The profit on sale would thus be derived by the Papuan Company, which, being a resident of Papua and deriving its profit from Papua, would be exempt from income tax under sec.7 (1) of the Assessment Act. It was contemplated at the beginning that tax would be payable on any distribution of profits by the Papuan Company to the partners, who were now its shareholders, but later a more ambitious use of the Papuan Company was conceived. By February 1948 a stage had been reached, at which all the disposals goods had been sold, and the New South Wales company had in its hands a sum of £78,520, representing the net proceeds thereof. On 4th February Bell and four other partners proceeded from Sydney to Port Moresby armed with a bank draft for this amount and a "Memorandum of Routine", which had been prepared by their advisers. What happened at Port Moresby is set out in detail in the report (87 C.L.R. at pp.569-71). It may be summarised as follows. The draft of £78,520 was paid into the Papuan Company's account in the Bank of New South Wales. The company lent Mr. White the sum of £77,000. Mr. White had again (as he had done on the formation of the Company) provided six local collaborators, and to each of these he lent a sum of £11,000. Mr. White and the collaborators bought the shares of the seven partners, each partner selling his £1 share for £11,000. The loans provided the purchase money. The purchaser of Bell's share was a man named Corlett. The company declared a dividend of £77,000 (payable, of course, to Mr. White and

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the collaborators). The collaborators repaid to Mr. White their respective loans of £11,000, and Mr. White repaid to the Company his loan of £77,000. These things were done by means of cheques drawn on the Bank of New South Wales. The "Routine" contained careful provision for the order of events in general, and for the order of the appearance of the cheques in the bank ledgers. Each of the six collaborators appears to have received a reward of £20, a sum which proved to be exactly £20 more than his services were really worth. 10

Of this transaction the Court observed that there was nothing fraudulent or otherwise dishonest in it. "If", it said, "there had been no more in the case than that Bell, in preference to retaining his share and deriving the dividends which it seemed certain to yield, chose to sell the share for a capital sum equal to the assured dividends, the Commissioner would not have been entitled to treat the capital sum as assessable income on the ground of an actual or supposed economic or business equivalence between the two courses. But there was, of course, much more in the case than that. The sale of the share was a part of a complex transaction carefully planned and carried through by Bell and a number of other persons acting in concert, for one predominant purpose, which was to ensure that Bell and his six colleagues should each receive £11,000 tax-free instead of £11,000 subject to tax". (87 C.L.R. at p.571). Referring to the word "arrangement", the Court (87 C.L.R. at p. 573) said:- "The case of Jaques v. Federal Commissioner of Taxation, (1924) 34 C.L.R. 328, itself, and the later case of Clarke v. Federal Commissioner of Taxation, (1932) 48 C.L.R. 56, illustrate the application of the word. It is true that, as Isaacs J. observed in the former of these cases ((1924) 34 C.L.R. at p.359), the word does not include a conveyance or transfer of property as such; but, as the cases cited show, under the section a conveyance or transfer of property may be void as against the Commissioner as being part of a wider course of action which constitutes an arrangement in the relevant sense of the word". It was, of course, clear that such an arrangement had been made, and the Court said:- "This arrangement, both in purpose and in effect, represented nothing but a method of impressing upon the moneys which came to the hands of Bell and his 20 30 40

colleagues the character of a capital receipt and of depriving it of the character of a distribution by a company out of profits. It was therefore a means for avoiding the income tax which would have become payable had the £77,000 been distributed by the Company in the normal way. Section 260 (c) postulates a duty or a liability imposed on a person by the Act, but this refers, not to a liability to pay a particular amount of tax (which would be a liability imposed by a taxing Act), but to a liability such as s. 17 of the Act imposed on Bell, to pay tax in respect of his taxable income ascertained by including in his assessable income his proportion of the Papuan company's profits if and when he should participate in a distribution of them". Finally the Court (87 C.L.R. at p. 574) said: "Then, if this arrangement be treated as void, what remains? Simply this, that on 3rd February 1948, £77,000, consisting entirely of profits, was withdrawn from the Company's bank account, and £11,000 of it passed, indirectly but by steps which are clearly traceable on the face of the bank's ledgers, into Bell's bank account; and Bell is to be considered as remaining at that time a shareholder in the Company, his transfer to Corlett being ex hypothesi void as against the Commissioner as an integral part of the arrangement. This means that the application of s. 260 in this case is to eliminate those features of the case upon which the exclusion of the £11,000 from assessable income depends, and by that means to establish the correctness of the assessment appealed against".

I have spent a considerable time in an examination of the four cases cited, because they provide, in my opinion, a complete and sound exposition of the true construction and effect of sec. 260. They are not the only relevant cases, but they are the most important, and there is, so far as I can find, nothing in any other case to cast the slightest doubt upon them. Bell's Case in particular was a very carefully considered case, in which a unanimous judgment of the Full Court upheld a judgment of McTiernan, J. Bell's Case does not, I think, go any further than Jaques's Case or Clarke's Case but it contains the most complete analysis. It is in the light of the four cases, and especially of Bell's Case, that the present case must be examined. There are, as

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I have indicated, two questions. The first is whether the operations which the Commissioner challenges were actuated by one or more of the purposes mentioned in sec. 260. Was there a contract agreement or arrangement which had in view the attainment of one or more of those purposes? If that question, which is ultimately a question of fact, is answered in the affirmative, the second question arises, which is - what is the effect of the application of sec. 260 to the case? It is essential that these two questions should be kept distinct, and dealt with in their logical order.

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With regard to the first question, there are one or two passages in the judgment of Kitto J. which might lead one to think that he was not satisfied of the existence of a relevant purpose. I think, however, that His Honour was prepared to find that such a purpose existed. He says explicitly that the intended effect of the transactions was to be "to enable the motor companies (a) while parting with comparatively little cash, to replace the greater part of their 1949 and 1950 profits by paid-up share capital, (b) to make the distributions required in order to exonerate themselves from Division 7 tax, and (c) at the same time to avoid involving the original shareholders, though they became the holders of the new share capital, in an income tax liability on the footing that they had participated in a distribution of profits". The answer to the first question appears to me indeed to be beyond serious argument. What other inference is possible than that the very remarkable series of operations outlined above was undertaken and carried out in pursuance of an arrangement which had for its purpose the avoiding of a liability to income tax imposed by the Act on persons in the position of Lanes and its shareholders? It is, of course, nothing to the point to say that what was being undertaken was a capital reconstruction of Lanes as part of a long term plan. That is merely a general description of what was being done. The position immediately to be faced was that Lanes had in its hands a very large sum of accumulated profits. If these were not distributed in cash or shares before 31st December, the Company would have to pay a large amount in income tax thereon. Actually both Lanes and its shareholders desired a distribution. They desired that a comparatively small portion of these profits

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should go into the hands of shareholders in cash, and that a large portion of them should be capitalised by means of an issue of shares. The achievement of everything that everybody desired presented of itself no problem at all. It was the simplest thing in the world: it might almost be described as an everyday company operation: the forms are all in Palmer's Company Precedents. No god from a machine in the shape of Pactolus was needed. There was a real and pressing problem because, and only because, any distribution in cash or shares would involve the shareholders in a liability to pay income tax at 15/- in the £ on a very large sum of money, while to make no distribution would involve the company in a similar liability. It was this problem - the problem of escaping from the dilemma which Division 7 had been designed to create - that the series of steps undertaken was intended to solve. That series of steps was worked out in the utmost detail with expert advice beforehand. It was obviously carried out in pursuance of an agreement or arrangement to which Lanes and its shareholders and Pactolus were parties. And I do not understand how anyone could suppose for a moment that that agreement or arrangement did not have for its purpose the avoiding of the liability imposed by Section 44 and Division 7 of the Assessment Act.

Again, it is nothing to the point in considering the purpose of the agreement or arrangement, to assert that the agreement or arrangement was "genuine" or "intended to have real effect". Of course it was "genuine" and "intended to have real effect". Otherwise it could not in any view have achieved anything. As Isaacs J. said in Jaques's Case (1924) 34 C.L.R. at p.358, "a sham transaction needs no enactment to nullify it". It is, as I have said, at genuine transactions intended to have full legal effect as between the parties, that sec. 260 strikes. It is said that, if a transaction is "genuine", there can be no distinction between form and substance - the form determines the substance. But it is not a mere question of form and substance. This whole approach is, in my opinion, quite wrong. The fallacy arises from a failure to keep distinct the two questions which I have propounded above - (1) Was there such an agreement or arrangement as will attract sec.260?, and (2) If so, what is the result of the avoidance

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of it by sec. 260 ? When the matter is thus ap-
proached, it is seen at once that the "genuineness"
or "reality" of a transaction is not really a
relevant matter at all. Either there was, or
there was not such an agreement or arrangement. If
there was not, that is the end of the matter. If
there was, all the "reality" in the world will not
save the transaction from sec. 260.

Sec. 260 being applicable to the case, it re-
mains now to consider the effect of its application. 10
The answer to this question again, when it is
considered in the light of the authorities, appears
to me to be clear enough. This case cannot, in
my opinion, be distinguished in any material re-
spect from Bell's Case. I have already stated
what appears plainly to have been the end result
of the series of operations undertaken. A sum of
£458,161 has been distributed by Lanes out of its
accumulated profits, and a sum of £402,679 has
been added to its issued capital in the shape of 20
402,679 B preference shares, which are fully paid.
The original shareholders have acquired 402,679
fully paid B preference shares, and have also re-
ceived £56,141 in cash. The cash which the share-
holders received, and the money which paid up the
B preference shares came out of the coffers of
Lanes: Lane's money was (literally or to all
intents and purposes) the only real money which
figured in the transactions which culminated in 30
the Bank's busy day at South Melbourne. It seems
to me nothing to the point to say that Pactolus
may have had £19 or £19,000 to the credit of its
account before the cheques were paid in, and that
(presumably by the application of the rule in
Clayton's Case (1816) 1 Mer. 572) that amount
should be regarded as used to pay in part the price
of £458,820 payable for the A ordinary shares - to
say nothing of the price of the shares in Neals
and Melford, which have yet to be mentioned, and 40
which involved also very large sums. The intention
from the outset was obviously that the dividends
should provide the real money to pay for the shares.

Sec. 260 alters nothing that was done as be-
tween the parties. But, for purposes of income
tax, it entitles the Commissioner to look at the
end result and to ignore all the steps which were
taken in pursuance of the avoided arrangement.
When he does that, what he finds is simply that

profits of the Company have come in the shape of cash and new fully paid shares, into the hands of the shareholders in the Company. And, when that is all that is looked at, it means that those shareholders have received income - dividends within the meaning of sec. 6 of the Assessment Act. The position may readily be stated mutatis mutandis in the very words used by this Court at the end of its judgment in Bell's Case (1953) 87 C.L.R. at p. 574. This passage has been quoted above.

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The apparent difficulty in this case is, I think, entirely created by the complexity of the operations involved. There are so many trees that the view of the forest is obscured. I have said that the fundamental idea behind it all may be thought to be simple. That fundamental idea is perhaps best revealed by taking an exaggerated concrete example. A is a shareholder in a company which wishes to distribute accumulated profits of £500,000 of which A's proportion will be £400,000. A does not scorn the idea of receiving £400,000 but views with distaste the prospect of having to pay to the Commissioner £300,000 out of this sum. He therefore sells his shares to a public hospital at a calculated price of £(x - 400,000). A public hospital is exempt from income tax under sec.23(e) of the Assessment Act. The Company declares and pays a dividend, and the hospital receives £400,000. A then buys back the shares for £x. If there were no sec.260, it is difficult to see how A could be made liable to pay tax on the £400,000 by which he has been enriched. He has in effect, sold shares cum div., and bought them back ex. div., and his receipt is a capital receipt. The whole thing is perfectly "real". But sec. 260 would step in and nullify, for the purposes only of the Assessment Act, the arrangement between A and the public hospital and the transfer and re-transfer made in pursuance thereof. The result would be to reveal nothing but a distribution by the Company of profits amounting to £400,000 and a receipt by A of that sum, and that means that A has received a dividend of £400,000. The case would not be different if either the sale price or the purchase price were so calculated as to give to the hospital a suitable reward for its kind assistance. Nor would the case be different if the "reward" were provided for by allowing the hospital to retain a few of the shares sold. I would not suggest that the

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great complexity of what was done in the present case was designed with no other object than to give artistic verisimilitude to what might otherwise have seemed bald and unconvincing - although I think that some of the details, e.g. the difference of 2d. per share between the amount paid by Pactolus for the shares and the dividend declared and paid, and the existence on 21st December of a relatively trifling initial credit balance in the bank account of Pactolus at South Melbourne, were possibly designed to cloud the real issues. Such details are of no importance. When once sec. 260 has been allowed to do its work, there can be no doubt about where the money came from, and no doubt about where it went. There is no fundamental difference between my exaggerated example and the present case. Here there is no re-purchase of any of the shares sold, but the equivalent of a re-purchase of a large part of them is obtained. The whole are in fact retained by the Purchaser as its reward, but only after they have become shares carrying rights very inferior to those which they carried when they were sold.

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Kitto J. was of opinion that Bell's Case was distinguishable from the present case. His Honour's view may, I think, fairly be taken to be summed up in a passage in his judgment in which he says that the decision in Bell's Case proceeded from two main findings. The first was that a sum of money, consisting of profits, having been withdrawn from a company's bank account, passed into the hands of the taxpayer - indirectly but by steps which were clearly traceable. This, if it had stood alone, would, his Honour says, have been insufficient, because it would have given no clue as to whether the receipt was an income receipt or a capital receipt. The second finding - which stamped the receipt as an income receipt was that the arrangement was found, in purpose and effect, to be "nothing but a method of impressing a dividend with the character of capital in the process of passing it from the company to the tax-payer". I would, with respect, make two comments. In the first place, at the stage which his Honour has reached, we are not considering whether there was an agreement or arrangement which is struck by sec. 260. We are considering the second question - the question of the operation of the section. The section being found to be applicable, I would

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say without hesitation that the first element or "finding" mentioned by his Honour was quite sufficient to dispose of the case in favour of the Commissioner. For that very finding means that a shareholder has received from the company a share of the profits of the company. If it means anything else, it is not even a relevant finding. And such a receipt could not - or at any rate clearly prima facie would not - be anything but an income receipt. In the second place, what his Honour has called the second finding, is a finding which is relevant only to the prior question whether there has been such an agreement or arrangement as is struck by sec. 260. It is not relevant to the logically subsequent question of what sec. 260 does when it is applied. I have already said that I regard it as clear that there was in this case such an agreement or arrangement. It may be going too far to say that there was "nothing but" such an agreement or arrangement but it is quite sufficient to find that there was in fact such an agreement or arrangement.

So far specific reference has been made only to the Lanes transaction. There were, as has been said, five such transactions in all. Of the other four, two were in relation to Neals, and two in relation to Melford. The first Neals transaction and the first Melford transaction were identical with the Lanes transaction. In the case of Melford there were originally no preference shares, so that it was necessary only to divide the shares into three classes, but this is an immaterial difference. These two transactions were carried out by precisely the same steps, taken on the same respective dates and culminating in the banking of the several relevant cheques at South Melbourne on 21st December 1949. Nor did the second Melford transaction or the second Neals transaction differ in any material respect, though the last did not involve any new issue of shares. It seems necessary only to state certain figures relating to the receipts of the original shareholders in shares and cash and the rewards reaped by Pactolus. It has been noted that, in the case of Lanes, the amount ostensibly paid by Pactolus for what may be called the privileged shares exceeded by £659 (2d. per share) the amount of the special dividend paid by the Company on those shares. The profit made by Pactolus was the value of those shares, which

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had become 5% preference shares, less the sum of £659. In each of the other four cases it will be seen that the amount paid by Pactolus for the privileged shares was less than the amount of the special dividend, so that the profit made by Pactolus consisted of the value of the shares which remained in its hands plus a sum of money representing the difference between price paid and special dividend. The position in relation to each of the other four transactions (taking them, of course, at face value) was as follows :- 10

1. First Neals transaction. Pactolus paid for the privileged shares £452,513. The amount of the special dividend was £486,517. The shareholders received £49,199 in cash and 403,314 new fully paid shares. Pactolus was left with 36,444 shares and £34,004 in cash. Pactolus's total "profit" (taking the shares at par) was thus £70,448.

2. First Melford transaction. Pactolus paid for the privileged shares £198,072. The amount of the special dividend was £219,117. The shareholders received £8,253 in cash and 189,819 new fully paid shares. Pactolus was left with 8,253 shares and £21,045 in cash. Pactolus's total "profit" (taking the shares at par) was thus £29,298. 20

3. Second Melford transaction. This transaction, which was completed by the banking of the relevant cheques at South Melbourne on 6th December 1950, was, arithmetically speaking, practically a repetition of the first Melford transaction. Pactolus paid for the privileged shares £198,072. The amount of the special dividend was £219,117. The shareholders received £8,253 in cash, and 189,819 new fully paid shares. Pactolus was left with 8,253 shares, and £21,045 in cash. Pactolus's total "profit" (taking the shares at par) was thus £29,298. 30

4. Second Neals transaction. This transaction was completed by the banking of the relevant cheques at South Melbourne on 27th June 1951. Pactolus paid for the privileged shares £354,245. The amount of the special dividend was £381,214. On this occasion there was no new issue of shares in Neals. The shareholders simply received the sum of £354,245 in cash. Pactolus was left with 29,156 shares and £26,969 in cash. Pactolus's total profit (taking the shares at par) was thus £56,125. 40

Taking the five transactions together, the figures are these. The shareholders received £476,091 in cash, and 1,185,631 fully paid 5% preference shares of £1 in the three motor companies. Pactolus received £102,404 in cash, and 161,213 fully paid 5% preference shares of £1 in the three motor companies. The sands of the Lydian river were indeed golden, but there was no gold which did not come from the profits of the motor companies.

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10 It follows from what I have said that the appeals of the Commissioner should, in my opinion, be allowed. With regard to the order to be made, however, there is one point to which specific reference has not so far been made. The Commissioner has excluded from his amended assessment of each taxpayer a due proportion of so much of the profits distributed by the Company as came from a tax-free fund in the hands of the Company. This is, of course, correct. He has, however, based his assessments in the aggregate (making a proper apportionment among the individual taxpayers) on the whole of the rest of what the shareholders received, without making any allowance for the cash and shares which, when all the transactions were completed, were left in the hands of Pactolus. It was suggested that he ought to have deducted from that aggregate the amount of the cash, and the value of the shares, which Pactolus in fact got.

20 The shares at the relevant times were 5% third preference shares (though still called A ordinaries) and their value was, as has been said, probably about par - the price at which Pactolus later sold most of them to Pactolus Investments. The argument, as I understand it, is that the receipt and retention by Pactolus of its cash and shares is just as much part of what I have called the "end result" as the receipt by the taxpayers of their cash and shares, and that, although the taxpayers are richer by what they ultimately got, they are poorer by what Pactolus ultimately got.

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The argument appears to me to be untenable. It is true that the gain of Pactolus is part of the end result, but it is a part which has no bearing on the taxability of the taxpayers. The whole basis of the argument disappears as soon as it is understood that what was received and finally retained by Pactolus was by way of remuneration or

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reward to Pactolus - which is the same thing as saying to Mr. Ratcliffe - for services rendered in conceiving, and assisting in carrying out, a plan which, it was hoped, would avoid the necessity of paying many thousands of pounds in income tax. It cannot be doubted that this was so. No other inference seems possible. No other explanation has been suggested. The Commissioner has assessed the taxpayers only on what actually came into their hands. He has assessed them on nothing that they did not actually receive. The whole of what they received was, if my view of the effect of sec. 260 is correct, assessable income within the meaning of the Assessment Act. If that be so, no allowance can be made for what Pactolus got, unless it can be claimed as a deduction under sec. 51 of the Act. And it seems to me plainly impossible to say that what Pactolus got represented an outgoing of the taxpayers incurred in gaining or producing their assessable income. It need only be added that the notices of objection did not claim a deduction on this account, and sec.190 of the Act provides that a taxpayer shall be limited on an appeal to the grounds stated in his notice of objection.

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The case of War Assets Pty., Ltd., v. Commissioner of Taxation (1954) 91 C.L.R. 35 should perhaps be mentioned. My view in that case was that the bank account known as the "P.F. Cody No. 2 Account" was in truth and in fact a trust account for War Assets Pty., Ltd., and certain other persons. On that view, of course, the Commissioner had no need to rely on sec. 260. When that view was rejected on appeal, there was obviously no room for the application of sec. 260, for the simple reason that no money had ever come into the hands of War Assets Pty., Ltd.,

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In each of the fourteen cases the Commissioner's appeal should be allowed with costs. The order of Kitto J. in each case should be discharged. In lieu thereof it should be ordered in each case that the taxpayer's appeal to this Court be dismissed with costs.

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10 The respondents in these appeals have been assessed to income tax in respect of dividends paid by three private companies out of their distributable profits. The dividends were not paid to the respondents by the Companies concerned, but they were paid in respect of shares which, immediately prior to the declaration of the dividends and payment thereof, had been sold by the respondents to a company known as Pactolus Pty. Ltd. At the time when the dividends were declared and paid Pactolus Pty. Ltd. was registered as the owner of the shares in the books of each company and the

20 dividends were paid to it. The evidence shows that, Pactolus Pty. Ltd. received by way of dividends an aggregate sum of £1,764,136 and that it paid £1,661,722 for the shares acquired. Furthermore it appears that practically the whole of the amount paid for these shares was paid by Pactolus Pty. Ltd. out of the dividends received by it.

30 In assessing the respondents to income tax, the Commissioner relies upon the provisions of s.260 of the Income Tax Assessment Act 1936-1949. The facts under review are of a complicated nature, but the principal difficulty in the case arises from the circumstance that the section referred to is couched in language which does little to reveal the intention of the legislature with any real degree of precision. The section has, however, had a long history and from time to time attempts have been made in particular and, as a rule, very special, circumstances to invoke its operation for

40 the purpose of determining questions of liability to income tax. Sometimes these attempts have succeeded and although the cases give some assistance in construing the section it was not until the comparatively recent case of Bell v. The Commissioner of Taxation (87 C.L.R. 548) that the

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court attempted to state in a more general fashion the nature of the circumstances which will call the section into operation and the effect which its application will produce.

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The section is in the following terms:

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"260 Every contract, agreement or arrangement made or entered into, orally or in writing, whether before or after the commencement of this Act, shall so far as it has or purports to have the purpose or effect of in any way, directly or indirectly -

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- (a) altering the incidence of any income tax;
- (b) relieving any person from liability to pay any income tax or make any return;
- (c) defeating, evading, or avoiding any duty or liability imposed on any person by this Act; or
- (d) preventing the operation of this Act in any respect,

be absolutely void, as against the Commissioner, or in regard to any proceeding under this Act, but without prejudice to such validity as it may have in any other respect or for any other purpose."

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It is the contention of the appellant that the respondents were parties to arrangements in relation to the profits of each company which had the purpose or effect of defeating, evading or avoiding a "duty or liability imposed" by the Act. These arrangements, it is said, were constituted by or carried into effect by means of the transactions established by the evidence with the result that income tax which, otherwise, would have been attracted was avoided by them. Neither upon the hearing of the appeals before Kitto J. nor before us was there any suggestion that these transactions were illusory; on the contrary it was explicitly stated by counsel for the Commissioner that no grounds existed for denying that the transactions were genuine or that as between the parties they had full legal force and effect. The only claim made was that, so far as the arrangements had or purported to have the purpose or effect of in any way directly or indirectly "avoiding any duty or liability" imposed by the Act, they were void as

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against the Commissioner. This, according to the submissions made on behalf of the appellant, involved the consequence that the dispositions between the various parties to the arrangements must, to the same extent, be regarded as void for the purposes of determining the liability of the respondents to income tax.

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10 In earlier legislation the effect of proto-
types of the section upon an offending "contract
or agreement or arrangement" was to render the
transactions wholly or partly void for all purposes
and it was not until 1936 that the qualification
"as against the Commissioner" was introduced.
Prior to 1936 provisions similar to clauses (a)
and (b) of the section had given rise to problems
such as those which arose in Harris v. Sydney Glass
& Tile Co. (2 C.L.R. 227) and De Romero v. Read
(48 C.L.R. 649), but after the introduction of the
20 qualification referred to those clauses lost a
great deal, if not all, of their practical signifi-
cance and in considering the section for the pur-
pose of the present case it is sufficient to focus
attention on clause (c). When this is done and
one asks what is meant by the expression "avoiding
any duty or liability imposed upon any person by
this Act" a difficulty arises immediately.

30 Section 17 of the Act provides: "Income Tax
at the rates declared by the Parliament, shall be
levied and paid for the financial year commencing
on the first day of July, One thousand nine hundred
and thirty-six and for each financial year there-
after, upon the taxable income derived during the
year of income by any person." The assessable in-
come of a resident shareholder in a company in-
cludes, with certain immaterial exceptions, divi-
dends paid to him by the Company out of profits
derived by it from any source (s.44) and the
expression dividend includes any distribution made
40 by a company to its shareholders, whether in money
or other property, and any amount credited to them
as shareholders, and includes the paid-up value of
shares distributed by a company to its shareholders
to the extent to which the paid-up value represents
a capitalisation of profits. Dividends are paid
when they are credited or distributed (s. 6).
Provision is made by s.161 for requiring returns
of income derived by taxpayers during any income
year to be furnished to the Commissioner and, from

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such returns and other information in his possession, the Commissioner is required to make an assessment of the amount of the taxable income of any taxpayer and of the tax payable thereon (s. 166). Income tax so assessed becomes due and payable by the person liable to pay the tax on the date specified in the notice of assessment (s. 204) and when due and payable the tax constitutes a debt due to the Crown on behalf of the Commonwealth (s. 208). Upon consideration of these provisions it will be seen that if, as the cases have consistently assumed, the expression "liability" in s. 260 includes the liability to pay income tax, a difficulty arises at once. That liability, except in a very general sense, does not arise until income has been derived by a taxpayer and, even after it has been derived, no strict liability to pay any specific amount of income tax arises until it is seen whether the taxpayer has a taxable, as distinct from an assessable, income and until the tax has been assessed. But once income has been derived by a taxpayer no transaction thereafter entered into by him - whether it be accomplished by means of a "contract, agreement or arrangement", or otherwise - can destroy that fact as a circumstance which, at the appropriate time, must be taken into account in the assessment of his income tax. Therefore in cases where the Commissioner proceeds to assess income tax on income which has actually been derived by a taxpayer no assistance is required from the provisions of s. 260 in determining either the extent of that taxpayer's assessable income or the amount of tax payable by him. In such cases the Commissioner is concerned with assessing tax on an amount which represents the taxpayer's actual income and not with an amount which, by reasons of the operation of the provisions of s. 260, the Commissioner is entitled to treat notionally as his income. Equally, the provisions of the section are not required to enable the Commissioner to disregard sham transactions designed to facilitate the evasion of a liability to pay income tax, for such transactions, being shams, cannot have the effect of avoiding such a liability. Nevertheless the section, in terms, operates to avoid contracts, agreements and arrangements, so far as they have or purport to have any such purpose or effect, and it would seem that it was the intention of the legislature, for good measure, to provide for the statutory avoidance of such transactions. But the section goes further and provides

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for the avoidance of any contract, agreement or arrangement so far as it has the purpose or effect of avoiding liability to income tax. And, since it is clear that the real work of the section is intended to be done in cases where the disputed item of income has not in fact or law been derived by a taxpayer, the section must be taken to contemplate that, even before income has been derived, a taxpayer may, by a legally effective contract, agreement or arrangement, avoid a liability to income tax on future income. But, as already appears it is a condition precedent to the liability of a taxpayer that he shall derive income and it is difficult to understand how, except in a loose sense, a person can be said to avoid liability to tax by putting himself in a position where he will, neither in fact nor in law, derive future income. Nevertheless, in an attempt to give some intelligible meaning to the section the view has been taken that there may be, on the part of a taxpayer, an avoidance of liability to tax, within the meaning of the section, in respect of income before that income has been derived. In Bell's Case (supra at pp. 573-574) it was said:-

"Section 260 (c) postulates a duty or a liability imposed on a person by the Act, but this refers, not to a liability to pay a particular amount of tax (which would be a liability imposed by a taxing Act), but to a liability such as s. 17 of the Act imposed on Bell, to pay tax in respect of his taxable income ascertained by including in his assessable income his proportion of the Papuan Company's profits if and when he should participate in a distribution of them".

The assignment or transfer of income producing property, of itself, has, however, the effect of avoiding tax in this general sense but such a transaction has never been regarded as offending against the section. In The Deputy Federal Commissioner of Taxation v. Purcell (29 C.L.R. 464) Knox C.J. said (at p.466):

"The section, if construed literally, would extend to every transaction whether voluntary or for value which had the effect of reducing the income of any taxpayer; but, in my opinion, its provisions are intended to and do extend to cover cases in which the transaction in question, if recognised as valid, would enable the taxpayer

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to avoid payment of income tax on what is really and in truth his income. It does not extend to the case of a bona fide disposition by virtue of which the right to receive income arising from a source which theretofore belonged to the taxpayer is transferred to and vested in some other person".

Upon appeal Gavan Duffy and Starke JJ. (at p.473) observed :-

"The section, as the Chief Justice says, does not prohibit the disposition of property. Its office is to avoid contracts, etc., which place the incidence of the tax or the burden of tax upon some person or body other than the person or body contemplated by the Act. If a person actually disposed of income-producing property to another so as to reduce the burden of taxation, the Act contemplated that the new owner should pay the tax. The incidence of the tax and the burden of the tax fall precisely as the Act intends, namely, upon the new owner. But any agreement which directly or indirectly throws the burden of the tax upon a person who is not liable to pay it, is within the ambit of sec. 53". 10 20

Indeed, in Jaques v. The Federal Commissioner of Taxation (34 C.L.R. at 328) Isaacs J. (p.359) expressed the view that the corresponding section in the legislation as it then stood did not contemplate instruments "actually changing the real ownership" of income producing property and thought that the section supposed "some contract, agreement or arrangement which apart from the provisions of the section itself would legally operate in one or more of the ways set out in paragraphs (a), (b), (c) and (d)". But in Clarke v. The Federal Commissioner of Taxation (48 C.L.R. 56) and in Bell's Case (supra) it was held that the section operated to avoid, as against the Commissioner, instruments of conveyance and transfer where they formed part of or constituted an arrangement within the meaning of the section. In the latter case, speaking of the word arrangement, it was said (at p. 573) :- 30 40

"The case of Jaques v. The Federal Commissioner of Taxation (1924 34 C.L.R. 328) itself, and the later case of Clarke v. Federal

10 Commissioner of Taxation (1932 48 C.L.R. 56), illustrate the application of the word. It is true that, as Isaacs J. observed in the former of these cases (1924 34 C.L.R. at p.359), the word does not include a conveyance or transfer of property as such; but, as the cases cited show, under the section a conveyance or transfer of property may be void as against the Commissioner as being part of a wider course of action which constitutes an arrangement in the relevant sense of the word".

20 It must now be taken as established that the section has no application in any case where there has been a genuine disposition of income producing property even though the disposition may have been influenced, or, even induced by considerations of the incidence of income tax and, even though in the general sense in which that expression has been used, it results in the avoidance of income tax. But the decision in Bell's case requires that this statement should be understood subject to the qualification - stated at this stage in broad terms - that if any such disposition is found as part of an arrangement made for the purpose of avoiding income tax the section may be called in aid by the Commissioner.

30 But can an arrangement, although induced by consideration of the incidence of income tax, be said to have such a purpose when its constituent parts are devised to do no more than effect the transfer from one person to another of income earning assets? In such a case, as in the case of a simple instrument of transfer or conveyance, the effect of the arrangement will be to transfer property from the taxpayer to another person in whose hands the future income will be taxable in accordance with the provisions of the Act. In this respect there is no difference between the effect of a transfer of income producing property which is part of an arrangement and one which is not. Nor, unless some special character is to be found in the arrangement, can it be said that there is any difference in purpose in either case. But Clarke's Case, (supra), in which the effect of instruments disposing of property were held to be avoided as against the Commissioner, shows that an arrangement may present features of a very special character and, indeed, that consideration of the

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dealings made pursuant to or constituting the arrangement may reveal that the arrangement has no practical economic or commercial significance beyond the avoidance of a liability to pay income tax. In such cases the arrangement, though not a sham in the strict sense, is removed from that category only by the presence of dealings which, although they are effective in law as such, serve no practical purpose other than the avoidance of income tax.

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In Clarke's Case (supra) the facts showed that the appellant was the owner of licensed premises which he proposed to lease to a tenant. Part of the contemplated consideration for the granting of the lease was the payment by the tenant of a substantial premium which, if it had been paid to the appellant pursuant to an agreement between them, would have constituted assessable income in the appellant's hands. But instead of granting a lease directly to the tenant he agreed that he would grant a lease in the proposed terms to a company of which he was the governing director and sole beneficial shareholder, and that, in consideration, inter alia, of the payment to the company of the specified premium, the company would transfer the whole of its interest in the lease to the tenant. Thereafter the lease was granted to the company, the specified premium was paid and the company thereupon assigned the lease to the tenant. In fact the premium was received from the tenant by the appellant and was paid by him into his personal banking account but this is of little consequence for, in law, the tenant thereby discharged his liability to the company and the payment was treated by the company in its books as a payment to it. The only reason for mentioning this particular circumstance is to explain why when, shortly after, the appellant decided that the company should go into liquidation and that its assets should be distributed, this amount was not paid by the company to him. It was however the subject of an adjustment and reconciliation in the course of the liquidation.

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It was not suggested in Clarke's Case that the dealings between the appellant and his company were mere shams. Indeed in the stated case it was expressly stated that none of them were "shams or fictitious transactions" and that "they were intended by the company to be operative and effective".

"But they were", it was said, "entered into by the company solely because their operation and effect would or might prove advantageous to the appellant, both generally, and from the point of view of State and Federal Income Tax Legislation". It is, however, obvious from what has been said that, although a lease was granted to the company, the interest which it so acquired was not of the slightest use or benefit to it. Nor, indeed, was the premium which it received from the tenant and it may well be said that, although the various dealings were legally effective according to their tenor, they had no significance whatever other than the avoidance of income tax. As was said in the course of the Court's reasons (at pp. 79 and 80):-

"The grant of the lease to the Company, his (the appellant's) automaton, and its immediate assignment to the intending lessee, and the subsequent liquidation of the company, and the entries in the books of the company narrating the taxpayer's accountability to it for the money and accountability of himself as the company's liquidator in a like sum, all amount to an arrangement adopted for the sole purpose of intercepting the liability to income tax which would otherwise flow from the payment to him of a consideration actually demanded and actually given in connection with a leasehold".

The italics are mine and emphasise that the dealings were dispositions of property in favour of the company in name only and that the sole purpose and significance of the arrangement of which they formed part was as a facade to defeat the provisions of the Act.

It was possible to characterise the arrangement disclosed by the evidence in Bell's Case (supra) in precisely the same way. In that case a company had been formed for the purpose of selling surplus military equipment which had been acquired by the appellant and the other six beneficial owners of the seven £1 shares which represented the issued capital of the company. The circumstances in which the appellant and the other beneficial owners secured transfers of these shares and, thereafter, resold them for £11,000 each are fully set out in the reasons delivered in that case and it is unnecessary to reiterate them. It is sufficient to

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say that the profits which, at the relevant time, became available for distribution to the ultimate shareholders amounted to approximately £78,500, that the payment by the company to those shareholders of dividends of £11,000 per share almost entirely stripped it of its resources and that it was established that there was not the slightest intention on the part of anyone that the company should continue to function after the arrangement had been carried out. It was said that at the material time (p.571):-

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"The Papuan company had been paid £78,520 for the goods it had sold to Torokina Disposals Pty. Ltd., and this sum consisted almost entirely of distributable profits since the Papuan company had no external liabilities and its paid-up capital was only £7. It had disposed of £77,000 of these profits, and the old shareholders between them had received £77,000. The old shareholders had parted with their shares. The new shareholders held all the issued shares in a company whose assets consisted of a little over £1,100, being the surplus which remained after providing for directors' travelling expenses and other small outgoings. It may be added, in order to complete the history of the company, that Mr. White (the Solicitor engaged by the appellant and his colleagues) on 6th February 1948 was paid his costs and obtained £1,000 from the company's funds as a loan. He later bought in for £20 each the shares which his six clients had purchased. The company had then only about £30 left in its bank account and no one seems to have troubled about it since".

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The only difference between Clarke's Case and Bell's Case is that the company which was interposed between the appellant in the former case and the tenant to whom the lease was assigned received no benefit whatever from the carrying out of the arrangement, whilst, in the latter case, it appears that each of the six persons who had acted virtually as ciphers in the matter received a small reward for their co-operation and that the solicitor for the parties succeeded to practically the whole of the residual profits of the company, no doubt, as remuneration for his services. In these circumstances it was said that :-

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"This arrangement, both in purpose and in effect,

represented nothing but a method of impressing upon the moneys which came to the hands of Bell and his colleagues the character of a capital receipt and of depriving it of the character of a distribution by a company out of profits. It was therefore a means for avoiding the income tax which would have become payable had the £77,000 been distributed by the company in the normal way".

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10 I take these observations to mean that the Court saw nothing in the fact that the company retained a comparatively insignificant portion of its profits to defeat the otherwise inevitable conclusion that the sole purpose and effect of the arrangement was to avoid a liability to income tax and, accordingly, Clarke's Case (supra) was directly in point. It was no doubt necessary to make provision for the remuneration of those who had co-operated in the carrying out of the scheme and, since
20 it was not intended that the company should engage in any future business, it was convenient to arrange for their remuneration in the manner indicated.

The broad conclusion to which the above observations lead is that, although the operation of s.260 is not invoked by every "arrangement" which has the effect of avoiding income tax in the general sense already indicated it will be invoked where the arrangement has no significance or purpose but the avoidance of tax in that sense. In-
30 deed, as will appear the section would seem to be of little use except in such cases.

In the present case there can be no doubt whatever that consideration of the incidence of income tax determined the selection of the transactions which the parties subsequently carried out. Unless a sufficient distribution of the profits made by the several companies during the year ended the 30th June 1949 was made before the 31st
40 December of that year additional tax under Division 7 of the Act would have become payable. On the other hand the making of such a distribution to the existing shareholders would have resulted in the dividends paid becoming part of their assessable income and subject to income tax at a high rate. And the latter result would, of course, have ensued, if instead of declaring and paying

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dividends to the shareholders in cash, the company had issued bonus shares to them. But as appears from the evidence it was essential for the companies concerned to maintain their working capital intact, or substantially intact, and this could not be done if a large proportion of their profits was to be used in the payment of additional tax under Division 7 or in the payment of dividends to the shareholders and subjected to taxation in their hands. One solution of the problem was, of course, to convert the companies into public companies and seek additional capital from the public. But although a great deal of tax would have been saved by this method it did not find favour; none of the interested parties were prepared to enlist public support to the extent of the capital required. Accordingly this method was rejected and the course ultimately pursued was decided upon. That is to say the parties determined that the companies should remain private companies and that, instead of proceeding to capitalise their profits, steps should be taken to secure the necessary capital in such a way that, whilst the companies would continue to remain under the control of the existing shareholders, no tax liability would arise. 10

In all, Kitto J. was required to consider five separate sets of transactions or "arrangements". Three of these arrangements were made in December 1949 and the remaining two in November 1950 and June 1951 respectively. The earlier arrangements presented identical features whilst in the remaining two there were slight variations which it is unnecessary to notice. The manner in which it was sought to achieve the desired object may therefore be illustrated by stating as briefly as possible what occurred in December 1949 in relation to the shares and profits of Lane's Motors Pty. Ltd. (hereinafter referred to as Lane's) one of the three companies concerned. In the earlier part of that month the respondents (or persons whom they represented) were the holders of the 237,321 ordinary shares of £1 each which at that time had been issued by the company. One, Thomas, was the holder of the 5,000 5% cumulative preference shares which constituted the remaining issued capital of the company. At that time the company had available for distribution profits in excess of £400,000 and a substantial part of these profits had been derived during the year ended 30th June 1949. A 30 40

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further substantial part consisted of profits actually made during the then current income year whilst the residual sum, £8,569, represented profits upon which additional tax under Division 7 of the Act had been paid. It is apparent, therefore, that the value of the ordinary shares was well in excess of their nominal value. It is equally apparent that had the shareholders, or any of them, been minded to sell their holdings the purchase price would have been received by them as capital and the purchaser would have become accountable for income tax purposes in respect of dividends subsequently declared and, thereafter, received by him. But the amount which any purchaser would have been prepared to pay to obtain any of these shares would have been greatly affected by two factors. Firstly, failure on the part of Lane's to make a sufficient distribution before the 31st December 1949 on the profits earned during the year which had ended on the 30th June previously would have resulted in the absorption of a considerable part of those profits in additional tax under Division 7 with a resultant depreciation in the value of the shares and, secondly, the extent of the purchaser's liability to tax in respect of dividends received by him was a material factor. Assuming the certainty of a distribution before the critical date it is, of course, apparent that a public company might well have been prepared to pay a larger sum for the shares than an individual taxpayer and, in turn, that a charitable institution, the income of which was exempt from tax by virtue of the provisions of s.23, could profitably have paid more for them than a public company. If the shareholders in Lane's had merely sold their shares to a purchaser answering either of these descriptions there could be no doubt that the subsequent receipt of dividends by the purchaser could not have involved the original shareholders in any liability to income tax. And this conclusion would follow whether the sale was induced by contemplation of a prospective liability to income tax and whether or not the dividends subsequently paid would, in the hands of the purchaser, attract a liability to income tax at the same or a lower rate or not at all. But the respondents had no wish to part with substantial control of their company and they had no intention of parting entirely with their existing holdings. Accordingly, the first step in the arrangement was to convert the existing 237,321 ordinary shares

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into shares of two classes. One-third of each shareholder's holding - 79,107 shares in all - became A ordinary shares and two-thirds became B ordinary shares. The unissued shares, 445,000 in number, became B preference shares. Thereafter, subject to the rights of the holder of the existing 5,000 preference shares, special dividend rights were attached to the A ordinary shares. Pursuant to an amendment to the Articles of Association made on the 14th December 1949 the holders of these shares became entitled to receive the whole of the dividends declared by the company on or after that date until the dividends should reach a total of not less than £5.15.10 in respect of each share and to a fixed cumulative preferential dividend of 5% per annum as from the 1st January 1950. Save as provided in the Articles as amended, the holders of these shares had, thereafter, no other right to participate in the profits of the company. On the following day, the 15th December 1949, the shareholders in Lane's gave to Pactolus Pty. Ltd. options to purchase their A ordinary shares at £5.16.0 per share and, on the 19th December 1949, Pactolus Pty. Ltd. exercised these options and delivered to the respondents in payment cheques totalling £458,820. Transfers of the A ordinary shares to Pactolus Pty. Ltd. were registered on the same day. Meanwhile, on the 16th December 1949, Lane's resolved to make available for issue at par 402,679 B preference shares of £1 each and by the same resolution it was specified that such shares should be offered to the person or persons entitled to the dividends upon the A ordinary shares on or after the 19th December 1949. On the last mentioned date Pactolus Pty. Ltd. as the holder of the A ordinary shares, applied to Lane's for the issue to it of the 402,679 B preference shares and lodged with Lane's its cheque for £402,679. On the following day Lane's resolved to pay dividends on the A ordinary shares amounting to £446,295 (i.e. £5.12.10 per share) and, thereafter, to issue to Pactolus Pty. Ltd. the 402,679 B preference shares. On the same day Lane's cheque for £446,295 in respect of the dividends then payable was handed to Pactolus Pty. Ltd. and the B preference shares were issued to the latter company. Again, on the same day, Pactolus Pty. Ltd. sold the B preference shares to the respondents for £1 per share and received their cheque for a total sum of £402,679. All of the cheques which had passed

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between the parties were deposited in the same branch of the English Scottish and Australian Bank on the 21st December 1949 where each of the parties concerned had a current account.

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10 At a later stage, on the 22nd March 1950, Lane's resolved upon the payment of a further dividend in respect of the A ordinary shares out of the profits of the then current year. The dividend so declared was 3/- per share and the amount involved, £11,866, was paid to Pactolus Pty. Ltd. on the same day. This payment completed the payments necessary to satisfy the special dividend rights attached to the A ordinary shares. Thereafter Pactolus Pty. Ltd., which had been formed for the purpose of trading in shares, sold the A ordinary shares to another company, Pactolus Investments Ltd., for £79,107 (i.e. £1 per share).

The effect of these transactions is compendiously stated by Kitto J. in the following passage:

20 "These steps had the following results: (1) in Lane's Accounts, £402,679 of profits went out and was replaced by paid-up capital of the same amount represented by B preference shares in the hands of the original shareholders; (2) the difference between that figure and the total of the special dividends paid (£458,161) viz. £55,482, was contained in the sum of £56,141 which, as will be mentioned in a moment, was kept by the original shareholders in cash,

30 (the remaining £659 of the latter sum being put in by Pactolus); (3) the original shareholders, although they received nothing directly from the distribution of Lane's profits, received between them £458,820 as the price of their A ordinary shares, keeping £56,141 of that amount in cash and applying the balance in the purchase of B preference shares from Pactolus; and (4)

40 although Pactolus had to put in £659 in cash, being the amount by which the special dividends fell short of the price paid for the A ordinary shares, it sold these shares for £79,107 and thus made an over-all profit of £78,448. To put Pactolus' result in another way, it lost on the re-sale of the A ordinary shares £379,713, but the dividends it received amounted to £458,161, so that on the whole it made a profit of £78,448. On the footing, which has been assumed to be correct for the purposes of the

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argument, that Pactolus was a trader in shares, its taxable income would include, in respect of the Lane's transaction, only the last-mentioned amount and not the full amount of the dividends which Pactolus derived from the A ordinary shares".

In the transactions which concern the other companies Pactolus Pty. Ltd. received more than sufficient by way of dividends to enable it to purchase the holdings of the respondents and, although it is unnecessary to state the details of those transactions, it is of importance to notice that the respondents did in each case part with substantial number of shares and that, on the whole, those shares were sold for less than the special dividends available. That Pactolus Pty. Ltd. was able to pay so much for the shares resulted from the fact that the special dividend rights were of a temporary character and that it was a company engaged in share trading. Hereunder is appended a table showing the amounts paid by that company for the shares which it acquired in each company, the number of shares acquired, the amounts received by way of dividend and the difference between the two sets of amounts referred to :-

	Amount paid for purchase of shares	Number of Shares pur- chased	Amounts received by way of dividends	Differ- ence be- tween amounts in Cols. 1 & 3
Lane's Motors Pty. Ltd.	£ 458,820	79,107	£ 458,161	£ Minus 659
Neal's Motors Pty. Ltd. (1st Trans- action)	452,513	36,444	486,527	34,014
Melford Motors Pty. Ltd. (1st Trans- action)	198,072	8,253	219,117	21,045
Melford Motors Pty. Ltd. (2nd Transaction)	198,072	8,253	219,117	21,045
Neal's Motors Pty. Ltd. (2nd Transaction)	354,245	29,156	381,214	26,969
TOTALS: £	1,661,722	161,213	£1,764,136	£102,414

In the course of the same transactions the respondents acquired 1,185,621 new shares in the same three companies. These shares were made up as follows: 402,679 shares in Lanes; 403,314 shares in Neal's Motor Pty. Ltd. and 379,638 shares in Melford Motors Pty. Ltd. For these shares the respondents paid in all the sum of £1,185,621.

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10 It will be seen that Pactolus Pty. Ltd. paid for the shares which it purchased sums which, in the aggregate, fell short of the dividends which it received by £102,414 and that, for the amounts paid to the respondents, they parted with shares totalling in number 161,213. For these shares Pactolus Pty. Ltd. had paid £1,661,722 but when the special dividend rights had been fully satisfied they re-sold the shares for £161,213 making, it was contended, an overall loss on the various sales of £1,500,509.

20 It should again be stated that the various dealings were not attacked as shams. Nor was it suggested that they did not have full legal force and effect according to their tenor. In these circumstances it is not open to doubt that the appellants sold their shares - 161,213 in number - for £1,661,722 and that Pactolus Investments Limited is now the owner of these income producing assets. Nor can it be asserted that the parties did not intend to produce this result. That the form of

30 the transactions was induced by consideration of the incidence of income tax is, however, unquestionable and the submissions made on behalf of the Commissioner focus attention on a number of features. The creation of special dividend rights, the use by Pactolus Pty. Ltd. of moneys received by way of dividend to finance its purchase of the respondents' shares and the reinvestment of the bulk of the purchase money in each of the three companies concerned were, it is said, all steps in

40 an arrangement designed to defeat a liability to tax on the part of the respondents. But if a liability to tax was avoided by these transactions it was, in the loose sense already referred to, avoided because, when the dividends in question became payable, Pactolus Pty. Ltd. and not the respondents, were the owners of the shares and because that company was a company which traded in shares and its operations left room for the contention that comparatively little or no tax could

In the Full
Court of the
High Court of
Australia.

No. 56.

Reasons for
Judgment of
His Honour
Mr. Justice
Taylor.

31st May 1957
- continued.

be collected from it in respect of its income receipts for the relevant year.

To my mind the case is vastly different from Clarke's Case and Bell's Case. As already appears the arrangements disclosed by the evidence in those cases had no purpose other than the avoidance of a liability to tax and had no significance beyond the achievement of this result. It is true that the dealings which were held to be avoided as against the Commissioner by the operation of s.260 were legally effective dispositions of property but it was inevitable that they should be regarded as having no commercial significance and as serving no other purpose than, prospectively, to transmute income into capital. On this basis s. 260 applied and its effect on the relevant dealings was such as to enable the Commissioner to deny any such transmutation and to assert that the particular receipts were receipts of income. But in the present case no such simple solution is possible. It may be urged that when the arrangements are considered in their entirety it is clear that it was intended that the bulk of the money paid as dividends by the companies concerned should find its way into the hands of the respondents as capital and that, in the circumstances, the amounts received by them should be regarded as income. But this brief statement presents a picture which is quite inadequate for the arrangements reached much further. The fact is that each respondent sold and intended to sell shares which were and still remain of considerable value and, as consideration, for the various transfers the purchaser intended to pay and each respondent intended to receive the purchase price. Indeed the respondents parted with and intended to part with shares which constituted practically one-third of the issued capital of the companies concerned and which, notwithstanding the new issue which was subsequently made, remained a substantial holding in those companies. That it was profitable for Pactolus Pty. Ltd. to pay so much for the shares resulted from the circumstances that it was a company, that its operations were of a particular character and that it was intended that the special dividend rights attached to the shares would be discharged within a short space of time. But although these circumstances may have produced features which appear to be artificial their presence is by no means

fatal to the respondents' contentions. As was conceded on behalf of the Commissioner the dealings were within the capacity of the companies concerned and were genuine and effective and, in these circumstances, it cannot be said that the arrangements had no purpose or significance other than the avoidance of income tax. Whilst the various dealings were designed to ensure that no tax liability should arise as far as the respondents were concerned their purpose and object was to divest the respondents of a substantial part of their existing holdings and to ensure that at no time in the future would they derive income from them. They were at liberty to sell their shares and when they sold them they did so by dealings which were genuine and effective sales. Pactolus Pty. Ltd. having purchased them, became entitled to valuable income earning assets and nothing emerges upon a consideration of the arrangements in their entirety to strip any of the relevant dealings of its commercial significance. It was, of course, otherwise in Clarke's Case and Bell's Case. In these circumstances it is impossible to say that the sole purpose of the arrangements was, in the language of s. 260, to avoid any duty or liability imposed by the Act and, accordingly, the condition precedent to the operation of s. 260 has not been established.

But even if I thought otherwise I would agree with Kitto J. that s. 260 would not entitle the Commissioner to treat the amounts actually received by the respondents as income. In Clarke's Case and Bell's Case the problem was comparatively simple. The only practical effect produced by the transactions which the Commissioner was entitled to treat as void was to transmute prospective income into capital for the facts showed that, in neither case, did the taxpayer, in a commercial sense, really part with anything. In those circumstances the annihilation of the arrangements left each taxpayer in statu quo. But in the present case the respondents parted with assets of considerable value and it is impossible simply by ignoring one part of the relevant transaction, i.e., the transfer of the shares, to characterise the actual receipt of the price of the shares as the receipt of assessable income. The appellant approaches the problem by asserting that the transfers of the shares are to be regarded as void.

In the Full Court of the High Court of Australia.

No. 56.

Reasons for Judgment of His Honour Mr. Justice Taylor.

31st May 1957
- continued.

In the Full
Court of the
High Court of
Australia.

No. 56

Reasons for
Judgment of
His Honour
Mr. Justice
Taylor.

31st May 1957
- continued.

That is to say, the respondents must be regarded as the shareholders at all material times. Then, the argument proceeds, what happened was, merely, that Pactolus Pty. Ltd. received dividends to which it was not entitled and passed them, or some part of them, on to the respondents as the shareholders. This final conclusion, however, does not depend merely upon the notional avoidance, as against the Commissioner, of the several transfers; it can be reached only by taking a further notional step for the purpose of giving a new colour or character to the payments, that is, by attributing to Pactolus Pty. Ltd. an intention to account to the respondents for the dividends received by it. But it is abundantly clear that nothing was further from the minds of the parties. The amounts paid by Pactolus Pty. Ltd. were paid in respect of a price legally payable and, although the notional annihilation of the transfers may, again notionally, leave those amounts without a character it cannot operate to invest them with a new character. Again it should be stressed that the problem in Clarke's Case and Bell's Case was quite different. In each of those cases the dealings between the respective parties were, as already appears, set up as a facade and upon its removal a state of affairs which involved the taxpayer in a tax liability was left exposed. But, even if the section may be invoked where dealings which have no real commercial significance have taken place, the same observation is not open in these circumstances. In a case such as the present the section may notionally annihilate the transfer of the shares in question and it may operate to divest the purchase price of its true character but this is far from saying that it can operate to invest the payments with a completely new character and one which is completely foreign to the circumstances in which they were made.

The challenged assessments include as the assessable income of each respondent, not only the amounts actually received by them, but, in the aggregate, the whole of the moneys paid as dividends by the three companies concerned and received by Pactolus Pty. Ltd. Nevertheless the more restricted view was put on behalf of the appellant as an alternative and since, as it seems to me, that view involves consideration of matters which are relevant in determining whether s. 260 may be

invoked at all, it has been convenient to consider the alternative view first. But in reaching the conclusion that this view should be rejected enough has been said to indicate why it is impossible to maintain that the payments to Pactolus Pty. Ltd. when made by the companies concerned could, in any way, be regarded as income derived by the respondents. They were paid to and received by Pactolus Pty. Ltd. as moneys to which that company was entitled and the notional annihilation even of every one of the steps in the arrangements under consideration cannot enable the Commissioner to treat those payments as having been received on account of or for the benefit of the respondents.

In the Full Court of the High Court of Australia.

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Reasons for Judgment of His Honour Mr. Justice Taylor.

31st May 1957
- continued.

The extent to which the annihilation of an offending arrangement will assist the Commissioner is well illustrated by the decision in War Assets Pty. Ltd. v. Federal Commissioner of Taxation (91 C.L.R. 53) and it is not out of place to quote again the two passages from Clarke's Case (supra) which were cited in that case. Speaking of s.260 it was said :-

"In its application perhaps it can do no more than destroy a contract, agreement or arrangement in the absence of which a duty or liability would subsist. Where circumstances are such that a choice is presented to a prospective taxpayer between two courses of which one will, and the other will not, expose him to liability to taxation, his deliberate choice of the second course cannot readily be made a ground of the application of the provision. In such a case it cannot be said that, but for the contract, agreement or arrangement impeached, a liability under the Act would exist. To invalidate the transaction into which the prospective taxpayer in fact entered is not enough to impose upon him a liability which could only arise out of another transaction into which he might have entered but in fact did not enter. Where, however, the annihilation of an agreement or arrangement so far as it has the purpose or effect of avoiding liability to income tax leaves exposed a set of actual facts from which that liability does arise, the provision effectively operates to remove the obstacle from the path of the Commissioner and to enable him to enforce the liability".

In the Full
Court of the
High Court of
Australia.

—————
No. 56.

Reasons for
Judgment of
His Honour
Mr. Justice
Taylor.

31st May 1957
- continued.

and that :-

"The section is, of course, an annihilating provision only. It has no further or other operation than to eliminate from consideration for tax purposes such contracts, agreements and arrangements as fall within the descriptions it contains. It assists the Commissioner, in a case like the present, only if, when all contracts, agreements and arrangements having such a purpose or effect as the section mentions are obliterated, the facts which remain justify the Commissioner's assessment".

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For the reasons given I am of the opinion that s. 260 has no application to these appeals and that, even if it has, it does not assist the appellant in upholding the assessments either wholly or in part.

In conclusion I desire to reiterate that the decision in this case depends essentially upon the meaning to be attributed to the wide and uncertain words of s. 260 and to add that, in attempting to give some reasonably precise and practical meaning to the section for the purpose of reaching a decision, I have failed to derive any assistance from current aphorisms which tend to obscure rather than reveal the solution. Nor have I found helpful observations such as those made by Viscount Simon in Latilla v. Inland Revenue Commissioners (1943 A.C. 377 at p. 381) concerning which I find myself in full agreement with the remarks of Jordan C.J., in the Estate of William Vicars (45 S.R. (N.S.W.) 85).

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No. 57.

ORDERS OF THE FULL COURT IN THE CASE
OF LAURI JOSEPH NEWTON

IN THE HIGH COURT OF AUSTRALIA

No.27. 1956

PRINCIPAL REGISTRY

ON APPEAL FROM AN ORDER OF THE
HONOURABLE SIR FRANK WALTERS KITTO A
JUSTICE OF THE HIGH COURT OF AUSTRALIA.

BETWEEN: THE COMMISSIONER OF TAXATION OF
THE COMMONWEALTH OF AUSTRALIA Appellant

- and -

LAURI JOSEPH NEWTON

Respondent

BEFORE THEIR HONOURS THE CHIEF JUSTICE
SIR OWEN DIXON, MR. JUSTICE McTIERNAN,
MR. JUSTICE WILLIAMS, MR. JUSTICE FULLAGAR,
AND MR. JUSTICE TAYLOR

FRIDAY 31st DAY OF MAY, 1957

THIS APPEAL from the Order made on the 15th day
of August 1956 by his Honour Mr. Justice Kitto a
Justice of the High Court of Australia upon the
hearing of an Appeal by Lauri Joseph Newton under
the Income Tax Assessment Act 1936-1949 and The
Social Services Contribution Assessment Act 1945-
1948 against an amended assessment of income tax
and social services contribution issued on the 9th
day of January 1953 based on an income derived
during the year ending the 30th day of June 1950
coming on for hearing before this Court at Mel-
bourne on the 11th, 12th, 15th, 16th, 17th, 18th
and 19th days of October 1956

UPON READING the transcript record of the proceed-
ings herein and UPON HEARING Mr. Tait and Mr. D.I.
Menzies both of Queen's Counsel and Mr. Aickin of
Counsel on behalf of the above-named Appellant and
Mr. Eggleston, Mr. Macfarlan and Mr. Kerrigan all
of Queen's Counsel and Mr. Nimmo of Counsel
on behalf of the above-named Respondent THIS
COURT DID ORDER on the said 19th day of
October 1956 that this Appeal should stand

In the Full
Court of the
High Court of
Australia.

No.57.

Orders of the
Full Court in
the case of
Lauri Joseph
Newton.
31st May 1957.

In the Full Court of the High Court of Australia.

No.57.

Orders of the Full Court in the case of Lauri Joseph Newton, 31st May 1957 - continued.

for judgment AND the same standing for judgment this day accordingly at Melbourne THIS COURT DOTH ORDER that this Appeal be and the same is hereby allowed AND THIS COURT DOTH FURTHER ORDER that the said Order made by his Honour Mr. Justice Kitto on the 15th day of August 1956 be and the same is hereby set aside AND in lieu thereof THIS COURT DOTH ORDER that the Appeal by the above-named Respondent from the said amended Assessment be and the same is hereby dismissed with costs AND THIS COURT DOTH FURTHER ORDER that the costs of the Commissioner of Taxation of this Appeal and of the proceedings before his Honour Mr. Justice Kitto be taxed by the proper officer of this Court and when so taxed and allowed be paid by the above named Respondent to the above named Appellant AND THIS COURT DOTH FURTHER ORDER that the parties be at liberty to apply as they may be advised.

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BY THE COURT

M. DOHERTY

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PRINCIPAL REGISTRAR.

IN THE HIGH COURT OF AUSTRALIA

No.28. 1956

PRINCIPAL REGISTRY

ON APPEAL FROM AN ORDER OF THE HONOURABLE SIR FRANK WALTERS KITTO A JUSTICE OF THE HIGH COURT OF AUSTRALIA

BETWEEN: THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA Appellant

- and -

LAURI JOSEPH NEWTON

Respondent

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BEFORE THEIR HONOURS THE CHIEF JUSTICE SIR OWEN DIXON, MR. JUSTICE McTIERNAN, MR. JUSTICE WILLIAMS, MR. JUSTICE FULLAGAR AND MR. JUSTICE TAYLOR

FRIDAY 31st DAY OF MAY, 1957

THIS APPEAL from the Order made on the 15th day of August 1956 by his Honour Mr. Justice Kitto a Justice of the High Court of Australia upon the

hearing of an Appeal by Lauri Joseph Newton under the Income Tax and Social Services Contribution Assessment Act 1936-1950 against an amended assessment of income tax and social services contribution issued on the 9th day of January 1953 based on income derived during the year ended the 30th day of June 1951 coming on for hearing before this Court at Melbourne on the 11th, 12th, 15th, 16th, 17th, 18th and 19th days of October 1956.

In the Full Court of the High Court of Australia.

No.57.

Orders of the Full Court in the case of Lauri Joseph Newton.

31st May 1957
- continued.

- 10 UPON READING the transcript record of the proceedings herein and UPON HEARING Mr. Tait and Mr. D. I. Menzies both of Queen's Counsel and Mr. Aickin of Counsel on behalf of the above-named Appellant and Mr. Eggleston, Mr. Macfarlan and Mr. Kerrigan all of Queen's Counsel and Mr. Nimmo of Counsel on behalf of the above-named Respondent THIS COURT DID ORDER on the said 19th day of October 1956 that this Appeal should stand for judgment AND the same standing for judgment this day accordingly at Melbourne THIS
- 20 COURT DOTH ORDER that this Appeal be and the same is hereby allowed AND THIS COURT DOTH FURTHER ORDER that the said Order made by his Honour Mr. Justice Kitto on the 15th day of August 1956 be and the same is hereby set aside AND in lieu thereof THIS COURT DOTH ORDER that the Appeal by the above-named Respondent from the said amended assessment be and the same is hereby dismissed with costs AND THIS COURT DOTH FURTHER
- 30 ORDER that the costs of the Commissioner of Taxation of this Appeal and of the proceedings before his Honour Mr. Justice Kitto be taxed by the proper officer of this Court and when so taxed and allowed be paid by the above-named Respondent to the above named Appellant AND THIS COURT DOTH FURTHER ORDER that the parties be at liberty to apply as they may be advised.

BY THE COURT

M. DOHERTY

PRINCIPAL REGISTRAR.

In the
Privy Council

No. 58.

ORDER IN COUNCIL GRANTING SPECIAL LEAVE
TO APPEAL TO HER MAJESTY IN COUNCIL

No.58.

Order in Council
granting Special
Leave to Appeal
to Her Majesty
in Council.

L.S.

AT THE COURT AT BUCKINGHAM PALACE

The 31st day of October, 1957

PRESENT

31st October,
1957.

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

CHANCELLOR OF THE
DUCHY OF LANCASTER

EARL OF PERTH

MR. WALKER-SMITH

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WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 16th day of October 1957 in the words following viz.:-

"Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of (1) Lauri Joseph Newton (2) Lionel Newton (3) Henry James Lane (4) Leonard Alfred Fenton (5) Stella Maude Adeline Lane (6) Francie Una Christian and (7) the Trustees of the Estate of Robert Nathan deceased in the matter of fourteen Appeals from the High Court of Australia between the Petitioners (Respondents) and the Commissioner of Taxation of the Commonwealth of Australia Respondent (Appellant) setting forth that the Petitioners seek special leave to appeal from a majority Judgment of the High Court of Australia allowing an Appeal by the Respondent and confirming amended assessments of the said Respondent imposing upon the Petitioners liability to pay in addition to the amounts of tax already paid by them under the original assessments for the relevant financial years a further sum in excess of £1,853,000 (one-third of which was imposed by way of penalty) in respect of dividends alleged to have been received by them from certain companies: that the amended assessments of the Respondent (numbering fourteen in all) were made by him ex parte and without

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any hearing but on an 'Appeal' by the Petitioners Kitto J. sitting as the High Court of Australia in its original jurisdiction on the 15th August 1956 set aside all the amended assessments: that the Respondent appealed to the Full Court of the High Court of Australia and that Court on the 31st May 1957 allowed the Appeals McTiernan Williams and Fullagar JJ. delivering separate judgments allowing the Appeals Taylor J. delivered a dissenting Judgment and Dixon C.J. saying that he agreed in all substantial respects with the view expressed by Williams and Fullagar JJ.: that the several Appeals of the Petitioners were heard together pursuant to an Order of the said High Court: And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the Judgment of the Full Court of the High Court of Australia dated the 31st day of May 1957 and that the Appeals may be consolidated and heard together or for further or other Order:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeals against the Judgment of the Full Court of the High Court of Australia dated the 31st day of May 1957 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs and that the Appeals ought to be consolidated and heard together on one printed case on each side:

"And Their Lordships do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioners of the usual fees for the same."

HER MAJESTY having taken the said Report into

In the
Privy Council

No.58.

Order in Council
granting Special
Leave to Appeal
to Her Majesty
in Council.

31st October,
1957 -
continued.

In the
Privy Council

No.58.

Order in Council
granting Special
Leave to Appeal
to Her Majesty
in Council.

31st October,
1957 -
continued.

consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

E X H I B I T SExhibitsEXHIBITS TENDERED ON BEHALF OF APPELLANTS

- | | | |
|-------|---|------|
| "A.1" | Documents forwarded to the High Court of Australia by the Respondent pursuant to Order 65, Rule 8 of the High Court Rules (see Documents numbers 1 to 50)(Volume I) | A.1. |
| "A.2" | Mutual Admissions of Fact (see Document Number 51 - Volume II page 1). | A.2. |
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ANNEXURES TO MUTUAL ADMISSIONS OF FACT WHICH ARE RELEVANT TO THESE APPEALS
(Part of Exhibit "A.2")

A N N E X U R E NO. 3

LANE'S MOTORS PTY. LIMITED - BALANCE SHEET AS AT 30th JUNE, 1949

Exhibits
A.2.

Annexures to
Mutual Admissions
of Fact (Part of
Exhibit "A.2")

LIABILITIES		ASSETS	
AUTHORISED CAPITAL		GOODWILL	
245,000 Ord. Shares @ £1	£245,000	LAND & BUILDINGS:	
5,000 Pref. " @ £1	5,000	Launceston Property	2,000. 0. 0
	£250,000	Little Collins Street	16,850. 0. 0
Less Unsubscribed Capital		Exhibition Street Land	40,000. 0. 0
(Ord.) 7,679 @ £1	7,679	Exhibition Street Buildings	58,693. 2. 1
PAID UP CAPITAL:		Dorcas Street Leasehold	4,970. 11. 10
237,321 Ord. Shares @ £1	237,321	Clifton Hill Property	1,423. 10. 10
5,000 Pref. " @ £1	5,000	PLANT & MACHINERY	2,497. 3. 10
	242,321. 0. 0	Less Provision for	
TAX PAID PROFIT RESERVE	250. 0. 0	Depreciation	306. 4. 4
PROFIT & LOSS APPROPRIATION A/C		Office Furniture	428. 16. 0
Balance as at 1/7/48	196,075. 18. 9	Less Provision for	
Less Dividends paid		Depreciation	65. 12. 11
Ord. £111,500. 0. 0		SHARES IN OTHER COMPANIES	
Pref. 250. 0. 0	111,750. 0. 0	LOANS:	
	84,325. 18. 9	Melb. Motor Engin.	4,000. 0. 0
Add Profit year ending		Chrysler Dodge	105. 0. 0
30/6/49	£372,608. 8. 4	W. B. Thomas	110. 0. 0
Less Paid.		C. Chambers	52. 10. 0
Inc. Tax	69,808. 10. 2		162. 10. 0
	302,799. 18. 2	SUNDRY DEBTORS:	
	387,125. 16. 11	629. 696. 16. 11	
LOANS:		Stella M. Lane	17,189. 2. 7
Stella M. Lane		Robert Nathan	34,379. 4. 0
Robert Nathan		Estate R. T. Lane	17,189. 12. 0
Estate R. T. Lane		Estate Mrs. C. Nathan	7,081. 4. 10
Estate Mrs. C. Nathan		L. J. Newton	7,081. 4. 10
L. J. Newton		L. Newton	7,081. 4. 10
L. Newton		Mrs. F. Christian	7,081. 4. 10
Mrs. F. Christian		Estate J. Nathan	6,054. 4. 0
Estate J. Nathan		Collins Motors Pty. Ltd.	52,264. 11. 8
Collins Motors Pty. Ltd.		Motor & General Agency	245. 0. 0
Motor & General Agency		H. J. Lane	8,362. 18. 1
H. J. Lane			164,009. 11. 8
SUSPENSE ACCOUNT:			
C. D. D. Pending Price			
adjustments	236. 12. 0		
Vehicles for delivery			
in Britain, paid in			
advance	13,133. 0. 6		
	13,369. 12. 6		
RESERVES - Defective parts			
SUPERANNUATION FUND			
SUNDRY CREDITORS:			
Deposits on new vehicles			
(see Contra)	94,752. 0. 0		
	£ 954,562. 15. 10		
		Annexure 3	
		Lane's Motors	22,800. 0. 0
		Pty. Limited.	
		Balance Sheet	
		as at	
		30th June, 1949.	

Annexure 3
Lane's Motors
Pty. Limited.
Balance Sheet
as at
30th June, 1949.

2,000. 0. 0
16,850. 0. 0
40,000. 0. 0
58,693. 2. 1
4,970. 11. 10
1,423. 10. 10
2,497. 3. 10
306. 4. 4
428. 16. 0
65. 12. 11
363. 3. 1
2,190. 19. 6
4,105. 0. 0
110. 0. 0
52. 10. 0
96. 330. 1. 1
94,752. 0. 0
1,578. 1. 1
450. 0. 0
57,299. 19. 7
157,050. 19. 4
128,769. 1. 0
343,119. 19. 11
9,070. 17. 8
1,136. 14. 10
116,630. 19. 8
469,958. 12. 1
68,372. 4. 4
28,444. 13. 6
8,074. 3. 0
2. 4. 7
109,172. 16. 1
109,175. 0. 8
£ 954,562. 15. 10

A N N U E X U R E NO. 6.

NEAL'S MOTORS PTY. LIMITED - BALANCE SHEET AS ON 30th JUNE, 1949

Exhibits
A.2.Annexures to
Mutual Admissions
of Fact (Part of
Exhibit "A.2")

<u>LIABILITIES</u>		<u>ASSETS</u>	
<u>AUTHORISED ORDINARY CAPITAL</u> (145,000 Shares of £1 each)	£145,000. 0. 0	<u>GOODWILL</u>	£ 10,820. 0. 0
Less Unsubscribed Capital	35,668. 0. 0	<u>LAND AND BUILDINGS</u>	
Paid Up Ordinary Capital	109,332. 0. 0	Exhibition Street	£ 36,000. 0. 0
<u>AUTHORISED PREFERENCE CAPITAL</u> (5,000 Shares of £1 each)	5,000. 0. 0	Sturt Street	1,348.15. 0
		Lonsdale Street	17,483. 8. 0
		23 Punch Lane	4,600. 0. 0
		<u>PLANT</u>	
<u>LOANS:</u>		Loose Tools	38. 6. 7
Motor Repairs Pty. Ltd.	11,217. 3. 6	Plant and Machinery	2,844. 2. 0
Overland (Vic.) Pty. Ltd.	124,750. 3. 6	Office Furniture	1,095.10. 0
Nathan, R.	55,193. 8.11		
Christian, F.M.	4,198. 9. 5	<u>LOANS</u>	
Lane, H.J.	22,960. 1. 0	Autocraft Pty. Ltd.	48,700. 0. 0
Lane, Estate of the late R.T.	4,673. 2. 2	<u>SHARES IN OTHER COMPANIES</u>	
Nathan, Estate of late C.	4,198. 9. 5	<u>STOCK ON HAND</u>	
Nathan, Estate of late J.	4,231.10. 2	New Cars	224,981. 0. 0
Newton, L.J.	4,198. 9. 5	Spare Parts and	
Newton, Lionel	4,198. 9. 5	Accessories	26,755. 3. 0
		Service Station	2,034. 0.10
<u>SUNDRY CREDITORS</u>		<u>SUNDRY DEBTORS</u>	
<u>TAX PAID PROFITS RESERVE ACCOUNT</u>		SALES TAX PAID IN ADVANCE	253,770. 3.10
APPROPRIATION ACCOUNT		COMMONWEALTH BONDS	48,156.16. 5
Balance 1/7/48	171,439. 2. 0	REMITTANCE ACCOUNT	49.13. 0
Less Preference Dividend		CASH:	54,563.18. 0
Paid	£ 250. 0. 0	English Scottish &	5,228. 9. 8
Ordinary		Australian Bank	
Dividend	62,300. 0. 0	Petty Cash	125,047. 5.10
Less Federal Income Tax			105. 0. 0
Add Net Profit for Year	73,197. 2. 0		125,152. 5.10
	195,241. 8.10		£ 687,422. 3. 4
	268,438.10.10		
	£ 687,422. 3. 4		

I beg to report that I have audited the Accounts of Neal's Motors Pty. Ltd. for the twelve months ended 30th June, 1949. I have obtained all the information and explanations required in the course of my audit. In my opinion the accompanying Balance Sheet is properly drawn up and exhibits a true and correct view of the state of the Company's affairs at 30th June, 1949, and the attached Profit and Loss Account is also properly drawn up and exhibits a true and correct view of the results of the business of the Company for the year. Both are in accord with the best of the information and explanations given to me, and are as shown in the books of the Company.

(Signed) L. B. WALLACE,
Auditor.

ANNEXURE No. 9.

MELFORD MOTORS PTY. LIMITED - BALANCE SHEET AS ON 30th JUNE, 1949

LIABILITIES		ASSETS	
AUTHORISED CAPITAL (50,000 shares of £1 each)	50,000. 0. 0	GOODWILL	6,500. 0. 0
Less UNSUBSCRIBED CAPITAL	33,494. 0. 0	M. McGRATH PTY. LTD.	1,600. 0. 0
PAID UP CAPITAL		FRESHOLD LAND AND BUILDINGS	
TAXED PROFITS RESERVE ACCOUNT		Elizabeth Street	81,686. 8. 7
SHAREHOLDERS' DIVIDEND ACCOUNTS		Capel Street	6,600. 0. 0
RESERVE FOR INCOME TAX		LEASEHOLD LAND AND BUILDINGS	
CHARGES IN ADVANCE		Less Depreciation	5,922. 0. 0
SUNDRY TRADE CREDITORS		ROYAL AGRICULTURAL SHOW	
SUNDRY CREDITORS -		STAND AS ON 30/6/48	220. 0. 0
Allowance New Vehicles	25. 1. 0	Less Depreciation	50. 0. 0
Audit Fees	184. 5. 11	GARAGE EQUIPMENT AS ON	
Building - Repairs and		30/6/48	2,679. 13. 3
Maintenance	228. 0. 0	Add Additions	1,698. 8. 3
Car & Truck Purchases	535. 9. 0	Less Depreciation	4,378. 1. 6
Car & Truck Sales	13,159. 2. 4	FURNITURE & FITTINGS AS	
Commission	1,309. 17. 1	ON 30/6/48	3,730. 0. 0
General Expenses	231. 1. 6	Add Additions	1,520. 0. 0
House Car Expenses	3. 0. 11	Less Depreciation	1,910. 17. 10
Insurance House	20. 17. 9	COMMONWEALTH WAR LOAN	
Insurance Outside	1,623. 0. 6	STOCKS ON HAND -	2,830. 0. 0
Material in Shop	21. 7. 6	New Vehicles	50,632. 0. 0
Rates and Taxes	82. 18. 4	Used Vehicles	3,465. 0. 0
Rent Paid	50. 0. 0	Spare Parts	114,345. 0. 0
Repair Purchases	431. 15. 8	Repairs	22,011. 0. 0
Sales Expense	202. 13. 2	SUNDRY DEBTORS ON OPEN	190,453. 0. 0
Service Account	380. 11. 1	ACCOUNT	
Spare Parts Sales	1,378. 0. 2	Less Reserve for Bad Debts	20,000. 0. 0
Spare Parts Expenses	3. 19. 3	SUNDRY DEBTORS ON HIRING AGREEMENTS	43,002. 17. 10
Superannuation Fund	98. 11. 5	CASH ON HAND	82. 10. 0
Telephones	48. 10. 6	ENGLISH SCOTTISH AND AUSTRALIAN	
Tools	15. 2. 6	BANK LTD., (SOUTH MELBOURNE)	
Used Vehicle Purchases	330. 0. 0	SUNDRY DEBTORS AND PRE-PAYMENTS -	
Wages	155. 10. 6	Advertising	324. 11. 5
Workshop Expenses	77. 2. 1	Building Reinstatement	2,769. 12. 3
PROFIT AND LOSS APPROPRIATION ACCOUNT		& Restoration	20. 0. 0
		Capel Street Rent	1,050. 19. 4
		Spare Parts Purchases	4,165. 3. 0
			£ 469,727. 13. 10

I report that I have audited the books and accounts of MELFORD MOTORS PTY. LTD. for the year ended 30th June, 1949, and in my opinion the annexed Balance Sheet sets out a true and correct view of the position of the Company's affairs according to the best of my information and explanations given to me and as shown by the books.

(Signed) L. B. WALLACE, F.C.A. (Aust.)
Auditor.

Exhibits
A.2.

Annexures to
Mutual Admissions
of Fact (Part of
Exhibit "A.2")
Annexure 9
Melford Motors
Pty. Limited
Balance Sheet
as on
30th June, 1949.

ANNEXURE No. 12.

LETTER, J.V. RATCLIFFE TO L.B. WALLACE,
AND ENCLOSURES

JOHN V. RATCLIFFE.

A.P.A. Chambers,
53, Martin Place,
SYDNEY, N.S.W.
30th September 1949.

CONFIDENTIAL

Mr. L.B. Wallace,
Chartered Accountant (Aust.)
60, Collins Place,
MELBOURNE.

10

Dear Lionel,

re Ajax Insurance Co. Ltd. and other Companies

I am enclosing herewith five copies of the following documents relating to the Ajax Insurance Co. Limited, namely :

20

- (1) Memorandum of alterations to be made in the Articles of Association.
- (2) Memorandum of matters to be covered in the contract for the sale of the "A" shares.
- (3) Memorandum containing calculations of prices for the "A" shares and of the new Preference Capital to be issued.

Five copies of a memorandum similar to that referred to in 3 are also enclosed for Neal's Motors Pty. Ltd., Lane's Motors Pty. Ltd., and Melford Motors Pty. Ltd.

30

As regards these last mentioned Companies, I have not compiled a memorandum similar to 1 and 2 above, as these should be the same excepting that Mr. Bunny will have to keep in mind that in each of these cases, there are 5,000 Preference Shares, the rights of which must be preserved. Further the calculations which I have made disregard the dividends on these 5,000 Preference Shares, and, in fact the dividends on the "A" shares have been calculated to absorb the whole of the 1949 profits. I think that in order to avoid adjustment of the calculations including the prices for the "A" Shares etc., the simple way of making the adjustment will

40

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 12.

Letter,
J.V.Ratcliffe
to L.B.Wallace,
and enclosures.

30th September,
1949.

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

be to add to the 1950 interim dividends proposed to be paid by these Companies, an amount of £250 which will balance the part of the 1949 profits which will go to the holders of these Preference Shares. As regards the £250 for these Preference dividends for 1950, these will be paid in addition, when due, as the 1950 profits should, in every case, be exceeded by more than £250, the interim dividends proposed to be declared (after the addition of £250 in respect of the 1949 adjustment).

Annexure 12.

10

Letter,
J.V.Ratcliffe
to L.B.Wallace,
and enclosures.

I suggest that the figures be checked first as regards the amount of new capital to be issued and that you let me know as early as possible whether the amounts suggested by me are adequate or whether any amendment, by way of reduction or increase is desired. At this point, I think it is only necessary really to determine that the amounts to be applied for are adequate because, after the permission is granted, the Company concerned need not issue the full amount stated in the permit.

30th September,
1949 -
continued.

20

I will proceed with the completion of the draft applications to the Capital Issues Board but will await your reply before having these typed for signature.

With kind regards,
Yours truly,
(Sgd.) JOHN.

AJAX INSURANCE COMPANY LIMITEDMEMORANDUM OF ALTERATIONS TO BE MADE IN ARTICLES

30

(1) Nominal Capital

If this is not sufficient to cover an issue of 210,000 shares, it should be increased to permit of this issue.

(2) Divide present Ordinary Shares into "A" Shares and "B" Shares:

Provide that the "A" Shares shall have the following rights:

- (a) A preferential right to the whole of the dividends distributed by the Company (other than out of tax paid profits) until dividends totalling £7/12/6 per share have been paid.

40

- (b) A preferential right to dividends distributed out of tax paid profits until these amount to £1/7/6 per share.
- (c) No right to further participation in profits upon the satisfaction of rights (a) and (b), except a preferential dividend at the rate of 5% per annum, accruing as from the 1st January 1950 - such dividend to be cumulative.
- 10 (d) Upon liquidation of the Company, or upon a reduction of capital, a right to £1 per share in respect of capital, together with dividends unpaid and accrued due to date of repayment of the capital.
- (e) No alteration, modification or abrogation of rights of the "A" shares to be made, except with the consent of the holders of the "A" shares.

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 12.

Letter,
J.V. Ratcliffe
to L.B. Wallace
and enclosures.

30th September,
1949 -
continued.

(3) Restrictions on Transfer:

- 20 Restrictions on transfer (other than the general restriction which is necessary in a Proprietary Company) to be removed. If a Branch Register is set up it may be possible to remove the restrictions on transfer in a simple way by providing that the restrictions in the Articles shall not be applicable to shares on a Branch Register.

- 30 The new Preference Shares to be issued as a result of the new issue of capital are to rank after the "A" shares. The question of restriction on transfer on these shares will have to be dealt with also as, in the first place, they will be taken up by "P" and sold to the holders of the "B" shares. The suggestion previously made regarding the "A" shares being on a Branch Register and being exempted from the special restrictions in the Articles may meet the case of these shares also.

(4) Branch Register:

Provide for the setting up of a Branch Register. (The necessary Board Minutes setting up a Branch Register in the Federal Capital Territory at Canberra will also require to be drafted).

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 12.

Letter,
J.V.Ratcliffe
to L.B.Wallace
and enclosures.

30th September,
1949 -
continued.

AJAX INSURANCE COMPANY LIMITEDCONTRACT FOR SALE OF "A" SHARES

- (1) It is proposed that "P" Pty. Limited will purchase all the "A" shares from the present holders. After "P" Pty. Limited has received all the special dividends to which the "A" shares are entitled, that is, when the "A" shares become 5% Cumulative Preference Shares, "P" Pty Limited will sell such shares to "P" Investments Pty. Limited. 10
- (2) "P" Pty. Limited and "P" Investment Pty. Limited are to contract with the Vendors of the "A" shares that if they (the holders of the "B" shares) decide to convert the Company to a Public Company, then "P" Investments Pty. Limited will agree to the "A" shares being re-converted to Ordinary shares and will pay to the holders of the "B" shares, in proportion to the number of "B" shares which they hold as consideration for the change in the "A" (Preference) Shares to Ordinary Shares a sum arrived at by taking the net price which the selling broker or underwriter is willing to pay to the holders of the "B" Shares at the time of conversion and deducting therefrom the sum of 21/- per share and multiplying such difference by the number of "A" Shares. If the conversion is made after twelve months from the date of the Contract, the deduction previously mentioned is to be made at the amount of 21/6 per share. "P" Investments Pty. Limited is not to be bound by this undertaking unless the conversion is made within two years of the date of the contract. 20 30
- (3) The holders of the "B" Shares to undertake with "P" Investments Pty. Limited that if they do not convert the Company to a Public Company within a period of two years from the date of the contract, they will, within one month of being called upon by "P" Investments Pty. Limited, put the Articles of Association of the Company into such a form that they will meet the requirements of the Stock Exchange for a listing of the "A" Preference Shares. 40
- (4) Consider whether the "B" holders should be given the option in the event that they do not desire to carry out the requirements in (3)

of returning the "A" Preference capital. If this be inserted in the contract, "P" Investments Pty. Limited would necessarily be bound to consent to the return of capital.

- (5) "P" Pty. Limited undertakes that it will take up new Preference Shares to an amount of £170,000 and that immediately these shares are fully paid it will sell them to the holders of the "B" Shares in the proportions in which these persons hold the "B" Shares, provided that a holder of "B" Shares may nominate some other person to purchase his proportion of the new Preference Shares.

AJAX INSURANCE COMPANY LIMITED

- (1) Charge taxes paid during 1949 year against Taxation and General Reserve and/or charge part of provision for tax on 1949 profits against General Reserve, so as to leave profit of £72,800 for distribution. If accounts are closed this can be done by minute as at 1/7/1950.

(2) 1950 Estimate:

Bobarfields Ltd. 1949 Div.	£ 34,000
Bobs. 1950 Interim Div.	17,500
I.A.C. Div.	22,500
	<u>£ 74,000</u>
<u>Less</u> Interest	3,000
	<u>£ 71,000</u>
<u>Add</u> Trading	39,000
	<u><u>£110,000</u></u>

30 TAX CALCULATIONS:

1949

Taxable Income included net dividends of £41,505	£ 86,130
Tax provision	<u>15,530</u>
	<u>£ 72,800</u>
Reserve	<u>8,280</u>
Minimum Dividend	<u><u>£ 64,520</u></u>

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 12.

Letter, J.V.Ratcliffe to L.B.Wallace and enclosures.

30th September, 1949 - continued.

<u>Exhibits</u>	<u>1950</u>	<u>1950</u>		
A.2.		Taxable Income	£ 110,000	
Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")		includes net dividends of £71,000		
		Tax provision	11,500	
			£ 98,500	
		Reserve	10,850	
Annexure 12.		Minimum Dividend	£ 87,650	
Letter J.V.Ratcliffe to L.B.Wallace and enclosures.		Dividend from Reserves -		
		1948 - £ 3,500		
		1949 - 8,280	11,780	10
			£ 75,870	
30th September, 1949 - continued.		Declare, say,	£ 76,000	
		Total Dividends:		
		1949 - £ 64,520		
		1950 - 76,000		
		1948 and 1949 Reserves	11,780	
			<u>£152,300</u>	
	Saving in tax	--	£110,418 (£152,300 at 14/6 in £)	20
	Less Cost - See below	-	25,500	
			<u>£ 84,918</u>	
			Plus £500 adjustment in price, see letter -	
			£85,418.	
	Net Saving			
	Cost - Public Company Tax:			
	<u>1949</u>			30
	<u>Super Tax</u>			
	Taxable Income	-	£ 86,130	
	Less		5,000	
	1/- on		81,130	- £ 4,056
	<u>Tax on Undistributed Income:</u>			
	Taxable Income		£ 86,130	
	Less Ordinary Tax		13,330	
			£ 72,800	
	Less Super Tax at 1/-		4,057	
	2/- on		£ 68,743	- £ 6,874
			<u>£ 10,930</u>	40

<u>1950</u>	<u>Super Tax</u>		<u>Exhibits</u>
	1/- on £110,000, less £5,000	£ 5,250	A.2.
	<u>Tax on Undistributed Income:</u>		Annexures to Mutual
	Taxable Income	£110,000 -	Admissions of Fact (Part of Exhibit "A.2")
	Less Ordinary Tax	11,500	
		<u>£ 98,500</u>	
	Less Super Tax at 1/-	5,250	Annexure 12.
	2/- on	£ 93,250 -	
		<u>9,325</u>	
10		£ 14,575	Letter
	1949 -	£ 10,930	J.V.Ratcliffe
	1950 -	14,575	to L.B.Wallace
		<u>£ 25,505</u>	and enclosures.
	£7/12/6 per Share Taxable Dividends	£152,500	30th September,
	£1/ 7/6 Tax paid Dividends	<u>27,500</u>	1949 -
	£9/ 0/0 £9 per share on 20,000 Shares	£180,000	continued.
	<u>Add Capital</u>	<u>20,000</u>	
		£200,000	
	<u>Less P's Profit</u>	<u>25,500</u>	
20		<u>£174,500</u>	
	Price - £8/15/- per share	£175,000	
	(reduces P's profit to £25,000)		
	<u>Shares Converted:</u>		
	"A" Shares - one third of total		
	(£60,000) -	£ 20,000	
	<u>Capital:</u>		
	New Capital to be £210,000, made up of -		
30	(1) 40,000 new preference shares of £1 each taken up by present holders out of tax-free dividend of £40,000;		
	(2) 170,000 new preference shares of £1 each taken up by P. Pty. Ltd. and sold to present holders at £1. per share.		
	P to pay £175,000 leaving present holders with 5/- per share in cash.		
	P. Pty. Ltd. will have 20,000 "A" shares of £1 each and £5,000 in cash.		

<u>Exhibits</u>	<u>LANES MOTORS PTY. LIMITED (AND SUBSIDIARY)</u>		
A.2.	<u>1949</u>		
Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")	X Rebates on Commonwealth Loan Interest and Dividends, say, £1,246 allowed.	Taxable Income Tax Reserve Dividend	£372,610 110,287 X 262,323 27,232 <u>£235,091</u>
Annexure 12.			
	<u>1950</u>		
Letter J.V.Ratcliffe to L.B.Wallace and enclosures.		Estimated Taxable Income Tax Reserve Necessary Dividend	£250,000 74,750 175,250 18,525 <u>£156,725</u>
30th September 1949 - continued.		Less Reserves - 1948 - £14,500 1949 - £27,232	 41,732 <u>£113,993</u>
		Pay, say	<u>£125,268</u>
		Total Dividends :	
		1949 1950 Reserves	£235,000 125,268 41,732 <u>£402,000</u>
	Cost		
	<u>1949</u> - £372,610 less £5,000 at 1/-		£ 18,380
		£372,610	
	Less 6/-	<u>110,287</u>	
		£262,323	
	Less 1/-	<u>18,380</u>	
		£243,943 at 2/-	£ 24,394
			<u>£ 42,774</u>
	<u>1950</u> - £250,000 less £5,000 at 1/-		£ 12,250
		£250,000	
	Less 6/-	<u>74,750</u>	
		£175,250	
	Less 1/-	<u>12,250</u>	
		£163,000 at 2/-	£ 16,300
			<u>£ 28,550</u>
		Total Cost:	
		1949 1950	£ 42,774 28,550
			<u>£ 71,324</u>
<u>British Service.</u>	Tax-free Profits		£ 11,490

	<u>1949:</u>			
		Taxable Income	£	7,900
		Tax 5/- and 6/-		<u>2,126</u>
				5,784
		Reserve		<u>1,456</u>
		Dividend	£	<u>4,324</u>
	<u>Cost:</u>			
		Super Tax	£145	
		Part IIIA Tax	<u>£565</u>	
			<u>£710</u>	
10				
	<u>1950:</u>			
		Taxable Income	£	6,000
		Reserve Tax 5/- and 6/-		<u>1,550</u>
		Reserve		4,450
		Dividend		<u>1,110</u>
			£	<u>3,340</u>
	<u>Cost:</u>			
		Super Tax	£ 50	
		Part IIIA Tax	<u>440</u>	
			<u>£490</u>	
20				
		Total Dividends:		
		1949	£	4,324
		1950		<u>3,340</u>
			£	<u>7,664</u>
		say	£	8,000
		Tax saving	£	6,000
		Cost	£	1,200
		One-third of 237,321 Ordinary Shares -		
		79,107 "A" Shares		
30				
		Total Dividends:		
		Lane's Motors Pty. Ltd.	£402,000	
		British Service	<u>8,000</u>	
		Taxable Dividends	£410,000	
		Add Tax paid Dividend		
		(from British Service)	2,684	
		Capital	<u>79,107</u>	
			£491,791	
		Cost - Lane's Motors	£71,324	
		British Service	<u>1,200</u>	
			£ 72,524	
40				
		Net Price	£5/6/- per share	<u>£419,267</u>

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 12.

Letter
J.V.Ratcliffe
to L.B.Wallace
and enclosures.

30th September,
1949 -
continued.

<u>Exhibits</u>	<u>Tax Saving</u>		
A.2.		Taxable dividends	
Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")		£410,000	
		Less 1/4th	<u>102,500</u>
		Tax Liability	£307,500
		Less Cost	<u>72,500</u>
		Net Saving	<u>£235,000</u>
Annexure 12.		New Capital	£402,679
Letter J.V.Ratcliffe to L.B.Wallace and enclosures.		Company finds cash	<u>10,005</u>
		Dividends - Taxable & Tax Paid	<u>£412,684</u>
30th September, 1949 - continued.		"P" finds £6,583 being difference between £79,107 in shares and its profit of £72,524.	10
		Cash for shareholders:	
		From Company	£ 10,005
		From "P"	<u>6,583</u>
		Total	£ 16,588
		Capital after completion	
		A and B shares	£237,321
		New Preference	<u>402,679</u>
			£640,000
		Add present Preference Capital	<u>5,000</u> 20
			<u>£645,000</u>

NEAL'S MOTORS PTY. LTD. AND SUBSIDIARIES.Exhibits

A.2.

Neal's Motors Pty. Ltd.1949:

Taxable Income	£195,241
Less 6/-	57,705 X
X Rebate on Commonwealth Loan Interest and Divi- dends allowed for £618	
	<u>£137,536</u>

Reserve	<u>14,753</u>
Dividend	<u>£122,783</u>

10

1950:

Taxable Income	£195,241
Less 6/-	57,705
	<u>£137,536</u>
Reserve	<u>14,753</u>
	<u>£122,783</u>

Less 1948 Reserve £ 8,000	
1949 Reserve <u>14,753</u>	<u>£ 22,753</u>

Dividend	<u>£100,030</u>
----------	-----------------

20

Declaro, say, £100,000

Total Dividends :

1949	£122,783
1950	£100,000
Ex-Reserves 1948 & 1949	<u>22,753</u>
	<u>£245,536</u>

Check re Profit and Loss Appropria-
tion re past profits of £50,000 and
add if these taxable on distribution 50,000

£295,53630 Cost:

1949 £195,241, less £5,000 at 1/- 9,512

£195,241

Less 6/- 57,705

£137,536

Less 1/- 9,512 £128,024 at 2/- 12,802£ 22,314

TWO YEARS at £22,314

£ 44,628

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 12.

Letter
J.V.Ratcliffe
to L.B.Wallace
and enclosures.

30th September,
1949 -
continued.

<u>Exhibits</u>	<u>Overland (Victoria) Pty. Ltd.</u>		
A.2.	<u>1949:</u> (all dividend income)	<u>£25,909</u>	
Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")	Declare dividend	<u>£25,909</u>	
	Cost - £25,909, less £ 5,000 at 1/-	£ 1,045	
	£25,909		
	Less 1/-	<u>1,045</u>	
	£24,864 at 2/-	<u>£ 2,486</u>	
Annexure 12.		<u>£ 3,531</u>	
Letter J.V.Ratcliffe to L.B.Wallace and enclosures.	(Note: Profit and Loss balance of £14,899 for this Company cannot be used with advantage, as there is no Ordinary Tax which can be charged against it - see notes re Melford's Profit and Loss balance).		10
30th September, 1949 - continued.	<u>Devon Motors Pty. Limited</u>		
	<u>1948</u> Reserve £4,000		
	<u>1949</u> Taxable Income	£83,864	
	Tax	<u>24,950</u>	
		£58,914	
	Reserve	<u>6,891</u>	
	Dividend	<u>£52,023</u>	20
	<u>1950</u>		
	Estimated Taxable Income	£60,000	
	Tax	<u>17,750</u>	
		£42,250	
	Reserve	<u>5,225</u>	
	Dividend	£37,025	
	Less Reserves - 1948 - £ 4,000		
	1949 - <u>6,891</u>	<u>£10,891</u>	
	Necessary Dividend, say,	<u>£26,000</u>	
	Total Dividends :		
	1949	£52,000	30
	1950	£26,000	
	Ex-Reserves	<u>£11,000</u>	
		<u>£89,000</u>	

	1949: - £83,864 less £5,000 at 1/-	£ 3,943	<u>Exhibits</u>
	£83,864		A.2.
	Less 6/- 24,950		Annexures to
	£58,914		Mutual
	Less 1/- 3,943		Admissions of
	£54,971 at 2/-	£ 5,497	Fact (Part of
		£ 9,440	Exhibit "A.2")
			Annexure 12.
	1950 - £60,000 less £5,000 at 1/-	£ 2,750	Letter
	£60,000		J.V. Ratcliffe
10	Less 6/- 17,750		to L.B. Wallace
	£42,250		and enclosures.
	Less 1/- 2,750		30th September,
	£39,500 at 2/-	£ 3,950	1949 -
		£ 6,700	continued.
	Total Cost:		
	1949	£ 9,440	
	1950	£ 6,700	
		£16,140	
	<u>Summary:</u>		
20	Neal's Motors Pty. Limited	£245,536	
	Overland (Victoria) Pty. Ltd.	25,909	
	Devon Motors Pty. Limited	89,000	
		£360,446	
	Neal's Motors Profit and Loss Balance	50,000	
	Total taxable dividends	£410,445	
	Reduce to	£409,995	
	"A" Shares 36,444 - one third of		
	Ordinaries - 109,332.		
	<u>Price Calculations:</u>		
30	(£11/5/- per share) Taxable		
	dividends	£409,995	
	16/8 " " Tax paid		
	dividends	£ 30,374	
		£440,369	
	Add Capital	36,444	
		£476,813	
	Less Cost - "P's" Profit:		
	Neal's	£44,628	
	Overland	3,531	
40	Devon	16,140	£ 64,259
			£412,554
	36,444 shares at £11.6.4.		
	per share		£412,425

<u>Exhibits</u>	"P" receives in shares	36,444	"A" Shares	
A.2.	"P" receives in cash	£440,389		
Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")	"P" pays in cash	£412,425		
Annexure 12.	Net Cash	£ 27,944		
Letter J.V.Ratcliffe to L.B.Wallace and enclosures.	Add Shares	36,444		
30th September, 1949 - continued.	<u>Total</u>	£ 64,388		
	(Excess £129)			
	<u>Saving:</u>			
	Taxable dividends	£409,995		
	Tax at 15/- in the £	£307,500	10	
	Less Cost	64,388		
	Net Saving	£243,112		
	<u>Note re Declaration of Dividends:</u>			
	As in the case of Melford, the Profit and Loss balance of £50,000 will not be distributed as a dividend out of past profits but the 1950 interim dividend will be increased from £100,000 to £150,000. The tax provision will then be made out of the Profit and Loss balance and the dividend being paid out of the taxable income, any excess distribution can be carried forward against 1951.		20	
	<u>New Capital to be issued :</u>			
	Payments to holders as price of "A" shares	£412,425		
	Apply for, say	405,668		
	Add present	109,332	30	
	" Present Preference Shares	£515,000		
		5,000		
	Total	£520,000		
	<u>Note:</u> Suggest issue only 403,314 (or some lesser number) and leave shareholders with at least £9,111 in cash, equal to 5/- per share sold.			
	Total cash withdrawn:			
	Shareholders	£ 9,111		
	"P" Pty. Ltd.	27,944	40	
		£37,055		

MELFORD MOTORS PTY. LIMITEDExhibits

	<u>1949</u>	Taxable Income	£138,229	A.2.
		Tax	<u>41,000</u>	Annexures to
			£ 97,200	Mutual
		Reserve	<u>10,720</u>	Admissions of
		Dividend	£ 86,480	Fact (Part of
				Exhibit "A.2")
	<u>1950</u>	Estimated Taxable Income	£120,000	Annexure 12.
		Tax	<u>35,750</u>	Letter
			£ 84,250	J.V.Ratcliffe
		Reserve	<u>9,425</u>	to L.B.Wallace
		Dividend	£ 74,825	and enclosures.
10		<u>Less</u> Reserves 1948 - £ 6,100		30th September,
		1949 - 10,720	<u>16,820</u>	1949 -
			<u>£ 58,000</u>	continued.
		<u>Total Dividends:</u>		
		1949	£ 86,480	
		1950	58,000	
		Ex-Reserves	<u>16,820</u>	
			<u>£161,300</u>	
		£19/11/- per share - increase to	£161,348	
		£3/-/- per share - add Tax Paid	<u>24,759</u>	
20		£22/11/-	£186,107	
		£1/-/- per share Capital	<u>8,253</u>	
			£194,360	
		P's Profit (see below)	<u>29,300</u>	
		P's - to £20 per share	£165,060	
		"P" receives 8,253 shares and		
		£21,044 in cash - Total £29,297		
		Calculation of "P's" profit		
	<u>1949</u>	Taxable Income £138,229 - 5,000		
		at 1/-	£ 6,661	
		£138,229		
30		Loss Ord.Tax <u>41,000</u>		
		£ 97,200		
		Loss Super		
		Tax 6,661 £90,539 @ 2/-	<u>9,053</u>	
			£ 15,714	

<u>Exhibits</u> A.2.	<u>1950:</u> Taxable Income £120,000	5,000 @ 1/- £ 5,750	
Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")	£120,000 Less Ord. Tax <u>35,750</u> £ 84,250	<u>5,750</u>	78,500 @ 2/- <u>7,850</u> £ 13,600
Annexure 12.	<u>Total:</u> 1949		15,714
Letter J.V.Ratcliffe to L.B.Wallace and enclosures.	1950		<u>13,600</u> <u>£ 29,314</u>

30th September,
1949 -
continued.

Note: Profit and Loss Appropriation of £32,000 odd from past years - taxable if distributed - subject to check on this, adjust and reduce Bad Debt reserves so as to increase this balance to £33,012 - to £4 per share. This will increase taxable dividends by £4 per share and price by same amount. However, the extra distribution will not be made out of past profits as such. The £33,012 will be added to the proposed interim dividend of £58,000 out of 1950 profits. When the 1950 accounts are prepared the tax provision will be made out of the £33,012 first. Thus the £58,000 and the £33,012 will be paid out of 1950 taxable income and any excess over the minimum distribution required will be carried forward to 1951.

Tax Saving:

Total Dividends (taxable)		
As before	£161,348	
Add	<u>33,012</u>	
	£194,360	30
Tax at 15/- in £ -	£145,770	
Less Cost	<u>29,297</u>	
	<u>£116,473</u>	

If the £33,012 cannot, upon investigation be distributed net saving will be reduced to £101,714.

New Preference Shares to be issued:

Price to holders	£165,060
Less £1 per share cash to be retained	<u>8,253</u>
	£157,807
Add Profit and Loss Balance	<u>33,012</u>
	<u>£190,819</u>
Apply for permit to issue 200,000 new preference shares, but issue only 190,819.	
The Company will have to find in cash :	
For "P" Pty.	£ 21,044
For present holders	<u>8,253</u>
	<u>£ 29,297</u>
"P" Pty. will hold 8,253 "A" Shares of £1 each and cash of £21,044.	

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2") Annexure 12.

Letter J.V.Ratcliffe to L.B.Wallace and enclosures.

30th September, 1949 - continued.

10

A N N E X U R E NO. 14.

Annexure 14.

LETTER L.B. WALLACE TO THE COMMONWEALTH ACTUARY,
CAPITAL ISSUES BOARD.

13th October, 1949

20 The Commonwealth Actuary,
Capital Issues Board,
Barton, CANBERRA A.C.T.

Letter L.B.Wallace to the Commonwealth Actuary, Capital Issues Board.

13th October, 1949.

Dear Sir,

RE LANE'S MOTORS PTY. LTD.

30

I enclose herewith application by the above Company for consent to issue 402,679 5% Cumulative Preference Shares of £1 each. It is proposed that these shares shall be taken up by the shareholders and paid for by them out of funds obtained through the declaration by the Company of tax free and taxable dividends or in part by the use of dividends previously declared and still owing.

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Exhibit "A.2")

Annexure 14.

In this latter connection, reference to the Balance Sheet as at the 30th June, 1949, will show that nearly the whole of the amount of the dividend declared last year on the Ordinary Shares (total £111,500) is still owing to the shareholders. In addition to the amounts appearing in the Profit and Loss Appropriation Account, the Company will receive tax free and taxable dividends from its subsidiary companies which will also be available for redistribution.

10

Letter
L.B. Wallace
to the
Commonwealth
Actuary,
Capital Issues
Board.

13th October,
1949 -
continued.

The Company does not wish to directly capitalise any profits but prefers to declare dividends and allow the shareholders to make application for the shares and use the funds from the dividends to pay for them. (This procedure is essential in regard to any shares which may be taken up and paid for by the application of dividends already declared). Therefore, your consent is desired to the issue of the 402,679 shares to be paid for with cash provided by tax free and taxable dividends declared or to be declared by the Company.

20

As in the case of the Ajax Insurance Co. Limited, the reason for the issue of Preference Shares rather than Ordinary Shares is that I have been verbally advised that there is some technicality in connection with Gift Duty which renders it advisable for a Private Company such as this to issue shares which are obviously not worth more than par, and thus avoid any question arising on this point.

30

Awaiting the favour of your early reply.

I am,
Yours truly,
(Sgd.) L.B. WALLACE.

Annexure 15.

Application by
Lane's Motors
Pty. Limited
for consent to
issue capital.

October 1949.

A N N E X U R E NO. 15.

APPLICATION BY LANE'S MOTORS PTY. LIMITED
FOR CONSENT TO ISSUE CAPITAL

NATIONAL SECURITY (CAPITAL ISSUES) REGULATIONS.

APPLICATION FOR CONSENT TO ISSUE CAPITAL

This application, relating to a matter which, under the National Security (Capital Issues) Regulations,

40

requires the Treasurer's consent, should, when completed, be forwarded to the Commonwealth Actuary, Capital Issues Control, Barton, Canberra, A.C.T.

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 15.

Application by Lane's Motors Pty. Limited for consent to issue capital.

October 1949 - continued.

1. Name and address of Applicant (i.e., Solicitor, Accountant or other person to whom reply is to be sent). Henry J. Lane,
Director, Lane's Motors Pty. Limited
C/- L.B. Wallace,
Chartered Accountant (Aust.)
60, Collins Place, MELBOURNE, VICTORIA.

10

2. Particulars of Company -

- (a) Name of Company. Lane's Motors Pty. Ltd.
(b) Address. 89, Exhibition Street, Melbourne, Victoria.
(c) Date and State of registration. 8th May, 1916 - Victoria.
(d) The nature of Company's business. Motor Car Distributors.

20

- (e) Are the Company's shares listed on a Stock Exchange? No.
If so, give current market quotation for Buyer - Seller
(f) Is it proposed to apply for listing of the Company's Shares? No.
(g) Has a previous application been made under the Regulations? No.
If so, the reference number should be quoted C.I. No.

30

- (h) Give particulars of issues made and calls on the company's share capital since 13th October 1939.
- | | | | |
|-----------|--------|-------|-------------------|
| 20/12/46) | 5,000 | £1 5% | Preference Shares |
|) | 5,000 | £1 | Ordinary Shares. |
| 22/12/47 | 10,000 | £1 | Ordinary Shares. |
| 22/12/48 | 2,800 | £1 | Ordinary Shares. |

Directors -

	<u>Name</u>	<u>Occupation</u>	<u>Address</u>
40	Nathan, Robert	Warehouseman.	Windsor Hotel, Spring Street, Melbourne, Vic.
	Newton, Lionel	"	44, Hopetoun Road, Toorak, Vic.
	Newton, Lauri Joseph	"	4, Hamilton Road, Malvern, Vic.

4. If any preference shares are included in the above statement full particulars of all dividend rights and privileges attaching to such shares should be stated

Five per cent cumulative.

The voting powers and privileges of each class of shareholders should also be defined

One vote for each share.

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A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 15.

Application by Lane's Motors Pty. Limited for consent to issue capital.

October 1949 - continued.

Note. "Preference share" means a share of a company, whether described as a preference share or otherwise, the owner of which is or may be entitled to a dividend preferential to the dividend payable on any other type of share issued by that company or which that company has power to issue and "preference Stock" has a corresponding meaning.

5. State fully the purposes of the proposed issue and how the moneys raised will be used. If it is proposed to capitalise any account state the name of the account and when and from what source it arose, and whether income tax has been paid thereon.

For the Company's business as the present paid-up capital is inadequate. It is not intended to capitalise any account but is intended to distribute tax paid and taxable dividends at least equal to the amount to be paid on the new shares.

6. (a) Is it proposed to acquire any business or to take over any assets or liabilities? No.

(b) If so, give a brief history of such business and support it with certified copies of the last three Balance Sheets and Trading and Profit and Loss Accounts issued, or such as have been issued, if the business has been in existence less than three years. A list should be attached showing the value of the assets and liabilities to be taken over, as certified by the Auditors. Goodwill, or other intangible assets, should be shown separately.

7. (a) Are any payments in cash, fully or partly paid shares, debentures royalties, etc. to be made to Vendors? Not applicable

(b) If so, give particulars " "

- | | |
|--|---|
| <p><u>Exhibits</u></p> <p>A.2.</p> <p>Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")</p> <p>Annexure 15.</p> <p>Application by Lane's Motors Pty. Limited for consent to issue capital.</p> <p>October 1949 - continued.</p> | <p>8. State -</p> <p>(a) Whether the shares will be issued to the public or otherwise and whether at a premium or par. No.</p> <p>(b) Amount paid or to be paid to any promoter (Also state his name and address) £ in cash
£ in shares
Not applicable.</p> <p>(c) Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures of the Company - 10</p> <p style="padding-left: 40px;">Not applicable Amount paid £
Amount payable £</p> <p style="padding-left: 40px;">or</p> <p style="padding-left: 40px;">Particulars of any underwriting or brokerage charges, and the name of the underwriter.</p> |
| | <p>9. Give a brief history of the Company and support it with - 20</p> <p>(a) certified copies of the last two Balance Sheets and Trading and Profit and Loss Accounts issued, and</p> <p>(b) copy of the Memorandum and Articles of Association. If this has been previously supplied, and remains unaltered, a further copy is not required.</p> <p>Since 1916 has imported and sold Motor Vehicles and spare parts. Present franchises are all Chrysler Lines and all Morris Lines 30</p> <p>(a) and (b) - These are attached.</p> |
| | <p>10. If any mortgages or charges are to be issued particulars should be given in a separate statement of the capital consideration, the rate of interest, the term of the mortgage, the name of the mortgagee, a brief description of the assets to be charged, and the purposes for which the moneys raised are to be applied. 40</p> <p style="text-align: right;">Not applicable.</p> |
| | <p>11. General -</p> <p>As much further information as is available should be supplied hereunder, regarding the</p> |

following and other relevant matters -

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 15.

Application by Lane's Motors Pty. Limited for consent to issue capital.

October 1949 - continued.

- (a) Whether it is proposed to erect or convert any premises and, if so, the probable cost and date of completion. If a building permit is held, give number and amount.
- (b) If it is proposed to purchase plant or machinery, state its value, when and from what country it can be obtained.
- 10 (c) The estimated number of persons to be employed directly by the Company, subdivided into males and females, skilled and unskilled.
- (d) Whether the Company will have to import any raw materials and, if so, the nature, source and estimated annual volume and value.
- (e) Whether the Company proposes to manufacture articles which, up to the present, have been mainly imported into Australia.
- 20 (f) The extent to which the Company is engaged in export trade.

Not applicable. Please refer to covering letter.

I HEREBY CERTIFY that the foregoing statements are true and correct in every particular.

Dated this day of October, 1949

Signature (Sgd.) H.J. Lane.

Note. Regulation 24 of the National Security (Capital Issues) Regulations reads as follows -

30 "A person shall not make to the Treasurer, or to any officer having duties connected with applications under any of these Regulations, any statement whether oral or in writing, relating to any matter dealt with under these Regulations which he knows to be untrue in any particular or which is made by him without his having first made proper inquiries to ascertain the truth thereof."

- - - - -

By Authority: L.F. Johnston,
Commonwealth Government Printer,
Canberra.

Exhibits

A.2.

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Fact (Part of
Exhibit "A.2")

Annexure 20.

Consent by
Delegate of
Treasurer to
Issue of
Capital by
Lane's Motors
Pty. Limited.

17th November,
1949.

ANNEXURE No. 20.

CONSENT BY DELEGATE OF TREASURER TO ISSUE OF
CAPITAL BY LANE'S MOTORS PTY. LIMITED

C.I. No. 33148

COMMONWEALTH OF AUSTRALIA

Department of the Treasury,
Canberra A.C.T.

National Security (Capital Issues) RegulationsC O N S E N T

In pursuance of the powers conferred by the
National Security (Capital Issues) Regulations I,
the Delegate of the Treasurer of the Commonwealth
of Australia, hereby consent to LANE'S MOTORS
PROPRIETARY LIMITED making an issue of authorised
capital within a period of Six (6) months from the
date of this consent by the issue at par of not
more than Four hundred and two thousand six hundred
and seventy-nine (402,679) Five per cent (5%) Non-
participating Cumulative Preference Shares of a
nominal value of One pound (£1) each for cash sub-
scription, subject to the following special con-
ditions :-

10

20

1. The authorised issue to be made privately.
2. No underwriting commission or brokerage shall be payable in respect to any shares issued in pursuance of this consent.

Dated this Seventeenth day of November, 1949.

(Sgd.) G. Hunter,
Delegate of the Treasurer
of the Commonwealth of Australia.

30

H.J. Lane, Esq., Director
Lane's Motors Pty. Ltd.,
c/- L.B. Wallace, Esq.,
60, Collins Place, MELBOURNE, VIC.

In connection with the above Authority for an ac-
tion requiring the consent of the Treasurer, atten-
tion is directed to Regulation 22(2) of the National
Security (Capital Issues) Regulations, which reads
as follows :-

"A company, body or any person on its behalf, which or who makes any intimation, whether orally, in writing or in any other way, of the fact of the Treasurer's consent to an application under these Regulations or the previous Regulations shall include in the intimation a statement in the following terms or in terms of the like effect:

10 "The fact that the Treasurer of the Commonwealth has consented to (here insert particulars of the matters consented to by the Treasurer) is not to be taken in any way as a guarantee of the actual or probable financial stability or success of the company (or society, club, association or body, as the case may be)"

20 The Commonwealth Treasurer's approval in this case is necessary under the National Security (Capital Issues) Regulations, and is a war time measure. Such approval has been given on the undertaking that all the conditions pertaining to the issue of capital as set out on the application will be observed and should not be interpreted as carrying any direct or implied undertaking relating to tariff protection, bounties, or any other form of Government assistance now or hereafter.

A N N E X U R E NO. 23.

RESOLUTION OF EXTRAORDINARY GENERAL MEETING OF LANE'S MOTORS PTY. LIMITED AMENDING ARTICLES OF ASSOCIATION.

30 THAT the Articles of Association of the Company be amended as follows :-

1. DELETE ARTICLE 8 AND SUBSTITUTE THE FOLLOWING ARTICLE:

40 8. The capital of the Company is Seven hundred and fifty thousand pounds divided into Seven hundred and fifty thousand shares of One pound each. Seventy nine thousand one hundred and seven of such shares shall be known as "A" Ordinary shares Two hundred and twenty thousand eight hundred and ninety three of such shares shall be known as "B" ordinary

Exhibits
A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 20.

Consent by Delegate of Treasurer to Issue of Capital by Lane's Motors Pty. Limited.

17th November, 1949.

Annexure 23.

Resolution of Extraordinary General Meeting of Lane's Motors Pty. Limited, amending Articles of Association.

14th December, 1949.

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shares Five thousand of such shares shall be known as "A" preference shares and Four hundred and forty five thousand of such shares shall be known as "B" preference shares. Each such class of shares shall have the respective rights hereinafter set out as applicable to each class of share respectively.

Annexure 23.

2. BY THE ADDITION OF THE FOLLOWING ARTICLES:

Resolution of
Extraordinary
General Meet-
ing of Lane's
Motors Pty.
Limited,
amending
Articles of
Association.

14th December,
1949 -
continued.

8A. The shares of the Company which prior to the 10
Eighteenth day of November One thousand nine
hundred and forty nine were identified as Num-
bers 1 to 57724 (inclusive) 106508 to 110370
(inclusive) 134762 to 136121 (inclusive) 144713
to 146303 (inclusive) 156352 to 157942 (inclus-
ive) 167991 to 169581 (inclusive) 179630 to
181220 (inclusive) 191269 to 195131 (inclusive)
and 219522 to 225454 (inclusive) shall be "A"
ordinary shares, the shares of the Company
which prior to the said Eighteenth day of Novem- 20
ber One thousand nine hundred and forty nine
were identified as Numbers 57725 to 106507
(inclusive) 110371 to 134761 (inclusive) 136122
to 144712 (inclusive) 146304 to 156351 (inclus-
ive) 157943 to 167990 (inclusive) 169582 to
179629 (inclusive) 181221 to 191268 (inclusive)
195132 to 219521 (inclusive) and 225455 to
237321 (inclusive) shall be "B" ordinary shares
and the shares of the Company which prior to 30
the said Eighteenth day of November One thousand
nine hundred and forty nine were known as Pref-
erence shares will be "A" preference shares.

8B. "A" preference shares shall be entitled to
the rights set out in Article 11A.

8C. Subject always to the rights of the "A"
preference shares "A" ordinary shares shall be
entitled :-

(a) to the whole of the dividends declared by
the Company on or after the Fourteenth day of 40
December One thousand nine hundred and forty
nine until such dividends in the aggregate
amount to not less than the sum of Five pounds
fifteen shillings and ten pence in respect of
each "A" ordinary share of which sum not less
than two shillings and two pence per share

shall have been paid in such manner and out of such income profits dividends or amounts as to entitle the holder for the time being of each of the said shares to the rebate provided for by Section 107 of the Income Tax Assessment Act 1936-1948 but save as provided by paragraph (b) of this Article the holders of the said "A" Ordinary shares shall not be entitled to any further participation in profits:

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A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 23.

(b) to a fixed cumulative preferential dividend (payable half-yearly on the Thirtieth day of June and the Thirty first day of December in each year) at the rate of Five pounds per centum per annum computed from the First day of January One thousand nine hundred and fifty on the capital for the time being and from time to time paid up thereon:

Resolution of Extraordinary General Meeting of Lane's Motors Pty. Limited, amending Articles of Association.

(c) in a winding up to rank in priority to all other shares of the company for payment of all arrears of dividend (whether earned declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon and for payment in respect of each share of a sum equal to the difference (if any) between the aggregate of all dividends received by the holder of each "A" ordinary share pursuant to paragraph (a) of this Article and the sum of Five pounds fifteen shillings and ten-pence but without any other right to further participation in profits or assets of the Company.

14th December, 1949 - continued.

(d) to the same rights as the holders of "B" ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending all general meetings of the Company;

(e) to the same rights as the holders of "B" ordinary shares as regards voting at general meetings and at polls until the dividends mentioned in sub-paragraph (a) of this Article have been received and thereafter if at any time and so long as the said fixed cumulative preferential dividend shall remain unpaid for six calendar months after any half-yearly date for payment thereof, or on any proposition or

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Resolution of
Extraordinary
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ing of Lane's
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continued.

resolution for the purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any question directly affecting the rights or privileges attached to the "A" ordinary shares.

8D. The "B" preference shares and any other preference shares issued pari passu therewith shall confer on the holders thereof the following rights and privileges and shall be subject to the following conditions:

10

(a) the right subject to the rights of the "A" preference shares and the "A" ordinary shares respectively to a fixed cumulative preferential dividend payable half-yearly on the Thirtieth day of June and the Thirty first day of December in each year at the rate of Five pounds per centum per annum on the capital for the time being and from time to time paid up thereon;

(b) the right to rank for payment of the said fixed cumulative preferential dividend in priority to all other shares of the Company other than the "A" preference shares and the "A" ordinary shares respectively;

20

(c) the right in a winding up to rank in priority to all other shares of the Company (other than the "A" preference shares and the "A" ordinary shares respectively) for payment of all arrears of dividend (whether earned or declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon but without any other right to further participation in profits or assets of the Company;

30

(d) the same rights as the holders of "B" ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending at all general meetings of the Company;

(e) the same rights as the holders of "B" ordinary shares as regards voting at general meetings and at polls if at any time and so long as the said fixed cumulative preferential dividend shall remain unpaid for six calendar months after any half-yearly date for payment

40

thereof or on any proposition or resolution for the purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any question directly affecting the rights or privileges attached to the preference shares;

10 (f) no shares shall be issued hereafter ranking in priority to the said "B" preference shares but the Directors may from time to time issue further preference shares at any rate of dividend not exceeding Five per centum per annum and ranking pari passu with the said "B" preference shares.

SE. The rights privileges and conditions conferred by or attached to "A" ordinary shares and to preference shares respectively shall not be varied modified altered added to or abrogated excepting in the manner provided by Section 61 of the Companies Act 1938.

20 SF. Clause 4 of Table A shall not apply.

30 SG. So long as the capital is divided into different classes of shares none of the rights and privileges attached to any class may be modified abrogated altered or varied in any way and no payment of capital in respect of "A" ordinary shares or of preference shares shall be made unless such repayment of capital or alteration modification abrogation or variation of rights is agreed to by a resolution of the holders of at least three-fourths of the issued shares of the class present in person or by proxy at a special meeting of such holders called for the purpose and the provisions hereinafter contained as to general meetings shall mutatis mutandis apply to every such meeting PROVIDED HOWEVER that in the event of the necessary majority not having been obtained in the manner aforesaid consent in writing may be secured from members holding at least three-fourths of the issued shares of the class and such consent if obtained within two months from the date of the said special meeting shall have the validity of a resolution carried by vote in person or by proxy at a special meeting as aforesaid. The provisions hereinafter contained as to general meetings and proxies shall mutatis mutandis apply to

40

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 23.

Resolution of Extraordinary General Meeting of Lane's Motors Pty. Limited, amending Articles of Association.

14th December, 1949 - continued.

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Admissions of
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Annexure 23.

Resolution of
Extraordinary
General Meet-
ing of Lane's
Motors Pty.
Limited,
amending
Articles of
Association.

14th December,
1949 -
continued.

every such meeting with the exception that a quorum at any such meeting shall be a member or members holding or representing by proxy three-fourths of the nominal amount of the issued shares of the class.

8H. Article 18 of Table A shall be amended by adding at the end thereof the following words: "excepting in regard to the right to receive dividends in respect of any share mentioned in a properly executed transfer where such transfer and the relevant share certificate shall have been handed to, noted by and retained by a Director or the Secretary of the Company or any person appointed under Article 47A to exercise the powers of an authority within the meaning of such Article (hereinafter called such authority) in which event the transferee mentioned in such transfer shall be entitled to receive all dividends declared by the Company on or after the date that such transfer and share certificate shall have been handed to, noted by and retained by such Director or the Secretary of the Company or such authority"

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2A. BY ADDING THE FOLLOWING ARTICLES:

23A. Article 42 of Table A shall not apply.

23B. The Directors notwithstanding Article 10 may before the issue of any new shares determine that the same or any of them shall be offered in the first instance and either at par or at premium to all the then holders of any class of shares in proportion to the amount of capital held by them or make any other provisions as to the issue and allotment of the new shares. In every case where new shares are offered to existing shareholders fractional rights shall be dealt with in such manner as the Directors may determine.

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23C. Article 60 of Table A shall not apply but the following Article shall be substituted: Subject to any restriction from time to time affecting any class or classes of shares on a show of hands every member present in person or by proxy shall have one vote and upon a poll every member present in person or by proxy shall have one vote for every share held by him.

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3. ARTICLE 48:

Insert "territory (including the Australian Capital Territory or any other Territory of the Commonwealth of Australia)" before the word "state" wherever the same appears.

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

4. AFTER ARTICLE 47 INSERT THE FOLLOWING ARTICLE:

10 47A. The Company may cause to be kept in any country state colony territory or place outside Victoria including the Australian Capital Territory or any other Territory of the Commonwealth of Australia a branch register and such power may be exercised by the Directors. The Directors may from time to time allocate or transfer any share or shares to any such branch register. The Directors may subject to Section 104 of the Companies Act 1938 make such provisions as they think fit respecting the keeping of any branch register and may notwithstanding any other provisions of the Articles but subject to Section 32 of the Companies Act 1938 determine the manner in which certificates for shares on the branch register may be sealed and signed or may authorise the issue of an official seal of the company for use in any country state colony territory or place outside Victoria and determine by whom the same shall be affixed to any certificates deed or other document executed by the Company and the Directors may from time to time appoint such person or persons or any corporation (hereinafter referred to as the "Authority") as they shall think fit in any place in which a branch register is kept to approve or reject transfers and to direct the registration of approved transfers in the branch register of such place and every such Authority may in respect of transfers or other entries proposed to be registered in the Branch Register for which such Authority is appointed exercise all the relevant powers of the Directors in the same manner and to the same extent and effect as if the Directors themselves were actually present in the place and exercised the same.

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Annexure 23.

Resolution of Extraordinary General Meeting of Lane's Motors Pty. Limited, amending Articles of Association.

14th December, 1949 - continued.

5. ARTICLE 49:

Insert "Territory" before "country".

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 23.

Resolution of
Extraordinary
General Meet-
ing of Lane's
Motors Pty.
Limited,
amending
Articles of
Association.

14th December,
1949 -
continued.

6. ARTICLE 57:

Insert after the word "person" where it first occurs "holding "B" ordinary shares"

7. ARTICLE 59:

(a) After the words "member of the Company" insert "holding "B" ordinary shares"

(b) Delete "do retire from the Company" and insert "be required to serve a transfer notice pursuant to Article 15 in respect of the "B" ordinary shares held by such member"

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8. BY ADDING THE FOLLOWING ARTICLE:

70A. Article 98 of Table A shall not apply.

9. DELETE ARTICLE 71 AND SUBSTITUTE THE FOLLOWING ARTICLE:

71. As to any profits of the Company which the Company may determine to distribute on the recommendation of the Directors and subject to such preferential rights as may be attached to shares in pursuance of these Articles, the Directors shall apply the same first in paying the preferential dividend or dividends on any shares having preferred or special rights and then in paying a dividend on the capital paid up or credited as paid up from time to time on the "B" ordinary shares to the holders of such "B" ordinary shares.

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10. DELETE ARTICLE 73 AND SUBSTITUTE THE FOLLOWING ARTICLE:

73. A transfer executed in accordance with these Articles which with the relevant share certificate shall have been handed to noted by and retained by a Director or the Secretary of the Company - or such authority - shall pass the right to any dividend declared on or subsequent to the date that such transfer and share certificate shall have been handed to noted by and retained by such Director or the Secretary of the Company or such authority.

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11. DELETE ARTICLE 75 AND SUBSTITUTE THE FOLLOWING ARTICLE:

10 75. If the Company shall be wound up and the assets available for distribution among the members as such shall be insufficient to repay the whole of the paid up capital such assets shall subject to the rights of preferential shareholders (if any) be distributed so that as nearly as may be the losses shall be borne by the members holding "B" ordinary shares in proportion to the capital paid up or which ought to have been paid up at the commencement of the winding up on the shares held by them respectively And if in a winding up the assets available for distribution among the members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding up the excess shall be distributed amongst the members holding "B" ordinary shares in proportion to the capital at the commencement of the winding up paid up or which ought to have been paid up on the shares held by them respectively but nothing in this Clause contained shall increase or reduce the rights of the holders of shares issued with any special conditions attached thereto or affecting the same.

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A N N E X U R E NO. 24.

30 OPTION GRANTED TO PACTOLUS PTY. LIMITED BY LAURI JOSEPH NEWTON IN RESPECT OF "A" ORDINARY SHARES IN LANE'S MOTORS PTY. LIMITED

40 THIS INDENTURE made the 15th day of December One thousand nine hundred and forty nine B E T W E E N LAURI J. NEWTON of 4 Hamilton Road, Malvern in the State of Victoria (hereinafter called the shareholder) of the first part PACTOLUS PROPRIETARY LIMITED of 53 Martin Place, Sydney in the State of New South Wales (hereinafter called the Purchaser) of the second part and DONALD HUGH ROSS of 60 Collins Place Melbourne in the State of Victoria Secretary (hereinafter called the Agent) of the third part W H E R E A S the shareholder is registered as

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 23.

Resolution of Extraordinary General Meeting of Lane's Motors Pty. Limited, amending Articles of Association.

14th December, 1949 - continued.

Annexure 24.

Option granted to Pactolus Pty. Limited by Lauri Joseph Newton in respect of "A" Ordinary Shares in Lane's Motors Pty. Limited.

15th December, 1949.

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 24.

Option granted
to Pactolus
Pty. Limited
by Lauri Joseph
Newton in
respect of "A"
Ordinary Shares
in Lane's
Motors Pty.
Limited.

15th December,
1949 -
continued.

the holder of 5,024 "A" Ordinary shares (hereinafter called the said shares) in the undertaking known as LANE'S MOTORS PTY. LTD. (hereinafter called the Company) a Company incorporated in the State of Victoria AND WHEREAS the shareholder has agreed to give to the Purchaser an option to purchase the said shares upon the terms and conditions hereinafter appearing NOW THIS INDENTURE WITNESSETH as follows :-

1. THE shareholder hereby grants to the Purchaser an option to purchase the said shares upon the following term and conditions :-

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(a) The said option shall be exercised by the giving by the Purchaser to the Agent as agent for the shareholder of a notice in writing exercising the said option on or before the Thirty first day of December One thousand nine hundred and forty nine;

(b) Within twenty four hours of the exercise of the said option the Purchaser shall pay to the Agent (who shall receive the same as agent for the shareholder) an amount equal to Five pounds Sixteen shillings for each of the said shares (which amount is hereinafter referred to as the "purchase price");

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(c) Upon receipt by the Agent of the purchase price the Agent shall complete (by including therein the amount of the purchase price and the name of the Purchaser as the transferee) a transfer of the said shares signed in blank by the shareholder in anticipation of the exercise of the said option and shall hand the said transfer and the Scrip for the said shares to the Purchaser and the Purchaser shall thereupon be entitled to produce the said transfer and the relevant Scrip to the Company or a Director or Secretary thereof and to apply for registration of the said transfer and the shareholder shall use the best endeavours of the shareholder to ensure that the said transfer shall be registered by the Company;

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2. THE shareholder hereby authorises the Agent to receive the purchase price on behalf of the shareholder and to give a valid receipt therefor, on receipt thereof to complete the transfer of shares as aforesaid and to hand the same and the

Scrip for the said shares to the Purchaser

IN WITNESS whereof the Shareholder has executed these presents the day and year first hereinbefore written

SIGNED SEALED AND DELIVERED)
by the Shareholder in the presence of :- LAURI NEWTON

M. R. Crawford.

PACTOLUS PTY. LIMITED hereby exercises this option
10 19th Decr., 1949.

PACTOLUS PTY. LIMITED

J.V.Ratcliffe

Director.

ANNEXURE NO. 25.

LETTER, LANE'S MOTORS PTY. LIMITED TO
PACTOLUS PTY. LIMITED.

16th December, 1949.

The Secretary,
Pactolus Pty. Ltd.,
20 C/- Mr. J.V. Ratcliffe,
53, Martin Place,
SYDNEY, N.S.W.

Dear Sir,

I desire to advise you that my Company has today passed a Resolution authorising the issue of 402,679 "B" Preference Shares of One pound each, and authorising further the offering of those shares to the person or persons entitled to the dividends from "A" Ordinary Shares on or after
30 the 19th December, 1949.

Yours truly,
LANE'S MOTORS PTY. LTD.
(Sgd.) R. Nathan,
Director.

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")
Annexure 24.
Option granted to Pactolus Pty. Limited by Lauri Joseph Newton in respect of "A" Ordinary Shares in Lane's Motors Pty. Limited.
15th December, 1949 - continued.

Annexure 25.

Letter, Lane's Motors Pty. Limited to Pactolus Pty. Limited.

16th December, 1949.

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 26.

Letter,
Pactolus
Pty. Limited
to Lane's
Motors Pty.
Limited.

19th December,
1949.

A N N E X U R E No. 26.

LETTER, PACTOLUS PTY. LIMITED TO
LANE'S MOTORS PTY. LIMITED

PACTOLUS PTY. LIMITED

C/o John V. Ratcliffe,
53, Martin Place,
SYDNEY.

19th December, 1949.

The Secretary,
Lane's Motors Pty. Limited,
89, Exhibition Street,
MELBOURNE, VICTORIA.

10

Dear Sir,

The undermentioned Company hereby applies for the allotment and issue to it of 402,679 Preference Shares of £1 each in your Company and hands you herewith a cheque for £402,679 being subscription in full for such shares.

If such shares are allotted to it, the under-mentioned Company would like the whole of such shares to be transferred to the branch register of members at Canberra.

20

Yours truly,

PACTOLUS PTY. LIMITED.

(Sgd.) J.V. Ratcliffe.

Director.

Encl.
JVR/JV

Annexure 27.

Telegram,
Lane's Motors
Pty. Limited
to S.R.Phippard.

20th December,
1949.

A N N E X U R E NO. 27.

TELEGRAM, LANE'S MOTORS PTY. LIMITED TO
S.R. PHIPPARD

URGENT.

S.R. PHIPPARD
ROYAL INSURANCE BUILDING
CITY. CANBERRA A.C.T.

30

402,679 "B" PREFERENCE SHARES TODAY ISSUED PACTOLUS
PTY. LTD. AND RESOLUTION PASSED TRANSFERRING SHARES
CANBERRA REGISTER

LANES MOTORS

Despatched 9.45 a.m. Tuesday.

A N N E X U R E N O . 3 0 .RESOLUTION OF EXTRAORDINARY GENERAL MEETING OF
NEAL'S MOTORS PTY. LIMITED, AMENDING ARTICLES
OF ASSOCIATION

THAT the Articles of Association of the Company be amended as follows :-

1. BY THE ADDITION OF THE FOLLOWING ARTICLES:

10 2A. The capital of the Company is £750,000 divided into 750,000 shares of one pound each. 36,444 of such shares shall be known as "A" ordinary shares 213,556 of such shares shall be known as "B" ordinary shares 5000 of such shares shall be known as "A" preference shares and 495,000 of shares shall be known as "B" preference shares. Each such class of shares shall have the respective rights hereinafter set out as applicable to each class of share respectively.

20 2B. The shares of the Company which prior to the Eighteenth day of November One thousand nine hundred and forty nine were identified as Numbers 1 to 19451 (inclusive) 19772 to 21260 (inclusive) 21642 to 23130 (inclusive) 23512 to 27861 (inclusive) 29001 to 33833 (inclusive) 35001 to 35964 (inclusive) 36201 to 37167 (inclusive) 37401 to 38367 (inclusive) 38601 to 39567 (inclusive) and 39801 to 40767 (inclusive) shall be "A" ordinary shares, the shares of the Company which prior to the said Eighteenth day
30 of November One thousand nine hundred and forty nine were identified as Numbers 19452 to 19771 (inclusive) 21261 to 21641 (inclusive) 23131 to 23511 (inclusive) 27862 to 29000 (inclusive) 33834 to 35000 (inclusive) 35965 to 36200 (inclusive) 37168 to 37400 (inclusive) 38368 to 38600 (inclusive) 39568 to 39800 (inclusive) 40768 to 109332 (inclusive) shall be "B" Ordinary shares and the shares of the Company which
40 prior to the said Eighteenth day of November One thousand nine hundred and forty nine were known as Preference shares shall be "A" Preference Shares.

2C. "A" Preference shares shall be entitled to the rights set out in Article 11A.

2D. Subject always to the rights of the "A" preference shares "A" ordinary shares shall be entitled :-

ExhibitsA.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 30.

Resolution of Extraordinary General Meeting of Neal's Motors Pty. Limited, amending Articles of Association.

14th December, 1949.

<u>Exhibits</u> A.2. Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")	(a) to the whole of the dividends declared by the Company on or after the Fourteenth day of December One thousand nine hundred and forty-nine until such dividends in the aggregate amount to not less than the sum of Thirteen pounds seven shillings in respect of each "A" ordinary share of which sum not less than one pound per share shall have been paid in such manner and out of such income profits dividends or amounts as to entitle the holder for the time being of each of the said shares to the rebate provided for by Section 107 of the Income Tax Assessment Act 1936-1948 but save as provided by paragraph (b) of this Article the holders of the said "A" ordinary shares shall not be entitled to any further participation in profits.	10
Annexure 30. Resolution of Extraordinary General Meet- ing of Neal's Motors Pty. Limited, amending Articles of Association.	(b) to a fixed cumulative preferential dividend (payable half-yearly on the Thirtieth day of June and the Thirty first day of December in each year) at the rate of Five pounds per centum per annum computed from the First day of January One thousand nine hundred and fifty on the capital for the time being and from time to time paid up thereon;	20
14th December, 1949 - continued.	(c) In a winding up to rank in priority to all other shares of the Company for payment of all arrears of dividend (whether earned declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon and for payment in respect of each share of a sum equal to the difference (if any) between the aggregate of all dividends received by the holder of each "A" ordinary share pursuant to paragraph (a) of this Article and the sum of Thirteen pounds seven shillings but without any other right to further participation in profits or assets of the Company.	30
	(d) to the same rights as the holder of "B" ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending all general meetings of the Company;	40
	(e) to the same rights as the holders of "B" ordinary shares as regards voting at general meetings and at polls until the dividends mentioned in sub-paragraph (a) of this Article have been received and thereafter if at any time and so long as the said fixed cumulative preferential	

dividend shall remain unpaid for six calendar months after any half-yearly date for payment thereof, or on any proposition or resolution for the purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any question directly affecting the rights or privileges attached to the "A" ordinary shares.

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 30.

Resolution of
Extraordinary
General Meet-
ing of Neal's
Motors Pty.
Limited
amending
Articles of
Association.

14th December,
1949 -
continued.

10 2E. The "B" preference shares and any other preference shares issued pari passu therewith shall confer on the holders thereof the following rights and privileges and shall be subject to the following conditions :-

20 (a) the right subject to the rights of the "A" preference shares and the "A" ordinary shares respectively to a fixed cumulative preferential dividend payable half-yearly on the Thirtieth day of June and the Thirty first day of December in each year at the rate of Five pounds per centum per annum on the capital for the time being and from time to time paid up thereon;

(b) the right to rank for payment of the said fixed cumulative preferential dividend in priority to all other shares of the Company other than the "A" preference shares and the "A" ordinary shares respectively;

30 (c) the right in a winding up to rank in priority to all other shares of the Company (other than the "A" preference shares and the "A" ordinary shares respectively) for payment of all arrears of dividend (whether earned or declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon but without any other right to further participation in profits or assets of the Company.

40 (d) the same rights as the holders of "B" ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending at all general meetings of the Company.

(e) the same rights as the holders of the "B" ordinary shares as regards voting at general meetings and at polls if at any time and so long as the said fixed cumulative preferential dividend

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 30.

Resolution of
Extraordinary
General Meet-
ing of Neal's
Motors Pty.
Limited,
amending
Articles of
Association.

14th December,
1949 -
continued.

shall remain unpaid for six calendar months after any half-yearly date for payment thereof or on any proposition or resolution for the purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any question directly affecting the rights or privileges attached to the preference shares;

(f) no shares shall be issued hereafter ranking in priority to the said "B" preference shares but the Directors may from time to time issue further preference shares at any rate of dividend not exceeding Five per centum per annum and ranking pari passu with the said "B" preference shares;

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2F. The rights privileges and conditions conferred by or attached to "A" ordinary shares and to preference shares respectively shall not be varied modified altered added to or abrogated excepting in the manner provided by Section 61 of the Companies Act 1938.

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2G. Clause 4 of Table A shall not apply.

2H. So long as the capital is divided into different classes of shares none of the rights and privileges attached to any class may be modified abrogated altered or varied in any way and no repayment of capital in respect of preference shares shall be made unless such repayment of capital or alteration modification abrogation or variation of rights is agreed to by a resolution of the holders of at least three-fourths of the issued shares of the relevant class present in person or by proxy at a special meeting of such holders called for the purpose and the provisions hereinafter contained as to general meetings shall mutatis mutandis apply to every such meeting PROVIDED HOWEVER that in the event of the necessary majority not having been obtained in the manner aforesaid consent in writing may be secured from members holding at least three fourths of the issued shares of the relevant class and such consent if obtained within two months from the date of the said special meeting shall have the validity of a resolution carried by vote in person or by proxy at a special meeting as aforesaid The provisions hereinafter contained as to general meetings and

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proxies shall mutatis mutandis apply to every such meeting with the exception that a quorum at any such meeting shall be a member or members holding or representing by proxy three fourths of the nominal amount of the issued shares of the relevant class.

21. Article 18 of Table A shall be amended by adding at the end thereof the following words:
 "excepting in regard to the rights to receive dividends in respect of any share mentioned in a properly executed transfer where such transfer and the relevant share certificate shall have been handed to, noted by and retained by a Director or the Secretary of the Company or any person appointed under Article 70A to exercise the powers of an authority within the meaning of such Article (hereinafter called such authority) in which event the transferee mentioned in such transfer shall be entitled to receive all dividends declared by the Company on or after the date that such transfer and share certificate shall have been handed to, noted by and retained by such Director or the Secretary of the Company or such Authority.

2. ARTICLE 9:

Between the words "of any" and the word "share" insert "'A" preference or "B" Ordinary".

3. ARTICLE 11:

Between "no" and "share" insert "'A" Preference or "B" Ordinary".

4. ARTICLE 12:

Before the word "share" where it first occurs insert "'A" Preference or "B" Ordinary".

5. ARTICLE 14:

Delete "each class of share" and insert "a "B" Ordinary share".

6. ARTICLE 19 AS AMENDED BY ANY SPECIAL RESOLUTION:

Between the word "holding" and the word "ordinary" wherever they occur in sequence insert "B".

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 30.

Resolution of Extraordinary General Meeting of Neal's Motors Pty. Limited, amending Articles of Association.

14th December, 1949 - continued.

Exhibits
 A.2.
 Annexures to
 Mutual
 Admissions of
 Fact (Part of
 Exhibit 'A.2')

 Annexure 30.

 Resolution of
 Extraordinary
 General Meet-
 ing of Neal's
 Motors Pty.
 Limited,
 amending
 Articles of
 Association.

 14th December,
 1949 -
 continued.

7. ARTICLE 19A.

Insert "A" before the word "preference"
 wherever the same occurs.

8. BY ADDING THE FOLLOWING ARTICLES:

26A. Article 42 of Table A shall not apply.

26B. The Directors without affecting their
 rights under Article 5 may before the issue of
 any new shares determine that the same or any
 of them shall be offered in the first instance
 and either at par or at a premium to all the
 then holders of any class of shares in propor-
 tion to the amount of capital held by them or
 make any other provisions as to the issue and
 allotment of the new shares. In every case
 where new shares are offered to existing share-
 holders fractional rights shall be dealt with
 in such manner as the Directors may determine.

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26C. Article 60 of Table A shall not apply
 but the following Article shall be substituted:
 Subject to any restriction from time to time
 affecting any class or classes of shares on a
 show of hands every member present in person
 or by proxy shall have one vote and upon a
 poll every member present in person or by proxy
 shall have one vote for every share held by him.

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9. DELETE ARTICLE 42:

10. ARTICLE 71:

Insert "Territory (including the Australian
 Capital Territory or any other Territory of the
 Commonwealth of Australia)" before the word
 "State" wherever the same appears.

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11. AFTER ARTICLE 70 INSERT THE FOLLOWING ARTICLE:

70A. The Company may cause to be kept in any
 country state colony territory or place outside
 Victoria including the Australian Capital
 Territory or any other Territory of the Common-
 wealth of Australia a branch register and such
 power may be exercised by the Directors. The
 Directors may from time to time allocate or
 transfer any share or shares to any such branch

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register. The Directors may subject to Section 104 of the Companies Act 1938 make such provisions as they think fit respecting the keeping of any branch register and may notwithstanding any other provisions of the Articles but subject to Section 32 of the Companies Act 1938 determine the manner in which certificates for shares on the branch register may be sealed and signed or may authorise the issue of an official seal of the Company for use in any country state colony territory or place outside Victoria and determine by whom the same shall be affixed to any certificates deed or other document executed by the Company and the Directors may from time to time appoint such person or persons or any corporation (hereinafter referred to as the "Authority") as they shall think fit in any place in which a branch register is kept to approve or reject transfers and to direct the registration of approved transfers in the branch register of such place and every such Authority may in respect of transfer or other entries proposed to be registered in the branch register for which such Authority is appointed exercise all the relevant powers of the Directors in the same manner and to the same extent and effect as if the Directors themselves were actually present in the place and exercised the same.

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 30.

Resolution of Extraordinary General Meeting of Neal's Motors Pty. Limited, amending Articles of Association.

14th December, 1949 - continued.

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30 12. ARTICLE 72:

Insert "Territory" before "state"

13. ARTICLE 79:

Insert after the word "person" where it first occurs "holding "B" ordinary shares".

14. INSERT THE FOLLOWING ARTICLES:

86A. Article 98 of Table A shall not apply.

86B. As to any profits of the Company which the Company may determine to distribute on the recommendation of the Directors and subject to such preferential rights as may be attached to shares in pursuance of these Articles, the Directors shall apply the same first in paying the preferential dividend or dividends on any

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Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 30.

Resolution of
Extraordinary
General Meet-
ing of Neal's
Motors Pty.
Limited,
amending
Articles of
Association.

14th December,
1949 -
continued.

shares having preferred or special rights and then in paying a dividend on the capital paid up or credited as paid up from time to time on the "B" ordinary shares to the holders of such "B" ordinary shares.

15. DELETE ARTICLE 90 AND SUBSTITUTE THE FOLLOWING ARTICLE:

90. A transfer executed in accordance with these Articles which with the relevant share certificate shall have been handed to noted by and retained by a Director or the Secretary of the Company or such authority shall pass the right to any dividend declared on or subsequent to the date that such transfer and share certificate shall have been handed to noted by and retained by such Director or the Secretary of the Company or such authority

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16. DELETE ARTICLE 91:

17. INSERT THE FOLLOWING ARTICLE:

95A. If the Company shall be wound up and the assets available for distribution among the members as such shall be insufficient to repay the whole of the paid up capital such assets shall subject to the rights of preferential shareholders (if any) be distributed so that as nearly as may be the losses shall be borne by the members holding "B" ordinary shares in proportion to the capital paid up or which ought to have been paid up at the commencement of the winding up on the shares held by them respectively And if in a winding up the assets available for distribution among the members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding up the excess shall be distributed amongst the members holding "B" ordinary shares in proportion to the capital at the commencement of the winding up paid up or which ought to have been paid up on the shares held by them respectively but nothing in this Clause contained shall increase or reduce the rights of the holders of shares issued with any special conditions attached thereto or affecting the same.

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ANNEXURE No. 31.

OPTION GRANTED TO PACTOLUS PTY. LIMITED BY
HENRY JAMES LANE IN RESPECT OF "A" ORDINARY
SHARES IN NEAL'S MOTORS PTY. LIMITED

ExhibitsA.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 31.

Option granted
to Pactolus
Pty. Limited
by Henry James
Lane in respect
of "A" Ordinary
Shares in
Neal's Motors
Pty. Limited.

15th December,
1949.

THIS INDENTURE made the 15th day of December One thousand nine hundred and forty nine B E T W E E N HENRY JAMES LANE of 89 Exhibition Street, Melbourne in the State of Victoria (hereinafter called the Shareholder) of the first part PACTOLUS PROPRIETARY LIMITED of 53 Martin Place, Sydney in the State of New South Wales (hereinafter called the Purchaser) of the second part and DONALD HUGH ROSS of 60, Collins Place Melbourne in the State of Victoria Secretary (hereinafter called the Agent) of the third part W H E R E A S the Shareholder is registered as the holder of 9,111 "A" Ordinary shares (hereinafter called the said shares) in the undertaking known as NEALS MOTORS PTY. LIMITED (hereinafter called the Company) a Company incorporated in the State of Victoria AND WHEREAS the Shareholder has agreed to give to the Purchaser an option to purchase the said shares upon the terms and conditions hereinafter appearing NOW THIS INDENTURE WITNESSETH as follows :-

1. THE Shareholder hereby grants to the Purchaser an option to purchase the said shares upon the following terms and conditions :-

(a) the said option shall be exercised by the giving by the Purchaser to the Agent as agent for the Shareholder of a notice in writing exercising the said option on or before the Thirty first day of December One thousand nine hundred and forty nine;

(b) Within twenty four hours of the exercise of the said option the Purchaser shall pay to the Agent (who shall receive the same as agent for the Shareholder) an amount equal to Twelve Pounds Eight shillings and four-pence for each of the said shares (which amount is hereinafter referred to as the "purchase price");

(c) Upon receipt by the Agent of the purchase price the Agent shall complete (by including therein the amount of the purchase price and the name of the Purchaser as the transferee) a transfer of the said shares signed in blank by the Shareholder

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 31.

Option granted to Pactolus Pty. Limited by Henry James Lane in respect of "A" Ordinary Shares in Neal's Motors Pty. Limited.

15th December, 1949 - continued.

in anticipation of the exercise of the said option and shall hand the said transfer and the Scrip for the said shares to the Purchaser and the Purchaser shall thereupon be entitled to produce the said transfer and the relevant Scrip to the Company or a Director or Secretary thereof and to apply for registration of the said transfer and the Shareholder shall use the best endeavours of the Shareholder to ensure that the said transfer shall be registered by the Company;

10

2. THE Shareholder hereby authorises the Agent to receive the purchase price on behalf of the Shareholder and to give a valid receipt therefor, on receipt thereof to complete the transfer of shares as aforesaid and to hand the same and the Scrip for the said shares to the Purchaser.

IN WITNESS whereof the Shareholder has executed these presents the day and year first hereinbefore written

SIGNED SEALED AND DELIVERED by the) H. J. LANE
Shareholder in the presence of:)
M.R. Crawford.

20

PACTOLUS PTY. LIMITED hereby exercised this option
Dec. 19th 1949.

PACTOLUS PTY. LIMITED
J.V. Ratcliffe
Director.

Annexure 32.

A N N E X U R E NO. 32.

Letter Neal's Motors Pty. Limited to Pactolus Pty. Limited.

16th December, 1949.

LETTER, NEAL'S MOTORS PTY. LIMITED TO PACTOLUS PTY. LIMITED

30

The Secretary, Pactolus Pty. Ltd.,
C/o Mr. J.V. Ratcliffe,
53, Martin Place,
Sydney, N.S.W.

16th December, 1949

Dear Sir,

I desire to advise you that my Company has to-day passed a Resolution authorising the issue of 403,314 "B" Preference Shares of One Pound each, and authorising further the offering of those shares to the person or persons entitled to the dividends from "A" Ordinary Shares on or after the 19th December, 1949.

40

Yours truly,
NEAL'S MOTORS PTY. LTD.
Director.

ANNEXURE NO. 33.

LETTER, PACTOLUS PTY. LIMITED TO
NEAL'S MOTORS PTY. LIMITED.

PACTOLUS PTY. LIMITED

C/- John V. Ratcliffe,
53, Martin Place,
SYDNEY.

19th December, 1949.

The Secretary,
Neal's Motors Pty. Limited,
222 Exhibition Street,
MELBOURNE. VICTORIA.

10

Dear Sir,

The undermentioned Company hereby applies for the allotment and issue to it of 403,314 Preference Shares of £1 each in your Company and hands you herewith a cheque for £403,314 being subscription in full for such shares.

If such shares are allotted to it, the undermentioned Company would like the whole of such shares to be transferred to the branch register of members at Canberra.

20

Yours truly,
PACTOLUS PTY. LIMITED
(Sgd.) J.V. Ratcliffe.
Director.

Encl.
JVR/JV

ANNEXURE NO. 34.

TELEGRAM, NEAL'S MOTORS PTY. LIMITED
TO S.R. PHIPPARD

30

URGENT.

S.R. PHIPPARD
ROYAL INSURANCE BUILDING,
CITY. CANBERRA A.C.T.

403,314 "B" PREFERENCE SHARES TODAY ISSUED PACTOLUS PTY. LTD. AND RESOLUTION PASSED TRANSFERRING SHARES CANBERRA REGISTER.

NEAL'S MOTORS.

Despatched 9.45 a.m. Tuesday.

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 33.

Letter,
Pactolus Pty.
Limited to
Neal's Motors
Pty. Limited.

19th December,
1949.

Annexure 34.

Telegram,
Neal's Motors
Pty. Limited
to S.R. Phippard.

20th December,
1949.

ExhibitsANNEXURE NO. 37.

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Resolution of Extra-ordinary General
Meeting of Melford Motors Pty. Ltd.
amending Articles of Association.

Annexure 37

Resolution of
Extra-ordinary
General Meeting
of Melford
Motors Pty.
Ltd. amending
Articles of
Association.

14th December
1949.

THAT the Articles of the Company be amended as follows:

1. BY THE ADDITION OF THE FOLLOWING ARTICLES:

2A. The share capital of the Company is Four hundred thousand pounds divided into four hundred thousand shares of One pound each. Eight thousand two hundred and fifty three of such shares shall be known as "A" Ordinary shares One hundred and ninety one thousand seven hundred and forty seven of such shares shall be known as "B" ordinary shares and Two hundred thousand of such shares shall be known as Preference Shares. Each such class of shares shall have the respective rights hereinafter set out as applicable to each class of share respectively.

10

2B. The shares of the Company which prior to the Eighteenth day of November One thousand nine hundred and forty nine were identified as Numbers 1 to 1255 (inclusive) 2507 to 3506 (inclusive) and 4507 to 10504 (inclusive) shall be "A" ordinary shares and the shares of the Company which prior to the Eighteenth day of November One thousand nine hundred and forty nine were identified as Numbers 1256 to 2506 (inclusive) 3507 to 4506 (inclusive) and 10505 to 16506 (inclusive) shall be "B" ordinary shares

20

2C. "A" ordinary shares shall be entitled:

(a) to the whole of the dividends declared by the Company on or after the Fourteenth day of December One thousand nine hundred and forty nine until such dividends in the aggregate amount to not less than the sum of Twenty six pounds eleven shillings in respect of each "A" ordinary share of which sum not less than Three pounds per share shall have been paid in such manner and out of such income profits or amounts as to entitle the holder for the time being of each of the said shares to the rebate provided for by Section 107 of the Income Tax Assessment Act 1936-1948 but save as provided by paragraph (b) of this Article the holders of the said "A" ordinary shares shall not be entitled to any further participation in profits.

30

40

(b) to a fixed cumulative preferential dividend (payable half-yearly on the Thirtieth day of

June and the Thirty first day of December in each year) at the rate of Five pounds per centum per annum computed from the First day of January One thousand nine hundred and fifty on the capital for the time being and from time to time paid up thereon;

10 (c) in a winding up to rank in priority to all other shares of the Company for payment of all arrears of dividend (whether earned declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon and for payment in respect of each share of a sum equal to the difference (if any) between the aggregate of all dividends received by the holder of each "A" ordinary share pursuant to paragraph (a) of this Article and the sum of Twenty six pounds eleven shillings but without any other right to further participation in profits or assets of the Company;

20 (d) to the same rights as the holders of "B" ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending all general meetings of the Company;

30 (e) to the same rights as the holders of "B" ordinary shares as regards voting at general meetings and at polls until the dividends mentioned in sub-paragraph (a) of this Article have been received and thereafter if at any time and so long as the said fixed cumulative preferential dividend shall remain unpaid for six calendar months after any half-yearly date for payment thereof, or on any proposition or resolution for the purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any question directly affecting the rights or privileges attached to the "A" Ordinary shares.

40 2D. The said preference shares and any other preference shares from time to time issued pari passu therewith shall confer on the holders thereof of the following rights and privileges and shall be subject to the following conditions:

(a) the right subject to the rights of the "A" ordinary shares to a fixed cumulative preferential dividend payable half-yearly on the thirtieth day of June and the Thirty first day of December in each year at the rate of Five pounds per centum per annum on the capital for the time being and from time to time paid up thereon;

50 (b) the right to rank for payment of the said fixed cumulative preferential dividend in priority

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 37
Resolution of Extra-ordinary General Meeting of Melford Motors Pty. Ltd. amending Articles of Association.

14th December 1949 - continued.

<u>Exhibits</u>	to all other shares of the Company other than the "A" ordinary shares;	
A.2.		
Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")	(c) the right in a winding up to rank in priority to all other shares of the Company (other than "A" ordinary shares) for payment of all arrears of dividend (whether earned or declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon but without any other right to further participation in profits or assets of the Company;	10
Annexure 37		
Resolution of Extra-ordinary General Meeting of Melford Motors Pty. Ltd. amending Articles of Association.	(d) the same rights as the holders of "B" ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending at all general meetings of the Company;	
14th December 1949 - continued.	(e) the same rights as the holders of "B" ordinary shares as regards voting at general meetings and at polls if at any time and so long as the said fixed cumulative preferential dividend shall remain unpaid for six calendar months after any half-yearly date for payment thereof, or on any proposition or resolution for the purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any question directly affecting the rights or privileges attached to the preference shares;	20
	(f) no shares shall be issued hereafter ranking in priority to the said preference shares but the Directors may from time to time issue further preference shares at any rate of dividend not exceeding five per centum per annum and ranking pari passu with the said preference shares.	30
	2E. The rights privileges and conditions conferred by or attached to "A" ordinary shares and to preference shares respectively shall not be varied modified altered added to or abrogated excepting in the manner provided by Section 61 of the Companies Act 1938	
	3A. Clause 4 of Table A shall not apply.	
	3B. So long as the capital is divided into different classes of shares none of the rights and privileges attached to any class may be modified abrogated altered or varied in any way and no repayment of capital in respect of "A" ordinary shares or of preference shares shall be made unless such repayment of capital or alteration modification abrogation or variation of rights is agreed to by a resolution of the holders of at least three-fourths of the issued shares of the class present in person or by proxy at a special meeting of such holders called for the purpose and the provisions hereinafter	40
		50

contained as to general meetings shall mutatis mutandis apply to every such meeting PROVIDED HOWEVER that in the event of the necessary majority not having been obtained in the manner aforesaid consent in writing may be secured from members holding at least three-fourths of the issued shares of the class and such consent if obtained within two months from the date of the said special meeting shall have the validity of a resolution carried by vote in person or by proxy at a special meeting as aforesaid. The provisions hereinafter contained as to general meetings and proxies shall mutatis mutandis apply to every such meeting with the exception that a quorum at any such meeting shall be a member or members holding or representing by proxy three fourths of the nominal amount of the issued shares of the class.

7A. Article 18 of Table A shall be amended by adding at the end thereof the following words: "excepting in regard to the right to receive dividends in respect of any share mentioned in a properly executed transfer where such transfer and the relevant share certificate shall have been handed to, noted by and retained by a Director or the Secretary of the Company in which event the transferee mentioned in such transfer shall be entitled to receive all dividends declared by the Company on or after the date that such transfer and share certificate shall have been handed to, noted by and retained by such Director or the Secretary of the Company".

2. ARTICLE 9:

Between the words "of any" and the word "share" insert " "B" ordinary".

3. ARTICLE 11:

Before the word "no" and the word "share" insert " "B" ordinary".

4. ARTICLE 12:

Before the word "share" where it first occurs insert " "B" ordinary".

5. ARTICLE 14:

(a) Delete "each class of" and insert "a "B" ordinary".

(b) After the words "value of the" insert " "B" ordinary".

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 37
Resolution of Extra-ordinary General Meeting of Melford Motors Pty. Ltd. amending Articles of Association.

14th December 1949 -
continued.

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 37

Resolution of
Extra-ordinary
General Meeting
of Melford
Motors Pty.
Ltd. amending
Articles of
Association.

14th December
1949 -
continued.

6. ARTICLE 18:

(a) After the word "member" where it firstly secondly and thirdly occurs insert "holding "B" ordinary shares".

(b) After the words "to transfer the" insert " "B" ordinary".

(c) After word "thereof" and before the words "and if such notice" insert "in respect of such "B" ordinary shares".

7. ARTICLE 20:

(a) After the words "member of the Company" insert "holding "B" ordinary shares".

(b) Delete "do retire from the Company" and insert "be required to serve a transfer notice pursuant to Article 12 in respect of the "B" ordinary shares held by such member".

8. DELETE ARTICLE 28 AND SUBSTITUTE THE FOLLOWING ARTICLE:

28. Article 42 of Table A shall not apply.

9. BY ADDING THE FOLLOWING ADDITIONAL ARTICLE:

28A. The Directors without affecting their rights under Article 5 may before the issue of any new shares determine that the same or any of them shall be offered in the first instance and either at par or at a premium to all the then holders of any class of shares in proportion to the amount of capital held by them or make any other provisions as to the issue and allotment of the new shares. In every case where new shares are offered to existing shareholders fractional rights shall be dealt with in such manner as the Directors may determine.

10. DELETE ARTICLE 43 AND SUBSTITUTE

43. Article 60 of Table A shall not apply but the following Article shall be substituted: Subject to any restriction from time to time affecting any class or classes of shares on a show of hands every member present in person or by proxy shall have one vote and upon a poll every member present in person or by proxy shall have one vote for every share held by him.

11. ARTICLE 73:

Insert "Territory (including the Australian Capital Territory or any other Territory of the Commonwealth of Australia)" before the word "state" wherever the same appears.

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12. AFTER ARTICLE 72 INSERT THE FOLLOWING ARTICLE:

72A. The Company may cause to be kept in any country state colony territory or place outside Victoria including the Australian Capital Territory or any other Territory of the Commonwealth of Australia a branch register and such power may be exercised by the Directors. The Directors may from time to time allocate or transfer any share or shares to any such branch register. The Directors may subject to Section 104 of the Companies Act 1938 make such provisions as they think fit respecting the keeping of any branch register and may notwithstanding any other provisions of the Articles but subject to section 32 of the Companies Act 1938 determine the manner in which certificates for shares on the branch register may be sealed and signed or may authorise the issue of an official seal of the Company for use in any country state colony territory or place outside Victoria and determine by whom the same shall be affixed to any certificates deed or other document executed by the Company and the Directors may from time to time appoint such person or persons or any corporation (hereinafter referred to as the "authority") as they shall think fit in any place in which a branch register is kept to approve or reject transfers and to direct the registration of approved transfers in the branch register of such place and every such Authority may in respect of transfers or other entries proposed to be registered in the Branch register for which such Authority is appointed exercise all the relevant powers of the Directors in the same manner and to the same extent and effect as if the Directors themselves were actually present in the place and exercised the same.

13. ARTICLE 74:

Insert "territory" before "country".

14. ARTICLE 81:

Insert after word "person" where it first occurs "holding "B" ordinary shares".

15. DELETE ARTICLE 87 AND SUBSTITUTE THE FOLLOWING ARTICLE:

87. Article 98 of Table A shall not apply.

16. AFTER ARTICLE 87 INSERT THE FOLLOWING ARTICLE:

87A. As to any profits of the Company which the Company may determine to distribute on the recommendation of the Directors and subject to

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 37

Resolution of Extra-ordinary General Meeting of Melford Motors Pty. Ltd. amending Articles of Association

14th December 1949 - continued.

Exhibits

A.2

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 37

Resolution of
Extra-ordinary
General Meeting
of Melford
Motors Pty.
Ltd. amending
Articles of
Association

14th December
1949 -
continued.

such preferential rights as may be attached to shares in pursuance of these Articles, the Directors shall apply the same first in paying the preferential dividend or dividends on any shares having preferred or special rights and then in paying a dividend on the capital paid up or credited as paid up from time to time on the "B" ordinary shares to the holders of such "B" ordinary shares

17. DELETE ARTICLE 91 AND SUBSTITUTE THE FOLLOWING ARTICLE:

10

91. A transfer executed in accordance with these Articles which with the relevant share certificate shall have been handed to noted by and retained by a Director or the Secretary of the Company shall pass the right to any dividend declared on or subsequent to the date that such transfer and share certificate shall have been handed to noted by and retained by such Director or the Secretary of the Company.

20

18. DELETE ARTICLE 92:

AFTER ARTICLE 96 INSERT THE FOLLOWING:

96A. If the Company shall be wound up and the assets available for distribution among the members as such shall be insufficient to repay the whole of the paid up capital such assets shall subject to the rights of preferential shareholders (if any) be distributed so that as nearly as may be the losses shall be borne by the members holding "B" ordinary shares in proportion to the capital paid up or which ought to have been paid up at the commencement of the winding up on the shares held by them respectively. And if in a winding up the assets available for distribution among the members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding up the excess shall be distributed amongst the members holding "B" ordinary shares in proportion to the capital at the commencement of the winding up paid up or which ought to have been paid up on the shares held by them respectively but nothing in this Clause contained shall increase or reduce the rights of the holders of shares issued with any special conditions attached thereto or affecting the same.

30

40

ANNEXURE NO. 38.

Option granted to Pactolus Pty. Ltd. by
Lionel Ballard Wallace in respect of "A"
Ordinary Shares in Melford Motors Pty. Ltd.

Exhibits

A.2

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 38.

THIS INDENTURE made the 15th day of December One
thousand nine hundred and forty nine B E T W E E N
Lionel B. WALLACE of 60 Collins Place Melbourne in
the State of Victoria (hereinafter called the
shareholder) of the first part PACTOLUS PROPRIETARY
LIMITED of 53 Martin Place SYDNEY in the State of
New South Wales (hereinafter called the Purchaser)
of the second part and DONALD HUGH ROSS of 60
Collins Place Melbourne in the State of Victoria
Secretary (hereinafter called the Agent) of the
third part W H E R E A S the shareholder is
registered as the holder of 4,502 "A" Ordinary
shares (hereinafter called the said shares) in the
undertaking known as MELFORD MOTORS PTY. LTD.
(hereinafter called the Company) a Company incor-
porated in the State of Victoria AND WHEREAS the
shareholder has agreed to give to the Purchaser an
option to purchase the said shares upon the terms
and conditions hereinafter appearing NOW THIS
INDENTURE WITNESSETH as follows:

Option granted
to Pactolus
Pty. Ltd. by
Lionel Ballard
Wallace in
respect of "A"
Ordinary Shares
in Melford
Motors Pty.
Ltd.

15th December
1949.

1. THE Shareholder hereby grants to the Purchaser
an option to purchase the said shares upon the
following terms and conditions:

(a) The said option shall be exercised by the
giving by the Purchaser to the Agent as agent for
the shareholder of a notice in writing exercising
the said option on or before the Thirty first day of
December One thousand nine hundred and forty nine;

(b) Within twenty four hours of the exercise
of the said option the Purchaser shall pay to the
Agent (who shall receive the same as agent for the
shareholder) an amount equal to Twenty four pounds
for each of the said shares (which amount is here-
inafter referred to as the "purchase price");

(c) Upon receipt by the Agent of the purchase
price the Agent shall complete (by including there-
in the amount of the purchase price and the name
of the Purchaser as the transferee) a transfer of
the said shares signed in blank by the shareholder
in anticipation of the exercise of the said option
and shall hand the said transfer and the Scrip for
the said shares to the Purchaser and the Purchaser
shall thereupon be entitled to produce the said
transfer and the relevant Scrip to the Company or
a Director or Secretary thereof and to apply for
registration of the said transfer and the share-
holder shall use the best endeavours of the

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 38.
Option granted to Pactolus Pty. Ltd. by Lionel Ballard Wallace in respect of "A" Ordinary Shares in Melford Motors Pty. Ltd.

15th December 1949 - continued.

shareholder to ensure that the said transfer shall be registered by the Company.

2. THE shareholder hereby authorises the Agent to receive the purchase price on behalf of the shareholder and to give a valid receipt therefor, on receipt thereof to complete the transfer of shares as aforesaid and to hand the same and the Scrip for the said shares to the Purchaser.

IN WITNESS whereof the Shareholder has executed these presents the day and year first hereinbefore written.

SIGNED SEALED AND DELIVERED)
by the Shareholder in the) L.B. Wallace
presence of:)

* J. Roche.

PACTOLUS PTY. LIMITED hereby exercises this option
Dec. 19th 1949

PACTOLUS PTY. LIMITED
J.V. Ratcliffe
Director

10

20

ANNEXURE NO. 39.

Annexure 39.
Letter - Melford Motors Pty., Ltd. to Pactolus Pty. Ltd.

16th December 1949.

Letter - Melford Motors Pty. Ltd. to Pactolus Pty. Ltd.

16th December, 1949

The Secretary,
Pactolus Pty. Ltd.,
C/- Mr. J.V. Ratcliffe,
53 Martin Place,
SYDNEY, N.S.W.

Dear Sir,

I desire to advise you that my Company has to-day passed a Resolution authorising the issue of 189,819 Preference Shares of One Pound each and authorising further the offering of those shares to the person or persons entitled to the dividends from "A" Ordinary Shares on or after the 19th December, 1949.

Yours truly,
MELFORD MOTORS PTY. LTD.
(Sgd.) L.A. Fenton
Director

30

40

ANNEXURE NO. 40.

Letter - Pactolus Pty. Ltd. to Melford
Motors Pty., Ltd.

PACTOLUS PTY. LIMITED

C/- John V. Ratcliffe,
53 Martin Place,
SYDNEY.

19th December, 1949

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 40.
Letter -
Pactolus Pty.
Ltd. to
Melford Motors
Pty. Ltd.

19th December
1949.

10 The Secretary,
Melford Motors Pty. Ltd.,
621 Elizabeth Street,
MELBOURNE C.1 VICTORIA

Dear Sir,

The undermentioned Company hereby applies for the allotment and issue to it of 189,819 Preference Shares of £1 each in your Company and hands you herewith a cheque for £189,819.0.0. being subscription in full for such shares.

20 If such shares are allotted to it, the under-mentioned Company would like the whole of such shares to be transferred to the branch register of members at Canberra.

Yours truly,

PACTOLUS PTY. LIMITED

(Sgd) J.V. Ratcliffe

Director.

Exhibits

ANNEXURE NO. 41.

A.2
Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")
Annexure 41.
Telegram -
Melford Motors
Pty. Ltd. to
S.R. Phippard.
20th December
1949.

Telgram - Melford Motors Pty. Ltd. to
S.R. Phippard.

U R G E N T

S.R. PHIPPARD
ROYAL INSURANCE BUILDING
CITY CANBERRA A.C.T.

189,819 PREFERENCE SHARES TODAY ISSUED PACTOLUS
PTY. LTD. AND RESOLUTION PASSED TRANSFERRING
SHARES CANBERRA REGISTER

10

MELFORD MOTORS

Despatched 9.45 a.m. Tuesday.

ANNEXURE NO. 44.

Annexure 44.
Letter - J.V.
Ratcliffe to
L.B. Wallace
and enclosure.
13th October
1950.

Letter - J.V. Ratcliffe to L.B. Wallace
and enclosure

JOHN V. RATCLIFFE

53 Martin Place,
SYDNEY.

13th October, 1950

L.B. Wallace, Esq.,
Messrs. L.B. Wallace & Son,
60 Collins Place,
MELBOURNE Victoria

20

Dear Lionel,

re Melford Motors Pty. Limited

I enclose herewith four copies of the memoran-
dum which I have prepared regarding the proposal
mentioned in Sydney.

I have a recollection that subsequently Mr.
Bunny mentioned that the shareholders would like to
obtain some cash and I have, therefore, made the
additional suggestion which can be added to last
year's plan, if so desired.

30

You will see that the addition to last year's plan deals with a proposal to issue a further 994 shares. You may wonder why this odd number was selected. The reason is that it would bring the ultimate holding of "P.I." Pty. Limited to 17,500 shares. Apart from this, it was selected to show how much additional cash would be available from approximately a further 1,000 shares.

Exhibits

A.2

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

10 I am also enclosing letter to Mr. Bennett, Secretary to the Company dated 11th instant (together with the Draft Accounts mentioned therein) which I have held over pending the Budget announcement. Although the proposal mentioned in the Budget may somewhat reduce the undistributed amount for 1950, it does not appear to me that the recommendations which I have made will be altered in any way. Nevertheless, it may be desirable to hold over the completion of the Accounts until I visit Melbourne later this month.

Annexure 44.
Letter - J.V. Ratcliffe to L.B. Wallace and enclosure.

13th October
1950 -
continued.

20 With kind regards,

Yours truly,

(Sgd.) John

MELFORD MOTORS PTY. LIMITED

The capital of Melford Motors Pty. Limited is now £206,325 made up as follows:

8,253 "A" Ordinary shares of £1 each	£8,253
8,253 "B" Ordinary shares of £1. each	£8,253
189,819 5% Preference shares of £1 each	<u>189,819</u>
	<u>£206,325</u>

30 The authorised capital is £400,000 in 400,000 shares of £1 each and the unissued shares comprise 183,494 "B" Ordinary Shares and 10,181 5% Preference Shares, making a total unissued capital of £193,675.

40 The proposal mentioned at our recent conference was that the operation carried out last year should be repeated in all respects on the same basis as to consideration for shares, dividends etc. Thus, the figures prepared last year would disclose the position in detail.

Exhibits

A.2

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 44.

Letter - J.V.
Ratcliffe to
L.B. Wallace
and enclosure.

13th October
1950 -
continued.

Briefly, the proposal is that the 8,253 "B" Ordinary Shares should be converted to "A" Ordinary Shares, carrying the same special dividend rights as the "A" Ordinary Shares carried, plus the right to a 5% Cumulative Preference dividend as from the 1st January 1951.

At the same time, the 189,819 5% Preference Shares would be converted to Ordinary Shares.

The owners of the "B" Ordinary Shares, which would be converted to "A" Ordinary Shares, would receive £24 per share, while the purchaser would be entitled to special dividends as follows :

10

Tax-paid, £3 per share, and
Taxable, £23/11/- per share, making a
total of £26/11/- per share.

The total dividends payable by the Company would, therefore, be :

Tax-paid	£24,759: 0: 0
Taxable	<u>194,358: 3: 0</u>
	<u>£219,117: 3: 0</u>

20

189,819 new Preference Shares would be taken up, with the result that the Company's cash funds would be depleted by £29,298/3/-, while the results to the purchaser would be the same as those set out in the Schedules prepared last year. Those schedules disclose that the vendors of the "A" Ordinary Shares then received £8,253 in cash after paying for the 189,819 Preference Shares.

Although, in order to avoid Private Company Tax for the year ended 30th June 1950, it will only be necessary for the Company to distribute £90,427, there will be a balance on the Appropriation Account of approximately £160,000 which, as the result of the appropriations recommended in a separate letter, will comprise taxable income of the year ended 30th June 1950. Therefore, if the whole of this amount be distributed, the excess could be carried forward to the next four years for the purposes of the Private Company Tax, but it would probably all be set off against the year 1951.

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40

Allowing for the distribution of £160,000 of taxable dividends as aforesaid, the balance of

taxable dividends to be appropriated out of 1951 profits to cover the special dividend rights of the new "A" Ordinary Shares would be only £34,358/3/- and it would appear that this could safely be distributed at the time the transaction is carried out prior to the 31st December next.

Exhibits

A.2

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 44.

Letter - J.V. Ratcliffe to L.B. Wallace and enclosure.

13th October 1950 - continued.

10

If the shareholders desire to receive more cash than the amount of £8,253 previously mentioned, this could be arranged by the Company allotting to "P" Pty. Limited, say 994 "B" Ordinary Shares of £1 each at par, upon an agreement between "P" Pty. Limited and the holders of the "B" Ordinary Shares that "P" Pty. Limited would agree to the conversion of such 994 shares to "A" Ordinary Shares, with the same special dividend rights, as previously mentioned, and in consideration of the payment to them of an amount of £23 per share (£24 less £1 paid to company) apportioned amongst them in proportion to the number of "B" Ordinary Shares which each Shareholder holds out of the present total of 8,253 shares, or, alternatively, the 994 shares could be issued as 5% Preference Shares (if this were considered a safer course) and "P" Pty. Limited would pay the amount of £23 per share for the conversion of such shares to "A" Ordinary Shares.

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30

This arrangement would mean that the Company would have to pay out a further amount of £27,390/14/- in tax-paid and taxable dividends, but would receive £994 as capital, leaving the net amount paid out, £26,386/14/-. Of this amount, the present holders of the "B" Ordinary Shares would receive £22,862 in consideration of their action in voting for the conversion of the 994 shares to "A" Ordinary Shares. The amount of £22,862 would slightly exceed £2/15/- for each "B" Ordinary Share.

40

The foregoing is not a necessary part of the plan, but is mentioned in case the shareholders want to obtain additional cash. They would receive this cash as a capital item.

The tax saving by merely repeating last year's plan would amount to £145,768. The cost of this plan is £29,298 and the net saving is, therefore, £116,470. In respect of the addition to the plan, the tax saving would be at the rate of 15/0d in the £1 on an amount of £23,408 (the taxable portion of the special dividends) and

Exhibits

A.2

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 44.

Letter - J.V.
Ratcliffe to
L.B. Wallace
and enclosure.

13th October
1950 -
continued.

this would be equivalent to £17,556. The cost would be £3,528 leaving the net saving at £14,028.

It would also appear that the additional taxable dividend of £23,408 could be appropriated out of 1951 profits at the time of the carrying out of the transaction - at some date prior to the 31st December next. The total amount of taxable dividends to be distributed out of 1951 profits, if the foregoing addition were made to the plan, would be £57,766.

10

The forecast in the Budget of some increase in the percentage allowed as a reserve will not, in my opinion, be large and will not affect the ultimate savings mentioned above.

An important point in this plan is that it should assist the Company in minimising the amount of any Excess Profits Tax if one of the factors of any such tax is the amount of the capital of the Company, as I think will be the case. Necessarily, if the addition mentioned herein be made to last year's plan, the additional dividends will, to some extent, offset the benefit for the purposes of any Excess Profits Tax, but if the shareholders desire to obtain a further amount of cash this cannot be avoided.

20

Finally, I should mention that if, for the purpose of bringing the capital to the round figure of £400,000, it be decided to issue the odd 3,856 shares (or 3,856 shares less 944 - 2,862 as the case may be) the amounts of cash available to the shareholders, as previously mentioned herein, will necessarily be reduced by the consideration for these shares as the rate of £1 per share.

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Formal application will need to be made by letter to the Department of the Treasury for consent to issue the 193,675 unissued shares of the Company.

ANNEXURE NO. 45.

Letter - Melford Motors Pty. Ltd. to Secretary, Capital Issues (Control) Branch.

19th October, 1950

The Secretary,
Capital Issues (Control) Branch,
Treasury,
CANBERRA. A.C.T.

Dear Sir,

10

RE PROPOSED ISSUE OF SHARES :

The paid up capital of this Company is at present £206,325 and its authorised capital is £400,000, which leaves 193,675 shares of £1 each unissued.

Some of these are 5% Preference Shares and some are Ordinary Shares.

It is proposed to issue the aforesaid 193,675 shares to the present holders for cash, at par, and your formal consent to this issue is desired.

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An early reply will be appreciated.

Yours faithfully,

MELFORD MOTORS PTY. LTD.

L.A. Fenton

MANAGING DIRECTOR.

ANNEXURE NO. 46.

Consent by Delegate of Treasurer to Issue of Capital by Melford Motors Pty. Ltd.

C.I. No. 33145

COMMONWEALTH OF AUSTRALIA

Department of the Treasury,
Canberra, A.C.T.

30

National Security (Capital Issues) Regulations

C O N S E N T

In pursuance of the powers conferred by the National Security (Capital Issues) Regulations, I, the Delegate of the Treasurer of the Commonwealth of Australia, hereby consent to :-

Exhibits

A.2

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 45.

Letter - Melford Motors Pty. Ltd. to Secretary, Capital Issues (Control) Branch.

19th October 1950.

Annexure 46.

Consent by Delegate of Treasurer to Issue of Capital by Melford Motors Pty. Ltd.

25th October 1950.

Exhibits

A.2

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 46.

Consent by
Delegate of
Treasurer to
Issue of Capital
by Melford
Motors Pty. Ltd.

25th October
1950 -
continued.

MELFORD MOTORS PTY. LTD. making an issue of authorised capital within a period of Six (6) months from the date of this consent by the issue at par of not more than One hundred and ninety-three thousand, six hundred and seventy five (193,675) Ordinary shares of a nominal value of One Pound (£1) each for cash subscription.

Dated this Twenty fifth day of October, 1950.

(Signed)

C. HUNTER

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Delegate of the Treasurer
of the Commonwealth of Australia.

In connection with the above Authority for an action requiring the consent of the Treasurer, attention is directed to Regulation 22 (2) of the National Security (Capital Issues) Regulations, which reads as follows :-

"A company, body, or any person on its behalf, which or who makes any intimation, whether orally, in writing or in any other way, of the fact of the Treasurer's consent to an application under these Regulations or the previous Regulations shall include in the intimation a statement in the following terms or in terms of the like effect:

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"The fact that the Treasurer of the Commonwealth has consented to (here insert particulars of the matters consented to by the Treasurer) is not to be taken in any way as a guarantee of the actual or probable financial stability or success of the Company (or society, club, association or body, as the case may be)."

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The Commonwealth Treasurer's approval in this case is necessary under the National Security (Capital Issues) Regulations, and is a war time measure. Such approval has been given on the understanding that all the conditions pertaining to the issue of capital as set out on the application will be observed and should not be interpreted as carrying any direct or implied undertaking relating to tariff protection, bounties, or any other form of Government assistance now or hereafter.

40

ANNEXURE NO. 47.

Minutes of Extra-ordinary General Meeting
of Preference Shareholders of Melford
Motors Pty. Ltd.

MELFORD MOTORS PTY. LTD.

Minutes of Extraordinary General Meeting of
Preference Shareholders held at 60 Collins
Place - 29th November, 1950 at 2.15 p.m.

Exhibits

A.2

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 47.

Minutes of
Extra-ordinary
General
Meeting of
Preference
Shareholders
of Melford
Motors Pty.
Ltd.

29th November
1950.

10 210
PRESENT Messrs. L.B. Wallace (Chairman), L.A.
Fenton, H.J. Lane, W.B. Thomas (Al-
ternate Director for Mrs. S.M.A. Lane).
Messrs. W.S. Bennett (Secretary) and
F.E. Bunny in attendance.

211
NOTICE OF
MEETING It was moved by Mr. L.A. Fenton,
seconded by Mr. H.J. Lane, and unani-
mously carried, that the Notice of
Meeting be taken as read.

20 212
CONSENT TO
AMENDMENT
OF ARTICLES The following Resolution moved by Mr.
H.J. Lane, and seconded by Mr. L.A.
Fenton, was carried unanimously :-

That this Meeting of Preference Share-
holders of Melford Motors Pty. Ltd.
hereby consents to and approves the
following amendments to the Articles
of Association of Melford Motors Pty.
Ltd.

30 1. THAT Article 2A be deleted and the
following Article substituted :-

40 2A. The share capital of the Com-
pany is Four hundred thousand
pounds divided into Four hundred
thousand shares of One pound each.
Eight thousand two hundred and
fifty three of such shares shall
be known as "A" Ordinary shares
and Eight thousand two hundred and
fifty three of such shares shall
be known as "C" Ordinary shares.
Each such class of share shall have
the respective rights hereinafter
set out as applicable to each such
class of share respectively. The

Exhibits

A.2

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 47

Minutes of
Extra-ordinary
General
Meeting of
Preference
Shareholders
of Melford
Motors Pty.
Ltd.

29th November
1950 -
continued.

remaining Three hundred and eighty three thousand four hundred and ninety four shares in the capital of the Company shall be known as "B" Ordinary Shares.

2. THAT Article 2B be deleted and the following Article substituted :-

2B. The shares of the Company which prior to the Eighteenth day of November One thousand nine hundred and forty nine were identified as Numbers 1 to 1255 (both inclusive) 2507 to 3506 (both inclusive) and 4507 to 10504 (both inclusive) shall be "A" Ordinary Shares.

10

3. THAT Article 2D be deleted and the following Article substituted :-

2D. The shares of the Company which prior to the Twenty ninth day of November One thousand nine hundred and fifty were identified as Numbers 1256 to 2506 (both inclusive) 3507 to 4506 (both inclusive) and 10505 to 16506 (both inclusive) and were known as "B" Ordinary shares shall on from and after such date be "C" Ordinary Shares.

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4. THAT Article 2E be deleted.

5. THAT the following Articles be inserted after Article 2D:

2E. "C" Ordinary shares shall be entitled:

- (a) Subject to the rights of the "A" Ordinary Shares to the whole of the dividends declared by the Company on or after the Twenty ninth day of November One thousand nine hundred and fifty until such dividends in the aggregate amount to not less than the sum of Twenty six pounds eleven shillings in respect of each "C" Ordinary share of which sum not less than Three pounds per share shall have been paid in such manner and out of such income profits or amounts as to entitle the holder for the time being of each of the said shares to the rebate provided for by Section 107 of the Income Tax Assessment Act 1936-1948 but save as provided by paragraph

30

40

(b) of this Article the holders of the said "C" Ordinary shares shall not be entitled to any further participation in profits;

Exhibits

A.2

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2)

Annexure 47.

Minutes of Extra-ordinary General Meeting of Preference Shareholders of Melford Motors Pty. Ltd.

29th November 1950 - continued.

10

(b) Subject to the rights of the "A" Ordinary shares to a fixed cumulative preferential dividend (payable half-yearly on the Thirtieth day of June and the Thirty first day of December in each year) at the rate of Five pounds per centum per annum computed from the First day of January One thousand nine hundred and fifty one on the capital for the time being and from time to time paid up thereon;

20

(c) In a winding up to rank in priority to all other shares of the Company other than the "A" ordinary shares for payment of all arrears of dividend (whether earned declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon and for payment in respect of each share of a sum equal to the difference (if any) between the aggregate of all dividends received by the holder of each "C" Ordinary share pursuant to paragraph (a) of this Article and the sum of Twenty six pounds eleven shillings but without any other right to further participation in profits or assets of the Company.

30

(d) To the same rights as the holders of "B" Ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending all general meetings of the Company;

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(e) To the same rights as the holders of "L" Ordinary Shares as regards voting at general meetings and at polls until the dividends mentioned in sub-paragraph (a) of this Article have been received and thereafter if at any time and so long as the said fixed cumulative preferential dividend shall remain unpaid for six

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Exhibits

A.2

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

· Annexure 47

Minutes of
Extra-ordinary
General
Meeting of
Preference
Shareholders
of Melford
Motors Pty.
Ltd.

29th November
1950 -
continued.

calendar months after any half-yearly date for payment thereof, or on any proposition or resolution for the purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any question directly affecting the rights or privileges attached to the "C" Ordinary shares.

- 2F. The shares (whether issued or un-issued) in the Company which prior to the Twenty ninth day of November One thousand nine hundred and fifty were issued or created and known as Preference shares shall as on and from the said Twenty ninth day of November One thousand nine hundred and fifty have attached to them (instead of the rights conditions and privileges theretofore attached to them) the rights conditions and privileges appertaining to "B" Ordinary shares under these Articles and no others and be known and treated as "B" Ordinary shares for all the purposes of these Articles. 10
- 2G. The rights privileges and conditions conferred by or attached to "A" Ordinary shares and to "C" Ordinary shares respectively shall not be varied modified altered added to or abrogated excepting in the manner provided by Section 61 of the Companies Act 1938. 20 30
6. THAT Article 3B be amended by deleting therefrom the word "Preference" and substituting therefor the letter and word "C" Ordinary.

Signed as correct

L.B. WALLACE

CHAIRMAN.

ANNEXURE NO. 48.

Minutes of Extra-ordinary General Meeting
of "B" Ordinary Shareholders of Melford
Motors Pty. Ltd.

MELFORD MOTORS PTY. LTD.

Minutes of Extraordinary Meeting of "B" Ordinary
Shareholders held at 60 Collins Place - 29th
November, 1950 at 2.30 p.m.

Exhibits

A.2

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 48.

Minutes of
Extra-ordinary
General
Meeting of "B"
Ordinary
Shareholders
of Melford
Motors Pty.
Ltd.

29th November
1950.

10 213
PRESENT Messrs. L.B. Wallace (Chairman), L.A.
Fenton, H.J. Lane, W.B. Thomas (Al-
ternate Director for Mrs.S.M.A.Lane).
Messrs. W.S. Bennett (Secretary) and
F.E. Bunny in attendance.

214
NOTICE OF
MEETING It was moved by Mr. H.J. Lane, secon-
ded by Mr. L.A. Fenton and unanimously
carried, that the Notice of Meeting be
taken as read.

20 215
CONSENT TO
AMENDMENT
OF ARTICLES The following Resolution moved by Mr.
H.J. Lane and seconded by Mr. W.B.
Thomas was carried unanimously :-

That this Meeting of "B" Ordinary
shareholders of Melford Motors Pty.
Ltd. hereby consents to and approves
the following amendments to the
Articles of Association of Melford
Motors Pty. Ltd. :-

30 1. THAT Article 2A be deleted and the
following Article substituted :

2A. The share capital of the Com-
pany is Four hundred thousand pounds
divided into Four hundred thousand
shares of One Pound each. Eight
thousand two hundred and fifty
three of such shares shall be known
as "A" Ordinary shares and Eight
thousand two hundred and fifty
three of such shares shall be known
as "C" Ordinary shares. Each such
class of share shall have the res-
pective rights hereinafter set out
as applicable to each such class of
share respectively. The remaining
Three hundred and eighty three

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Exhibits

A.2

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 48.

Minutes of
Extra-ordinary
General
Meeting of "B"
Ordinary
Shareholders
of Melford
Motors Pty.
Ltd.

29th November
1950 -
continued.

thousand four hundred and ninety four
shares in the capital of the Company
shall be known as "B" Ordinary shares

2. THAT Article 2B be deleted and the
following Article substituted:

2B. The shares of the Company which
prior to the Eighteenth day of
November One thousand nine hundred and
forty nine were identified as Numbers
1 to 1255 (both inclusive) 2507 to
3506 (inclusive) and 4507 to 10504
(both inclusive) shall be "A" Ordinary
shares.

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3. THAT Article 2D be deleted and the
following Article substituted:

2D. The shares of the Company which
prior to the Twenty ninth day of
November One thousand nine hundred
and fifty were identified as Numbers
1256 to 2506 (both inclusive) 3507 to
4506 (both inclusive) and 10505 to
16506 (both inclusive) and were known
as "B" Ordinary shares shall on from
and after such date be "C" Ordinary
shares.

20

4. THAT Article 2E be deleted.

5. THAT the following Articles be inserted
after Article 2D:

2E. "C" Ordinary shares shall be
entitled:

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(a) Subject to the rights of the "A"
Ordinary shares to the whole of
the dividends declared by the Com-
pany on or after the Twenty ninth
day of November One thousand nine
hundred and fifty until such divi-
dends in the aggregate amount to
not less than the sum of Twenty
six pounds eleven shillings in
respect of each "C" Ordinary share
of which sum not less than Three
pounds per share shall have been
paid in such manner and out of
such income profits or amounts as

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to entitle the holder for the time being of each of the said shares to the rebate provided for by Section 107 of the Income Tax Assessment Act 1936-1948 but save as provided by paragraph (b) of this Article the holders of the said "C" Ordinary shares shall not be entitled to any further participation in profits;

10

(b) Subject to the rights of the "A" Ordinary shares to a fixed cumulative preferential dividend (payable half-yearly on the Thirtieth day of June and the Thirty first day of December in each year) at the rate of Five pounds per centum per annum computed from the First day of January One thousand nine hundred and fifty one on the capital for the time being and from time to time paid up thereon;

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(c) In a winding up to rank in priority to all other shares of the Company other than the "A" ordinary shares for payment of all arrears of dividend (whether earned declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon and for payment in respect of each share of a sum equal to the difference (if any) between the aggregate of all dividends received by the holder of each "C" ordinary share pursuant to paragraph (a) of this Article and the sum of Twenty six pounds eleven shillings but without any other right to further participation in profits or assets of the Company;

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(d) To the same rights as the holders of "B" Ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending all general meetings of the Company;

(e) To the same rights as the holders of "B" Ordinary shares as regards voting at general meetings and at

Exhibits

A.2

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 48.

Minutes of Extra-ordinary General Meeting of "B" Ordinary Shareholders of Melford Motors Pty. Ltd.

29th November 1950 - continued.

Exhibits

A.2

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

-
Annexure 48.

Minutes of
Extra-ordinary
General
Meeting of "B"
Ordinary
Shareholders
of Melford
Motors Pty.
Ltd.

29th November
1950 -
continued.

polls until the dividends mentioned in sub-paragraph (a) of this Article have been received and thereafter if at any time and so long as the said fixed cumulative preferential dividend shall remain unpaid for six calendar months after any half-yearly date for payment thereof, or on any proposition or resolution for the purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any questions directly affecting the rights or privileges attached to the "C" Ordinary shares.

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2F. The shares (whether issued or un-issued) in the Company which prior to the Twenty ninth day of November One thousand nine hundred and fifty were issued or created and known as Preference Shares shall as on and from the said Twenty ninth day of November One thousand nine hundred and fifty have attached to them (instead of the rights conditions and privileges theretofore attached to them) the rights conditions and privileges appertaining to "B" Ordinary shares under these Articles and no others and be known and treated as "B" Ordinary shares for all the purposes of these Articles.

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2G. The rights privileges and conditions conferred by or attached to "A" Ordinary shares and to "C" Ordinary shares respectively shall not be varied modified altered added to or abrogated excepting in the manner provided by Section 61 of the Companies Act 1938.

6. THAT Article 3B be amended by deleting therefrom the word "Preference" and substituting therefor the letter and word "C" Ordinary.

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Signed as correct

L.B. WALLACE

Chairman.

ANNEXURE NO. 49

Minutes of Extra-ordinary General Meeting
of all Shareholders of Melford Motors Pty.
Ltd.

MELFORD MOTORS PTY. LTD.

Minutes of Extraordinary General Meeting of all
Shareholders held at 60 Collins Place - 29th
November, 1950 at 2.25 p.m.

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 49

Minutes of
Extra-ordinary
General Meeting
of all Share-
holders of
Melford Motors
Pty. Ltd.

29th November
1950.

- 10 216
PRESENT Messrs. L.B. Wallace (Chairman), L.A.
Fenton, H.J. Lane, W.B. Thomas (Alter-
nate Director for Mrs. S.M.A. Lane).
Messrs. W.S. Bennett (Secretary) and
F.E. Bunny in attendance.
- 217
NOTICE OF
MEETING It was moved by Mr. W.B. Thomas,
seconded by Mr. H.J. Lane, and unani-
mously carried; that the Notice of
Meeting be taken as read.
- 20 218
AMENDMENT
OF ARTICLES The following Special Resolution moved
by Mr. W.B. Thomas and seconded by Mr.
L.A. Fenton was carried unanimously:
That the Articles of Association of the
Company be amended as follows:-
1. THAT Article 2A be deleted and the
following Article substituted:
2A. The share capital of the Com-
pany is Four hundred thousand pounds
divided into Four hundred thousand
30 shares of One pound each. Eight
thousand two hundred and fifty three
of such shares shall be known as "A"
Ordinary shares and Eight thousand
two hundred and fifty three of such
shares shall be known as "C"ordi-
nary shares. Each such class of
share shall have the respective
40 rights hereinafter set out as appli-
cable to each such class of share
respectively. The remaining Three
hundred and eighty three thousand
four hundred and ninety four shares
in the capital of the Company shall
be known as "B" Ordinary shares.

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 49

Minutes of
Extra-ordinary
General Meeting
of all Share-
holders of
Melford Motors
Pty. Ltd.

29th November
1950 -
continued.

2. THAT Article 2B be deleted and the following Article substituted:

2B. The shares of the Company which prior to the Eighteenth day of November One thousand nine hundred and forty nine were identified as Numbers 1 to 1255 (both inclusive) 2507 to 3506 (both inclusive) and 4507 to 10504 (both inclusive) shall be "A" Ordinary shares.

3. THAT Article 2D be deleted and the following Article substituted: 10

2D. The shares of the Company which prior to the twenty ninth day of November One thousand nine hundred and fifty were identified as Numbers 1256 to 2506 (both inclusive) 3507 to 4506 (both inclusive) and 10505 to 16506 (both inclusive) and were known as "B" Ordinary shares shall on from and after such date be "C" Ordinary shares. 20

4. THAT Article 2E be deleted.

5. THAT the following Articles be inserted after Article 2D.

2E. "C" Ordinary shares shall be entitled:

(a) Subject to the rights of the "A" Ordinary shares to the whole of the dividends declared by the Company on or after the Twenty ninth day of November One thousand nine hundred and fifty until such dividends in the aggregate amount to not less than the sum of Twenty six pounds eleven shillings in respect of each "C" Ordinary share of which sum not less than Three pounds per share shall have been paid in such manner and out of such income profits or amounts as to entitle the holder for the time being of each of the said shares to the rebate provided for by Section 107 of the Income Tax Assessment Act 1936-1948 but save as provided by paragraph (b) of this Article the holders of the said "C" Ordinary shares shall not be entitled to any further participation in profits; 30

(b) Subject to the rights of the "A" Ordinary shares to a fixed cumulative preferential dividend (payable half yearly on the Thirtieth day of June and the Thirty first 40

day of December in each year) at the rate of Five pounds per centum per annum computed from the First day of January One thousand nine hundred and fifty one on the capital for the time being and from time to time paid up thereon;

(c) In a winding up to rank in priority to all other shares of the Company other than the "A" Ordinary shares for payment of all arrears of dividend (whether earned declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon and for payment in respect of each share of a sum equal to the difference (if any) between the aggregate of all dividends received by the holder of each "C" Ordinary share pursuant to paragraph (a) of this Article and the sum of Twenty six pounds eleven shillings but without any other right to further participation in profits or assets of the Company.

(d) To the same rights as the holders of "B" Ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending all general meetings of the Company;

(e) To the same rights as the holders of "B" Ordinary shares as regards voting at general meetings and at polls until the dividends mentioned in sub-paragraph (a) of this Article have been received and thereafter if at any time and so long as the said fixed cumulative preferential dividend shall remain unpaid for six calendar months after any half-yearly date for payment thereof, or on any proposition or resolution for the purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any question directly affecting the rights or privileges attached to the "C" Ordinary shares.

2F. The shares (whether issued or unissued) in the Company which prior to the Twenty ninth day of November One thousand nine hundred and fifty were issued or created and known as Preference

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 49

Minutes of Extra-ordinary General Meeting of all Shareholders of Melford Motors Pty. Ltd.

29th November 1950 - continued.

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Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 49

Minutes of
Extra-ordinary
General Meeting
of all Share-
holders of
Melford Motors
Pty. Ltd.

29th November
1950 -
continued.

shares shall as on and from the said
Twenty ninth day of November One thousand
nine hundred and fifty have attached to
them (instead of the rights conditions
and privileges theretofore attached to
them) the rights conditions and privileges
appertaining to "B" Ordinary shares under
these Articles and no others and be known
and treated as "B" Ordinary shares for
all the purposes of these Articles.

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2G. The rights privileges and conditions
conferred by or attached to "A" Ordinary
shares and to "C" Ordinary shares res-
pectively shall not be varied modified
altered added to or abrogated excepting
in the manner provided by Section 61 of
the Companies Act 1938.

6. THAT Article 3B be amended by deleting
therefrom the word "Preference" and sub-
stituting therefor the letter and word
"C" Ordinary

20

Signed as correct

L.B. WALLACE

CHAIRMAN

Annexure 50

Option granted
to Pactolus
Pty. Ltd. by
Leonard Alfred
Fenton in
respect of "C"
Ordinary shares
in Melford
Motors Pty.
Ltd.

30th November
1950.

ANNEXURE NO. 50

Option granted to Pactolus Pty. Ltd.
by Leonard Alfred Fenton in respect of
"C" Ordinary shares in Melford Motors
Pty., Ltd.

THIS INDENTURE made the 30th day of November One
thousand nine hundred and fifty B E T W E E N
LEONARD ALFRED FENTON of 621 Elizabeth Street
Melbourne in the State of Victoria Managing Direc-
tor (hereinafter called the shareholder) of the
first part PACTOLUS PROPRIETARY LIMITED of 53
Martin Place Sydney in the State of New South Wales
(hereinafter called the purchaser) of the second
part and WILLIAM STEWART BENNETT of 621 Elizabeth
Street Melbourne in the State of Victoria Secretary
(hereinafter called the Agent) of the third part
W H E R E A S the shareholder is registered as the
holder of One thousand five hundred "C" Ordinary
shares (hereinafter called the said shares) in the

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undertaking known as MELFORD MOTORS PROPRIETARY LIMITED (hereinafter called the Company) a Company incorporated in the State of Victoria AND WHEREAS the shareholder has agreed to give to the purchaser an option to purchase the said shares upon the terms and conditions hereinafter appearing NOW THIS INDENTURE WITNESSETH as follows:

1. THE shareholder hereby grants to the purchaser an option to purchase the said shares upon the following terms and conditions:

(a) The said option shall be exercised by the giving by the purchaser to the Agent as agent for the shareholder of a notice in writing exercising the said option on or before the Thirty first day of December One thousand nine hundred and fifty;

(b) Within twenty four hours of the exercise of the said option the purchaser shall pay to the agent (who shall receive the same as agent for the shareholder) an amount equal to Twenty four pounds for each of the said shares (which amount is hereinafter referred to as the purchase price);

(c) Upon receipt by the agent of the purchase price the agent shall complete (by including therein the amount of the purchase price and the name of the purchaser as the transferee) a transfer of the said shares signed in blank by the shareholder in anticipation of the exercise of the said option and shall hand the said transfer and the scrip for the said shares to the purchaser and the purchaser shall thereupon be entitled to produce the said transfer and the relevant scrip to the Company or a Director or Secretary thereof or to any authority within the meaning of the Articles of Association of the Company competent within the said Articles to register such transfer and the purchaser shall also be entitled to apply for registration of the said transfer and the shareholder shall use the best endeavours of the shareholder to ensure that the said transfer shall be registered by the Company.

2. THE shareholder hereby authorises the agent to receive the purchase price on behalf of the shareholder and to give a valid receipt therefor and on receipt of the purchase price to complete the transfer of the said shares hereinbefore mentioned as hereinbefore provided and to hand the same and

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 50

Option granted to Pactolus Pty. Ltd. by Leonard Alfred Fenton in respect of "C" Ordinary shares in Melford Motors Pty. Ltd.

30th November 1950 - continued.

Exhibits

A.2.

the scrip for the said shares to the purchaser and the purchaser shall be under no obligation to see to the application of the purchase price so paid.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

IN WITNESS whereof the party hereto of the first part has executed these presents the day and year first hereinbefore written

Annexure 50
Option granted to Pactolus Pty. Ltd. by Leonard Alfred Fenton in respect of "C" Ordinary shares in Melford Motors Pty. Ltd.

SIGNED SEALED AND DELIVERED }
by the said LEONARD ALFRED } L.A. Fenton
FENTON in the presence of: }

W.S. Bennett

10

PACTOLUS PTY. LIMITED hereby exercises this option

Dec. 4th 1950

PACTOLUS PTY. LIMITED

J.V. Ratcliffe

Director.

30th November 1950 - continued.

Annexure 52
Application for New "B" Ordinary shares in Melford Motors Pty. Ltd. by Leonard Alfred Fenton.

ANNEXURE NO. 52

Application for New "B" Ordinary shares in Melford Motors Pty. Ltd. by Leonard Alfred Fenton.

MELFORD MOTORS PROPRIETARY LIMITED

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30th November 1950.

I LEONARD ALFRED FENTON of 621 Elizabeth Street Melbourne HEREBY APPLY for the issue to me of Thirty four thousand five hundred "B" Ordinary shares fully paid to One pound each in Melford Motors Proprietary Limited for which shares I undertake to pay the allotment money of One pound each in full as soon as I have been notified that the shares have been allotted to me. It will be a sufficient notice of such allotment if a notice containing such information is handed to William Stewart Bennett of 621 Elizabeth Street Melbourne addressed to me.

30

DATED the 30th day of November 1950.

L.A. Fenton.

ANNEXURE NO. 55

Letter - J.V. Ratcliffe to H.J. Lane and
Schedule

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

JOHN V. RATCLIFFE

53 Martin Place,
SYDNEY.

23rd April 1951.

Annexure 55

Letter - J.V.
Ratcliffe to
H.J. Lane and
Schedule.

23rd April
1951.

H.J. Lane, Esq.,
c/- Lane's Motors Pty. Ltd.,
89-109 Exhibition Street,
10 MELBOURNE, C.1.

Dear Harry,

I have considered the figures in your letter of the 19th instant regarding Neal's Motors Pty. Limited, and have come to the conclusion that a transaction similar to that carried out in 1950 could be carried out before the 30th June next, subject to certain modifications. These are:

- (a) a smaller number of shares would be given special dividend rights;
- 20 (b) the tax dividends per share would have to be less than last year but the taxable dividends would be the same.

I find that the tax paid profits now available would total only £21,221 made up as follows:

In Devon Motors Pty. Limited	£8,680: 0: 0
In Allcars Pty. Limited -	
2/3 of £18,812	<u>12,541: 0: 0</u>
Total	<u>£21,221: 0: 0</u>

30 The above leaves out of consideration the amount of £11,351 in Devon Motors Pty. Ltd., which the Department refuses to regard as available for distribution upon a tax paid basis. It is, therefore, inadvisable to appropriate this amount as it would only lead to a contest.

I have worked out two proposals for consideration, these are:

- 40 (1) The number of "C" shares to be equal to the number of "A" shares, reduced by 10%. The number of "A" shares is 36,444 and there would, therefore, be under this proposal, 32,800 "C" shares.

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 55
Letter - J.V.
Ratcliffe to
H.J. Lane and
Schedule.
23rd April
1951 -
continued.

(2) The number of "C" shares to be equal to the number of "A" shares, reduced by 20%. The number of "A" shares is 36,444 and there would therefore be, under this proposal, 29,156 "C" shares.

A schedule attached shows the allocation of 32,800 or 29,156, as the case may be, "C" shares among the shareholders.

If the first proposal be adopted, the tax paid profits would permit of a tax paid dividend of 12/11d, per share on the 32,800 shares; this would require a total amount of £21,183/6/8.

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The alteration in the amount of the tax paid dividend necessitates an alteration in the price per share.

The price for the "A" shares was £12/8/4 made up thus:

(i) Value of share ex special dividend right, that is, as at 5% Preference share	£1: 0: 0	20
(ii) Value of tax paid dividend	1: 0: 0	
(iii) Balance	<u>10: 8: 4</u>	
Total	<u>£12: 8: 4</u>	

Item (ii) above would be reduced to 12/11d., and this would reduce the price for 32,800 shares to £12/1/3.

Under proposal (1) the taxable dividend would be payable on the same basis as those paid on the "A" shares, namely £12.7.--. per share. This would require a total payment of £405075: 1: 0

30

add tax paid dividend at 12/11 per share which amounts to 21183: 6: 8

Total amount to be found by the Company £426258: 7: 8

Under proposal number (2) there would be 29,156 "C" shares. This would mean that the tax paid dividend per share would rise to 14/6 per share, an increase of 1/7 would be reflected in the price raising it to £12/2/10 per share - say £12/3/- per share.

Under this proposal the Company would have to meet :-

40

Taxable dividends of £12/7/- per share on the 21,967 shares to carry out	£360,966:12: 0
Tax paid dividends of 14/6 per share	<u>21,108: 7: 6</u>
	<u>£382,074:19: 6</u>

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

10 In order to carry out proposal (1) Devon Motors Pty. Ltd. would declare a taxable dividend of £82,000 but if proposal (2) it would be only £76,000. Neal's Motors Pty. Ltd. would find the balance - under proposal (1) this would be £323,075/1/-, and under proposal (2) £284,966/12/-. In each case tax paid dividends would be additional.

Annexure 55

Letter - J.V. Ratcliffe to H.J. Lane and Schedule.

23rd April 1951 - continued.

20 If profits are in accordance with the estimate in your letter, proposal (2) would just about avoid Division 7 Tax on 1951 profits. Proposal (1) is safe, having regard to the large general reserve available in Neal's Motors Pty. Limited. Thus if the tax on 1951 profits plus taxable dividends declared, should exceed the net profit before tax, the tax provision would be drawn in the first place from the general reserve, thereby leaving ample taxable income to cover the taxable dividends.

30 This would be adjusted in the following year as there would be an excess to be carried forward for Division 7 purposes, and an amount of 1952 profits equal to the excess, being free from Division 7 tax, could be transferred back to general reserve, thus restoring the present position, and at the same time avoiding Division 7 Tax (to a certain extent) on 1952 profits.

Under either proposal the shareholders can form a Trust similar to the Morton Trust to finance shipments, etc., if the amount to be paid out will leave the Company short of funds.

40 The "A" shares had a right to special dividends of £13/7/- per share, of which £1 was payable out of tax paid profits.

If there are 32,800 "C" shares, the special dividend will be £12/19/11 (which I suggest be rounded off to £13) of which 12/11 would be payable out of tax paid profits, while if there are 29,156 "C" shares the total will be £13/1/6 of which 14/6 per share will be payable out of tax paid profits.

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 55
Letter - J.V.
Ratcliffe to
H.J. Lane and
Schedule.

23rd April
1951 -
continued.

The 5% preference dividend will accrue from
1st July 1951.

The "B" preference shares could be converted
to "D" ordinary shares, although there is no special
need for this at present as there will still be a
large number of "B" ordinary shares.

The last three paragraphs have been added
mainly for the attention of Ernest. Three extra
copies of this letter are attached for your con-
venience.

Kind regards.

Yours faithfully,

(Sgd.) J.V. RATCLIFFE.

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NEAL'S MOTORS PTY. LIMITEDALLOCATION OF SHARES

Shareholder	No. of "A" Shares	10% re- duction	No. of "C" Shares	20% re- duction	No. of "C" Shares
H. J. L.	9111	911	8200	1822	7289
Estate R.N.	12300	1230	11070	2460	9840
Estate J.N.	2475	247	2228	495	1980
L.N.	2456	245	221	491	1965
L. J. N.	2456	246	2210	491	1965
Mrs. F.U.C.	2456	246	2210	491	1965
Est.C.M.N.	2456	246	2210	491	1965
Est.R.T.L.	2734	273	<u>2461</u>	547	<u>2187</u>
			<u>32800</u>		<u>29156</u>

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ANNEXURE NO. 56

Minutes of Extra-ordinary Meeting of Holders
of "B" Preference Shares in Neal's Motors
Pty. Ltd.

NEAL'S MOTORS PTY. LTD.

MINUTES OF EXTRAORDINARY MEETING OF HOLDERS OF
"B" PREFERENCE SHARES, HELD AT 60 COLLINS
PLACE MELBOURNE AT 2.15 P.M. ON THE 12th JUNE
1951.

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 56
Minutes of
Extra-ordinary
Meeting of
Holders of "B"
Preference
Shares in
Neal's Motors
Pty. Ltd.
12th June
1951.

10 PRESENT Messrs. L.J. Newton (Chairman)
 H.J. Lane
 L. Newton
 F.E. Bunny, representing the
 Estate of the late R. Nathan.
 L.J. Newton, representing the
 estate of the late C.M. Nathan.
 L. Newton, representing the
 Estate of the late J. Nathan.
20 H.J. Lane representing the Estate
 of the late R.T. Lane.
 Mrs. S.M. Lane by her proxy H.J. Lane.
 Mrs. F.U. Christian by her proxy L.J.
 Newton.
 Mr. H. Carr, Secretary in attendance.

ALTERATIONS
TO ARTICLES

The following resolution, moved by
Mr. H.J. Lane, and seconded by Mr.
L. Newton was carried unanimously:-

30 THAT this Meeting of "B" Preference
Shareholders of Neal's Motors Prop-
rietary Limited HEREBY CONSENTS to
and approves the following amend-
ments to the Articles of Association
of such Company:-

1. That Article 2A be deleted, and
the following Article substi-
tuted:-

40 2A. The share capital of the
company is £750,000 divided into
750,000 shares of £1 each. 36,444
of such shares shall be known as
"A" ordinary shares, 184,400 of

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 56

Minutes of
Extra-ordinary
Meeting of
Holders of "B"
Preference
Shares in
Neal's Motors
Pty. Ltd.

12th June
1951 -
continued.

such shares shall be known as "B" ordinary shares, 29,156 of such shares shall be known as "C" Ordinary shares, 5,000 of such shares shall be known as "A" Preference shares and 495,000 of such shares shall be known as "B" Preference shares.

2. THAT Article 2B be deleted, and the following Article substituted therefor:-

2B. The shares of the Company which prior to the Eighteenth day of November 1949 were identified as Nos. 1 to 19,451 (inclusive) 19,772 to 21,260 (inclusive) 21,642 to 23,130 (inclusive) 23,512 to 27,861 (inclusive) 29,001 to 33,833 (inclusive) 35,001 to 35,964 (inclusive) 36,201 to 37,167 (inclusive) 37,401 to 38,367 (inclusive) 38,601 to 39,567 (inclusive) and 39,801 to 40,767 (inclusive) shall be "A" Ordinary shares, the shares of the Company which prior to the said Eighteenth day of November 1949, were identified as Nos. 19,452 to 19,771 (inclusive) 21,261 to 21,641 (inclusive), 23,131 to 23,511 (inclusive) 27,862 to 29,000 (inclusive) 33,834 to 35,000 (inclusive) 35,965 to 36,200 (inclusive) 37,168 to 37,400 (inclusive) 38,368 to 38,600 (inclusive) 39,568 to 39,800 (inclusive) 40,768 to 50,871 (inclusive) 58,161 to 65,486 (inclusive) 75,327 to 85,217 (inclusive) 87,198 to 89,187 (inclusive), 91,153 to 93,127 (inclusive) 95,093 to 97,067 (inclusive) 99,033 to 101,007 (inclusive) 102,973 to 104,947 (inclusive) 107,135 to 109,332 (inclusive) shall be "B" Ordinary shares, the shares of the Company which prior to the Twelfth day of June 1951, were identified as Nos. 50,872 to 58,160 (inclusive) 65,487 to 75,326 (inclusive) 85,218 to 87,197 (inclusive) 89,188 to 91,152 (inclusive) 93,128 to 95,092 (inclusive) 97,068 to 99,032 (inclusive) 101,008 to 102,972 (inclusive) and 104,948 to 107,134 (inclusive) and were prior to the last-mentioned date known as "B" Ordinary

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shares shall on, from and after the said Twelfth day of June 1951 be "C" Ordinary shares, and the shares of the Company which prior to the said Eighteenth day of November 1949 were known as Preference shares shall be "A" Preference Shares

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 56

Minutes of Extra-ordinary Meeting of Holders of "B" Preference Shares in Neal's Motors Pty. Ltd.

12th June 1951 - continued.

- 10 3. THAT Article 2C shall be amended by deleting the figures and letter "11A" and substituting therefor the figure and letter "4A"
4. THAT Article 2E shall be amended as follows:-

By deleting the letters and words "A" Preference shares and the "A" ordinary shares" wherever they appear in sequence and by substituting therefor the letters and words "A" Preference shares, "A" Ordinary shares and "C" Ordinary shares".

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5. THAT Article 2F be deleted, and the following Article substituted:-

2F. Subject always to the rights of the "A" Preference shares, and the "A" Ordinary shares "C" Ordinary shares shall be entitled :-

- 30 (a) to the whole of the dividends declared by the Company on or after the twelfth day of June 1951 until such dividends in the aggregate amount to not less than £13: 1: 6 in respect of each "C" Ordinary share of which sum not less than 12/11d per share shall have been paid in such manner and out of such income profits dividends or amounts as to entitle the holder for the time being of each of the said shares to the rebate provided for by Section 107 of the Income Tax Assessment Act 1936-1948, but save as provided by paragraph (b) of this Article the holders of the
- 40

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 56

Minutes of
Extra-ordinary
Meeting of
Holders of "B"
Preference
Shares in
Neal's Motors
Pty. Ltd.

12th June
1951 -
continued.

said "C" Ordinary shares shall not be entitled to any further participation in profits.

- (b) to a fixed cumulative preferential dividend (payable half-yearly on the Thirtieth day of June and the Thirty first day of December in each year) at the rate of Five Pounds per centum per annum computed from the First day of July One thousand nine hundred and fifty one on the capital for the time being and from time to time paid up thereon; 10
- (c) in a winding up to rank in priority to all other shares of the Company for payment of all arrears of dividend (whether earned declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon and for payment in respect of each share of a sum equal to the difference (if any) between the aggregate of all dividends received by the holder of each "C" Ordinary share pursuant to paragraph (a) of this Article and the sum of £13:1:6, but without any other right to further participation in profits or assets of the Company; 20
- (d) to the same rights as the holders of "B" Ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending all general meetings of the Company; 30
- (e) to the same rights as the holders of "B" Ordinary shares as regards voting at general meetings and at polls until the dividends mentioned in subparagraph (a) of this Article have been received and thereafter if at any time and so long as the said fixed cumulative preferential dividend shall remain unpaid for six calendar months after any half-yearly date for payment thereof, or on any proposition or resolution for the 40

purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any question directly affecting the rights or privileges attached to the "C" Ordinary shares.

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

6. THAT the following Article be inserted after Article 2F:

Annexure 56

10 2FF. The rights privileges and conditions conferred by or attached to "A" Ordinary shares, to Preference shares and to "C" Ordinary shares respectively shall not be varied modified altered added to or abrogated excepting in the manner provided by Section 61 of the Companies Act 1938.

Minutes of Extra-ordinary Meeting of Holders of "B" Preference Shares in Neal's Motors Pty., Ltd.

12th June
1951 -
continued.

- 20 7. THAT Article 2H be amended as follows :-

(a) by inserting before the words "Preference shares" the following words and letters (viz): "A" Ordinary shares "C" Ordinary shares or"

(b) By inserting before the word "class" where it secondly thirdly and fourthly appears the word "relevant".

30 Signed as correct

Chairman

Date

ExhibitsANNEXURE No. 57

A.2. Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")	Minutes of Extraordinary Meeting of Holders of "B" Ordinary Shares in Neal's Motors Pty. Ltd.	
Annexure 57. Minutes of Extraordinary Meeting of Holders of "B" Ordinary Shares in Neal's Motors Pty. Ltd. 12th June 1951.	<p style="text-align: center;"><u>NEAL'S MOTORS PTY. LTD.</u></p> <p style="text-align: center;">MINUTES OF EXTRAORDINARY MEETING OF HOLDERS OF "B" ORDINARY SHARES HELD AT 60 COLLINS PLACE, MELBOURNE AT 2.30 P.M. ON THE 12th JUNE 1951</p> <hr/> <p><u>PRESENT</u> Messrs. L.J. Newton (Chairman) 10 H.J. Lane L. Newton F.E. Bunny, representing the Estate of the late R. Nathan L.J. Newton, representing the Estate of the late C.M. Nathan L. Newton, representing the Estate of the late J. Nathan H.J. Lane, representing the Estate of the late R.T. Lane 20 Mrs. S.M. Lane by her proxy H.J. Lane Mrs. F.U. Christian by her proxy L.J. Newton Mr. H. Carr, Secretary, in attendance.</p>	
<u>ALTERA- TIONS TO ARTICLES</u>	The following Resolution, moved by Mr. L. Newton, and seconded by Mr. H.J. Lane, was carried unanimously :	
	<u>THAT</u> this Meeting of "B" Ordinary share- holders of Neal's Motors Proprietary Limited <u>HEREBY CONSENTS</u> to and approves the following amendments to the Articles of Association of such Company:-	30
	1. <u>THAT</u> Article 2A be deleted, and the following Articles substituted:-	
	2A. The share capital of the Company is £750,000 divided into 750,000 shares of £1 each. 36,444 of such shares shall be known as "A" Ordinary shares, 184,400 of such shares shall be known as "B" Ordinary shares, 29,156 of such shares shall be known as "C" Ordinary	40

shares, 5,000 of such shares shall be known as "A" Preference shares, and 495,000 of such shares shall be known as "B" Preference shares.

Exhibits

A.2.

2. THAT Article 2B be deleted, and the following Article substituted therefor:-

2B. The shares of the Company which prior to the Eighteenth day of November 1949 were identified as Nos. 1 to 19,451 (inclusive), 19,772 to 21,260 (inclusive), 21,642 to 23,130 (inclusive), 23,512 to 27,861 (inclusive) 29,001 to 33,833 (inclusive) 35,001 to 35,964 (inclusive) 36,201 to 37,167 (inclusive) 37,401 to 38,367 (inclusive) 38,601 to 39,567 (inclusive) and 39,801 to 40,767 (inclusive) shall be "A" Ordinary shares, the shares of the Company which prior to the said Eighteenth day of November 1949, were identified as Nos. 19,452 to 19,771 (inclusive) 21,261 to 21,641 (inclusive) 23,131 to 23,511 (inclusive) 27,862 to 29,000 (inclusive) 33,834 to 35,000 (inclusive) 35,965 to 36,200 (inclusive) 37,168 to 37,400 (inclusive) 38,368 to 38,600 (inclusive) 39,568 to 39,800 (inclusive) 40,768 to 50,871 (inclusive) 58,161 to 65,486 (inclusive) 75,327 to 85,217 (inclusive) 87,198 to 89,187 (inclusive) 91,153 to 93,127 (inclusive) 95,093 to 97,067 (inclusive) 99,033 to 101,007 (inclusive) 102,973 to 104,947 (inclusive) 107,135 to 109,332 (inclusive) shall be "B" Ordinary share, the shares of the Company which prior to the Twelfth day of June 1951 were identified as Nos. 50,872 to 58,160 (inclusive) 65,487 to 75,326 (inclusive) 85,218 to 87,197 (inclusive) 89,188 to 91,152 (inclusive) 93,128 to 95,092 (inclusive) 97,068 to 99,032 (inclusive) 101,008 to 102,972 (inclusive) and 104,948 to 107,134 (inclusive) and were prior to the last mentioned date known as "B" Ordinary shares shall on, from and after the said Twelfth day of June 1951 be "C" Ordinary shares, and the shares of the Company which prior to the said Eighteenth day of November 1949 were known as Preference shares shall be "A" Preference shares.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 57

Minutes of Extraordinary Meeting of Holders of "B" Ordinary Shares in Neal's Motors Pty. Ltd.

12th June 1951
- continued

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 57.

Minutes of
Extraordinary
Meeting of
Holders of "B"
Ordinary Shares
in Neal's
Motors Pty.
Ltd.

12th June 1951
- continued

3. THAT Article 2C shall be amended by deleting the figures and letter "11A" and substituting therefor the figure and letter "4A".
4. THAT Article 2E shall be amended as follows:

By deleting the letters and words " "A" Preference shares and the "A" Ordinary shares" wherever they appear in sequence and by substituting therefor the letters and words " "A" Preference shares, "A" Ordinary shares and "C" Ordinary shares".

10

5. ~~THAT~~ Article 2F be deleted, and the following Article substituted :-

2F. Subject always to the rights of the "A" Preference shares, and the "A" Ordinary shares "C" Ordinary shares shall be entitled

- (a) to the whole of the dividends declared by the Company on or after the Twelfth day of June 1951 until such dividends in the aggregate amount to not less than £13: 1: 6 in respect of each "C" Ordinary share of which sum not less than 12/11d per share shall have been paid in such manner and out of such income profits dividends or amounts as to entitle the holder for the time being of each of the said shares to the rebate provided for by Section 107 of the Income Tax Assessment Act 1936-1948, but save as provided by paragraph (b) of this Article the holders of the said "C" Ordinary shares shall not be entitled to any further participation in profits;

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- (b) to a fixed cumulative preferential dividend (payable half-yearly on the Thirtieth day of June and the Thirty first day of December in each year) at the rate of Five pounds per centum per annum computed from the First day of July One thousand nine hundred and fifty one on the capital for the time being and from time to time paid up thereon;

40

- 10 (c) in a winding up to rank in priority to all other shares of the Company for payment of all arrears of dividend (whether earned declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon and for payment in respect of each share of a sum equal to the difference (if any) between the aggregate of all dividends received by the holder of each "C" Ordinary share pursuant to paragraph (a) of this Article and the sum of £13: 1: 6 but without any other right to further participation in profits or assets of the Company;
- 20 (d) to the same rights as the holders of "B" Ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending all general meetings of the Company;
- 30 (e) to the same rights as the holders of "B" Ordinary shares as regards voting at general meetings and at polls until the dividends mentioned in sub-paragraph (a) of this Article have been received and thereafter if at any time and so long as the said fixed cumulative preferential dividend shall remain unpaid for six calendar months after any half-yearly date for payment thereof, or on any proposition or resolution for the purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any question directly affecting the rights or privileges attached to the "C" Ordinary shares.

6. THAT the following Article be inserted after Article 2F:-

2FF. The rights privileges and conditions conferred by or attached to "A" Ordinary shares, to Preference shares and to "C" Ordinary shares respectively shall not be varied modified altered added to or abrogated excepting in the manner provided

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 57.

Minutes of Extraordinary Meeting of Holders of "B" Ordinary Shares in Neal's Motors Pty. Ltd.

12th June 1951
- continued.

Exhibits
 A.2.
 Annexures to
 Mutual
 Admissions of
 Fact (Part of
 Exhibit "A.2")
 Annexure 57.
 Minutes of
 Extraordinary
 Meeting of
 Holders of "B"
 Ordinary Shares
 in Neal's
 Motors Pty.Ltd.
 12th June 1951
 - continued.

by Section 61 of the Companies Act 1938.

7. THAT Article 2H be amended as follows:-

(a) by inserting before the words "Preference shares" the following words and letters (viz): " "A" Ordinary shares "C" Ordinary shares or"

(b) by inserting before the word "class" where it secondly thirdly and fourthly appears the word "relevant".

Signed as correct

10

Chairman

Date

ANNEXURE NO. 58

Annexure 58.
 Minutes of
 Extraordinary
 General Meeting of Share-
 holders of
 Neal's Motors
 Pty. Ltd.
 12th June 1951

Minutes of Extraordinary General Meeting
 of Shareholders of Neal's Motors Pty. Ltd.

NEAL'S MOTORS PTY., LTD.

MINUTES OF EXTRAORDINARY GENERAL MEETING
 OF SHAREHOLDERS HELD AT 60 COLLINS PLACE,
 MELBOURNE, AT 2.45 P.M. ON THE 12th JUNE
 1951

20

PRESENT Messrs. L.J. Newton (Chairman)
 H.J. Lane
 L. Newton
 F.E. Bunny, representing the
 Estate of the late R. Nathan
 L.J. Newton, representing the
 Estate of the late C.M. Nathan
 L. Newton, representing the Estate
 of the late J. Nathan
 H.J. Lane, representing the Estate 30
 of the late R.T. Lane
 Mrs. S.M. Lane by her proxy H.J. Lane
 Mrs. F.U. Christian by her proxy L.J.
 Newton
 Mr. H. Carr, Secretary, in attendance.

ALTERA-
TIONS TO
ARTICLES

The following Resolution, moved by Mr.H.J. Lane and seconded by Mr. L. Newton, was carried unanimously :-

Exhibits

A.2.

THAT the Articles of the Association of the Company be amended as follows :-

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

1. THAT Article 2A be deleted, and the following Article substituted:-

Annexure 58.

2A. The share capital of the Company is £750,000 divided into 750,000 shares of £1. each. 36,444 of such shares shall be known as "A" Ordinary shares, 184,400 of such shares shall be known as "B" Ordinary shares, 29,156 of such shares shall be known as "C" Ordinary shares, 5,000 of such shares shall be known as "A" Preference shares, and 495,000 of such shares shall be known as "B" Preference shares.

Minutes of Extraordinary General Meeting of Shareholders of Neal's Motors Pty. Ltd.

12th June 1951
- continued.

2. THAT Article 2B be deleted, and the following Article substituted therefor:-

2B. The shares of the Company which prior to the Eighteenth day of November 1949 were identified as Nos. 1 to 19,451 (inclusive) 19,772 to 21,260 (inclusive) 21,642 to 23,130 (inclusive) 23,512 to 27,861 (inclusive) 29,001 to 33,833 (inclusive) 35,001 to 35,964 (inclusive) 36,201 to 37,167 (inclusive) 37,401 to 38,367 (inclusive) 38,601 to 39,567 (inclusive) and 39,801 to 40,767 (inclusive) shall be "A" Ordinary shares, the shares of the Company which prior to the said Eighteenth day of November 1949, were identified as Nos. 19,452 to 19,771 (inclusive) 21,261 to 21,641 (inclusive) 23,131 to 23,511 (inclusive) 27,862 to 29,000 (inclusive) 33,834 to 35,000 (inclusive) 35,965 to 36,200 (inclusive), 37,168 to 37,400 (inclusive) 38,368 to 38,600 (inclusive) 39,568 to 39,800 (inclusive) 40,768 to 50,871 (inclusive) 58,161 to 65,486 (inclusive) 75,327 to 85,217 (inclusive) 87,198 to 89,187 (inclusive) 91,153 to 93,127 (inclusive) 95,093 to 97,067

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Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 58.

Minutes of .
Extraordinary
General Meet-
ing of Share-
holders of
Neal's Motors
Pty. Ltd.

12th June 1951
- continued.

- (inclusive) 99,033 to 101,007 (inclusive) 102,973 to 104,947 (inclusive) 107,135 to 109,332 (inclusive) shall be "B" Ordinary shares, the shares of the Company which prior to the Twelfth day of June 1951, were identified as Nos. 50,872 to 58,160 (inclusive) 65,487 to 75,326 (inclusive) 85,218 to 87,197 (inclusive) 89,188 to 91,152 (inclusive) 93,128 to 95,092 (inclusive) 97,068 to 99,032 (inclusive) 101,008 to 102,972 (inclusive) and 104,948 to 107,134 (inclusive) and were prior to the last-mentioned date known as "B" Ordinary shares shall on, from and after the said Twelfth day of June 1951 be "C" Ordinary shares, and the shares of the Company which prior to the said Eighteenth day of November 1949 were known as Preference shares shall be "A" Preference shares. 10
3. THAT Article 2C shall be amended by deleting the figures and letter "11A" and substituting therefor the figure and letter "4A". 20
4. THAT Article 2E shall be amended as follows:-
By deleting the letters and words " "A" Preference shares and the "A" Ordinary shares" wherever they appear in sequence and by substituting therefor the letters and words " "A" Preference shares, "A" Ordinary shares and "C" Ordinary shares". 30
5. THAT Article 2F be deleted, and the following Article substituted:-
2F. Subject always to the rights of the "A" Preference shares, and the "A" Ordinary shares "C" Ordinary shares shall be entitled:-
(a) to the whole of the dividends declared by the Company on or after the Twelfth day of June 1951 until such dividends in the aggregate amount to not less than £13: 1: 6 in respect of each "C" Ordinary share of which sum not less than 12/11d per share shall have been paid in such manner and out of such income profits dividends or amounts as 40

to entitle the holder for the time being of each of the said shares to the rebate provided for by Section 107 of the Income Tax Assessment Act 1936-1948, but save as provided by paragraph (b) of this Article the holders of the said "C" Ordinary shares shall not be entitled to any further participation in profits;

10 (b) to a fixed cumulative preferential dividend (payable half-yearly on the Thirtieth day of June and the Thirty first day of December in each year) at the rate of Five pounds per centum per annum computed from the First day of July One thousand nine hundred and fifty one on the capital for the time being and from time to time paid up thereon;

20 (c) in a winding up to rank in priority to all other shares of the Company for payment of all arrears of dividend (whether earned declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon and for payment in respect of each share of a sum equal to the difference (if any) between the aggregate of all dividends received by the holder of each "C" Ordinary share pursuant to paragraph (a) of the Article and the sum of £13: 1: 6, but without
30 any other right to further participation in profits or assets of the Company;

(d) to the same rights as the holders of "B" Ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending all general meetings of the Company;

40 (e) to the same rights as the holders of "B" Ordinary shares as regards voting at general meetings and at polls until the dividends mentioned in sub-paragraph (a) of this Article have been received and thereafter if at any time and so long as the said fixed cumulative preferential dividend shall remain unpaid

Exhibits

A.2.

Annexures to Mutual Admissions of Fact (Part of Exhibit "A.2")

Annexure 58.

Minutes of Extraordinary General Meeting of Shareholders of Neal's Motors Pty. Ltd.

12th June 1951
- continued.

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

for six calendar months after any half-yearly date for payment thereof or on any proposition or resolution for the purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any question directly affecting the rights or privileges attached to the "C" Ordinary shares.

Annexure 58.

Minutes of
Extraordinary
General Meeting of Shareholders of
Neal's Motors
Pty. Ltd.

12th June 1951
- continued.

6. THAT the following Article be inserted after Article 2F:- 10

2FF. The rights privileges and conditions conferred by or attached to "A" Ordinary shares to Preference shares and to "C" Ordinary shares respectively shall not be varied modified altered added to or abrogated excepting in the manner provided by Section 61 of the Companies Act 1938.

7. THAT Article 2H be amended as follows:-

- (a) By inserting before the words "Preference shares" the following words and letters (viz): " "A" Ordinary shares "C" Ordinary shares or" 20
- (b) By inserting before the word "class" where it secondly thirdly and fourthly appears the word "relevant".

Signed as correct

(Sgd.) Lauri J. Newton

Date 30/6/54.

Chairman

30

ANNEXURE NO. 59Exhibits

Option granted to Pactolus Pty. Ltd. by
Henry James Lane in respect of "C" Ord-
inary Shares in Neal's Motors Pty. Ltd.

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 59.

THIS INDENTURE made the 21st day of June One
thousand nine hundred and fifty one B E T W E E N
HENRY JAMES LANE of 28 Albany Road Toorak in the
State of Victoria Warehouseman (hereinafter called
the shareholder) of the first part PACTOLUS
10 PROPRIETARY LIMITED of 53 Martin Place Sydney in
the State of New South Wales (hereinafter called
the purchaser) of the second part and HAROLD CARR
of 222 Exhibition Street Melbourne in the State of
Victoria Secretary (hereinafter called the agent)
of the third part

Option granted
to Pactolus
Pty. Ltd. by
Henry James
Lane in respect
of "C" Ordinary
Shares in
Neal's Motors
Pty. Ltd.

21st June 1951.

WHEREAS the shareholder is registered as the
holder of Seven thousand two hundred and eighty
nine "C" Ordinary shares (hereinafter called the
said shares) in the undertaking known as NEAL'S
20 MOTORS PROPRIETARY LIMITED (hereinafter called the
Company) a Company incorporated in the State of
Victoria AND WHEREAS the shareholder has agreed
to give to the purchaser an option to purchase the
said shares upon the terms and conditions herein-
after appearing NOW THIS INDENTURE WITNESSETH as
follows:-

1. THE shareholder hereby grants to the purchaser
an option to purchase the said shares upon the
following terms and conditions :

- 30 (a) The said option shall be exercised by the
giving by the purchaser to the agent as
agent for the shareholder of a notice in
writing exercising the said option on or
before the Thirtieth day of June One thousand
nine hundred and fifty one;
- (b) Within twenty four hours of the exercise of
the said option the purchaser shall pay to
the agent (who shall receive the same as
agent for the shareholder) an amount equal
40 to Twelve pounds three shillings for each of
the said shares (which amount is hereinafter
referred to as the purchase price);
- (c) Upon receipt by the agent of the purchase

Exhibits

A.2.

Annexures to
Mutual
Admissions of
Fact (Part of
Exhibit "A.2")

Annexure 59.

Option granted
to Pactolus
Pty. Ltd. by
Henry James
Lane in respect
of "C" Ordinary
shares in
Neal's Motors
Pty. Ltd.

21st June 1951
- continued.

price the agent shall complete (by including therein the amount of the purchase price and the name of the purchaser as the transferee) a transfer of the said shares signed in blank by the shareholder in anticipation of the exercise of the said option and shall hand the said transfer and the scrip for the said shares to the purchaser and the purchaser shall thereupon be entitled to produce the said transfer and the relevant scrip to the Company or a Director or Secretary thereof or to any authority within the meaning of the Articles of Association of the Company competent within the said Articles to register such transfer and the purchaser shall also be entitled to apply for registration of the said transfer and the shareholder shall use the best endeavours of the shareholder to ensure that the said transfer shall be registered by the Company.

10

20

2. THE shareholder hereby authorises the agent to receive the purchase price on behalf of the shareholder and to give a valid receipt therefor and on receipt of the purchase price to complete the transfer of the said shares hereinbefore mentioned as hereinbefore provided and to hand the same and the scrip for the said shares to the purchaser.

IN WITNESS whereof the party hereto of
2d the first part has hereunto set his hand and
duty seal the day and year first hereinbefore
stamp written.

30

SIGNED SEALED AND DELIVERED)
by the said HENRY JAMES) H.J. Lane
LANE in the presence of :)

W.B. Thomas

Option exercised
PACTOLUS PTY. LIMITED
J.V. Ratcliffe
Director.
25/6/1951.

40

A.3 - LETTERS (numbered 1 to 30)

No. 1 - L.B. Wallace to
J.V. Ratcliffe

6th October 1949.

Mr. J.V. Ratcliffe

Dear John,

10 Mr. Bunny phoned me this morning with the suggestion that the Articles of Lane's and Neal's and perhaps Ajax, should be patterned on those of I.A.C. They would save a cross reference which now appears in the Articles of Neal's and Lane's to Table A.

Mr. Bunny would like your advice on this point and for your purposes we enclose herewith a copy of I.A.C. Articles.

20 Mr. Ross has advised me, since dictating the above, that the type for the I.A.C. articles is still held by the Printer because we intend adopting the I.A.C. Articles with slight modifications for Proprietary Companies for the I.A.C. Subsidiaries Premium Investments Ltd., Fleet Investments Pty. Ltd. and Dominion Finance Pty. Ltd.

The adoption of the I.A.C. Articles, which have been approved by the Stock Exchange would of course simplify matters at a later date if any of the Companies concerned were converted to public companies and listed on the Exchange.

With kind regards,

sincerely,

(Sgd.) L.B. Wallace

Exhibits

A.3.

No. 1 - L.B. Wallace to J.V. Ratcliffe.

6th October 1949

Exhibits

No. 2 - Corr & Corr to J.V. Ratcliffe

A.3.

No. 2 - Corr &
Corr to J.V.
Ratcliffe.

(Copy)

CORR & CORR

10th October, 1949

10th October
1949.

J.V. Ratcliffe Esq.

Dear Sir,

re Ajax Insurance Co. Ltd. and
other Companies

The correspondence and details sent to Mr. Wallace and to Mr. Ross have been handed to us, and we have considered the proposal from the legal aspect. 10

There are one or two matters which we desire to raise, on some of which we will have to get some further instructions from Mr. Wallace and, in this regard, we will communicate directly with him.

Section 102(1) of the Companies Act 1938, reads as follows:

"A Company having a share capital may, if so authorised by its Articles, cause to be kept in any country, state or colony outside Victoria, a Branch Register of members (in this part called a Branch Register)." 20

It is, of course, proposed to establish a Branch Register at Canberra, and we raise the question as to whether a Branch Register established in that City is competent, having regard to the Section to which we have referred. Normally, one would say that Australia being a country, it would be competent to establish a Branch Register in any part of Australia, but we think that the Section is directed to the authorising of the establishment of a Branch Register in some place which has jurisdictional limits. In other words, we think that in order to justify the setting up of a Branch Register, one must find a place which is a country, state or colony which has a separate legal entity. For instance, it might well be argued that a Branch 30

Register could not be established in a State of the United States of America if the Section referred only to a country. Authority to establish a Branch Register in a State of the United States of America would be founded on the reference to the word "State" in the Section.

Exhibits

A.3.

No. 2 - Corr &
Corr to J.V.
Ratcliffe.

10th October
1949 -
continued.

10 The Australian Capital Territory is not a State, nor is it part of a State, and it is certainly not a Colony. If a Branch Register was established in Canberra, and transactions with shares were recorded on that Register and it was then found that the Register was improperly established it seems to us that the whole of the transactions relating to the movement of shares, would become ineffective.

It is just possible that our view is incorrect, and we are open to conviction, but we regard the matter as of some importance and consequently raise it with you.

20 The next point we want to raise is the requirement of Section 8 (3) of the Companies Act 1938, which requires that no Company shall allot any preference shares unless the rights of the holders of those shares are set out in the Articles of Association. We think that, of necessity, this condition will be complied with, as the Articles of Association will, in their amendment, be made to refer fully to the rights of the holders of "A" ordinary shares.

30 The next question is as to whether the provisions of Section 7(b) of the National Security (Capital Issues) Regulations apply to the creation of the "A" ordinary shares. It is to be noted that the sub-clause refers to an "issue of preference shares". We think that when the conditions attaching to the "A" ordinary shares are set out in the Articles, the "A" ordinary shares become Preference shares within the meaning of the Regulations.

40 We propose that the amendment to the Articles should refer to the share capital as being divided into so many shares of £1 each to be known in future as "A" ordinary shares, so many shares of £1 each to be known as "B" ordinary shares, and a further number of shares to be known as Preference

Exhibits

A.3.

No. 2 - Corr &
Corr to J.V.
Ratcliffe

10th October
1949 -
continued.

shares. These latter preference shares clearly require the consent of the Treasurer of the Commonwealth to their issue.

We propose, then, that the amended Articles should provide that a certain percentage of the issued shares of the Company held by each shareholder on a certain date, shall be "A" ordinary shares. We feel that this procedure does not involve the issue of "A" ordinary shares, and that it is reasonably safe to assume that the Sub-Regulation to which we have referred has no application. Clause 8 however of the Regulations appears to us to raise some difficulty. It will be seen that any alteration in Articles of Association which provides for an increase in the rate of dividends on preference shares shall not have any effect unless approved by the Treasurer. 10

The position, therefore, is that if what is proposed fails within the provisions of this clause, the whole scheme would fail in its objects. 20

It is clear that the shares which become "A" ordinary shares at the present time cannot in any circumstances be considered as preference shares. When however the new conditions are attached to these shares they then, as we have stated before, become preference shares within the meaning of the regulations. It is also clear that the dividend on those very shares will be increased by the proposed amendment. The problem is almost as difficult to solve as the old question as to which comes first, the chicken or the egg. It may be because it is only by reason of the special rights which are to be attached to the "A" ordinary shares that these become preference shares at all, it cannot be said that the dividends on preference shares are being increased. 30

If however the shares themselves and their rights are to be looked at, it may well be said that the dividends in respect of those shares are being increased, and the consent of the Treasurer, is, therefore, necessary. 40

Although it may not be relevant for the final consideration of the matter, we are influenced to some extent by the question of what could happen if the regulations do not apply to the proposal on foot. A company intending to create preference

shares could amend its Articles to provide that all or a portion of its issued capital could, in future, have preferential rights, and could then take in £25,000 by the issue of further ordinary shares. It may well be, of course, that the loophole is there and, if so, advantage can definitely be taken of it.

Exhibits

A.3.

No. 2 - Corr &
Corr to J.V.
Ratcliffe

10 One must perhaps give some effect to Clause 28 of the Regulations, although it is difficult to see what application a Court would be likely to give to this clause.

10th October
1949 -
continued.

We do not say that Clause 8 does apply, but we feel that there is so much double on the matter and so much is at stake, that it is our duty to consider the possible effect of the Clause.

20 We mentioned these points to Mr. Ross on Friday, and suggested that it might be well to take the opinion of eminent Counsel. This has now been approved, and the question arises as to whether an opinion should be sought in Melbourne or in Sydney. We think that Mr. E.H. Hudson, K.C. of this City is eminently suited to express an opinion on all the matters raised by us, but Messrs. Wallace and Ross are prepared to consider any views expressed by you on the question of Counsel.

30 We have prepared a draft amendment of the Articles of Ajax Insurance Co. Ltd. and have also drafted an agreement whereby the shareholders in that Company will sell what will be their "A" ordinary shares to your Company. To get over any difficulty in relation to the completion of the transaction in Canberra, we propose that this document should take the form of an option given by the shareholders to your Company, which option can be exercised by a notice in writing given by Mr. Ross, who will also be a party to the agreement.

40 Mr. Ross will be authorised to accept the purchase money for the "A" ordinary shares, and will also be authorised to pay to your company the purchase price for the new preference shares.

Some arrangement will have to be made whereby the money for the new preference shares can be provided, in view of the fact that the amount payable for the "A" ordinary shares to each shareholder

Exhibits

A.3.

No. 2 - Corr &
Corr to J.V.
Ratcliffe

10th October
1949 -
continued.

will exceed the amount to be found by that shareholder for the new preference shares.

There is no difficulty so far as Ajax Insurance Co. Ltd. is concerned with regard to transfers of shares, as this Company is a Public Company within the meaning of the Companies Act, and consequently the right to transfer shares is practically unlimited.

So far as the shares in the Proprietary Companies are concerned we will have to evolve some method of free transfer of "A" ordinary shares and the new preference shares.

10

In the agreement to be signed by the shareholders, we propose to insert various conditions dealing with the situation which is to arise if Ajax Insurance Co. Ltd. shall be converted into a Public Company for Stock Exchange purposes. We then propose to include a provision that if the Company shall not be converted into a Public Company with its shares listed generally or the "A" ordinary shares listed within two years and one month, the vendors of the shares will re-purchase the "A" ordinary shares at £1 each. It occurs to us that this price may be slightly wrong having regard to the adjustment which is to be made in respect of the amount payable by the purchaser of the shares if the Company is converted into a public company generally.

20

You might please consider whether the method which we have adopted is satisfactory in relation to the re-purchase of shares if the Company is not converted into a public company or if the "A" ordinary shares are not listed. It seems to us that there is nothing unduly unusual in the proposal which amounts to a payment by your Company of a certain amount for shares, which are not listed, for your Company paying a further sum if the shares do become listed, and for the original shareholders to re-purchase the shares if the Company does not become a Public Company. In other words, it might be said that your Company was purchasing the shares in contemplation of their becoming listed, but insisted that if they did not become listed they should be re-purchased at their full value at some specified time.

30

40

The proposal departs slightly from the suggestion made by you, but we have taken the liberty of

10 suggesting the variation in the form of agreement. We have not made your Investment Company a party to this agreement, as we feel that this is undesirable. It may connect up too closely the investment company with the sale of the shares by the shareholders in Ajax Insurance Co. Ltd., but we have inserted in the agreement between the shareholders and your Company a clause to the effect that if your Company sells the shares before the Company is converted into a public company or before the expiration of two years and one month, it must obtain an agreement between the new purchaser (which will, of course, be your Investment Company) and the shareholder, in which the new purchaser undertakes to pay the additional money if the Company is converted into a Public Company or resells the shares to the original shareholders if the Company is not so converted within two years.

20 We have also included a clause to the effect that such an agreement with a new purchaser is not to absolve your Company from its responsibility to pay the additional money and under which your Company guarantees performance by the new purchaser of its obligation.

30 It occurs to us that if you feel that we have brought the re-purchase of the "A" ordinary shares too close to their sale by the present shareholders, another method might be for your Company to give an option to some person generally to purchase the shares at the expiration of two years if the Company has not previously been converted into a public Company.

We fear we have written you at some length, but trust that you will feel that we are justified in the circumstances.

(Sgd.) Corr & Corr.

Exhibits

A.3.

No. 2 - Corr &
Corr to J.V.
Ratcliffe

10th October
1949 -
continued.

Exhibits

No. 3 - J.V. Ratcliffe to Corr & Corr

A.3.

(Copy)

No. 3 - J.V.
Ratcliffe to
Corr & Corr.

JOHN V. RATCLIFFE

12th October 1949

12th October
1949.

AIR MAIL

Messrs. Corr & Corr.

Dear Sirs,

Re Ajax Insurance Co. Ltd. and
Other Companies

I refer to your letter of the 10th instant regarding the proposals which were the subject of my correspondence with Mr. Wallace and note that questions are raised in regard to the following matters, namely:-

10

- 1. Branch Share Register.
- 2. Victorian Companies Act - rights of Preference Shares.
- 3. Capital Issues Regulations . creation of "A" ordinary shares.
- 4. Agreement for sale including certain options.

20

and I will deal with these seriatim.

1. Branch Share Register:

I agree that this is a question upon which Counsel's opinion might be obtained.

In the first paragraph on page two of your letter, you say that ".....and it was then found that the Register was improperly established, it seems to us that the whole of the transactions relating to the movement of shares, would become ineffective".

30

I assume that what you mean by this statement is that the shares would have remained in law on the Victorian Register and Stamp Duty would, therefore, be payable upon the transfers. These transfers would still I assume have to be brought within Victoria to become the subject of transfer duty.

Further, I assume that the transfers would pass title to the shares. I think I mentioned to you a case of a Foreign Company in Sydney which regularly dealt with transfers of shares listed on the Stock Exchange and issued scrip signed by two Directors resident in Sydney, although the register kept was not a properly constituted Branch Register.

Exhibits

A.3.

No. 3 - J.V.
Ratcliffe to
Corr & Corr.12th October
1949 -
continued.

10 It is usual to find in Articles of Association a provision that the property in a share or the right to dividends shall remain with the holder until the transfer is entered in the share register.

In the case of the Ajax Insurance Co. Limited, the relevant article appears to be No.37 which reads as follows :-

20 "37. The instrument of transfer of any share shall be signed both by the transferrer and the transferee and the transferrer shall be deemed to remain the holder of such share until the name of the transferrer is entered in the Register in respect thereof".

In a case in this State in which I was recently concerned in order to overcome delays in the State Stamp Duties Office, an article to the foregoing effect was deleted and an article similar to the following substituted:

30 "A transfer of shares shall if the transfer be presented to the Company or the transferrer so directs the Company in writing pass the rights to any dividend declared thereon after such presentation or direction as the case may be. Presentation of the transfer or other notification may be made at any place specified in any resolution of the directors."

40 If a Branch Register be established the inclusion of an amending article such as that set out above would remove doubts as to the rights of the purchaser to receive payment from the Company of the dividend assuming the setting up of the Branch Share Register were successfully challenged. Even if it were successfully challenged, the vendors would be, it seems to me, trustees for the purchaser of the shares and of any dividends declared after the sale and although there would be more room for argument the income tax position would still be secure.

Exhibits

A.3.

No. 3 - J.V.
Ratcliffe to
Corr & Corr.

12th October
1949 -
continued.

If a Branch Share Register were not established an article such as that suggested above would enable the transaction to be carried out in Victoria without waiting on the Stamp Duties Office for stamping, although if practicable it would be desirable to have the transfers stamped and registered before the declaration of the dividends.

2. Victorian Companies Act - Rights of Preference Shares:

I note what you say under this heading in the third paragraph on page two of your letter where you deal with the rights of the "A" ordinary shares. I assume that the rights of the new Preference shares will also be set out in the Articles.

10

3. Capital Issues Regulations:

I gather from your comments on this subject that, although in your view the "A" ordinary shares become Preference Shares within the meaning of the Regulations what is proposed does not involve the issue of any shares. This is the view which I take because it seems to be clear that having regard to the Articles of Association of the Company, and relevant records of the Company, the only "issue" involved as regards the "A" shares would be the original issue of the shares made long before the regulations were in force. All that is now being done is to change the rights of these shares.

20

As to the manner in which the amendment is to be made, in the last paragraph of page two of your letter you mentioned a proposal to provide that a certain percentage of the issued shares shall become "A" ordinary shares. I think, in this connection, that the best plan would be to list the actual serial numbers of the shares which are to become "A" ordinary shares and the serial numbers of the shares which are to remain "B" ordinary shares.

30

You then proceed to deal with the question of regulation 8 which requires the Treasurer's consent to an alteration to the Memorandum or Articles of Association increasing the rate of dividend on Preference shares. In my view, this regulation is applicable only to an alteration in the rate of dividend of a share which is a Preference share before the alteration is made. Furthermore, in my

40

opinion the proposal which we are discussing does not increase the rate of dividend to which the "A" shares would, apart from the amendment, be entitled. The amendment has the effect of reducing the rate and from this angle also, in my view the regulation is inapplicable.

On the whole I cannot see any advantage in submitting these questions to Counsel.

10 I agree that the new Preference shares clearly require the consent of the Treasurer and the applications in this connection are already in the course of preparation. In two cases they have been forwarded to Mr. Wallace for completion. In the other two cases, the applications will be ready shortly.

4. Agreement for sale:

20 I note what you propose with regard to the option to the purchasing company and this seems to me to be a simple means of carrying out the transaction.

30 In the third paragraph on page 4 of your letter you refer to the provision of money for the taking up of the new preference shares. In this regard I think I should make it clear that the purchaser of the "A" Ordinary shares will take up the new Preference shares. The dividends on the "A" ordinary shares will be available for this purpose, and will, in fact, exceed the amount payable on the new preference shares. After taking up the new Preference shares the purchaser will sell them to the holders of the "B" ordinary shares. These holders will have sufficient funds from the proceeds of the sale of the "A" ordinary shares to pay for the new preference shares. In the net result the companies will pay out the difference between the total amount of dividends payable and the amount of the new preference capital. In each case this amount has been calculated and payment will be well within the capacity of the company concerned.

40 You next refer to the question of some method of free transfer of the "A" ordinary shares and the preference shares. This is a matter which it is desirable shall be covered in the amendments to the Articles.

Exhibits

A.3.

No. 3 - J.V.
Ratcliffe to
Corr & Corr.

12th October
1949 -
continued.

Exhibits

A.3.

No. 3 - J.V.
Ratcliffe to
Corr & Corr.

12th October
1949 -
continued.

As regards the agreement between the vendors and the purchaser, this is dealt with in the last complete paragraph in page 4 of your letter.

I note that here you refer to a repurchase of the "A" ordinary shares in a certain eventuality. In my view this provision should not be included and I think I rather stressed this view at the conference in Melbourne. It is because I hold this view somewhat strongly that I suggested that consideration be given to the question of providing for a return of the capital represented by the "A" ordinary shares, that is, in the event that a decision be made not to convert to a public company. While from the legal point of view your suggestion appears quite a usual provision to insert in such a contract, I think it would provide a point which would aid the Commissioner in any contest which may arise out of the transaction.

10

The Commissioner's argument would be that the transaction is a profit making scheme involving the making of a profit out of the sale of the shares and their repurchase. Such an argument might well be successful and I think I expressed this view at the conference in Melbourne. I have given further consideration to the suggestion which I made that in preparing the contract "consideration" should be given to the inclusion of a clause relating to a return of capital. Although this would not involve the attaching of a "string" to the shares, it seems to me that the Commissioner could raise exactly the same argument, although perhaps with not the same force.

20

30

After very careful consideration, therefore, I have come to the conclusion that the contract must not include any provision which could be regarded as a "string" to the shares, or its equivalent such as a cancellation of the shares.

You refer to this particular matter again in the second last paragraph on page 5. For the reasons already given, I think that from the taxation point of view it is undesirable to provide for any such option. There are also objections from the business point of view but these are of less importance.

40

In your first complete paragraph on page 5, you refer to the exclusion of the investment company

from the agreement. I agree with what you propose in this connection and also with what you say in the immediately following paragraph.

Exhibits

A.3.

No. 3 - J.V. Ratcliffe to Corr & Corr.

12th October 1949 - continued.

10

In conclusion, there is the matter of obtaining Counsel's opinion. I suggest that in this connection it is unnecessary to place the full details before Counsel. The questions upon which Counsel's opinion is desired each seem to me to be capable of a separate statement of facts (without reference to the ultimate purpose) e.g. the question of the Branch Register and (if you still think it essential) the question of the Capital Issues Regulations, and in each case, it should be practicable to confine the statement of case to such facts as are necessary to raise the question. Subject to this I am quite happy to leave the choice of Counsel in your hands, particularly as the opinion is desired on behalf of the proposed vendors. I would, however, like to see the draft amendments of the articles and the draft contract together with a copy of the proposed case for the opinion of Counsel before Counsel's opinion is asked for.

20

I hope that I have dealt specifically with all the matters which you have raised.

As I assume that you have sent a copy of your letter to Mr. Wallace, I attach an extra copy of my reply so that you may send it to him.

(Sgd.) J.V. Ratcliffe.

30

No. 4 - J.V. Ratcliffe to H.J. Lane

(Copy)

J.V. RATCLIFFE

13th October 1949

H.J. Lane Esq.,
Lane's Motors Pty. Ltd.,
89-109 Exhibition Street,
MELBOURNE.

No. 4 - J.V. Ratcliffe to H.J. Lane.

13th October 1949.

Dear Harry,

I have had a long letter from Mr. Bunny which I answered yesterday. I have sent Mr. Bunny an

Exhibits

A.3.

No. 4 - J.V.
Ratcliffe to
H.J. Lane.

13th October
1949 -
continued.

extra copy of my reply so that he can hand it on to Lionel Wallace who had probably a copy of his letter to me. However, there is one point which seems to me to be clearly a question for decision by the vendors. In this regard Mr. Bunny is endeavouring to draft a contract which will include some "string" to the shares. I am enclosing for your information a copy of my reply to Mr. Bunny and you will be able to see from this the view which I hold on this point. See marked portions of pages 3 and 4.

10

I feel that we should not enter into a transaction which at the outset includes an arrangement which may result on the loss of the advantage sought to be obtained. Therefore I think that the vendors should now consider whether they are willing to dispose of the shares without any "string" being attached. If they are not willing to do this, they will in my opinion be running a much greater risk than otherwise.

At the conference in Melbourne I think I stressed the grave risk that would be involved if the vendors attempted to attach any "string" to the transaction.

20

Since then I have been reconsidering the matter very carefully and I have come to the conclusion that the vendors should make up their minds to sell the shares unconditionally - except for the provision relating to the disposal of the shares by the purchaser in the event of the Company deciding to have its shares listed on the Stock Exchange.

30

If the sale includes a "string" to the shares, opinion both official and public would be against us and the Commissioner might seek an amendment of the law to tax the transaction. If there is no "string" there is then only a sale of an investment which would be very difficult to legislate for, either retrospectively or otherwise.

I feel sure that you will realize that this is not a mere insistence of my own opinion but a point which I feel compelled to stress. Of course if the vendors wish to proceed with the transaction with some "string" attached to the shares, it would be open for me to say "go ahead, the responsibility is all yours". Even so I would be unhappy and reluctant about entering into a transaction which had such an element of weakness in it.

40

Perhaps if Mr. Bunny devotes himself to this matter and produces the necessary drafts quickly you could come up to Sydney with him and Lionel - also Lauri if he can spare the time. There are some further points which I wish to discuss in any event and this could be done more easily personally than by letter.

With kind regards,

Yours truly,

JOHN.

10

Exhibits

A.3.

No. 4 - J.V. Ratcliffe to H.J. Lane.

13th October 1949 - continued.

No. 5 - Corr & Corr to J.V. Ratcliffe

(Copy)

No. 5 - Corr & Corr to J.V. Ratcliffe.

18th October 1949.

CORR & CORR

18th October 49

AIR MAIL

J.V. Ratcliffe Esq.

Dear Sir,

Ajax Insurance Co. Ltd. and other Companies

20

We duly received your letter of the 12th inst. We propose to deal with the subjects under the headings which you have enumerated in your letter. For the present we propose to deal only with the position of Ajax Insurance Co. Ltd. so far as the Articles are concerned. Different variations will be required in the other Companies.

Branch Share Register.

30

We propose to take the opinion of Counsel and the matter is dealt with in the draft case for opinion which is forwarded herewith.

On the question of the passing of the interest in a share on the transfer thereof, in addition to Article 37 of Ajax, Article 130 of that Company

Exhibits

A.3.

No. 5 - Corr &
Corr to J.V.
Ratcliffe.18th October
1949 -
continued.

will also have to be borne in mind if Counsel is of the opinion that a Branch Register cannot be established. We prefer and we think you will agree that registration should be the evidence of a transfer of interest in a share, as otherwise questions may possibly arise as between transferor and transferee in regard to the right to a dividend if a dispute arises between those parties. For the present, we are assuming that a Branch Register can be established, and consequently in the proposed amendments to the Articles of Ajax, we propose a new Article No.111A which will enable the Company to vest in some person authority to register transfers at the location of the Branch Register. As the Articles stand, there may be some doubt as to whether if a transfer is not properly registered, a vendor would be trustee for the purchase of the shares and of any dividends, but we do not propose to elaborate on this proposition for the time being. 10

Victorian Companies Act, Rights of Preference shares: 20

The proposed alteration to the Articles of Association should take care of our comments under this heading. (See new Articles 4C and 4D).

Capital Issues Regulations:

The suggested new Article 4B adopts your suggestion that the "A" ordinary shares should be identified by numbers. We think that it will be practicable to provide a list so that shares identified by numbers held by each shareholder will aggregate the intended proportion of shares to be converted into "A" ordinary shares. The numbers will of course, be far from consecutive, but apparently this cannot be avoided. 30

We recognise the force of your argument against the applicability of Regulation 8 to the proposal but after having discussed the matter with Mr. H.J. Lane and others it is felt that Counsel's opinion should be obtained. The draft case for opinion of Counsel forwarded herewith attempts to put the views which you advanced in your letter, as well as the views expressed in our letter of the 10th inst. and for the moment we consider that no further comment on this heading is necessary, excepting that we are interested to know how you argue that the effect of the proposal will be to reduce the rate of dividend payable on "A" ordinary shares as 40

compared with the rate of dividend now payable on ordinary shares. You will see in the draft case our comments on the question of the meaning of the word "rate".

Agreement for Sale:

Following our conference with Messrs. H.J. Lane, L.B. Wallace and D.H. Ross yesterday, we are advised that Mr. Ross spoke to you on the telephone yesterday afternoon, and you agreed that in the

10 draft agreement there was now no necessity to refer to the matters set out in paragraphs 2 3 and 4 of your memorandum headed "Ajax Insurance Company Limited - Contract for sale of A shares". We understand that Mr. Lane has to consult Mr. Nathan and Mr. L.J. Newton and he feels that these gentlemen will have no objection to the non-appearance of the matters suggested in the three paragraphs mentioned. This will simplify the agreement very considerably. We are submitting a draft agreement on

20 the basis that these provisions are not to be included, and we invite your comments on the form of the agreement. The only observation we have to make is as to the wisdom of the inclusion of paragraph 1(d). Unless it is proposed to delay the application for the new Preference shares until after the payment of the dividend, there seems no real reason why this clause should appear excepting, of course, to create an obligation on your Company to sell certain of the new Preference issue to the

30 original shareholders. It might be considered that this matter can rest on the mutual trust between your company and the original shareholders. We realize that you, at the conference in Melbourne, were against the proposal that the original shareholders should have the right at some future date to repurchase the "A" ordinary shares but having regard to paragraph 4 of the memorandum to which we have previously referred, we thought that you had come to the conclusion that some provision should

40 be made for the ultimate disposal by your company of these shares. We thought that the proposal which we made had the added advantage of protecting the purchaser of the "A" ordinary shares. We understand however that you do not care whether these shares remain outstanding permanently and if the matters referred to in paragraphs 2 and 3 of the memorandum are to be excluded there seems no point in having any provision at all dealing with the ultimate destiny of these shares.

Exhibits

A.3.

No. 5 - Corr &
Corr to J.V.
Ratcliffe.

18th October
1949 -
continued.

Exhibits

A.3.

No. 5 - Corr &
Corr to J.V.
Ratcliffe.

18th October
1949 -
continued.

In the second paragraph under the heading "Agreement for Sale" you have missed the point which we were attempting to make. We realize that the vendors of "A" ordinary shares will receive as purchase money more than will be required to take up their portion of the new preference issue, but the difficulty which we foresaw was that Mr. Ross would receive a cheque for some shareholders for, say £2,000, and would be obliged to find, say £1,900 for the purchase of preference shares. It was the matter of the splitting of the cheque which we had in mind. It has been suggested that in the example given, the purchasing Company could give two cheques, one for £1,900 and one for £100, but it occurs to us that this may create too close an association between the sale of the "A" ordinary shares and the purchase of the new preference issue. We do not regard this difficulty as very serious, and no doubt it can be overcome when the full procedure to be followed at Canberra is settled.

10

20

General:

Because of the Sittings of the High Court in Melbourne Mr. Hudson will probably be very busy. We are however, endeavouring to see him today to ascertain whether he can make himself available to give an urgent opinion. We will let you know his decision. If he is not available, it might be necessary to seek an opinion in Sydney but in view of the fact that to some extent the Victorian Companies Act is involved, we would prefer to have a Victorian Counsel. If Mr. Hudson cannot undertake to give a speedy opinion we propose to approach Mr. T.W. Smith K.C. and Mr. P.D. Phillips K.C., whose opinion we value, to ascertain if one of them could treat the matter as urgent.

30

In the meantime we would be pleased to have any comments which you may desire to offer on the contents of the case for opinion on the draft agreement or the proposed amendments to the Articles.

40

As we indicated earlier in this letter, we have dealt with Ajax only on the question of amendment of Articles. We have drafted proposed amendments to the Articles of Melford Motors Pty. Ltd. and these will be sent to you in the course of a day or so. We have, for various reasons, thought it best not to provide a complete set of new Articles for the

proprietary companies.

We will draw the proposed amendments to the Articles of Lane's Motors Pty. Ltd. and Neal's Motors Pty. Ltd. in the course of a few days, and these will be sent to you when available.

(Sgd.) Corr & Corr.

P.S. Since dictating the above, we have seen Mr. Hudson and he had promised that provided we let him have the complete Brief by Thursday next, the 20th inst. he will let us have his opinion on the following Tuesday namely, the 25th inst.

Exhibits

A.3.

No. 5 - Corr & Corr to J.V. Ratcliffe.

18th October 1949 - continued.

10

No. 6 - J.V. Ratcliffe to Corr & Corr and Telegram referred to therein.

No. 6 - J.V. Ratcliffe to Corr & Corr and Telegram referred to therein.

(Copy)

JOHN V. RATCLIFFE

19th October, 1949

19th October 1949.

AIR MAIL

Messrs. Corr & Corr.

Dear Sirs,

20

Ajax Insurance Co., Ltd. and other Companies.

I acknowledge receipt of your letter of the 18th instant and enclosures.

I note that you have arranged to submit the case for Opinion of Counsel to Mr. Hudson K.C. tomorrow and I have, therefore, given first attention to a perusal of the case for opinion.

30

It seems to me that the case as set out, very clearly puts all the questions which arise at present, although, in the event of an unfavourable opinion regarding the setting up of a Branch Register in Canberra, there are some other questions

Exhibits

A.3.

No. 6 - J.V.
Ratcliffe to
Corr & Corr
and Telegram
referred to
therein.

19th October
1949 -
continued

in which I would like to put to Counsel. There is a matter which I note in the draft amendment of the Articles which will not affect Counsel's opinion but which I take this opportunity of mentioning.

In new Article 4C provision is made for the payment of Preference dividends on a yearly basis - see Paragraph (c) but in paragraph (f) of the same Article reference is made to half yearly preference dividends.

For business reasons I asked that the preference dividend on the "A" shares be payable half yearly and I, therefore, suggest that when the draft is being finally settled paragraph (c) be altered rather than paragraph (f).

10

The same question arises under new Article 4D - see Paragraphs (a) and (e) thereof.

As this letter may not reach you until late tomorrow I am also sending you a telegram suggesting that you proceed with the submission of the case to Mr. Hudson K.C.

20

I will study your letter carefully and let you have any further comments which I wish to offer as soon as possible.

(Sgd.) J.V. Ratcliffe.

Telegram -
J.V.Ratcliffe
to Corr &
Corr.

(Copy)

19th October, 1949

19th October
1949.

T E L E G R A M

MESSRS. CORR & CORR

RE YOUR LETTER 18TH AJAX AND OTHERS DRAFT CASE
ACCEPTABLE SUGGEST YOU PROCEED WITH SUBMISSION TO
COUNCIL...JOHNCLIFFE

30

No. 7 - J.V. Ratcliffe to Corr & Corr

Exhibits

(Copy)

A.3.

JOHN V. RATCLIFFE
Messrs. Corr & Corr

25th October, 1949

No. 7 - J.V.
Ratcliffe to
Corr & Corr.

Dear Sirs,

25th October.
1949.

re Ajax Insurance Company Limited
and Other companies

I refer to my letter of the 19th instant on
the above subject.

10 I have now given further consideration to the
matter as regards the draft amendments to the
Articles - particularly as regards new Article 4C.

Paragraphs (a) and (b) of your draft follow my
memo, but it appears to me now that the exception
in paragraph (a) would leave it open to the Company
to pay only dividends out of "tax-paid" profits,
and once the rights under paragraph (b) are satis-
fied, the holders of the "B" ordinary shares would
receive all the "tax paid" dividends.

20 As the matter is one of some difficulty I have
discussed it with Mr. H.V. Single of Messrs. Dawson
Waldron Edwards & Nicholls, who is my Company's
Solicitor and he suggests paragraphs (a) and (b) of
the draft be deleted and the following paragraph
(a) be inserted in lieu thereof:

30 "(a) To the whole of the dividends declared by the
Company until such dividends aggregate the sum
of £9 for each "A" ordinary share and until
not less than £1.7.6 of such sum shall have
been paid wholly and exclusively out of an
amount or amounts in respect of which under
Division 7 of the Income Tax Assessment Act
1936/1947 the Company has paid or is liable to
pay tax".

Paragraph (c) will be altered to paragraph (b)
and so on until paragraph (g) becomes paragraph (f).

In paragraph (c) which will become new para-
graph (b) there will be an alteration in the second

Exhibits

A.3.

No. 7 - J.V.
Ratcliffe to
Corr & Corr.

25th October
1949 -
continued.

line to provide for half-yearly preference dividends payable on the thirtieth day of June and the thirty first day of December in each year.

Paragraph (d) which will be new paragraph (c) applies only to arrears of the 5% preference dividend. On the basis so far discussed there should be no arrears of the Special Dividends but there may yet be some need for deferring part payment of the Special Dividends until a later date (provided my Company can provide the necessary finance) and, therefore, this particular paragraph should be amended by inserting after the word "thereon" at the end of the third last line, the following:-

10

"and for payment in respect of each share of a sum equal to the difference (if any) between the aggregate of all dividends declared pursuant to paragraph (a) of this Article and the sum of £9".

In Paragraph (f) which will be new paragraph (e), in the third line of the third paragraph (which is at the end of the line at the top of the page) delete "and (b)" and after the word "and" in the following line, insert the word "thereafter".

20

Article 4D requires alteration in paragraphs (a) and (e) to provide for half yearly dividends payable at the end of June and December - as mentioned in my letter of the 19th instant.

I have been unable to follow a number of the proposed amendments because I have no copy of the present Articles of Association. The copy supplied to me was forwarded on to the Capital Issues Board with the application for consent to the new preference issue.

30

I should therefore be glad if you would kindly arrange for another copy to be sent to me.

Thanking you in anticipation.

(Sgd.) J.V. Ratcliffe.

No. 8 - Corr & Corr to J.V. Ratcliffe

Exhibits

(Copy)

A.3.

CORR & CORR

26th October, 1949

No. 8 .. Corr &
Corr to J.V.
Ratcliffe.

AIR MAIL

J.V. Ratcliffe Esq.

26th October
1949.

Dear Sir,

re Ajax Insurance Co. Ltd.
and other Companies.

10 We refer to our letter to you of yesterday's
date.

We have considered Mr. Hudson's opinion, and
propose to discuss the effect with the Directors of
the various Companies this afternoon.

20 The difficulty with regard to the establishment
of a Branch Register might be met by going ahead
with the proposed amendment to the Articles, incor-
porating the phrase suggested by Mr. Hudson, by
establishing a Branch Register in Canberra and
effecting the transfers there, but by providing
30 that the right to a dividend is transferred when a
transfer of a share signed by the transferror and
transferee is produced to and noted by the Secretary
of the Company. This will, in our opinion, get
over any difficulty in regard to the right to a
dividend, and the only risk appears to be that when
the Registrar-General in Victoria learns of the
transfers of the various shares, he may inform the
Comptroller of Stamps who might then call for an
explanation and attempt to assess duty on the
transfers as if they had been effected in Victoria.

40 It did occur to us that the various vendors
might authorise Mr. Ross to sign the transfer on
their behalf but this procedure unfortunately could
not be followed in the case of Executors. Our
idea was that if the transfer was signed outside of
Victoria it might create a further difficulty with
the Comptroller of Stamps but even if the transfer
could be wholly completed in Canberra, it may not
affect the right of the Victorian Duties Office to
insist on duty being paid if it is necessary to

Exhibits

bring the transfer into Victoria for the purpose of registration.

A.3.

No. 8 - Corr & Corr to J.V. Ratcliffe.

26th October 1949 - continued.

In your letter of the 19th inst. you express the view that you might like other questions submitted to Counsel in the event of his opinion being unfavorable regarding the setting up of a Branch Register in Canberra. We suggest that you indicate to us the further matters on which you would like Counsel's opinion.

You will notice that Counsel has suggested some slight alterations to the proposed amendments. As a matter of fact, we had noticed that amendments were necessary, but when the amendments were drawn by us it was not intended that they should be in their final form, but they were only drawn to give Counsel and other interested parties an idea as to the procedure which was to be followed.

10

We are now going ahead with the preparation of the amendments to the Articles of Association of Melford Motors Pty. Ltd. (these amendments are already drafted), Lane's Motors Pty. Ltd. and Neal's Motors Pty. Ltd. and these, and the proposed amendments to the Articles of Ajax Insurance Co. Ltd. will be submitted to you within the next few days.

20

(Sgd.) CORR & CORR.

No. 9 - Corr & Corr to J.V. Ratcliffe.

No. 9 - Corr & Corr to J.V. Ratcliffe

27th October 1949.

CORR & CORR

27th October, 1949

(Copy)

AIR MAIL

J.V. Ratcliffe Esq.

30

Dear Sir,

re Ajax Insurance Co. Ltd.
and other Companies

We duly received your letter of the 25th inst. and desire to advise you that the matter therein referred to is receiving attention.

In the letter which we wrote to you yesterday, we notice that a typographical error appears in the fifth line of the fourth paragraph. The word "with" should have read "for".

(Sgd.) CORR & CORR

Exhibits

A.3.

No. 9 - Corr & Corr to J.V. Ratcliffe.

27th October 1949 - continued.

No. 10 - J.V. Ratcliffe to Corr & Corr.

No. 10 - J.V. Ratcliffe to Corr & Corr.

(Copy)

1st November 1949.

JOHN V. RATCLIFFE

1st November 1949

10 Messrs. Corr & Corr

Dear Sirs,

re Ajax Insurance Company Limited and other Companies

I acknowledge with thanks receipt of your letter of the 26th ultimo further letter of the 27th ultimo.

20 In view of the opinion given by Counsel there are no further questions on the subject of the Branch Register which I wish to suggest for his opinion.

With regard to my letter of the 25th ultimo, I have come to the conclusion that the description of the tax-free profits included in the re-draft of paragraph "(a)" of new Article 4C requires some alteration.

30 It does not appear to me to fit any case in which there is a holding Company and Subsidiaries which have distributed tax-free dividends. I have, therefore, asked Mr. Single to have a further look at an altered description of these profits, and will write to you further as soon as I hear from him.

(Sgd.) J.V. Ratcliffe

Exhibits

No. 11 - Corr & Corr to J.V. Ratcliffe

A.3.

(Copy)

No. 11 - Corr
& Corr to J.V.
Ratcliffe.

CORR & CORR

2nd November, 1949

2nd Ncvember,
1949.

John V. Ratcliffe Esq.

Dear Sir,

re Ajax Insurance Co. Ltd. and
other Companies.

We duly received your letter of the 1st inst.
and note the contents.

We feel that the definition of "tax paid
profits" will have to be carefully considered and
we welcome the fact that Mr. Single is considering
the matter.

10

We are now enclosing herewith draft of the
amendments which we propose should be made to the
Articles of Association of Ajax Insurance Co. Ltd.,
Melford Motors Pty. Ltd. and Lane's Motors Pty. Ltd.
For various reasons, we have come to the conclusion
that it might be desirable to amend the existing
Articles of the two last mentioned Companies rather
than settle a new set of Articles. As the Articles
of Association of such Companies refer to Table A
of the Companies Act 1915 we have taken out of an
old text book a copy of Table A and now forward the
same herewith.

20

We understand that you have copies of the
Articles, and the copy of Table A should enable you
to follow the various proposals for amendment.

We will complete the draft amendments to the
Articles of Neal's Motors Pty. Ltd. this week, and
will then send them to you.

30

In the meantime, we presume that you will con-
sider the proposed amendments and make a note of
any comments that you desire to make.

You will see that we have incorporated in new
Articles 4C of Ajax Insurance Co. Ltd. and

10 corresponding Articles in the other Companies the passage suggested for inclusion on the second page of your letter. It occurs to us, however, that the wording used may not fully protect the holders of "A" ordinary shares in regard to the amount to be paid out of tax free profits. It seems to us that the clause should fully cover all types of dividend or it should be left out altogether. In view of the fact that the dividends will be paid almost simultaneously with the acceptance of the offer to purchase, it occurs to us that it could safely be left out, but we realise that it might be argued that as it is left out, it shews either a lack of bona fides or points to the fact that the whole transaction of purchase is bound up with the immediate declaration of the dividend.

We would like to have your further comments on this.

20 We understand that a further copy of the Memorandum & Articles of Association of Ajax Insurance Co. Ltd. have been sent to you.

(Sgd.) CORR & CORR

P.S. You will note the difference in the method adopted for providing for a minimum of tax paid dividends. We think that perhaps this matter requires further consideration. Unless the method adopted in Melford's and Lane's is followed, Lane's Articles will refer to a tax paid dividend of 8d per share.

30 No. 12 - J.V. Ratcliffe to Corr & Corr

(Copy)

John V. Ratcliffe

4th November 1949

Messrs. Corr & Corr

Dear Sirs,

re Ajax Insurance Company Limited
and Other Companies

I refer to my letter of the 25th ultimo and my

Exhibits

A.3.

No. 11 - Corr
& Corr to J.V.
Ratcliffe.

2nd November,
1949 -
continued.

No. 12 - J.V.
Ratcliffe to
Corr & Corr.

4th November
1949.

Exhibits

A.3.

No. 12 - J.V.
Ratcliffe to
Corr & Corr.

4th November
1949 -
continued.

further letter of the 1st instant on the above subject, with particular reference to the amendment of the Articles as regards the rights of the "A" Ordinary shares.

Mr. H.V. Single has now advised me that he agrees that the reference to tax-free dividends cannot be phrased in the form of the draft which he previously supplied to me and he now suggests that the paragraph in question should be drafted as follows :-

10

"(a) The holders for the time being of the said "A" shares shall be entitled, in proportion to the number of shares held by them respectively, to the whole of the dividends hereafter declared by the Company until such dividends in the aggregate amount to not less than the sum of £ in respect of each "A" share, of which sum not less than £ shall have been paid in such manner and out of such dividends or amounts as to entitle the said holders to the rebate provided for by Section 107 of the Income Tax Assessment Act 1936-1948 but, save as provided by paragraph (b) of this Article, they shall not be entitled to any further participation in profits."

20

Mr. Wallace has, I understand, advised you that I will be in Melbourne on Tuesday, the 15th instant and for some days thereafter.

Yours faithfully,

(Sgd.) J.V. Ratcliffe

30

No. 13 - J.V. Ratcliffe to Corr & Corr

Exhibits

(Copy)

A.3.

JOHN V. RATCLIFFE

7th November 1949.

No. 13 - J.V.
Ratcliffe to
Corr & Corr.

Messrs. Corr & Corr

7th November
1949.

Dear Sirs,

I thank you for your letter of the 2nd inst.
and enclosures.

I comment on the amendments to be made to the
Articles of Association of Ajax Insurance Company
Limited as follows:-

(1) New Article 4C:

Paragraph (a):

The question of the definition of "tax-free"
profits was dealt with in my letter of the 2nd
instant.

Paragraph (c):

A liquidator cannot appropriate distributions
out of particular profits.

For tax purposes, the Commissioner treats dis-
tributions by a liquidator as made pro rata
out of the different classes of profits, and
Section 47(2) applies to deem the amount so
ascertained as paid out of "tax-free" profits,
as paid "wholly and exclusively" out of those
profits.

It is impracticable, therefore to carry the
matter any further so far as the rights appli-
cable to the "A" shares in a Liquidation are
concerned.

I think it is desirable to retain the paragraph
in its present form.

(2) New Article 4D:

Paragraph (a):

I note that the dividend in the case of the
new Preference Shares is also to be computed
from the 1st January, 1950. I think it may
be desirable to omit this date and allow the
dividend in this case to accrue as from the

Exhibits

A.3.

No. 13 - J.V.
Ratcliffe to
Corr & Corr.

7th November
1949 -
continued.

date on which the shares are paid up. In the case of the "A" ordinary shares which are already in existence there is a special dividend which may be regarded as the full share of profits to which these shares are entitled up to the 31st December 1949 and in any event, it is necessary to fix some date from which the 5% shall accrue.

As the new preference shares will be acquired by the holders of the "B" shares there will I assume be no objection from their point of view to the dividend accruing as from the actual date on which the new capital is paid up.

10

Paragraph (g):

This paragraph provides that the new preference shares may be taken into account in determining whether any person is possessed of the necessary qualification of a director. This provision therefore makes a marked distinction between the "A" shares and the new Preference shares and I suggest that this is inadvisable. I assume that present directors will not be disqualified if this paragraph is not included. If there were any danger on this point the matter could be rectified by altering the Directors' qualification.

20

I think that these new Preference shares should continue to be held by the holders of the "B" shares in the same proportions as they hold the "B" shares, in order that they may be converted at any time into ordinary shares if they so desire without raising questions of Gift Duty.

30

- (3) (New Article 37 - Lines 7 and 8)
(New Article 130 - Line 5.)

These amendments relate to dividends declared by the Company "after the date" of a transfer, or "subsequent to the date" of a transfer. The inclusion of the words "the date that" will have the effect of making it impracticable, should it be so desired, to declare a dividend on the day on which a transfer is presented. I think, therefore, that the words quoted might be omitted in order that, if necessary, a dividend may be declared on the same day that a transfer is lodged, but after receipt of the transfer. If a dividend were declared on the same day, it would, of course, be necessary to record the time of the receipt of the transfer

40

and the time of the declaration of the dividend.

Exhibits

A.3.

The foregoing are my comments after a perusal of the amendments over the weekend. I will ask Mr. Single to have a look at the amendments and will advise you of his comments as early as possible, or I may bring them with me.

No. 13 - J.V. Ratcliffe to Corr & Corr.

7th November 1949 - continued.

Yours faithfully,

(Sgd.) J.V. Ratcliffe.

10 No. 14 - Corr & Corr to J.V. Ratcliffe

No. 14 - Corr & Corr to J.V. Ratcliffe

(Copy)

CORR & CORR

8th November 1949

8th November 1949

AIR MAIL

John V. Ratcliffe Esq.

Dear Sir,

Ajax Insurance Co. Ltd. and other Companies

20 We duly received your letter of the 4th inst. and note the proposed clause dealing with the ordinary dividends to be paid to "A" ordinary shares. Generally, with respect, we agree with the proposed clause, but suggest that the word "hereafter" is not altogether desirable. We prefer to refer to a specific date.

Technically, once an amendment is made it becomes part of the Articles, and some question might conceivably arise as to the date which is to be taken into account to interpret the word 'hereafter'.

30 We suggest, therefore, that instead of "hereafter" the following words should appear: "on or after the day of1949".

Exhibits

A.3.

No. 14 - Corr
& Corr to J.V.
Ratcliffe.

8th November
1949 -
continued.

We notice that Mr. Single has generally retained the phraseology in reference to the amount to be quoted as the minimum amount to be paid out of tax free profits. We suggest that you ask Mr. Single whether he proposes that the amount per share should be inserted, or the aggregate amount of the tax free dividends.

We are now enclosing proposed amendments to the Articles of Neal's Motors Pty. Ltd.

We note that you will be in Melbourne next week. We suggest that an appointment should be made for 2.15 p.m. on Tuesday the 15th inst. as we understand that you will have Tuesday afternoon available for an appointment. Proceedings to date can then be reviewed. We presume that by that time we will have had from you any further comments that you desire to offer on the proposed amendments to the Articles, or that you will, at the conference, indicate your further comments.

10

Yours truly,

20

(Sgd.) CORR & CORR.

P.S. Since dictating the above letter, we have received your letter of the 7th inst. and will consider the same during the course of the day.

No. 15 - Corr
& Corr to J.V.
Ratcliffe

No. 15 - Corr & Corr to J.V. Ratcliffe

(Copy)

10th November
1949.

CORR & CORR

10th November, 1949

AIR MAIL

John V. Ratcliffe Esq.

Dear Sir,

30

re Ajax Insurance Co. Ltd. and
other Companies

We have now considered your letter of the 7th inst. and desire to make the following comments:

Paragraph 4C:

We note what you say.

Paragraph 4D:

Your comments are noted, and instructions are being received from our client.

New Articles 37 and 130:

10 We suggest that your point can be met if the words "on or" are inserted before the phrase "after the date" in Article 37 and before the phrase "subsequent to the date" in Article 130.

We look forward to having your further comments on the proposed amendments.

(Sgd.) CORR & CORR.

Exhibits

A.3.

No. 15 - Corr & Corr to J.V. Ratcliffe.

10th November 1949 - continued.

No. 16 - J.V. Ratcliffe to Corr & Corr and enclosure

(Copy)

No. 16 - J.V. Ratcliffe to Corr & Corr and enclosure.

11th November 1949.

JOHN V. RATCLIFFE

11th November, 1949

Messrs. Corr & Corr

Dear Sirs,

20 re Ajax Insurance Company Limited and other Companies

Further to my letter of the 7th instant, I now enclose copy of letter received from Mr. Single, which contains his comments.

I have now received your letter of the 8th instant.

Mr. Single only prepared a draft of paragraph (a) for the purpose of expressing his ideas on the

Exhibits

A.3.

No. 16 - J.V.
Ratcliffe to
Corr & Corr
and enclosure.

11th November
1949 -
continued.

way in which the particular difficulty, which arose in connection with this paragraph, should be dealt with.

As the point has been made clear, I think the final form of the Articles is a matter for you to settle.

With regard to the amount of the tax-free profits mentioned in Paragraph (a), it seems to me that if the total amount of the tax-free profits is to be mentioned, the first part of the paragraph would have to be altered because, as I read the draft, the words "such sum" refer back to the sum of so much per share, and, therefore, I think that in every case the tax-free profits should be expressed at an amount per share, even if this means expressing it in pence carried to decimal points.

10

The suggested appointment for 2.15 p.m. on Tuesday the 15th instant, will meet my convenience. Unless I hear to the contrary I will assume that the conference will be held in the I.A.C. Board Room.

20

I think I should make it clear that owing to the limited time available, Mr. Single considered only the amendments in the case of the Ajax Insurance Company Limited. I will look through the amendments for the other Companies and will let you know on Tuesday if I have any comments to offer in connection therewith.

Yours faithfully,

(Sgd.) J.V. Ratcliffe

30

No.16 - EnclosureExhibits

(Copy)

9th November, 1949.

A.3.

DAWSON WALDRON EDWARDS & NICHOLLS

J.V. Ratcliffe, Esq.

Dear Sir,

No. 16 -
Enclosure,
letter J.V.
Ratcliffe to
Corr & Corr.PACTOLUS PTY. LIMITED re AJAX INSURANCE
COMPANY and OTHER COMPANIES11th November
1949.

10 We acknowledge receipt of your letter of the 8th instant and have perused the draft Articles Mr. Bunny has prepared and think they are very satisfactory. We agree with the comments in your letter to Messrs. Corr and Corr of the 7th instant and add the following remarks :-

Article 4D paragraph (g): We agree that this paragraph would make a distinction between "A" shares and the new preference shares but we would point out that if it is deleted the effect will be that a Director may be qualified by holding any shares whether preference or otherwise. See article 84.

20 Article 37 and new Article 130. If the amendment to which your letter refers is desired, we think it might be best achieved by substituting in the appropriate place in the Articles in question the word "time" in lieu of the word "date". In the interests of certainty this will enable the Company to be sure of the person to whom the dividend is to be paid.

30 We return herewith the document you left with us, including the Memorandum of Association of Ajax Insurance Co. Limited and the copy correspondence with the Commonwealth Actuary.

Yours truly,

(Sgd.) H.V. SINGLE

Exhibits

No. 17 - Corr & Corr to J.V. Ratcliffe

A.3.

(Copy)

No. 17 - Corr
& Corr to J.V.
Ratcliffe

16th November, 1949.

16th November
1949.

CORR & CORR

J.V. Ratcliffe Esq.
C/o Athenaeum Club,
83 Collins Street,
MELBOURNE.

Dear Sir,

re Neal's Motors Pty. Ltd. and
other Companies

10

We are enclosing herewith a draft of the amend-
ments to the Articles of Association of the various
Companies, which drafts were prepared prior to
yesterday's conference.

We would like you to consider particularly the
Sub-clause in each set of amendments dealing with
the rights to dividend of "A" ordinary shares.

If you have any comments to offer in regard to
the method adopted to protect these dividends, we
should be pleased if you would telephone Mr. Bunny
either during today, or if this is not possible (as
we appreciate it may not be), you might telephone
him tomorrow morning at his home number (UM1266).
He will be home during the morning, but would like
to have any comments as early as practicable after
8.30 a.m.

20

Yours truly,

(Sgd.) CORR & CORR.

No. 18 - J.V. Ratcliffe to Corr & Corr

Exhibits

(Copy)

A.3.

JOHN V. RATCLIFFE

No. 18 - J.V.
Ratcliffe to
Corr & Corr.

Consulting Accountant.

A. P. A. Chambers,
53 Martin Place,
Sydney.
30th November, 1949.

30th November
1949.

10 Messrs. Corr & Corr,
Solicitors,
104 Queen Street,
MELBOURNE. Victoria.

Attention - Mr. F.E. Bunny.

Dear Sirs,

re Lane's Motors Pty. Limited and
Other Companies

20 Referring to our previous correspondence and
conferences, I have to advise that Mr. Single has
written to Mr. S.R. Phippard, Solicitor, of Canberra,
who usually acts for his firm in that City, to the
effect that the three companies concerned herein
wish to establish Branch Registers in Canberra at
his Office and that the parties would be in Canberra
on the 19th proximo. Mr. Single has also mentioned
that you will be writing to Mr. Phippard on behalf
of the three Companies concerned.

Mr. Phippard's postal address is P.O. Box 135,
City, Canberra, A.C.T., and his office is in the
Royal Insurance Building, City, Canberra, A.C.T.

30 I enclose, for your information, copy of a
letter which I have addressed to Mr. L.B. Wallace,
including covering draft dividend resolutions.

Yours faithfully,

(Sgd.) J.V. Ratcliffe.

Enc.
JVR/JV.

Exhibits

No. 19 - Corr & Corr to J.V. Ratcliffe

A.3.

(Copy)

No. 19 - Corr
& Corr to J.V.
Ratcliffe.

CORR & CORR

2nd December 49.

2nd December
1949.

J.V. Ratcliffe Esq.,

Dear Sir,

Lane's Motors Pty. Ltd. and
other Companies

We thank you for your letter of the 30th ult.

We will be writing to Mr. Phippard on Monday
with the necessary retainer.

10

We will look at the draft resolutions prepared
by you and, in the unlikely event of there being
any comments which we desire to make, we will let
you know after Monday.

We have again looked at the draft agreement to
be signed by the shareholders, particularly Clause
1(d). We have not been altogether happy at the
presence of this clause in the agreement, parti-
cularly when the various other clauses were ex-
cluded for reasons well known to you. We mentioned
the matter to Mr. H.J. Lane this morning, and he is
quite prepared that this sub-clause shall be deleted.
He feels that the other interested parties would
also approve.

20

We are assuming that you have a draft of the
agreement, but in case you have not, we are
enclosing a clean copy of the draft as sent by us
to Mr. Ross for duplication. We would like to get
this work in hand as soon as practicable.

30

We anticipate that you will have this letter
on Monday at the latest. We are seeing Mr. Ross
at 2.45 p.m. and perhaps we could have a telegram
from you by that time.

Yours truly,

(Sgd.) CORR & CORR.

No. 20 - J.V. Ratcliffe to Corr & Corr
and enclosure

Exhibits

A.3.

(Copy)

JOHN V. RATCLIFFE

5th December, 1949

Messrs. Corr & Corr

Dear Sirs,

Attention Mr. F.E. Bunny
re Lane's Motors Pty. Limited and
Other Companies.

No. 20 - J.V.
Ratcliffe to
Corr & Corr
and enclosure.

5th December
1949.

10 I acknowledge receipt this morning of your
letter of the 2nd instant and enclosures.

After perusal of the draft agreement to be
signed by the shareholders, I was not sure whether,
in the circumstances, the words "the company" were
sufficiently wide to cover a presentation to an
Attorney authorized to register transfers on a
Branch Register in Canberra, and as it seemed to me
that neither the Secretary nor a Director of any of
the Companies would be in Canberra, I thought it
20 advisable to raise this question for your considera-
tion.

I agree that it would be preferable to omit
paragraph (d) of Clause (1) and as the business
circumstances appear to me to be such that the "B"
shareholders would not be running any risk by the
omission, it would be an advantage to omit it.

Accordingly, I sent you an urgent telegram this
morning reading as follows :-

30 "RE PARAGRAPH (c) ARE WORDS COMPANY OR DIRECTOR
OR SECRETARY SUFFICIENTLY WIDE OR SHOULD ADDI-
TION BE MADE SOMEWHAT AS FOLLOWS QUOTE "OR TO
THE ATTORNEY AUTHORIZED TO REGISTER TRANSFERS
ON ANY BRANCH REGISTER" UNQUOTE RE PARAGRAPH
(d) AGREE THAT THIS SHOULD BE DELETED".

I attach hereto copy of a letter from Mr. S.R.
Phippard to Mr. Single, which he has sent on to me.

There is one sentence in this letter upon which
I think I should comment. This reads - "The

Exhibits

A.3.

No. 20 - J.V.
Ratcliffe to
Corr & Corr
and enclosure.

5th December
1949 -
continued.

Companies will, of course, have to register as a foreign company in the Australian Capital Territory."

I think that this is a matter which you will be able to investigate on the spot, but according to my recollection The Federal Capital Territory's Companies Ordinance is based on the New South Wales Companies Act of 1899 and there is nothing in that Act which would suggest that the bare setting up of a Branch Register would necessitate registration as a Foreign Company.

10

I recollect that this same question was raised in Canberra some years ago when another client set up a Branch Register there. The Canberra Solicitor then concerned even consulted the Registrar of Companies in Canberra, who confirmed his opinion, but the New South Wales Solicitors for the client took the view that registration was quite unnecessary and declined to register. Nothing eventuated as a result of this decision and unless there has been some alteration in the Ordinance it does not seem to me that the Companies should incur the expense of registration in Canberra. However, this is a matter upon which I assume the Companies will take your advice.

20

J.V. RATCLIFFE

No. 20 -
Enclosure to
letter J.V.
Ratcliffe to
Corr & Corr.

5th December
1949.

(Copy)

Royal Insurance Building
CANBERRA.

30th November, 1949.

S. R. PHIPPARD

Messrs. Dawson Waldron Edwards & Nicholls,
Solicitors
44 Martin Place,
SYDNEY

30

Dear Sirs,

re Melford Motors Pty. Limited
Neal's Motors Pty. Limited
Lane's Motors Pty. Limited

In reply to your letter of 29th November instant I shall be pleased to allow the above companies to establish a Branch Register at my office.

40

The Companies will of course have to register as a foreign company in the Australian Capital Territory. I perform this service for a number of companies registered in the Australian Capital Territory and charge a rental of £5.5.0 a year for each Company. This charge was fixed by the Solicitors and Accountants in Canberra some years ago and so far as I know it has not been increased. I shall also be pleased to keep the records in my office.

Exhibits

A.3.

No. 20 -
Enclosure to
letter J.V.
Ratcliffe to
Corr & Corr.

10

I have not yet heard from Messrs. Corr and Corr of Melbourne.

5th December
1949 -
continued.

I shall be available in Canberra on Monday the 19th December next and shall be pleased to see you and Mr. Ratcliffe.

Accommodation in my office is somewhat meagre but I shall be pleased to make a room available for your use.

Yours faithfully,

(Sgd.) S.R. PHIPPARD.

20

No. 21 - Telegram - Ratcliffe to Bunny

No. 21 - Tele-
gram - Ratcliffe
to Bunny.

5 Dec. 49

5th December
1949.

BUNNY

PHONE MU8327 MELBOURNE.

RE PARAGRAPH C ARE WORDS COMPANY OR DIRECTOR OR SECRETARY SUFFICIENTLY WIDE OR SHOULD ADDITION BE MADE SOMEWHAT AS FOLLOWS QUOTE OR TO THE ATTORNEY AUTHORIZED TO REGISTER TRANSFERS ON ANY BRANCH REGISTER UNQUOTE RE PARAGRAPH D AGREE THAT THIS SHOULD BE DELETED.....RATCLIFFE.

Exhibits

No. 22 - Corr & Corr to J.V. Ratcliffe

A.3.

7th December, 49

No. 22 - Corr
& Corr to J.V.
Ratcliffe.

AIR MAIL

7th December
1949.

J.V. Ratcliffe, Esq.,
53 Martin Place,
SYDNEY.

Dear Sir,

We asked the Officer at the Registrar-General's Department who is responsible for the acceptance of Special Resolutions amending Articles, if he would look at the proposed amendments before they were submitted to the various meetings. 10

He agreed to do this, and has now indicated, that with one minor exception, he is prepared to accept the proposed amendments to the Articles of Neal's Motors Pty. Ltd. and Melford Motors Pty.Ltd., but with respect to Lane's Motors Pty. Ltd., he makes the following comment:-

"Articles 12 to 22 (both inclusive) of the Company's Articles of Association are unalterable except under Section 27(1) of the Companies Act 1938, in view of Clause IV of the Company's Memorandum of Association and Sections 10(1) and 26(4) of the above Act." 20

We have not considered the effect of this refusal to accept amendments to these Articles, but will do so tomorrow. We thought, however, that we should advise you immediately of the attitude taken by the Department, although the same Department previously did accept amendments to Articles 15 and 21 and agreed to the inclusion of Article 21A. 30

A cursory glance at the amendments which are objected to, shews that they record the right of Directors to refuse consent to transfers, but the objection may have an effect beyond this.

We will write you further after we have given the matter some further thought tomorrow.

Yours truly,

(Sgd.) CORR & CORR.

No. 23 - Telegram - Johncliffe to Bunny

Exhibits

A.3.

12 Dec. 49

No. 23 - Tele-
gram - John-
cliffe to Bunny.

12th December
1949.

TELEGRAM

BUNNY
MU8327 MELBOURNE

10 AGREEABLE RESTRICTIONS ON TRANSFER REMAINING PRO-
VIDED DIRECTORS UNDERTAKE USE BEST ENDEAVOURS
ENSURE FIRSTLY REGISTRATION ANY TRANSFER FROM
PACTOLUS TO PACTOLUS INVESTMENT PRIOR TO 30TH JUNE
1950 SECONDLY THAT AFTER SPECIAL RIGHTS PARAGRAPH
(A) EXHAUSTED FAIR VALUE WILL NOT BE FIXED AT LESS
THAN £1.....JOHNCLIFFE

No. 24 - Melford Motors Pty. Ltd. to
Secretary Capital Issues (Control) Branch

No. 24 - Melford
Motors Pty.
Ltd. to Secre-
tary Capital
Issues (Control)
Branch.

19th October, 1950.

The Secretary,
Capital Issues (Control) Branch,
Treasury,
CANBERRA. A.C.T.

19th October
1950.

20 Dear Sir,

re Proposed Issue of Shares

The paid up capital of this Company is at pre-
sent £206,325 and its authorized capital is £400,000,
which leaves 193,675 shares of £1 each unissued.

Some of these are 5% Preference Shares and some
are ordinary shares.

It is proposed to issue the aforesaid 193,675
shares to the present holders for cash, at par, and
your formal consent to this issue is desired.

30 An early reply will be appreciated.

Yours faithfully,
MELFORD MOTORS PTY. LTD.

L.A. Fenton
Managing Director.

Exhibits

A.3.

No. 25 - Consent by Delegate of Treasurer of Treasurer to Issue of New Capital by Melford Motors Pty. Ltd.

25th October 1950.

No. 25 - Consent by Delegate of Treasurer to Issue of New Capital by Melford Motors Pty. Ltd.

C.I. No. 33145

COMMONWEALTH OF AUSTRALIA,

Department of the Treasury,

Canberra. A.C.T.

National Security(Capital Issues) Regulations.

C O N S E N T

In pursuance of the powers conferred by the National Security (Capital Issues) Regulations, I, the Delegate of the Treasurer of the Commonwealth of Australia, hereby consent to:- 10

MELFORD MOTORS PTY. LTD. making an issue of authorized capital within a period of Six (6) months from the date of this consent by the issue at par of not more than One hundred and ninety-three thousand six hundred and seventy-five (193,675) Ordinary Shares of a nominal value of One pound (£1) each for cash subscription. 20

Dated this Twenty-fifth day of October, 1950.

(signed)

C. HUNTER

Delegate of the Treasurer
of the Commonwealth of Australia.

No. 26 - H.J. Lane to J.V. RatcliffeExhibitsAIR MAIL

19th April 1951

A.3.

Mr. J.V. Ratcliffe.

No. 26 - H.J.
Lane to J.V.
Ratcliffe.

Dear John,

19th April
1951.

Herewith please find the Monthly Profits of Neal's Motors Pty. Ltd. as submitted monthly in the Monthly Cost Statements.

	July, 1950	£36,806
	August, 1950	42,658
10	September, 1950	38,844
	October, 1950	53,481
	November, 1950	48,746
	December, 1950	28,588
	January, 1951	23,212
	February, 1951	37,831
		<u>£310,166</u>

20 In regard to the remainder of the year, due to shortage of supplies, we would assume that it will not average as much as the first eight months of the financial year, and we assess the profit for the preceding four months at approximately £25,000 per month, which, if achieved would bring the net profit, before tax, for the financial year ended 1st June, 1951 to approximately £410,000.

Herewith please find the Monthly Profits of Devon Motors Pty. Ltd. as submitted monthly in the Monthly Cost Statement.

	July, 1950	£7,433
	August, 1950	11,062
30	September, 1950	6,712
	October, 1950	13,357
	November, 1950	14,279
	December, 1950	12,487
	January, 1951	8,694
	February, 1951	13,809
		<u>£87,833</u>

Again, this assessment for the remaining four months of the year will not average the same as the

Exhibits

A.3.

No. 26 - H.J.
Lane to J.V.
Ratcliffe.

19th April
1951 -
continued.

first eight months, and we would assume the total profit for the preceding four months to be £35,000 making the net profit for the financial year ended 1st June, 1951, before tax, approximately £122,000.

From our conversation, I assume that these are the figures, and will be sufficient for the purpose of your considerations.

Kindest Regards,

H.J. LANE.

10

No. 27 - H.J.
Lane to J.V.
Ratcliffe.

7th May 1951

No. 27 - H.J. Lane to J.V. Ratcliffe

(Copy)

7th May 1951.

AIR MAIL

Mr. J.V. Ratcliffe.

Dear John:

Please refer your letter of 23rd April re Neal's Motors Pty. Ltd.

At a meeting held on Friday, 4th May, at which all the parties concerned were present, it was decided to adopt Proposal No. 2 referred to in your above-quoted letter and I was requested to advise you accordingly.

20

Mr. Bunny stated at the meeting that he had sufficient information to commence drafting the necessary notices and resolutions which he proposes to commence on the holiday of Wednesday next 9th May. For your information Ernest leaves Melbourne on the afternoon of 17th May for Western Australia and returns on approximately 5th June.

The Accounts of Neal's Motors are audited by L.B. Wallace & Son and the familiarity with previous procedures by both Ernest Bunny and Lionel Wallace should facilitate matters considerably.

30

In view of Ernest's departure on the 17th, I suggest that any legal points arising be referred to him direct. Similarly, any accountancy matters arising be referred to Lionel Wallace direct with, in both instances, sufficient copies for distribution. This procedure would, I think, save much valuable time.

Exhibits

A.3.

No. 27 - H.J.
Lane to J.V.
Ratcliffe.

10 It is believed that you will be in Melbourne during the week commencing Monday 14th May. If this assumption is correct, would you please advise whether you would be available for a conference with the parties prior to Ernest's departure on 17th. Unfortunately Tuesday 15th must be excluded as there is an Ajax meeting in the morning and an I.A.C. meeting in the afternoon at which several of us are required to be present.

7th May 1951 -
continued.

20 Arising out of the foregoing is the question of timings. As you know we are very much pre-occupied with other matters and will be for quite a while and a time-table would help. It appears necessary for a visit to be paid to Canberra to implement and finalize the transaction and it would be advisable to fix a definite date as early as possible, or at any rate an approximate date, so that all concerned can plan accordingly. This date would need to be after Ernest's return from Western Australia after the 5th June and Monday 18th June, is suggested.

30 Would appreciate any comments you may be disposed to make and, if you require any further information, will you please advise.

Kindest regards,

Yours,

Harry

H. J. LANE.

Exhibits

No. 28 - Corr & Corr to J.V. Ratcliffe

A.3.

(Copy)

10th May 1951

No. 28 - Corr
& Corr to J.V.
Ratcliffe.

AIR MAIL

10th May 1951.

J.V. Ratcliffe, Esq.,
53 Martin Place,
SYDNEY.

Dear Sir,

Neal's Motors Pty. Ltd.

We have considered the steps to be taken to give effect to the proposal in this matter whereby 29,156 shares are to be sold as "C" ordinary shares to Pactolus Pty. Ltd.

10

It seems to us that the procedure will be to amend the Articles so that of the existing 72,888 "B" ordinary shares 29,156 will be converted to "C" Ordinary shares and will then be sold to your Company at £12. 3. 0 per share.

We have prepared a memorandum setting out the amendments which we consider will require to be made to the Articles of Association to create the necessary number of "C" ordinary shares, and we are submitting a copy of that memorandum herewith in the hope that you may be able to look through the memorandum and see whether you agree with the proposals therein set out.

20

As you know, the writer will be out of town after Thursday next, and he would like to feel when he leaves that the amendments have been approved by you. The notices can then go out and the meeting can be held immediately after the writer's return.

30

We propose to use a similar form of option agreement to that used in the case of Melford Motors Pty. Ltd. We are preparing a draft of this agreement and, if available, will include it with this letter, but we are endeavouring to catch a mail with the proposed amendments.

We should be pleased to hear from you in due course.

Yours truly,

Enc.

(sgd.) CORR & CORR.

40

No. 29 - J.V. Ratcliffe to Corr & Corr

Exhibits

A.3.

14th May 1951

No. 29 - J.V.
Ratcliffe to
Corr & Corr.

14th May 1951.

AIR MAIL

Messrs. Corr & Corr.

Attention: Mr. F.E. Bunny

Dear Sirs,

re NEAL'S MOTORS PTY. LIMITED.

10 I acknowledge receipt of your letter of the
10th inst., and desire to say that the procedure
set out therein appears to me to be satisfactory.

I have also considered the draft amendments to
the Articles and these appear to me to be in order
with the exception that according to the serial
numbers there are only 28,256 "C" ordinary shares,
which is 900 short of the required number, 29,156.

20 The error seems to be at the top of the second
page in the second group of serial numbers, namely
65,487 to 74,426, inclusive. I think these numbers
should read 65,487 to 75,326 inclusive. If this is
correct there will be an alteration to the serial
numbers of the "B" ordinary shares on page 1 in the
first group in the sixth line from the foot of the
page. This group reads 74,427 to 85,217 inclusive.
If I am right it would read 75,327 to 85,217 in-
clusive.

I cannot of course check the serial numbers
with the shares held by the various shareholders,
but I assume that you will have this rechecked.

30 The option agreement enclosed with your letter
also appears to be in order.

Yours faithfully,

(Sgd.) J.V. Ratcliffe.

Exhibits

No. 30 - Corr & Corr to J.V. Ratcliffe

A.3.

No. 30 - Corr
& Corr to J.V.
Ratcliffe.

(COPY)

15th May 1951.

15th May 1951.

AIR MAIL

J.V. Ratcliffe, Esq.,
53 Martin Place,
SYDNEY.
NEW SOUTH WALES.

Dear Sir,

Neal's Motors Pty. Ltd.

We refer to our letter to you of the 10th inst. and the memorandum of proposed amendments forwarded therewith. 10

We have come to the conclusion that Clause 2E will require to be amended further than suggested by us.

The amendment to Clause 2E should read as follows :-

"By deleting the letters and words "'A' Preference Shares and the 'A' Ordinary Shares" wherever they appear in sequence and by substituting therefor the letters and words "'A' Preference Shares 'A' Ordinary shares and 'C' ordinary shares". 20

We should be pleased, therefore, if you would read the memorandum forwarded with our letter subject to this proposal.

Yours truly,

(Sgd.) CORR & CORR.

A.4. APPLICATION BY J.V. RATCLIFFE FOR
OVERDRAFT FOR PACTOLUS PTY. LTD.

Exhibits

A.4.

Application by
J.V. Ratcliffe
for overdraft
for Pactolus
Pty. Ltd.

October 1949.

P PTY. LTD.

BUSINESS: Trader in Shares & Underwriter

This Company proposes to acquire 143,804 shares of £1 each in four companies as follows:-

	Company A	£20,000
	" M	8,253
	" N	36,444
10	" L	<u>79,107</u>
	<u>Total</u>	<u>£143,804</u>

These shares represent 1/3rd of the ordinary capital (paid-up) of each company, except Company M, in which case the proportion is one-half.

Companies N. & L also have a preference capital of £5,000 each.

20 The shares to be acquired are to be "A" shares having special dividend rights plus a cumulative preferential dividend at the rate of 5% p.a. accruing from 1/1/1950. The special rights are hereafter referred to as "arrears". Once these "arrears" are satisfied the shares become 5% preference shares.

At date of proposed sale in November the position as regards the "arrears" will be as follows:-

Coy.	Total Arrears	Arrears to be declared immediately after sale.	Balance of Arrears anticipated to be declared in March 1950
A	£180,000	£160,000	£20,000
30 M	219,119	177,854	41,265
N	440,365	358,366	81,999
L	412,684	373,130	39,554
	<u>£1,252,168</u>	<u>£1,069,350</u>	<u>£182,818</u>

Exhibits

A.4.

Application by
J.V. Ratcliffe
for overdraft
for Pactolus
Pty. Ltd.

October 1949
- continued.

The "A" Shares are entitled to absolute preference for the above amounts plus the 5% accruing from 1.1.1950, excepting as regards the 5% dividend (250 per annum) payable on the £5,000 first preference capital of Companies N & L.

The purchase price will be £1,204,764
arrived at as follows:-

For all the "A" shares in Coy A	£175,000	
" " " " " " " M	198,072	
" " " " " " " N	412,425	10
" " " " " " " L	<u>419,267</u>	
	<u>£1,204,764</u>	

At or after 3 p.m. on the day of sale P. Pty. Ltd. will give cheques to the vendors totalling the above amounts. The next day it will receive cheques from the companies for the dividend "arrears" amounting to £1,069,350

P will therefore have to find the difference of £135,414

It will have cash of at least 20,414

Leaving amount required at £115,000 20

In view of expenses to be incurred and allowing for contingencies, an overdraft limit of £125,000 is asked for repayable within six months.

Security available will be:-

"A" shares at par after payment of balance of "arrears"	£143,804
Balance of arrears due about March, 1950	<u>£182,818</u>
	<u>£326,622</u>

As and when the "arrears" balance is paid the overdraft will be reduced. 30

P Pty. Ltd.

The approximate present position of P Pty. is as follows:-

Paid-up Capital	£5,000
Undistributed Profit to June 1949 approx.	<u>3,400</u>
	<u>£8,400</u>

Represented by :-

Exhibits

Shares in Public Companies at cost
- approx.

650

A.4.
Application by
J.V. Ratcliffe
for overdraft
for Pactolus
Pty. Ltd.

Cash at Bank -- approx.
(Ask Castlereagh St. Branch for
this figure).

7,750

£8,400

=====

October 1949
- continued.

No liabilities other than tax.

No tax if dividend equal to profit
credited to shareholders by 31.12.49.

10

Balance of cash to bring cash resources
to at least £20,414 will be placed on
deposit with the Company by its shareholders.

Values of "A" Shares:

Balance Sheets of the four companies are
attached for perusal (in strict confidence) and re-
turn.

The capital shown in each case will be in-
creased by a new second preference issue ranking
after the "A" shares.

20

As the "arrears" are paid, P. Pty. Ltd. will
take up these new second preference shares and immed-
iately sell them to the vendors at par. Therefore on
the day after the date of sale the dividend "arrears"
of £1,069,350 will be used to take up an equivalent
amount of new capital and the companies will not need
to find any money at this time.

30

When the balance of the "arrears" is paid in
March, 1950, a further 98,816 shares will have to be
taken up (and sold immediately at par to the vendors
of the "A" shares for cash).

The total cash which the companies will have to
find is therefore:-

Total Second Preference to be issued £1,168,165

Dividend "arrears" 1,252,168

Cash to be paid out by companies 84,002

=====

This will be well within their capacity.

The vendors will also take up directly in Com-
pany "A" a further 40,000 Second Preference shares

Exhibits

A.4.

Application by
J.V. Ratcliffe
for overdraft
for Pactolus
Pty. Ltd.

October 1949
- continued.

of £1 each out of a tax-free dividend of the same amount.

The following are some notes re each of the companies:-

Company "A" The new paid-up capital will be:

£20,000	in "A" shares	
210,000	in Second	
	Pref. shares	
<u>40,000</u>	in "B" shares	
<u>£270,000</u>		10

Since 30.6.1949 large dividends have been received on share investments and Bank overdraft has been considerably reduced. It will be quickly reduced to a much smaller amount.

Company "M":

The new paid-up Capital will be

£8,253	"A" shares	
189,819	Second	
	Pref. Shares	
<u>8,253</u>	"B" shares	20
<u>£206,325</u>		

The Balance Sheet values of fixed assets are substantially below market values.

Company "N":

The new paid-up Capital will be

£5,000	First Pref.	
	Shares	
36,444	"A" Shares	
405,668	Second Pref.	
	Shares	30
72,888	"B" Shares	
<u>£520,000</u>		

This Company owns a large subsidiary earning large profits (which have not yet been brought into the Company's accounts) and having assets much in excess of this Company's investment in the shares appearing in the Balance Sheet at 30.6.49. Profit of subsidiary for the Balance Sheet 1949 before providing for tax £83,864. Values of fixed assets of both Companies are much below market values.

Company "L":

10	The new paid-up capital will be:	
		£5,000 First Pref. Shares
		79,107 "A" Shares
		402,679 Second Pref. Shares
		158,214 "B" Shares
		<u> </u>
	<u>Total</u>	<u>£645,000</u>

This Company also has subsidiaries earning profits but these are not large. The Balance Sheet values of fixed assets are much below market values.

Exhibits

A.4.

Application by
J.V. Ratcliffe
for overdraft
for Pactolus
Pty. Ltd.

October 1949
- continued.

Exhibits

A.5.

Check Sheet
compiled by
D.H. Ross

1. Establish Amount Available for -
 - (a) 1949 Dividend
 - (b) 1950 Interim Dividend

2. Establish -
 - (a) Rights of "A" Shares
 - (b) Amount of Preference Capital
 - (c) Amount of Authorised Capital
3. Make application to Capital Issues for issue
New Preference Capital

4. Alterations to Memo. & Articles
 - (a) Prepared by Mr. Bunny
 - (b) Approved by Mr. Ratcliffe
 - (c) Directors Resolution to call S/Hdrs. Meetings
 - (d) ~~Shareholders-give-approval-to-waive-21~~
~~days-notice~~
 - (e) Notice of Meeting Despatched
 - (f) Confirmatory Meeting held
 - (g) Resolution filed with R. General

 - (h) New Memo. & Articles typed or printed
 - (i) ~~Copy-of-Resolutions-filed-with-Registrar~~
General
(~~attach-C.I.-Approval~~)
 - (j) Meeting held and resolutions passed. Ext.
Gen. Mtg.

5. Authorised Capital & Splitting of Shares
 - (a) Make Actg. Entries for new authorised cap.
 - (b) Prepare Actg. Entries for splitting shares

COMPILED BY D.H. ROSS

AJAX		LANES		MELFORDS		NEALS	
✓		✓		✓		✓	
✓		✓		✓		✓	
✓		✓		✓		✓	
✓		✓		✓		✓	
12/10	Date LBW letter	13/10	Date LBW letter	12/10	Date LBW letter	13/10	Date LBW letter
18/10	Ack. by Canberra	✓		18/10	Ack. by Canberra		
16	Consent Received					15/12	Consent Received
✓		✓		✓		✓	
✓		✓		✓		✓	
✓		✓	18/11	✓	18/11	✓	18/-
-		-		-		-	
		21/11		21/11		21/11	
		3/12	Copy of Resolutions typed	3/12	Copy of Resolutions typed	3/12	Copy of Resolutions typed
		14/12	14/12 11.5 am	14/12	14/12 11.25	14/12	14/12 11.15 am
		12/1	Draft to J.V.R.	12/1		12/1	
		12/1		12/1		12/1	

Exhibits

A.5.

Check Sheet
compiled by
D.H. Ross

Exhibits

A.5.

Check Sheet
compiled by
D.H. Ross
- continued

- (c) Old Scrip received
 - (d) ~~New shares allotted~~
 - (e) Share Register written up
 - (f) New Scrip issued
6. Branch Register in Canberra
- (a) Pass Directors Resolution to open Register and include authority to register transfers and for any two to sign scrip (S.104⁵)
 - (b) Receive request from shareholders for transfer "A" shares to Branch Register
 - (c) File with Registrar-General address of Branch Register etc. (S103)
 - (d) Set up Branch Register - Canberra
 - (e) Issue scrip - Canberra
 - (f) Set up copy of Branch Register (S104) in Melb.
7. Sale of "A" shares to "P"
- (a) Contracts with Agent (DHR) prepared and ready for signature - Melbourne
 - (b) Contracts signed by all Shareholders - Melbourne
 - (c) Blank transfers signed by all S/holders - Melbourne
 - (d) Purchaser takes up option - Canberra
 - (e) Purchase price received from "P" - Canberra
 - (f) Agent completes blank transfers by filling in amount and name of purchaser - Canberra
 - (g) Directors register transfers - Canberra
 - (h) New Scrip issued - Canberra
 - (i) Share Register written up - Canberra
8. New Preference Shares - Issue of: (All this work to be done in Melbourne)
- (a) Receive application from "P" for new preference shares.
 - (b) Allot new preference shares
 - (c) Upon application by "P" transfer shares to Canberra Register

AJAX		LANES		MELFORDS		NEALS	
		3/12	O.K.	3/		3/12	O.K.
		-		-		-	
		15/12		15/12		15/12	
		14/12		14/12		14/12	
		14/12		14/12		14/12	
		15/12		15/12		15/12	
		✓		✓		✓	
		✓		✓		✓	
		✓		✓		✓	
		✓		✓		✓	
		✓		✓		✓	
		15/12		15/12		15/12	
		15/12		15/12		15/12	
		19/12		19/12		19/12	
		✓		✓		✓	
		✓		✓		✓	
		✓		✓		✓	
		✓		✓		✓	
		✓		✓		✓	
		✓		✓		✓	
		✓		✓		✓	
		✓		✓		✓	

Exhibits

A.5.

Check Sheet
 compiled by
 D.H. Ross
 - continued

Exhibits

A.5.

Check Sheet
compiled by
D.H. Ross
-- continued

- (d) Collect allotment money
- (e) Make necessary accounting entries
- (f) File Allotment Lists and C.I. Consent

9. Declaration of Dividends

- (a) Declare Dividend. Mr. Ratcliffe to prepare draft resolution
- (b) Subsidiary Companies to declare and pay dividends (before going to Canberra.)
- (c) The day "P" buys the "A" shares in Canberra advise the Directors in Melbourne by 'phone or urgent telegram, thereupon parent Companies declare dividend.
- (d) Make necessary accounting entries
- (e) Pay Dividends (parent companies)

10. Passing of Cheques

- (a) "P" pays for "A" shares - cheques for each shareholder to D.H.R.
- (b) "P" pays one ^{penny} pound per share on preference shares
- (c) Companies pay dividends to "P".
- (d) ~~"P" pay balance (10/11) on Preference Shares~~
- (e) Shareholders pay "P" for Preference Shares

11. Bank Account "P"

"P" opens Bank account with E. S. & A. Melbourne ✓

12. New Preference Shares - Sale by "P" to the S/Hldrs.

- (a) "P" signs transfers - Canberra
- (b) Shareholders sign transfers - Melbourne
- (c) Agent pays "P" - Canberra - Hands over S/Hrs. cheques
- (d) Coy. registers transfers - Canberra
- (e) New Scrip issued - Canberra
- (f) Share Register written up - Canberra

Exhibits

A.5.

Check Sheet
compiled by
D.H. Ross
- continued

13. Minutes of Directors & S/H. Meetings.

To be approved by Mr. Bunny before pasting in M. Book

14. Final Check on all Files etc.

- (a) Minutes pasted in.
- (b) Accounting entries made and checked
- (c) Disposition of Share Registers
- (d) All files reviewed

AJAX		LANES		MELFORDS		NEALS	
		✓		✓		✓	
		✓		✓		✓	
		✓		✓		✓	
		✓		✓		✓	
		✓		✓		✓	

Exhibits

A.5.

Check Sheet
 compiled by
 D.H. Ross
 - continued

A.6. MEMORANDA (3) BY D.H. ROSS
CHEQUES TO BE DRAWN BY
COMPANIES.

ExhibitsLANES MOTORS PTY. LTD.

A.6.

Memoranda (3)
by D.H. Ross
to show dates
and amounts
of cheques to
be drawn by
Shareholders
in each of
three
Companies.

Shareholder	Shares Present Holding (1)	Split of Shares		Proceeds Sale A at £5.16.0 per Share (4)
		A (2)	B (3)	
Nathan, R.	73,174	24,301	48,783	£141,467.16. 0
∅ Lane, R.T. (Decd)	36,587	12,196	24,391	70,736.16. 0
x Nathan, J. (Decd)	12,886	4,295	8,591	24,911. 0. 0
x Nathan C.M. (Decd)	15,072	5,024	10,048	29,139. 4. 0
Newton, Lionel	15,072	5,024	10,048	29,139. 4. 0
Newton, Lauri J.	15,072	5,024	10,048	29,139. 4. 0
Christian F.U.	15,072	5,024	10,048	29,139. 4. 0
Lane, Stella M.A.	36,586	12,196	24,390	70,736.16. 0
Lane, H.J.	17,800	5,933	11,867	34,411. 8. 0
	237,321	79,107	158,214	£458,820.12. 0

Shareholders will finish with Assets of:-

- "B" Shares as per Column (3)
- Preference Shares as per Column (5)
- Cash as per Column (6) and Deposits Column (7)
- (Newton, Lauri J.
- x (Newton, Lionel
- (Christian (Mrs.) F.U.
- (Lane, Henry J.
- ∅ (Lane (Mrs.) Stella M.A.

TO SHOW DATES AND AMOUNTS OF
SHAREHOLDERS IN EACH OF THREE

Cost New Preference Shares (5)	Net Cash Gain (6)	Deposited by S/holder with	
		Amount	Company (7)
£124,160	£5,107.16. 0	£12,200	British Serv. P/L.
62,079	2,557.16. 0	6,100	do.
21,865	946. 0. 0	2,100	do.
25,573	1,066. 4. 0	2,500	Collins Mts. P/L.
25,573	1,066. 4. 0	2,500	do.
25,573	1,066. 4. 0	2,500	do.
25,573	1,066. 4. 0	2,500	do.
62,080	2,556.16. 0	6,100	do.
30,203	1,208. 8. 0	3,000	British Serv. P/L.
£402,679	16,641.12. 0	39,500	

Exhibits

A.6.

Memoranda (3)
by D.H. Ross
to show dates
and amounts
of cheques to
be drawn by
Shareholders
in each of
three
Companies

Cheques are wanted from each Shareholder for:-

- (a) Each amount in Column (5) payable to Pactolus Pty. Ltd. and dated 20th December, 1949.
- (b) Each amount in Column (7) payable to Company named therein and dated 20th December, 1949.

ExhibitsNEAL'S MOTORS PTY. LTD.

A.6.

Memoranda (3)
by D.H. Ross
to show dates
and amounts
of cheques to
be drawn by
Shareholders
in each of
three
Companies -
continued.

Shareholder	Shares Present Holding (1)	Split of Shares		Proceeds Sale A at £2. 8. 4 per Share (4)
		A (2)	B (3)	
Lane H.T.	27,333	9,111	18,222	£113,128. 5. 0
Nathan, Robert	36,900	12,300	24,600	152,725. 0. 0
x Nathan, Jos (decd)	7,426	2,475	4,951	30,731. 5. 0
Newton, Lionel	7,368	2,456	4,912	30,495. 6. 8
Newton, Lauri J.	7,368	2,456	4,912	30,495. 6. 8
Christian, F.U.	7,368	2,456	4,912	30,495. 6. 8
x Nathan, C.M. (decd)	7,368	2,456	4,912	30,495. 6. 8
∅ Lane, R.T. (decd)	8,201	2,734	5,467	33,947. 3. 4
	109,332	36,444	72,888	£452,513. 0. 0

Shareholders will finish with Assets of:-

"B" Shares as per Column (3)
Preference Shares as per Column (5)
Cash as per Column (6) and Deposits
Column (7)

(Newton, Lauri J.)
x (Newton, Lionel)
(Christian, (Mrs.) F.U.)
∅ (Lane, Henry J.)
(Lane, (Mrs.) Stella M.A.)

Exhibits

A.6.

Cost New Preference Shares (5)	Net Cash Gain (4) Minus (5) (6)	Deposited by S/holder with	
		Amount (7)	Company
£100,828	£2,300. 5. 0	£10,000	Devon Motors P/L.
136,120	3,105. 0. 0	13,500	do.
27,390	641. 5. 0	2,700	Overland Vic P/L.
27,180	615. 6. 8	2,700	do.
27,180	615. 6. 8	2,700	do.
27,180	615. 6. 8	2,700	do.
27,180	615. 6. 8	2,700	do.
30,256	691. 3. 4	3,000	do.
£403,314	£9,199. 0. 0	£40,000	

Memoranda (3) by D.H. Ross to show dates and amounts of cheques to be drawn by Shareholders in each of three Companies - continued.

Cheques are wanted from each Shareholder for:-

- (a) Each amount in Column (5) payable to Pactolus Pty. Ltd. and dated 20th December, 1949.
- (b) Each amount in Column (7) payable to Company named therein and dated 20th December, 1949.

ExhibitsMELFORD MOTORS PTY. LTD.

A.6.

Memoranda (3)
by D.H. Ross
to show dates
and amounts
of cheques to
be drawn by
Shareholders
in each of
three
Companies -
continued.

	Shareholder	Shares Present Holding (1)	Split of Shares	
			A (2)	B (3)
x	Lane, R.T. (Decd)	2,502	1,251	1,251
	Lane, Stella, M.A.	2,000	1,000	1,000
	Fenton, L.A.	3,000	1,500	1,500
	Wallace L.B.	9,004	4,502	4,502
		16,506	8,253	8,253

Shareholders will finish with Assets of:-

"B" Shares as per Column (3)
Preference Shares as per Column (5)
Cash as per Column (6)

x (Lane, Henry J.
(Lane, Stella M.A.

Exhibits

A.6.

Proceeds Sale A at £24. 0. 0 per share (4)	Cost New Preference Shares (5)	Net Cash Gain (4) Minus (5) (6)
£30,024. 0. 0	£28,773	£1,251. 0. 0
24,000. 0. 0	23,000	1,000. 0. 0
36,000. 0. 0	34,500	1,500. 0. 0
108,048. 0. 0	103,546	4,502. 0. 0
198,072. 0. 0	189,819	8,253. 0. 0

Memoranda (3)
by D.H. Ross
to show dates
and amounts
of cheques to
be drawn by
Shareholders
in each of
three
Companies -
continued.

Cheques are wanted from each Shareholder for the amounts in Column (5) dated 20th December, 1949, and payable to Pactolus Pty. Ltd.

Exhibits

A.7.

A.7. LETTER - J.V. Ratcliffe to L.B. Wallace
with attached Draft Dividend
Resolutions.

Letter - J.V.
Ratcliffe to
L.B. Wallace
with attached
Draft Dividend
Resolutions

30th November
1949.

(Copy)

JOHN V. RATCLIFFE

30th November 1949

L.B. Wallace Esq.,
60 Collins Place,
MELBOURNE.

Dear Lionel,

re Motor Group

10

I enclose herewith draft dividend resolutions
for:-

- (1) Melford Motors Pty. Limited,
- (2) Neal's Motors Pty. Limited and Subsidiaries,
and
- (3) Lane's Motors Pty. Limited and Subsidiaries.

In the case of Melford Motors Pty. Limited,
the third resolution which relates to the interim
dividend out of 1950 profits is somewhat lengthy
because I have provided for an appropriation out
of past profits, in the event that the dividend de-
clared should be found to exceed the 1950 profits.

20

If, by the 20th proximo, it appears to be
quite safe to assume that the profits for the 1950
year will clearly exceed the amount of this divi-
dend, then I think it will be safe to omit all the
words in the third resolution after "1950".

A similar resolution appears in Resolution
No. 3 of the resolutions for Neal's Motors Pty.
Limited and, here again, the same position applies.
If by the 20th proximo it appears that the profits
of this Company (disregarding dividends from Sub-
sidiary Companies which are covered by Resolution
No.4) will clearly be sufficient to cover this
dividend, all the words after "1950" may be omitted.

30

At the discussions in Melbourne I think I
indicated an intention to make some reference

in the Minutes to the estimates of profits which would be before the directors at their meeting on the 20th proximo, but on reflection it seems to me inadvisable to make any such reference and it has, therefore, been omitted from the draft resolutions.

10 The resolutions in the case of the Subsidiary Companies are not in as much detail as those for the three main Companies because firstly, the shares are all of one class and, secondly, the circumstances do not call for the same amount of detail.

20 When the dividends covered by these resolutions have been declared the special rights of the "A" shares will still be outstanding to the extent of £3 per share in Melford Motors Pty. Limited and to the extent of £1 per share in Neal's Motors Pty. Limited. It is proposed to satisfy these balances of the special rights in March 1950 and, subject to these special rights being fully satisfied, the "A" shares will then be entitled only to the 5% Cumulative Preference Dividend, accruing from the 1st January 1950.

I enclose for your information copy of a letter which I have sent to Mr. Bunny giving the name of the Canberra Solicitor, etc.

Yours faithfully,

30 P.S. Mr. Ross's memo of the 29th instant has just come to hand. I agree with Mr. Lane's suggestion regarding the declaration of the dividends by the Subsidiary Companies and see no objection to these being declared on the 7th proximo. If this be done, the words "this day", appearing in Resolution No. 4 of the Neal's Motors Resolutions will require to be suitably altered.

Exhibits

A.7.

Letter - J.V. Ratcliffe to L.B. Wallace with attached Draft Dividend Resolutions

30th November 1949 - continued.

Exhibits

A.7.

Letter - J.V.
Ratcliffe to
L.B. Wallace
with attached
Draft Dividend
Resolutions

30th November
1949 -
continued.

MELFORD MOTORS PTY. LIMITEDDRAFT DIVIDEND RESOLUTIONS

1. RESOLVED that an interim dividend of £3 per share be declared payable forthwith in respect of the "A" Ordinary Shares to the persons entitled thereto and that such dividend be appropriated wholly and exclusively out of such income, profits, or amounts in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act, 1936-1949. 10

2. RESOLVED that an interim dividend of £97,200 be declared payable forthwith in respect of the "A" Ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ended 30th June 1949.

3. RESOLVED that an interim dividend of £72,399. 3. 0. be declared payable forthwith in respect of the "A" Ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ending on the 30th June, 1950, in so far as such profits and taxable income extend, and as to the excess, if any, out of other available profits (not being profits subject to tax under Division 7 of the Income Tax Assessment Act, 1936-1949), appropriating the most recently derived of such other available profits. 20
30

(Copy)

NEAL'S MOTORS GROUPDRAFT DIVIDEND RESOLUTIONSDEVON MOTORS PTY. LIMITED:

1. RESOLVED that a dividend of £1,659. 6. 8 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated wholly and exclusively out of such income, profits or amounts, in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act, 1936-1949.
- 10
2. RESOLVED that an interim dividend of £58,914 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ended 30th June 1949.
3. RESOLVED that an interim dividend of £30,086 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ending on the 30th June 1950.
- 20

OVERLAND (VICTORIA) PTY. LIMITED:

1. RESOLVED that an interim dividend of £4,266.6.8 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated wholly and exclusively out of such income, profits, dividends or amounts, in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act, 1936-1949.
- 30
2. RESOLVED that an interim dividend of £25,909 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ended 30th June, 1949.
3. RESOLVED that an interim dividend of £89,000 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of the taxable dividends declared this day by Devon Motors Pty. Limited.
- 40

Exhibits

A.7.

Letter - J.V.
Ratcliffe to
L.B. Wallace
with attached
Draft Dividend
Resolutions

30th November
1949 -
continued.

ExhibitsNEAL'S MOTORS PTY. LIMITED:

A.7.

Letter - J.V.
Ratcliffe to
L.B. Wallace
with attached
Draft Dividend
Resolutions

30th November
1949 -
continued.

1. RESOLVED that an interim dividend of £30,370 be declared payable forthwith in respect of the "A" Ordinary Shares to the persons entitled thereto and that such dividend be appropriated wholly and exclusively out of such income, profits, dividends or amounts in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act 1936-1949. 10
2. RESOLVED that an interim dividend of £137,086 be declared payable forthwith in respect of the "A" ordinary shares to the persons entitled thereto and that such dividend be appropriated out of the profits forming part of the taxable income of the year ended 30th June 1949.
3. RESOLVED that an interim dividend of £121,556 be declared payable forthwith in respect of the "A" ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ending on the 30th June 1950 in so far as such profits and taxable income extend and as to the excess, if any, out of other available profits (not being profits subject to tax under Division 7 of the Income Tax Assessment Act 1936-1949) appropriating the most recently derived of such other available profits. 20
4. RESOLVED that an interim dividend of £114,909 be declared payable forthwith in respect of the "A" ordinary shares to the persons entitled thereto and that such dividend be appropriated out of the dividends declared this day by Overland (Victoria) Pty. Limited. 30

(Copy)

LANE'S MOTORS GROUPDRAFT DIVIDEND RESOLUTIONSCollins Motors Pty. Limited

RESOLVED that an interim dividend of £200 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of the profits of the year ended 30th June, 1949.

Exhibits

A.7.

Letter - J.V. Ratcliffe to L.B. Wallace with attached Draft Dividend Resolutions

30th November 1949 - continued.

10 British Service Pty. Limited

1. RESOLVED that an interim dividend of £2,636.18.0 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated wholly and exclusively out of such income, profits or amounts, in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act, 1936-1949.

20 2. RESOLVED that an interim dividend of £4,500 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of the profits of the year ended 30th June, 1949.

3. RESOLVED that an interim dividend of £3,500 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of the profits of the year ending on the 30th June 1950.

Lane's Motors Pty. Limited

30 1. RESOLVED that an interim dividend of £2,636.18.0 be declared payable forthwith in respect of the "A" ordinary shares to the persons entitled thereto and that such dividend be appropriated wholly and exclusively out of such income, profits, dividends or amounts in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act, 1936-1949.

2. RESOLVED that an interim dividend of £262,232 be

Exhibits

A.7.

Letter - J.V. Ratcliffe to L.B. Wallace with attached Draft Dividend Resolutions
30th November 1949 - continued.

declared payable forthwith in respect of the "A" ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ended 30th June 1949.

- 3. RESOLVED that an interim dividend of £147,805.19.0 be declared payable forthwith in respect of the "A" ordinary shares to the persons entitled thereto and that such dividend be appropriated out of the profits forming part of the taxable income of the year ending on the 30th June 1950.

10

COPY

Memorandum from J.V. Ratcliffe to D.H. Ross
13th December 1949.

MEMO TO MR. D.H. ROSS

FROM J.V. RATCLIFFE

13th December 1949.

RE DIVIDEND RESOLUTIONS

Referring to your telephone conversation with me last night, I now set out the revised or additional dividend Resolutions which are necessary in consequence of the amendments.

20

MELFORD MOTORS PTY. LIMITED

These resolutions are not affected, except to the extent of the alteration in Resolution No. (3) previously advised, namely, the omission of the words "in so far as profits".

NEAL'S MOTORS GROUP

Devon Motors Pty. Limited.

- (1) RESOLVED that a dividend of £6,074 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated wholly and exclusively out of such income, profits or amounts, in

30

respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act, 1936-1949.

- (2) RESOLVED that an interim dividend of £40,088. 8. 0 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ending on the 30th June 1950.

10

OVERLAND (Victoria) PTY. LIMITED

- (1) RESOLVED that an interim dividend of £6,074 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated wholly and exclusively out of such income, profits, dividends or amounts, in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act, 1936-1949.

20

- (2) RESOLVED that an interim dividend of £40,088. 8. 0 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of the taxable dividend declared this day by Devon Motors Pty. Limited.

Neal's Motors Pty. Ltd.

In this case the dividends, as per the draft resolutions, have not yet been declared and, therefore, all that will be necessary will be to increase the amounts in Resolutions Nos. (1) and (4).

30

In Resolution No. (1) the amount of £30,370 will become £36,444.

In Resolution No. (4) the amount of £114,909 will become £154,997. 8. 0. The words "this day" will have to be suitably altered.

40

Resolution No. (3) will, of course, as previously advised be altered to omit all the words "in so far as profits."

LANE'S MOTORS GROUP

Collins Motors Pty. Limited

There is no additional dividend in this case.

Exhibits

A.7.

Letter - J.V. Ratcliffe to L.B. Wallace with attached Draft Dividend Resolutions

30th November 1949 - continued.

Memorandum from J.V. Ratcliffe to D.H. Ross

13th December 1949 - continued.

Exhibits

A.7.

Letter - J.V.
Ratcliffe to
L.B. Wallace
with attached
Draft Dividend
Resolutions

30th November
1949 -
continued.

Memorandum from
J.V. Ratcliffe to
D.H. Ross

13th December
1949 -
continued.

British Service Pty. Limited

(1) RESOLVED that an interim dividend of £5,933. 0. 6 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated wholly and exclusively out of such income profits or amounts, in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act, 1936-1949.

10

(2) RESOLVED that an interim dividend of £2,000 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of the profits of the year ending on the 30th June, 1950.

Lane's Motors Pty. Ltd.

This is similar to Neal's Motors Pty. Limited and as no dividends have so far been declared the draft resolutions already forwarded may be used, subject to alteration of the amounts.

20

In Resolution No. (1) the amount of £2,636.18. 0 should be omitted and the amount of £8,569.18. 6 substituted.

There will be no change in Resolution No. (2).

Resolution No. (3) will be altered by omitting the amount of £147,805.19.0 and substituting the amount of £175,493. 8. 0.

On the foregoing basis there will still be 3/- per share to be paid, in order to exhaust the special rights. According to my calculation, this will amount to £11,866. 1. 0 and this could be paid in March, 1950.

30

This will mean that there will be no immediate drain on the liquid resources of the Company, provided the shareholders make the deposits suggested in my letter of the 9th instant.

(sgd.) J.V. RATCLIFFE.

LANE'S MOTORS GROUPDRAFT DIVIDEND RESOLUTIONSExhibits

A.7.

Letter - J.V.
Ratcliffe to
L.B. Wallace
with attached
Draft Dividend
Resolutions

30th November
1949 -
continued.

Collins Motors Pty. Limited

RESOLVED that an interim dividend of £200 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of the profits of the year ended 30th June, 1949.

British Service Pty. Limited

- 10 (1) RESOLVED that an interim dividend of £2,636.18. 0 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated wholly and exclusively out of such income, profits or amounts, in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act, 1936-1949.
- 20 (2) RESOLVED that an interim dividend of £4,500 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of the profits of the year ended 30th June, 1949.
- (3) RESOLVED that an interim dividend of £3,500 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of the profits of the year ending on the 30th June, 1950.

Lane's Motors Pty. Limited

- 30 (1) RESOLVED that an interim dividend of £8,569.18. 6 be declared payable forthwith in respect of the "A" ordinary Shares to the persons entitled thereto and that such dividend be appropriated wholly and exclusively out of such income, profits, dividends or amounts in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act 1936-1949.
- 40 (2) RESOLVED that an interim dividend of £262,232 be declared payable forthwith in respect of

Exhibits

A.7.

Letter - J.V.
Ratcliffe to
L.B. Wallace
with attached
Draft Dividend
Resolutions

30th November
1949 -
continued.

the "A" ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ended 30th June, 1949.

- (3) RESOLVED that an interim dividend of £175,493. 8. 0 be declared payable forthwith in respect of the "A" Ordinary Shares to the persons entitled thereto and that such dividend be appropriated out of the profits forming part of the taxable income of the year ending on the 30th June 1950.

10

COPYNEAL'S MOTORS GROUPDRAFT DIVIDEND RESOLUTIONSDevon Motors Pty. Limited

- (1) RESOLVED that a dividend of £1,659. 6. 8 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated wholly and exclusively out of such income, profits or amounts, in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act, 1936-1949. 20
- (2) RESOLVED that an interim dividend of £58,914 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ended 30th June, 1949.
- (3) RESOLVED that an interim dividend of £30,086 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ending on the 30th June, 1950. 30

Overland (Victoria) Pty. Limited

- (1) RESOLVED that an interim dividend of £4,266. 6. 8 be declared payable forthwith to the shareholders entitled thereto and that

such dividend be appropriated wholly and exclusively out of such income, profits, dividends or amounts, in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act, 1936-1949.

- 10 (2) RESOLVED that an interim dividend of £25,909 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ended 30th June 1949.
- (3) RESOLVED that an interim dividend of £89,000 be declared payable forthwith to the shareholders entitled thereto and that such dividend be appropriated out of the taxable dividends declared this day by Devon Motors Pty. Limited.

Exhibits

A.7.

Letter - J.V. Ratcliffe to L.B. Wallace with attached Draft Dividend Resolutions

30th November 1949 - continued.

Neal's Motors Pty. Limited

- 20 (1) RESOLVED that an interim dividend of £36,444 be declared payable forthwith in respect of the "A" Ordinary Shares to the persons entitled thereto and that such dividend be appropriated wholly and exclusively out of such income, profits, dividends or amounts, in respect of which the recipient is entitled to the rebate of tax provided for by Section 107 of the Income Tax Assessment Act 1936-1949.
- 30 (2) RESOLVED that an interim dividend of £137,086 be declared payable forthwith in respect of the "A" Ordinary shares to the persons entitled thereto and that such dividend be appropriated out of the profits forming part of the taxable income of the year ended 30th June 1949.
- (3) RESOLVED that an interim dividend of £121,556 be declared payable forthwith in respect of the "A" Ordinary shares to the persons entitled thereto and that such dividend be appropriated out of profits forming part of the taxable income of the year ending on the 30th June, 1950.
- 40 (4) RESOLVED that an interim dividend of £154,997.8.0 be declared payable forthwith in respect of the "A" Ordinary Shares to the persons entitled thereto and that such dividend be appropriated out of the dividends declared by Overland (Victoria) Pty. Limited.

Exhibits

A.8.

Extract of
 Figures of Motor
 Car Sales by
 Lane's Motors
 Pty. Ltd.

A.8. EXTRACT of FIGURES of MOTOR CAR SALES
 by LANE'S MOTORS PTY. LTD.

LANE'S MOTORS DELIVERIES FOR
THE UNDERMENTIONED YEARS

1944/45	115		
1945/46	227		
1946/47	1008	(includes De Soto)	
1947/48	2714	" " "	
1948/49	4519	" " "	
1949/50	6479	" " "	
1950/51	7691	" " "	
1951/52	8362	" " "	
1952/53	4114	" De Soto 9 months)	
1953/54	5122		
1954/55	6925		

A.9. CABLE - Lauri Newton to Lionel Newton
and REPLY.

Exhibits

A.9.

Cable - Lauri
Newton to
Lionel Newton
and Reply.

April 1949.

NEWTON PLEASE FORWARD
I I T PASSENGER
CARE COUPON
CAPETOWN.

10 IMPOSSIBLE GET TELEPHONE CONNECTION STOP GREG
EMPHATICALLY REFUSES ACCOMMODATION TO YOU AND ME
RE OUR LARGE ANNUAL CONTRIBUTION UNLESS PARTNERS
GIVE IMMEDIATE UNDERTAKING THAT FLOAT WILL BE MADE
WITHIN NEXT FEW MONTHS STOP UNCLE LESS RESISTANT
THAN TIM STOP IF PARTNERS DECISION UNFAVOURABLE
PARTNERSHIP ACCOUNT MUST BE REDUCED BY ONE THIRD
STOP I REGARD POSITION VERY SERIOUS AND MAY BE
FORCED TO REALISE ON YOUR BEHALF STOP PLEASE
INDICATE ANY PREFERENCE IF THIS NECESSARY STOP
PREFER YOU TRY TELEPHONE ME OR FAILING THIS CABLE
YOUR DECISIONS EARLY

LAURI

20

27th April, 1949.

CE12 LADISMITHCAPE 49 2Z 0940

NEWTON INDALCOR MELBOURNE AUSTRALIA.
CABLE RECEIVED AND UNDERSTOOD STOP PREFER IF
POSSIBLE TO FLOAT MOTOR COMPANIES STOP HAS FLOAT
OF BLOCK COMPANIES BEEN CONSIDERED STOP WILL
ABIDE BY YOU ULTIMATE DECISION STOP WILL TRY AND
RING YOU FROM DURBAN STOP BOTH WELL AFTER GOOD
TRIP STOP LETTERS FOLLOWING. LIONEL.

Exhibits

A.10.

Original Draft Agreement for purchase of shares by Pactolus Pty.Ltd. and draft Agreement on basis that certain provisions are not to be included.

A.10 - ORIGINAL DRAFT AGREEMENT for purchase of shares by Pactolus Pty. Ltd. and draft Agreement on basis that certain provisions are not to be included.

THIS INDENTURE made the _____ day of _____ One thousand nine hundred and forty nine BETWEEN _____ in the State of Victoria (hereinafter called the shareholder) of the first part

in the State of New South Wales (hereinafter called the Purchaser) of the second part and DONALD HUGH ROSS of 60 Collins Place Melbourne in the State of Victoria Secretary (hereinafter called the Agent) of the third part WHEREAS the shareholder is registered as the holder of "A" ordinary shares (hereinafter called the said shares) in the undertaking known as

(hereinafter called the Company) a Company incorporated in the State of Victoria AND WHEREAS the shareholder has agreed to give to the Purchaser an option to purchase the said shares upon the terms and conditions hereinafter appearing NOW THIS INDENTURE WITNESSETH as follows:-

1. THE shareholder hereby grants to the Purchaser an option to purchase the said shares upon the following terms and conditions:

(a) The said option shall be exercised by the giving by the Company to the Agent as agent for the shareholder of a notice in writing exercising the said option on or before the Thirty first day of December One thousand nine hundred and forty nine

(b) Within twenty four hours of the exercise of the said option the Purchaser shall pay to the Agent (who shall receive the same as agent for the shareholder) an amount equal to £ _____ for each of the said shares (which amount is hereinafter referred to as the "purchase price").

(c) Upon receipt by the agent of the purchase

price the agent shall complete (by including therein the amount of the purchase price and the name of the purchaser as the transferee) a transfer of the said shares signed in blank by the shareholder in anticipation of the exercise of the said option and shall hand the said transfer and the scrip for the said shares to the purchaser and the purchaser shall thereupon be entitled to apply for registration of the said transfer and the shareholder shall use the best endeavours of the shareholders to ensure that the said transfer shall be registered by the Company.

10

(d) The Purchaser shall apply for the allotment to the purchaser of one hundred and seventy thousand preference shares of the Company now available for allotment and will pay for the same in full if such allotment shall be made. If such allotment shall be made the purchaser shall sell to the shareholder or any person nominated by of the said preference shares at one pound for each such share.

20

2. THE shareholder hereby authorizes the agent to receive on behalf of the shareholder the purchase price and to give a receipt therefor on receipt thereof to complete the transfer of shares as aforesaid and to hand the same and the scrip for the said shares to the purchaser and also to pay out of the purchase price any amount payable by the shareholder on the purchaser from the purchaser (party hereto) of the preference shares mentioned in sub-paragraph (d) of paragraph one hereof.

30

IN WITNESS whereof, etc.

Exhibits

A.10.

Original Draft Agreement for purchase of shares by Pactolus Pty. Ltd. and draft Agreement on basis that certain provisions are not to be included - continued.

Exhibits

A.10.

Original Draft Agreement for purchase of shares by Pactolus Pty. Ltd. and draft Agreement on basis that certain provisions are not to be included - continued.

THIS INDENTURE made the _____ day of
One thousand nine hundred and forty-nine BETWEEN
State of Victoria (hereinafter called the share-
holder) of the first part

_____ in the State of New
South Wales (hereinafter called the Purchaser) of
the second part and DONALD HUGH ROSS of 60 Collins
Place Melbourne in the State of Victoria Secretary
(hereinafter called the Agent) of the third part 10
W H E R E A S the shareholder is registered as the
holder of "A" Ordinary shares (hereinafter
called the said shares) in the undertaking known as
(hereinafter called
the Company) a Company incorporated in the State of
Victoria AND WHEREAS the Shareholder has agreed
to give to the Purchaser an option to purchase the
said shares upon the terms and conditions herein-
after appearing NOW THIS INDENTURE WITNESSETH as
follows: 20

1. THE Shareholder hereby grants to the Pur-
chaser an option to purchase the said shares upon
the following terms and conditions :

(a) The said option shall be exercised by the
giving by the Company to the Agent as agent for the
Shareholders of a notice in writing exercising the
said option on or before the Thirty-first day of
December One thousand nine hundred and forty-nine;

(b) Within twenty-four hours of the exercise of
the said option the Purchaser shall pay to the 30
Agent (who shall receive the same as agent for the
Shareholder) an amount equal to £ _____ for each
of the said shares (which amount is hereinafter re-
ferred to as the "initial purchase price");

(c) Upon receipt by the Agent of the initial
purchase price the Agent shall complete (by includ-
ing therein the amount of the initial purchase price
and the name of the Purchaser as the transferee) a
transfer of the said shares signed in blank by the
shareholder in anticipation of the exercise of the 40
said option and shall hand the said transfer and
the Scrip for the said shares to the Purchaser and
the Purchaser shall thereupon be entitled to apply
for registration of the said transfer and the share-
holder shall use the best endeavours of the Share-
holder to ensure that the said transfer shall be
registered by the Company;

Exhibits

A.10.

Original Draft Agreement for purchase of shares by Pactolus Pty. Ltd. and draft Agreement on basis that certain provisions are not to be included - continued.

(d) If the Company shall be converted into a Public Company so that the shares of the Company may be quoted or listed on some Stock Exchange operating in Australia the Purchaser shall at the request of the Shareholder consent to the conditions attaching to the said shares being altered to correspond with those attaching to the "B" Ordinary shares of the Company and the Purchaser shall forthwith on being required so to do pay to the Shareholder in respect of each of the said shares a further sum equal to the highest net price at which shares in the Company shall be sold on an open market after the said conversion less the sum of One pound one shilling if such conversion shall occur within one year of the date hereof or less the sum of One pound one shilling and sixpence if such conversion shall occur after the expiration of one year from the date hereof;

(e) If the Company shall not be converted into a Public Company as aforesaid within the period of two years from the date hereof the Shareholder will use his best endeavours to have alterations made to the Articles of Association of the Company within one month of the termination of the said period so that the "A" Ordinary shares of the Company shall be quoted or listed on some Stock Exchange operating in Australia and the Shareholder will within the said period of one month repurchase the said shares from the Purchaser at the sum of One pound for each of the said shares plus the amount of any dividend accrued thereon to the date of purchase and in the latter event the Purchaser (party hereto) shall sell the said shares to the Shareholder for the said sum;

(f) The Purchaser shall apply for the allotment to the Purchaser of One hundred and seventy thousand Preference Shares of the Company now available for allotment and will pay for the same in full if such allotment shall be made. If such allotment shall be made the Purchaser shall sell to the Shareholder or any person nominated by him of the said Preference shares at One pound for each such share;

(g) If the Purchaser (party hereto) shall sell the said shares or any part thereof to any person or corporation (hereinafter called the new purchaser) within the period of two years and one month from the date hereof the purchaser shall procure the new purchaser to enter into a covenant with the

Exhibits

A.10.

Original Draft Agreement for purchase of shares by Pactolus Pty. Ltd. and draft Agreement on basis that certain provisions are not to be included - continued.

Shareholder in a form to be approved by the Shareholder that the new purchaser will perform such duties and pay such moneys as the Purchaser (party hereto) would from time to time have been obliged to perform and pay respectively pursuant to sub-clauses (d) and (e) of this Clause if the Purchaser (party hereto) had at the date that relevant action under the said sub-clauses shall have been taken still been the owner of the said shares but nothing herein or in the said covenant contained shall release the Purchaser (party hereto) from any obligation to the Shareholder under the said sub-clauses and the Purchaser (party hereto) shall in an appropriate form guarantee to the Shareholder the performance by the new purchaser of the obligations of the new Purchaser under the said covenant.

10

2. THE Shareholder hereby authorises the Agent to receive on behalf of the Shareholder the initial purchase price and to give a receipt therefor, on receipt thereof to complete the transfer of shares as aforesaid and to hand the same and the Scrip for the said shares to the Purchaser and also to pay out of the initial purchase price any amount payable by the Shareholder on the purchase from the purchaser (party hereto) of the Preference shares mentioned in sub-paragraph (f) of paragraph one hereof

20

IN WITNESS whereof, etc.

A.11 - TIME TABLE Relating to Transaction
Prepared by D.H. Ross.

Exhibits

A.11.

Time Table
relating to
Transactions
Prepared by
D.H. Ross.

MEETINGS1. Directors - Subsidiary Companies

		<u>Date</u>	<u>Time</u>
Declare Dividends:	Devon also	15/12	
		7/12	2.15 pm.
	Overland "	15/12	
		7/12	2.20 pm.
	Collins	7/12	2.25 pm.
	British Service		
	also 15/12	7/12	2.30 pm.

10

2. Shareholders

Increase Capital:	Lanes	14/12	11 am.
	Neals	14/12	11.10 am.
	Melfords	14/12	11.20 am.
Alter Articles:	Lanes	14/12	11.5 am.
	Neals	14/12	11.15 am.
	Melfords	14/12	11.25 am.

3. Directors - (Quorum Two Directors for Lanes, Melfords and Neals).

20

	<u>Date</u>	<u>Lanes</u>	<u>Melfords</u>	<u>Neals</u>
Issue of Scrip "A" & "B" Snares and sign scrip	14/12	12.00	12.5 pm.	12.10 pm.

Authorise Opening Canberra Register	14/12	12.00	12.5 pm.	12.10 pm.
--	-------	-------	----------	-----------

30

Receive requests for transfer of "A" Shares to Canberra Register and authorise the tsfr.	16/12	2 pm.	2.5 pm.	2.10 pm.
---	-------	-------	---------	----------

Authorise the issue of Pref. Shares	16/12	2 pm.	2.5 pm.	2.10 pm.
---	-------	-------	---------	----------

Pass Dividends	20/12	9 am.	9.5 am.	9.10 am.
----------------	-------	-------	---------	----------

Issue and allot new Pref. Shares	20/12	9.30 am.	9.55 am.	9.40 am.
-------------------------------------	-------	----------	----------	----------

40

Receive request for tsfr. of new Pref. Shares to Canberra and authorise the transfer	20/12	9.30 am.	9.35 am.	9.40 am.
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Exhibits

A.11.

Time Table
relating to
Transactions
Prepared by
D.H. Ross -
continued.

Issue Scrip for new
Pref. Shares

(leave for present)

Receive transfers and
issue new Scrip for
"A" Shares

Tsfrs. for "A" Shares to be
handed to D. in C. on 19/12,
who notes them and hands to
Canberra Agent.

Receive transfers and
issue New Scrip for
Pref. Shares

Prepare in M. to send to C.
after return from Canberra.

Further Interim Dividend Devon Dec. 16

10

" " " Overland Dec. 16

" " " British Service

MAJOR ITEMS THAT REQUIRE ATTENTION BEFORE GOING TO
CANBERRA ON DECEMBER 18th.

(Refer to other work sheets for detail items arising from this list).

1. Subsidiary Companies declare and pay dividends.
2. Hold Shareholders meetings (2) altering M. & A.
3. Directors authorise Canberra Register.
4. Authorise the signing of Scrip - "A" and "B" Shares. 20
5. Shareholders request transfer of "A's" to Canberra.
6. Shareholders sign contracts and transfer forms for "A" Shares.
7. Mail contracts to "P".
8. Receive cheques from each shareholder for pref. shares.

CANBERRA

1. Register "A" shares. 30
2. Stamp the scrip for the "A" Shares "Canberra Register". This scrip will have been brought from Melbourne.
3. "P" takes up option on "A" shares.

4. D.H.R. completes the transfer of "A" shares.
5. "P" hands over cheques for the purchase of "A" shares.
6. Transfers for the "A" shares are produced to a Director of each company for noting.
7. Register the transfers of the "A" shares to "P".
8. Wire Melbourne that option taken up and transfers registered.

Exhibits

A.11.

Time Table
relating to
Transactions
Prepared by
D.H. Ross -
continued.

MELBOURNE - Upon receipt of wire:

- 10 1. Declare dividends.
2. Pass dividends to "P's" Agent.
3. Allot preference shares and receive payment.
4. Receive application for transfer of preference shares to Canberra.
5. Pass resolution transferring preference shares to Canberra Register.
6. Wire Canberra that preference shares have been issued and have been transferred to Canberra register naming the allottee of the share numbers.
- 20 7. Issue new Scrip for "A" shares.

CANBERRA

1. Set up the register for the preference shares.
2. "P" signs the transfers for the preference shares and DHR. hands over the cheques in exchange for the transfer forms.

MELBOURNE - AFTER RETURNING FROM CANBERRA

"P" banks cheques for -

- | | | |
|----|------------------------------------|--|
| 30 | Dividends
Sales of Pref. Shares |) "P" cheques for purchase of "A" shares
) cross these, |
|----|------------------------------------|--|

<u>Shareholders</u> bank cheques for sale of "A" Shares) Shareholders cheques) for purchase of Pref. Shares cross these.
--	---

<u>Company</u> banks cheques for new Pref. Shares) Dividend cheques cross) these.
--	--------------------------------------

Shareholders sign transfers of Pref. Shares and return them to Canberra.

Type up Scrip and send to Agent for sealing and issue.

- 40 Issue Scrip for Pref. Shares to "P" later sent to Canberra for cancellation with the transfers

ExhibitsTAKK TO CANBERRA

A.11.

Time Table
relating to
Transactions
Prepared by
D.H. Ross -
continued.

1. M & A. with alterations (2 copies) 1 copy to be left with Agent.
2. Canberra Register:
 - (a) Agents authority to open.
 - (b) Copy of Drs. Resolution.
 - (c) Two Share Registers for each Company with the following entries made, but no dates:
 - (i) "A" Shares - original entries - transfer to Canberra. 10
 - (ii) Transfer of "A" to P.
One of the share registers will be taken back to Melbourne as the Copy of Canberra Register.
 - (d) Requests from "A" shareholders to transfer to Canberra Register.
 - (e) Seal and stamp "Canberra Register".
3. Sale of "A" Shares.
 - (a) Contracts.
 - (b) Transfers of "A" shares signed by Shareholders but no date or amount. 20
 - (c) Scrip for "A" Shares :-
 - Old scrip - signed and sealed
 - New scrip - in name of Pactolus but no dates, seal or signatures.
 - (d) Evidence that signatures on transfers are okay and that Directors are satisfied that transfers should be registered.
4. Complete files - include Ajax because that file has some general information. 30
5. Draft (? typed wires) wires on "P" taking up option, etc.
6. New Preference Issue:
 - (a) Cheque from each shareholder.
 - (b) Transfers ready for "P" to sign but undated.
 - (c) Scrip for preference shares which agent will sign later in "P's" name.

EXHIBITS TENDERED ON BEHALF OF
RESPONDENT

Exhibits

R.1 - ORIGINAL of LETTER J.V. Ratcliffe to
L.B. Wallace dated 30th November 1949
and memorandum marked as Exhibit "A.7"
(not recopied)

R.1.
Original of
letter J.V.
Ratcliffe to
L.B. Wallace
dated 30th
November 1949
and memorandum
marked as
Exhibit "A.7"
(not recopied)

R.2 - MINUTES of PACTOLUS PTY. LTD. (numbered 1
to 14)
No.1. Meeting of Directors 9th December
1949.

R.2.
Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)
No.1 - Meeting
of Directors
9th December
1949.

PACTOLUS PTY. LIMITED

MINUTES OF MEETING OF DIRECTORS
HELD AT 53 MARTIN PLACE, SYDNEY
ON FRIDAY, 9th DECEMBER, 1949,
AT 9.30 A.M.

Present: Mr. J.V. Ratcliffe - Chairman
Mr. P.J. Ratcliffe - Director
Miss J.M. Vincent - Secretary.

20 Confirmation The Minutes of the Meeting held
of Minutes on the 25th November, 1949 were read
and confirmed.

Melbourne The Chairman advised that, in con-
Bank nection with business operations pro-
Account posed to be undertaken in Victoria, it
would be advisable to open a Bank
Account in Melbourne.

30 Resolved that the Company open an
Account at the South Melbourne Branch
of The English Scottish & Australian
Bank Limited, in the name of "Pactolus
Pty. Limited" and that such Account be

Exhibits

R.2.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)

No.1 - Meeting
of Directors
9th December
1949 -
continued.

operated on either by Mr. J. V. Ratcliffe (alone) or by any Director and the Secretary and that each of them separately be empowered to endorse cheques, drafts, promissory notes, bills of exchange, bills of lading, or other negotiable instruments for and on behalf of the Company.

Transfer
of Funds
to
Melbourne

Resolved that an amount of £3,500 10
be transferred from the Account with
The Commercial Banking Company of
Sydney Limited, 11b Castlereagh Street,
Sydney, to the new Account with the
English Scottish and Australian Bank
Limited, South Melbourne.

Deposit
with
Company

Mr. J.V. Ratcliffe intimated
that he was willing to deposit with
the Company the sum of £15,500 with-
out interest, but repayable upon de- 20
mand.

Resolved that this offer be ac-
cepted and that the amount be paid
into the Company's new Account at The
English Scottish and Australian Bank
Limited, South Melbourne.

Annual
Meeting of
Shareholders

Resolved that the Annual General
Meeting of Shareholders be called for
Friday 30th December, 1949 at 10 a.m.
and that notice to shareholders be 30
issued as per copy affixed hereto.

Confirmed

J.V. Ratcliffe
Chairman

19/12/49.

No.2. Meeting of Directors 19th December 1949

Exhibits

R.2-

PACTOLUS PTY. LTD.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)

MINUTES OF MEETING OF DIRECTORS, HELD AT THE OFFICE
OF MR. S.R. PHIPPARD, SOLICITOR, ROYAL INSURANCE
CHAMBERS, NORTHBOURNE AV. CIVIC CENTRE CANBERRA,
A.C.T., ON MONDAY, 19th DECEMBER, 1949, AT 10.30
A.M.

No.2 - Meeting
of Directors
19th December
1949.

Present: Mr. J.V. Ratcliffe, Chairman
Mr. P.J. Ratcliffe, Director
Mr. H.V. Single, the Company's
Solicitor by invitation.

10

Confirmation
of Minutes

The Minutes of the Meeting held
on the 9th December, 1949, were read
and confirmed.

Deal in
Shares of
Three Heron
Pty. Ltd.

The Chairman stated that the Com-
pany had been offered 5200 "A" shares
in Three Heron Pty. Ltd., being the
whole of the issued shares of this
class, at £25. 7. 0 per share - such
shares being on the Canberra Register,
and that these shares carried special
dividend rights equal to £24.12. 0 per
share plus 5% per annum preferential
dividend as from 1st January 1950. As
after the special dividend rights were
exhausted the company should be able
to sell these shares at £1. 0. 0. per
share, it should be able to make a
gross profit of £1300, and he there-
fore recommended the deal.

20

30

Resolved that the purchase be
made and that tsfrs. (4) to the com-
pany be executed under the common
seal.

Confirmed

J.V. Ratcliffe
Chairman

19/12/49

Exhibits

No.3. Meeting of Directors 19th December 1949

R.2.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)No.3 - Meeting
of Directors
19th December
1949.PACTOLUS PTY. LTD.MINUTES OF MEETING OF DIRECTORS, HELD AT THE
OFFICE OF MR. S.R. PHILPARD, SOLICITOR,
ROYAL INSURANCE BLDG., CIVIC CENTRE, CANBERRA,
A.C.T., ON MONDAY 19th DECEMBER, 1949, AT
2.30 P.M.

Present: Mr. J.V. Ratcliffe, Chairman
Mr. P.J. Ratcliffe, Director
Mr. H.V. Single, the Company's Solr., 10
by invitation.

Confirma- The Minutes of the meeting held at
tion of 10.30 a.m. this morning were read and
Minutes confirmed.

"A" Shares Mr. P.J. Ratcliffe reported receipt
in Three of Share Certificate No. 5 - Canberra
Heron Pty. Register - for 5200 "A" shares in Three
Ltd. Heron Pty. Ltd.

Deal in The Chairman advised that he had
Shares of obtained on behalf of the Company
Melford options over all the 8253 "A" Ordinary 20
Motors shares in Melford Motors Pty. Ltd. and
Pty. Ltd. that in his opinion these shares could
be purchased and sold at a substantial
profit after taking into consideration
the special dividends which should be
collected before re-sale.

Resolved that the options be exer-
cised in writing and that transfers of
the shares, which are all on the 30
Canberra Register, be executed under
the common seal.

Resolved further that the consider-
ations amounting to £198072 be paid by
cheques drawn on the Company's
Melbourne Bank Account.

Preference The Chairman advised receipt of a
Shares in letter from the Secretary of Melford
Melford Motors Pty. Ltd. to the effect that the
Motors Pty. holders of the "A" shares on this date 40
Ltd. would be entitled to take up the new

issue of 189,819 preference shares of £1 each.

Exhibits

R.2.

Resolved that the company make an application for these shares and that cheque for the full amount payable thereon be drawn on the company's Melbourne Bank Account.

Minutes of Pactolus Pty. Ltd. (numbered 1 to 14)

Resolved further that Melford Motors Pty. Ltd. be requested to transfer these shares to the Canberra Register.

No.3 - Meeting of Directors 19th December 1949 - continued.

10

Deal in Shares of Neal's Motors Pty. Ltd.

The Chairman advised that he had obtained on behalf of the company options over all the "A" ordinary shares (36444 in number) in Neal's Motors Pty. Ltd. and that in his opinion these shares could be purchased and sold at a substantial profit after taking into consideration the special dividends which should be collected before resale.

20

Resolved that the options be exercised in writing and that the transfers of the shares which are all on the Canberra Register, be executed under the common seal.

Resolved further that the consideration amounting to £452,513 be paid by cheques drawn on the Company's Melbourne Bank Account.

30

"B" Preference Shares in Neal's Motors Pty. Ltd.

~~the Secretary of~~ The Chairman tabled a letter from J.V.R. Neal's Motors Pty. Ltd. dated 16th December 1949 to the effect that the holders of the "A" ordinary shares on this date would be entitled to take up the new issue of 403,314 "B" Preference Shares of £1 each.

40

Resolved that the Company make an application for these shares and that cheque for the full amount payable thereon be drawn on the Company's Melbourne Bank Account.

Resolved further that Neal's Motors Pty. Ltd. be requested to transfer these shares to the Canberra Register.

<u>Exhibits</u> R.2. Minutes of Pactolus Pty. Ltd. (numbered 1 to 14) No.3 - Meeting of Directors 19th December 1949 - continued.	<u>Deal in "A" Shares of Lane's Motors Pty. Ltd.</u>	<p>The Chairman advised that he had obtained on behalf of the Company options over all the "A" ordinary shares in Lane's Motors Pty. Ltd. (79107 in number) and that in his opinion these shares could be purchased and sold at a substantial profit, after taking into consideration the special dividends which should be collected before re-sale.</p> <p style="text-align: right;">10</p> <p><u>Resolved</u> that the options be exercised in writing and that the transfers of the shares which are all on the Canberra Register be executed under the common seal.</p> <p><u>Resolved further</u> that the consideration amounting in all to £458320.12. 0 be paid by cheques drawn on the Company's Melbourne Bank Account.</p>
	<u>"B" Preference Shares in Lane's Motors Pty. Ltd.</u>	<p>The Chairman tabled a letter from Lane's Motors Pty. Ltd., dated 16th December, 1949, to the effect that the holders of the "A" ordinary shares on this date would be entitled to take up the new issue of 402679 "B" preference shares of £1 each.</p> <p style="text-align: right;">20</p> <p><u>Resolved</u> that the Company make an application for these shares and that cheque for the full amount payable thereon be drawn on the company's Melbourne Bank Account.</p> <p style="text-align: right;">30</p> <p><u>Resolved further</u> that Lane's Motors Pty. Ltd. be requested to transfer these shares to the Canberra Register.</p>

Confirmed

J.V. Ratcliffe
Chairman

30/12/49.

No.4. MEETING OF DIRECTORS 20th December 1949

Exhibits

R.2.

PACTOLUS PTY. LTD.

MINUTES OF MEETING OF DIRECTORS, HELD AT THE OFFICE OF MR. S.R. PHIPPARD, SOLICITOR, ROYAL INSURANCE CHAMBERS, NORTHBOURNE AVENUE, CIVIC CENTRE, CANBERRA, A.C.T. ON TUESDAY 20th DECEMBER, 1949, AT 11.30 A.M.

Minutes of Pactolus Pty. Ltd. (numbered 1 to 14)

No.4 - Meeting of Directors 20th December 1949.

Present: Mr. J.V. Ratcliffe, Chairman
Mr. P.J. Ratcliffe, Director

10 Receipt of Share Scrip Mr. P.J. Ratcliffe reported receipt of certificates for 8253 "A" ordinary shares in Melford Motors Pty. Ltd., 36444 "A" ordinary shares in Neal's Motors Pty. Ltd., and 79107 "A" ordinary shares in Lane's Motors Pty. Ltd.

20 Allotment of 5% Preference Shares in Melford Motors Pty. Ltd. & sale of such Shares The Chairman reported that the Company had been allotted 189819 5% preference shares in Melford Motors Pty. Ltd. and that these had been placed on the Canberra Register. He further reported receipt of offers to purchase all these shares at £1 per share.

Resolved that these shares be sold to the persons named in the transfers (4) submitted to this meeting at £1 per share and that such transfers be executed under the common seal.

30 Allotment of 5% "B" Preference Shares in Neal's Motors Pty. Ltd. & sale of such shares. The Chairman reported that the Company had been allotted 403314 "B" preference shares of £1 each in Neal's Motors Pty. Ltd. and that these had been placed on the Canberra Register. He further reported offers to purchase all these shares at £1 per share.

Resolved that these shares be sold to the persons named in the transfers (8) submitted to this meeting at £1 per share and that such transfers be executed under the common seal.

40

Exhibits
 R.2.
 Minutes of
 Pactolus Pty.
 Ltd. (numbered
 1 to 14)
 No.4 - Meeting
 of Directors
 20th December
 1949 -
 continued.

Allotment
 of "B"
 Preference
 Shares in
 Lane's
 Motors
 Pty. Ltd.
 and sale
 of such
 shares.

The Chairman reported that the Company had been allotted 402679 "B" preference shares in Lane's Motors Pty. Ltd. and that these had been placed on the Canberra Register. He further reported offers to purchase all these shares at £1 per share.

Resolved that these shares be sold to the persons named in the transfers (9) submitted to this meeting at £1 per share and that such transfers be executed under the common seal of the company. 10

Confirmed

J.V. Ratcliffe
Chairman
 30/12/49.

No.5 - Meeting
 of Directors
 30th December
 1949.

No.5. MEETING OF DIRECTORS 30th December 1949

PACTOLUS PTY. LTD.

MINUTES OF MEETING OF DIRECTORS HELD AT 53
 MARTIN PLACE, SYDNEY ON FRIDAY 30th DECEMBER
 1949 AT 9.45 A.M.

20

Present: Mr. J.V. Ratcliffe - Chairman
 Mr. P.J. Ratcliffe - Director
 Miss J.M. Vincent - Secretary

Confirma-
 tion of
 Minutes

The Minutes of the Meetings of Directors in Canberra, on Monday the 19th December, 1949, at 2.30 p.m. and on Tuesday the 20th December, 1949 at 11.30 a.m. were read and confirmed.

Tax-free
 Dividends
 from Three
 Heron Pty.
 Ltd. -
 Transfer to
 Tax-free
 Profits
 Account

The Secretary tabled a letter from the Secretary, Three Heron Pty. Limited, dated 20th instant, advising the declaration and payment of tax-free dividends and taxable dividends on the "A" shares in Three Heron Pty. Limited owned by this company. 30

The tax-free dividends were as follows:-

£10 per "A" Share	-	£52,000
£5 " " "	-	£26,000
£2 " " "	-	£10,400
2/- " " "	-	£520
		<u>£88,920</u>

Exhibits

R.2.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)

No.5 - Meeting
of Directors
30th December
1949 -
continued.

Resolved that the whole of the
aforesaid dividends, totalling £88,920,
be transferred to Tax-free Profits
Account.

10 Tax-free
Dividend
from
Melford
Motors Pty.
Limited
Transfer to
Tax-free
Profits
Account

The Secretary tabled a letter from
Melford Motors Pty. Limited, dated 20th
instant, advising the declaration and
payment of tax-free and taxable divi-
dends on the "A" shares in Melford
Motors Pty. Limited owned by this Com-
pany. The tax-free dividend was £3 per
share amounting to £24,759.

20 Tax-free
Dividend
from Neal's
Motors Pty.
Limited -
Transfer to
Tax-free
Profits
Account

Resolved that the whole of the
aforesaid dividend amounting to £24,759,
be transferred to tax-free Profits
Account.

30 Tax-free
Dividend
from Neal's
Motors Pty.
Limited -
Transfer to
Tax-free
Profits
Account

The Secretary tabled a letter from
Neal's Motors Pty. Limited, dated 20th
instant, advising the declaration and
payment of tax-free and taxable divi-
dends on the "A" shares in Neal's Motors
Pty. Limited owned by this Company. The
tax-free dividend was £1 per share,
amounting to £36,444.

40 Tax-free
Dividend
from Lane's
Motors Pty.
Limited -
Transfer to
Tax-free
Profits
Account

Resolved that the whole of the
aforesaid dividend amounting to £36,444,
be transferred to Tax-free Profits
Account.

The Secretary tabled a letter from
Lane's Motors Pty. Limited, dated 20th
instant, advising the declaration and
payment of tax-free and taxable divi-
dends on the "A" shares in Lane's Motors
Pty. Limited owned by this Company. The
tax-free dividend was 2/2 per share,
amounting to £8,569.18. 6.

Resolved that the whole of the
aforesaid dividend amounting to
£8,569.18.6, be transferred to Tax-free
Profits Account.

Confirmed

J.V. Ratcliffe
Chairman

12/1/50

Exhibits

R.2.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)

No.6 - Meeting
of Directors
11th May 1950.

No.6. MEETING OF DIRECTORS 11th May 1950.PACTOLUS PTY. LIMITED

MINUTES OF MEETING OF DIRECTORS HELD AT 53 MARTIN
PLACE, SYDNEY, ON THURSDAY 11th MAY 1950, AT
9.30 A.M.

Present: Mr. J.V. Ratcliffe - Chairman
Mr. P.J. Ratcliffe - Director
Miss J.M. Vincent - Secretary

Confirma-
tion of
Minutes The Minutes of the Meeting held
on the 12th April 1950 were read and
confirmed. 10

Sale of
"A" Shares
in Melford
Motors Pty.
Ltd., Neal's
Motors Pty.
Ltd., and
Lane's
Motors
Pty. Ltd. The Chairman stated that all the
special dividend rights attaching to
these shares had now been exhausted
and that if the Company could dispose
of the shares (which now carry a divi-
dend of 5% per annum only) for £1 per
share, which he thought would be the
fair value having regard to the fact
that the Companies were Private Com- 20
panies and the shares were unlisted,
the Company would make a substantial
profit out of the transactions. He
accordingly recommended that the
following shares, namely:-

Melford Motors Pty. Ltd. 8,253 "A"
ordinary shares
Neal's Motors Pty. Limited 36,444 "A"
ordinary shares
Lane's Motors Pty. Limited - 79,107 30
"A" ordinary shares

be disposed of to Pactolus Investments
Pty. Limited at £1 per share, making
the total consideration £123,804.

Resolved that this recommendation
be approved and that the transfers be
completed under the Common Seal of the
Company by any one Director and the
Secretary, or other authorized witness.

Sale of
"A" shares
in Three
Heron Pty.
Limited The Chairman stated that the 40
5,200 "A" shares in Three Heron Pty.
Limited now only carried a dividend of

5% per annum - all the special rights having been exhausted. As the shares were in a Private Company and were unlisted he recommended that they be sold at a price of £1 per share, which he considered the fair value and because, if sold at this price, the Company would make a substantial gross profit on the deal.

Exhibits

R.2.

Minutes of Pactolus Pty. Ltd. (numbered 1 to 14)

No.6 - Meeting of Directors 11th May 1950 - continued.

10 The Chairman further stated that Mrs. V.M. Parsons was willing to purchase the shares at £1 per share and he recommended that the shares be sold to Mrs. Parsons at the price stated.

20 Resolved that the recommendation of the Chairman be approved and that the necessary transfer be completed under the Common Seal of the Company in the presence of one Director and the Secretary, or other authorized witness.

Tax-free Dividends

Resolved that a dividend of £25,000 be declared payable forthwith and that such dividend be appropriated wholly and exclusively out of dividends standing to the credit of the Tax-free Profits Account, comprising income subject to rebate under the provisions of Section 107 of the Income Tax Assessment Act, 1936-1949.

30 Resolved that a dividend of £25,000 be declared payable forthwith and that such dividend be appropriated wholly and exclusively out of dividends standing to the credit of the Tax-free Profits Account, comprising income subject to rebate under the provisions of Section 107 of the Income Tax Assessment Act, 1936-1949.

40 Resolved that a dividend of £25,000 be declared payable forthwith and that such dividend be appropriated wholly and exclusively out of dividends standing to the credit of the Tax-free Profits Account, comprising income subject to rebate under the provisions of Section 107 of the Income Tax Assessment Act, 1936-1949.

Resolved that a dividend of £25,000 be declared payable forthwith and that

Exhibits

R.2.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)

No.6 - Meeting
of Directors
11th May 1950
- continued.

such dividend be appropriated wholly and exclusively out of dividends standing to the credit of the Tax-free Profits Account, comprising income subject to rebate under the provisions of Section 107 of the Income Tax Assessment Act, 1936-1949.

Resolved that a dividend of £10,000 be declared payable forthwith and that such dividend be appropriated wholly and exclusively out of dividends standing to the credit of the Tax-free Profits Account, comprising income subject to rebate under the provisions of Section 107 of the Income Tax Assessment Act, 1936-1949. 10

Resolved that a dividend of £10,000 be declared payable forthwith and that such dividend be appropriated wholly and exclusively out of dividends standing to the credit of the Tax-free Profits Account, comprising income subject to rebate under the provisions of Section 107 of the Income Tax Assessment Act 1936-1949. 20

Resolved that a dividend of £10,000 be declared payable forthwith and that such dividend be appropriated wholly and exclusively out of dividends standing to the credit of the Tax-free Profits Account, comprising income subject to rebate under the provisions of Section 107 of the Income Tax Assessment Act 1936-1949. 30

Resolved that a dividend of £10,000 be declared payable forthwith and that such dividend be appropriated wholly and exclusively out of dividends standing to the credit of the Tax-free Profits Account, comprising income subject to rebate under the provisions of Section 107 of the Income Tax Assessment Act, 1936-1949.

Resolved that a dividend of £3,600 be declared payable forthwith and that such dividend be appropriated wholly and exclusively out of dividends standing to the credit of the Tax-free Profits Account, comprising income subject to rebate under the provisions of Section 107 of the Income Tax Assessment Act, 1936-1949. 40

Confirmed

J.V. Ratcliffe
Chairman

21.6.50

50

No.7. MEETING OF DIRECTORS 10th November 1950Exhibits

R.2.

PACTOLUS PTY. LTD.Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)No.7 - Meeting
of Directors
10th November
1950.MINUTES OF MEETING OF DIRECTORS HELD AT 53
MARTIN PLACE, SYDNEY, ON FRIDAY 10th NOVEMBER
1950, AT 10 A.M.

Present: Mr. J.V. Ratcliffe - Chairman
Mr. P.J. Ratcliffe - Director
Miss J.M. Vincent - Secretary

10 Confirma- The Minutes of the Meeting held on
tion of the 17th July, 1950, were read and con-
Minutes firmed.

20 Deal in The Chairman advised that he was
"C" negotiating on behalf of the Company
Ordinary and expected to obtain, an option of
Shares in purchase over 8,253 "C" ordinary shares
Melford in Melford Motors Pty. Limited and that,
Motors Pty. in his opinion, these shares could be
Limited purchased and sold at a substantial pro-
fit, after taking into consideration the
special dividends which should be collect-
ed before re-sale.

Resolved that the Chairman be author-
ized to continue the negotiations.

30 Deposit The Chairman reported that in antici-
with pation of the need for funds to carry
Industrial out the transaction mentioned in the
Acceptance preceding Minute, he had instructed The
Corporation Industrial Acceptance Corporation Limited
Limited to repay the deposit of £25,000 made with
that Company as follows:

£5,000 to be repaid in Sydney on the
27th instant, together with
accrued interest;

£20,000 to be repaid to the Account
of Pactolus Pty. Limited at the
English Scottish and Australian
Bank Limited, South Melbourne, on
the 4th proximo together with
accrued interest.

40

ConfirmedJ.V. Ratcliffe
Chairman

4.12.50

Exhibits

No.8. MEETING OF DIRECTORS 4th December 1950

R.2.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)

No.8 - Meeting
of Directors
4th December
1950.

PACTOLUS PTY. LIMITED

MINUTES OF MEETING OF DIRECTORS, HELD AT THE
OFFICE OF MR. S.R. PHIPPARD, SOLICITOR, ROYAL
INSURANCE BLDG., CIVIC CENTRE, CANBERRA, A.C.T.
ON MONDAY 4th DECEMBER, 1950, AT 3.30 P.M.

Present: Mr. J.V. Ratcliffe, Chairman
Mr. P.J. Ratcliffe, Director.

Confirma-
tion of
Minutes

The Minutes of the meeting held on the 10th November, 1950, were read and confirmed. 10

Deal in
"C"
Shares in
Melford
Motors
Pty. Ltd.

The Chairman advised that he had obtained on behalf of the Company options over all the 8253 "C" ordinary shares in Melford Motors Pty. Ltd. - pursuant to the decision of the meeting of 10th November 1950 - and that in his opinion (as previously stated) these shares could be purchased and sold at a substantial profit, after taking into consideration the special dividends which should be collected before re-sale. 20

Resolved that the options be exercised in writing and that transfers of the shares, which are all on the Canberra Register, be executed under the common seal.

Resolved further that the consideration amounting in all to £198,072 (8253 shares at £24 per share) be paid by cheques drawn on the Melbourne Bank A/c. of the Company. 30

Confirmed

J.V. Ratcliffe,
Chairman

5.12.50

No.9. MEETING OF DIRECTORS 5th December 1950

Exhibits

R.2.

PACTOLUS PTY. LIMITED

MINUTES OF MEETING OF DIRECTORS, HELD AT
THE OFFICE OF MR. S.R. PHIPPARD, SOLICITOR
ROYAL INSURANCE BLDG., CIVIC CENTRE,
CANBERRA, A.C.T., ON TUESDAY, 5th DECEMBER,
1950, AT 10.15 A.M.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)

No.9 - Meeting
of Directors
5th December
1950.

Present: Mr. J.V. Ratcliffe - Chairman
Mr. P.J. Ratcliffe - Director

10 Confirma- The Minutes of the Meeting held
tion of on the 4th December, 1950, at 3.30 p.m.
Minutes were read and confirmed.

Share Scrip Mr. P.J. Ratcliffe reported receipt
Melford of scrip for 8253 "C" Shares in Melford
Motors Motors Pty. Ltd., on the Canberra Regis-
Pty. Ltd. ter.

20 Transfer The Chairman advised that pending
of Melford collection of all special dividends on
"C" Shares these shares and sale thereof, it was
to Trustee desirable that the shares be placed in
the name of a trustee - solely for busi-
ness reasons - and that Mr. L.B. Wallace
was willing to act for the company in
this capacity.

30 Resolved that the shares be trans-
ferred to Mr. L.B. Wallace to hold as
Trustee for this company, and that all
necessary documents be executed under
the seal of the Company, and Declaration
of Trust obtained from Mr. Wallace.

Confirmed

J.V. Ratcliffe
Chairman

15.12.50.

Exhibits

R.2.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)

No.10 - Meeting
of Directors
15th December
1950.

No.10. MEETING OF DIRECTORS 15th December 1950PACTOLUS PTY. LIMITED

MINUTES OF MEETING OF DIRECTORS, HELD AT 53
MARTIN PLACE SYDNEY, ON FRIDAY THE 15th
DECEMBER 1950 AT 5.30 P.M.

<u>Present:</u>	Mr. J.V. Ratcliffe, Chairman Mr. P.J. Ratcliffe, Director Miss J. Vincent, Secretary Mr. R.A. Ratcliffe, by invitation.	
<u>Confirma- tion of Minutes</u>	The Minutes of the meeting held at Canberra on Tuesday 5th December 1950 were read and confirmed.	10
<u>Melford Motors "C" Shares Taxable Dividend</u>	The Chairman advised that a taxable dividend of £19 per share on 8253 "C" shares was declared by Melford Motors Pty. Ltd. on the 5th December 1950 and that the total amount of £156807 was paid into the Company's Account with the E. S. & A. Bank, South Melbourne, on the following day.	20
<u>Melford Motors "C" Shares Tax Paid Dividend</u>	The Chairman also advised that a tax paid dividend of £3 per share on 8253 "C" shares was declared by Melford Motors Pty. Ltd. on the 5th December, 1950 and that the total amount of £24,759 was paid into the Company's Account with the E. S. & A. Bank, South Melbourne, on the following day.	
	<u>Resolved</u> that the whole of the said tax paid dividend of £24,759 be transferred to Tax Free Profits Account.	30
<u>Resigna- tion of Secretary</u>	Miss J. Vincent submitted her resignation as Secretary of the Company, in view of her approaching marriage. Resolved that the said resignation be accepted.	
<u>Appointment of Secretary</u>	<u>Resolved</u> that Mr. R.A. Ratcliffe be appointed Secretary of the Company and that the necessary notices be given of the change in this office.	40

Bank
Authorities

Resolved that the Commercial Bank of Sydney 11B Castlereagh St. Sydney, Branch and the E. S. & A. Bank, South Melbourne be advised of the change in the office of Secretary; also that authority to operate on the account is "J.V. Ratcliffe (alone) or any Director and the Secretary (jointly)"; endorsements to be made by any Director, or the Secretary.

Exhibits

R.2.

Minutes of Pactolus Pty. Ltd. (numbered 1 to 14)
No.10 - Meeting of Directors 15th December 1950 - continued.

10

Annual
Meeting.

Resolved that draft report to shareholders tabled by the Chairman, be approved, and that the Annual Meeting be called for Friday 29th December 1950 at 5.30 p.m. and that notice to shareholders be issued as per copy affixed hereto.

Confirmed

J.V. Ratcliffe
Chairman
21/3/1951

20

No.11. MEETING OF DIRECTORS 21st March 1951

No.11 - Meeting of Directors 21st March 1951

PACTOLUS PTY. LTD.

MINUTES OF MEETING OF DIRECTORS, HELD AT 53
MARTIN PLACE, SYDNEY, ON WEDNESDAY 21st MARCH
1951 AT 5.30 P.M.

Present:

Mr. J.V. Ratcliffe, Chairman.
Mr. F.J. Ratcliffe, Director.
Mr. R.A. Ratcliffe, Secretary.

30

Confirma-
tion of
Minutes

The Minutes of the meeting held at Sydney on Friday 15th December 1950 were read and confirmed.

Melford
Motors "C"
Shares -
Taxable
Dividend

The Secretary reported that a taxable dividend of £4.11.0 per share on 8253 "C" Shares was declared by Melford Motors Pty. Ltd. on the 30th January 1951 and that the total amount of £37,551. 3. 0 was paid into the Company's

Exhibits

R.2.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)
No.11 - Meeting
of Directors
21st March 1951
- continued.

Sale of "C"
Shares in
Melford
Motors Pty.
Ltd.

Account with the E.S. & A. Bank, South
Melbourne, on 2nd February 1951.

The Chairman stated that all the special dividend rights attaching to these shares had now been exhausted and that if the Company could dispose of the shares (which now carry a dividend of 5% per annum only) for £1 per share, which he thought would be the fair value having regard to the fact that the Companies were Private Companies and the shares were unlisted, the Company would make a substantial profit out of the transactions.

10

He was negotiating for the sale of 5000 of these shares and if completed successfully recommended that the balance of 3253 shares be offered to Pactolus Investments Pty. Ltd. This recommendation was approved.

20

Tax Free
Dividends

Resolved that a dividend of £24,750 be declared payable forthwith and that such dividend be appropriated wholly and exclusively out of dividends standing to the credit of the Tax-free Profits Account, comprising income subject to rebate under the provisions of Section 107 of the Income Tax Assessment Act 1936-1949.

Error
in Bank
Account

The Secretary reported that a dividend of £206. 6. 6 due to Pactolus Investments Pty. Ltd. was wrongly credited to this Company's Account with the E.S. & A. Bank, South Melbourne on 3rd January 1951. The error has since been adjusted.

30

Confirmed

J.V. Ratcliffe
Chairman

15/5/51.

No.12. MEETING OF DIRECTORS 15th May 1951

Exhibits

R.2.

PACTOLUS PTY. LTD.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)

No.12 - Meeting
of Directors
15th May 1951.

MINUTES OF MEETING OF DIRECTORS, HELD AT 53
MARTIN PLACE, SYDNEY, ON TUESDAY 15th MAY
1951 AT 5.30 P.M.

Present: Mr. J.V. Ratcliffe, Chairman
Mr. P.J. Ratcliffe, Director
Mr. R.A. Ratcliffe, Secretary

10 Confirma-
tion of
Minutes The Minutes of the meeting held at
Sydney on Wednesday 21st March 1951
were read and confirmed.

Melford
Motors "C"
Shares The Chairman reported that following
an offer by Mesdames B.J. Urquhart and
A. Brinsley of £1 per share, the shares
referred to at the last meeting had
been sold to them and the transfers
completed. The full consideration had
since been paid to the credit of the
Company's Melbourne Bank Account.

20 Resolved that the Chairman's action in
this connexion be confirmed.

Neal's
Motors "C"
Shares The Chairman reported that he had made
an informal offer to purchase any "C"
shares which might be available and
that an option over such shares might
be obtained by the Company at an early
date.

Confirmed

30 J.V. Ratcliffe,
Chairman

12/6/51.

ExhibitsNo.13. MEETING OF DIRECTORS 25th June 1951

R.2.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)No.13 - Meeting
of Directors
25th June 1951PACTOLUS PTY. LIMITEDMINUTES OF MEETING OF DIRECTORS HELD AT THE
OFFICE OF MR. S.R. PHIPPARD, SOLICITOR, ROYAL
INSURANCE BUILDING, CIVIC CENTRE, CANBERRA,
A.C.T. ON MONDAY 25th JUNE, 1951 AT 11 A.M.

<u>Present:</u>	Mr. J.V. Ratcliffe, Chairman. Mr. R.A. Ratcliffe, Director & Secretary.	
<u>Confirma- tion of Minutes</u>	The Minutes of the meeting held at Canberra on Friday 22nd June 1951 were read and confirmed.	10
<u>Tax-free Dividend on "A" Ord. Shares in W. Herman Slade & Co. Pty. Ltd.</u>	The Secretary reported receipt of a tax-free dividend of £411, that is, subject to rebate under Section 107 (1)(e) of the Income Tax Assessment Act 1936-1950. Also that this divi- dend would not be tax-free if re- distributed.	
	<u>Resolved</u> that this dividend be trans- ferred to General Reserve.	20
<u>Taxable Dividend on above Shares.</u>	The Secretary reported receipt of a taxable dividend of £120,000 from W. Herman Slade & Co. Pty. Ltd.	
<u>Sale of "A" Ord. Shares in W. Herman Slade & Co. Pty. Ltd.</u>	The Chairman reported that all special dividend rights in respect of these shares had been satisfied by dividends declared by the Company on Friday 22nd June, 1951 after the pur- chase of these shares in the Company, and that as they now carried a divi- dend of 5% per annum only, he thought that £1 per share would be the fair value of the 9,444 shares owned by this Company, and if disposed of at this price the Company would make a substantial profit (taking dividends into consideration) out of the trans- actions. He also thought that the shares would be a fair investment for the parent company.	30

Resolved that the shares be sold to Pactolus Investments Pty. Ltd. at £1 per share or a total consideration of £9,444 and that the transfer be completed under the common seal of the Company by the Chairman and the Secretary.

Exhibits

R.2.

Minutes of Pactolus Pty. Ltd. (numbered 1 to 14)

No.13 - Meeting of Directors 25th June 1951 - continued.

10 Purchase of "C" Shares in Neal's Motors Pty. Ltd.

The Chairman referred to the negotiations for an option of purchase of these shares mentioned in the minutes of the meeting held in Sydney on 15th May 1951 and stated that options of purchase over the whole 29,156 "C" ordinary shares had now been obtained; consideration to be £12. 3. 0 per share. He also stated that if purchased at this price a substantial profit could be made out of the purchase and sale of the shares, having regard to their special dividend rights.

20

Resolved that the purchase be made and that the transfers be completed by the Company as transferee under its common seal and signed by the Chairman and the Secretary.

30 Taxable Dividend

Resolved that a taxable dividend of £10,000 be declared payable forthwith and that such dividend be appropriated out of taxable income of the year ending on 30th June, 1951.

Confirmed

J.V. Ratcliffe

Chairman

26/6/51.

ExhibitsNo.14. MEETING OF DIRECTORS 26th June 1951.

R.2.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)No.14 - Meeting
of Directors
26th June 1951.PACTOLUS PTY. LIMITEDMINUTES OF MEETING OF DIRECTORS, HELD AT THE
OFFICE OF MR. S.R. PHIPPARD, SOLICITOR, ROYAL
INSURANCE BUILDING, CIVIC CENTRE, CANBERRA,
A.C.T. ON TUESDAY 26th JUNE 1951 AT 10.15 A.M.

<u>Present:</u>	Mr. J.V. Ratcliffe, Chairman. Mr. R.A. Ratcliffe, Director & Secretary.	
<u>Confirmation of Minutes</u>	The Minutes of the meeting held at Canberra, on Monday 25th June, 1951, were read and confirmed.	10
<u>Tax-free and taxable Dividend on "C" Ord. Shares in Neal's Motors Pty. Ltd.</u>	The Secretary reported receipt of advice that Neal's Motors Pty. Ltd. had declared the following dividends payable forthwith namely:- (a) Tax Free dividends aggregating 14/6d per share, total amount £21,138. 2. 0; and (b) Taxable dividends of £12.7.0 per share, total amount £360,076.12.0, and that these would be paid direct to the Company's Melbourne Bank Account.	20
<u>Transfer to Tax-Free Profits Account</u>	Resolved that the Tax Free dividends of £21,138. 2. 0 be transferred to the credit of Tax Free Profits Account.	
<u>Declaration of Tax Free Dividends.</u>	Resolved that a tax free dividend of £10,000 be declared payable forthwith, and that such dividend be appropriated wholly and exclusively out of income subject to rebate under the provisions of Section 107 of the Income Tax Assessment Act, 1936-1950.	30
	Resolved that a tax free dividend of £7,500 be declared payable forthwith, and that such dividend be appropriated wholly and exclusively out of income	

subject to rebate under Section 107 of the Income Tax Assessment Act 1936-1950.

Exhibits

R.2.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)
No.14 - Meeting
of Directors
26th June 1951
- continued.

Resolved that a tax free dividend of £2,500 be declared payable forthwith and that such dividend be appropriated wholly and exclusively out of income subject to rebate under Section 107 of the Income Tax Assessment Act 1936-1950.

10

Resolved that a tax free dividend of £1,135 be declared payable forthwith and that such dividend be appropriated wholly and exclusively out of income subject to rebate under Section 107 of the Income Tax Assessment Act 1936-1950.

Sale of
29156 "C"
Ord. Shares
in Neal's
Motors Pty.
Ltd.

20

The Chairman reported that all special dividend rights in respect of these shares had been satisfied by dividends declared by the Company yesterday and that as they now carried a preferential dividend of 5% per annum only, he thought that £1 per share was the fair value of the 29,156 "C" ordinary shares held by this Company and if disposed of at this price the Company would make a substantial profit out of the transactions, taking into account the dividends received. He also thought that the shares would be a fair investment for the parent company.

30

Resolved that the shares be sold to Pactolus Investments Pty. Ltd. at £1 per share, or a total consideration of £29,156, and that the transfer be completed by the Company as transferor, under its common seal and signed by the Chairman and the Secretary.

Purchase of
9776 "A" Ord.
Shares in
Chas. Parsons
& Co. Pty.
Ltd.

40

The Chairman reported that the Company had been offered the whole of the 9,776 "A" ordinary shares in Chas. Parsons & Co. Pty. Ltd. held by 8 shareholders of that company at a

Exhibits

R.2.

Minutes of
Pactolus Pty.
Ltd. (numbered
1 to 14)

No.14 - Meeting
of Directors
26th June 1951
- continued.

price of £10.15. 0 per share, total
cost of £105,092. The Chairman
stated that in his opinion these
shares could be purchased and sold at
a substantial profit, taking into con-
sideration the dividends which would
be collected before sale.

Resolved that the shares be purchased
that cheques for the consideration
payable be handed to the agent for the
vendors, and that transfers be execut- 10
ed by the Company as transferee under
its common seal, and signed by the
Chairman and the Secretary.

Confirmed

J.V. Ratcliffe
Chairman

27.6.51

R.3.

Prospectus of
Lane's Motors
(Holdings)
Limited on
conversion to
a Public
Company,
23rd May 1951.

R.3. PROSPECTUS of Lane's Motors (Holdings)
Limited on conversion to a Public
Company (not copied).

20

R.4. RECONCILIATION of 30th September 1949
 Figures with Final Transactions in
 December 1949.

Exhibits

R.4.

Reconciliation
 of 30th
 September 1949
 Figures with
 Final Trans-
 actions in
 December 1949.

Lane's Motors Pty. Ltd.

		£			
	Taxable dividends as per memo of 30/9/49	410,000			
	Add adjustment	<u>38</u>			
10	Dividends as per draft resolutions	410,038	£	s	d
	Additional taxable dividends as per memo. of 13/12/49	<u>39,553</u>		10	0
		449,591	5	13	8
	Tax free dividends as per memo of 30/9/49	2,684			
	Less adjustment	<u>47</u>			
	Dividends as per draft Resolutions	2,637		8	"
20	Additional tax free dividend as per memo of 13/12/49	<u>5,933</u>		1	6
		<u>8,570</u>		2	2
	Total dividends to be paid on "A" ordinary shares	458,161	5	15	10
	Add nominal value of "A" shares to be sold	<u>79,107</u>	1	-	-
		537,268			
30	Less cost-profit to Pactolus P/L.:				
	Profit as per memo 30/9/49	72,524			
	Less adjustment (47-38)	<u>9</u>			
		72,515			
	Additional profit being further tax free dividend received as above	<u>5,933</u>	78,448		
	Net price	458,820	5	16	0

ExhibitsNeal's Motors Pty. Ltd.

R.4.		£	£	s	d	
Reconciliation of 30th September 1949 Figures with Final Trans- actions in December 1949 - continued.	Taxable dividends as per memo. 30/9/49	409,995	11	5	0	per share
	Additional taxable dividend as per memo. 13/12/49	40,088	1	2	0	"
		<u>450,083</u>	12	7	0	"
	Tax free dividends as per memo 30/9/49	30,374				
	Less adjustment	<u>4</u>				
	Dividends as per Draft Resolution	30,370		16	8	" 10
	Additional tax free dividends as per memo. of 13/12/49	6,074			3	4
		<u>36,444</u>	36,444	1	-	-
	Total dividend to be paid on "A" ordinary shares	486,527	13	7	0	"
	Add nominal value of shares to be sold	36,444	1	-	-	" 20
		<u>522,971</u>				
	Less costs - profit to Pactolus P/L. Profit as per memo. 30/9/49	64,388				
	Less adjustment	<u>4</u>				
		64,384				
	Additional profit being further tax free divi- dend received as above	6,074	70,458			
Net Price	452,513	12	8	4	" 30	

Melford Motors Pty. Ltd.

Taxable dividends as per memo 30/9/49	194,360				
Less adjustment	<u>2</u>				
Dividends as per Draft Resolutions	194,358	23	11	0	"
Add tax free dividends as per memo. 30/9/49	24,759	3	-	-	"
Total dividend to be paid on "A" ordinary shares	219,117	26	11	0	" 40
Add nominal value of shares to be sold	8,253	1	-	-	"
	<u>227,370</u>				
Less cost - profit to Pactolus P/L.	29,298				
Net Price	198,072	24	-	-	"

R.5. CHEQUES AND PAY-IN SLIPS (not copied)

Exhibits

R.5.

Cheques and
pay-in slips

R.6. SHARE TRANSFERS referred to in Mutual
Admissions of Fact (not copied)

R.6.

Share Transfers
referred to in
Mutual
Admissions of
Fact.

R.7. MINUTES OF MEETING of Directors of
Neal's Motors Pty. Ltd. and
Accompanying Notice.

R.7.

Minutes of
Meeting of
Directors of
Neal's Motors
Pty. Ltd. and
Accompanying
Notice
18th November
1949.

NEAL'S MOTORS PTY. LTD.

Minutes of Directors' Meeting held at 60
Collins Place - 18th November 1949.

- 10 PRESENT Messrs. R. Nathan (Chairman), H. J. Lane
and Lauri J. Newton.
- AMENDMENT -
MEMORANDUM &
ARTICLES OF
ASSOCIATION It was resolved that a Special General
Meeting be held to amend the Memorandum
and Articles of Association to increase
the Authorised Capital from £150,000 to
£750,000, and that the Secretary pre-
pare and send out the necessary notices
calling the meeting.
- 20 EXTRA-
ORDINARY
GENERAL
MEETING OF
SHARE-
HOLDERS It was resolved that an Extraordinary
General Meeting of Shareholders be
held to consider the amendments to the
Articles of Association as per copy of
the proposed notice to shareholders
filed herein and initialled by the
Chairman, and that the Secretary pre-
pare the necessary notices and send
them to the shareholders.

Signed as correct

(sgd.) R. Nathan
Chairman

30

Date 2/12/49

ExhibitsNEAL'S MOTORS PROPRIETARY LIMITED

R.7.

Minutes of
Meeting of
Directors of
Neal's Motors
Pty. Ltd. and
Accompanying
Notice
18th November
1949 -
continued.

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of the Shareholders of Neal's Motors Proprietary Limited will be held at 60 Collins Place, Melbourne on Wednesday the 14th day of December 1949 at 11.15 a.m. for the purpose of considering and if thought fit passing the following resolution as a special resolution (viz.):

THAT the Articles of Association of the Company be amended as follows:-

10

1. BY THE ADDITION OF THE FOLLOWING ARTICLES:

2A. The capital of the Company is £750,000 divided into 750,000 shares of one pound each. 36,444 of such shares shall be known as "A" ordinary shares 213,556 of such shares shall be known as "B" ordinary shares 5,000 of such shares shall be known as "A" preference shares and 495,000 of such shares shall be known as "B" Preference shares. Each such class of shares shall have the respective rights herein-
after set out as applicable to each class of share respectively.

20

2B. The shares of the Company which prior to the eighteenth day of November One thousand nine hundred and forty nine were identified as Numbers 1 to 19451 (inclusive) 19772 to 21260 (inclusive) 21642 to 23130 (inclusive) 23512 to 27861 (inclusive) 29001 to 33833 (inclusive) 35001 to 35964 (inclusive) 36201 to 37167 (inclusive) 37401 to 38367 (inclusive) 38601 to 39567 (inclusive) and 39801 to 40767 (inclusive) shall be "A" ordinary shares, the shares of the Company which prior to the said eighteenth day of November One thousand nine hundred and forty nine were identified as Numbers 19452 to 19771 (inclusive) 21261 to 21641 (inclusive) 23131 to 23511 (inclusive) 27862 to 29000 (inclusive) 33834 to 35000 (inclusive) 35965 to 36200 (inclusive) 37168 to 37400 (inclusive) 38368 to 38600 (inclusive) 39568 to 39800 (inclusive) 40768 to 109332 (inclusive) shall be "B" ordinary shares and the shares of the Company which prior to the said eighteenth day of November One thousand nine hundred and forty-nine were known as Preference shares shall be "A" preference shares.

30

40

2C. "A" Preference Shares shall be entitled to the rights set out in Article 11A.

Exhibits

R.7.

2D. Subject always to the rights of the "A" preference shares "A" ordinary shares shall be entitled:

Minutes of
Meeting of
Directors of
Neal's Motors
Pty. Ltd. and
Accompanying
Notice
18th November
1949 -
continued.

10 (a) to the whole of the dividends declared by the Company on or after the fourteenth day of December One thousand nine hundred and forty nine until such dividends in the aggregate amount to not less than the sum of Thirteen pounds seven shillings in respect of each "A" ordinary share of which sum not less than one pound per share shall have been paid in such manner and out of such income profits dividends or amounts as to entitle the holder for the time being of each of the said shares to the rebate provided for by Section 107 of the Income Tax Assessment Act 1936-1948 but save as provided by paragraph (b) of this Article the holders of the said "A" ordinary shares shall not be entitled to any further participation in profits.

20 (b) to a fixed cumulative preferential dividend (payable half-yearly on the Thirtieth day of June and the Thirty first day of December in each year) at the rate of Five pounds per centum per annum computed from the first day of January One thousand nine hundred and fifty on the capital for the time being and from time to time paid up thereon;

30 (c) in a winding up to rank in priority to all other shares of the Company for payment of all arrears of dividend (whether earned declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon and for payment in respect of each share of a sum equal to the difference (if any) between the aggregate of all dividends received by the holder of each "A" ordinary share pursuant to paragraph (a) of this Article and the sum of Thirteen pounds seven shillings but without any other right to further participation in profits or assets of the Company;

40 (d) to the same rights as the holder of "B" ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending all general meetings of the Company;

(e) to the same rights as the holders of "B" ordinary shares as regards voting at general meetings and at polls until the dividends mentioned in

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sub-paragraph (a) of this Article have been received and thereafter if at any time and so long as the said fixed cumulative preferential dividend shall remain unpaid for six calendar months after any half-yearly date for payment thereof, or on any proposition or resolution for the purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any question directly affecting the rights or privileges attached to the "A" ordinary shares. 10

2E. The "B" preference shares and any other preference shares issued pari passu therewith shall confer on the holders thereof the following rights and privileges and shall be subject to the following conditions:

(a) the right subject to the rights of the "A" preference shares and the "A" ordinary shares respectively to a fixed cumulative preferential dividend payable half-yearly on the thirtieth day of June and the thirty-first day of December in each year at the rate of Five pounds per centum per annum on the capital for the time being and from time to time paid up thereon 20

(b) the right to rank for payment of the said fixed cumulative preferential dividend in priority to all other shares of the Company other than the "A" preference shares and the "A" ordinary shares respectively; 30

(c) the right in a winding up to rank in priority to all other shares of the Company (other than the "A" Preference shares and the "A" ordinary shares respectively) for payment of all arrears of dividend (whether earned or declared or not) down to the commencement of the winding up and for repayment of the amount of capital paid up thereon but without any other right to further participation in profits or assets of the Company. 40

(d) the same rights as the holders of "B" ordinary shares as regards receiving notices of general meetings reports and balance sheets and attending at all general meetings of the Company;

(e) the same rights as the holders of "B"

ordinary shares as regards voting at general meetings and at polls if at any time and so long as the said fixed cumulative preferential dividend shall remain unpaid for six calendar months after any half-yearly date for payment thereof or on any proposition or resolution for the purpose of reducing the capital of the Company or winding up or sanctioning a sale of the undertaking or on any question directly affecting the rights or privileges attached to the preference shares;

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(f) no shares shall be issued hereafter ranking in priority to the said "B" preference shares but the Directors may from time to time issue further preference shares at any rate of dividend not exceeding five per centum per annum and ranking pari passu with the said "B" preference shares;

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2F. The rights privileges and conditions conferred by or attached to "A" ordinary shares and to preference shares respectively shall not be varied modified altered added to or abrogated excepting in the manner provided by Section 61 of the Companies Act 1938.

2G. Clause 4 of Table A shall not apply.

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2H. So long as the capital is divided into different classes of shares none of the rights and privileges attached to any class may be modified abrogated altered or varied in any way and no repayment of capital in respect of preference shares shall be made unless such repayment of capital or alteration modification abrogation or variation of rights is agreed to by a resolution of the holders of at least three-fourths of the issued shares of the class present in person or by proxy at a special meeting of such holders called for the purpose and the provisions hereinafter contained as to general meetings shall mutatis mutandis apply to every such meeting PROVIDED HOWEVER that in the event of the necessary majority not having been obtained in the manner aforesaid consent in writing may be secured from members holding at least three-fourths of the issued shares of the class and such consent if obtained within two months from the date of the said special meeting shall have the validity of a resolution carried by vote in person or by

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proxy at a special meeting as aforesaid. The provisions hereinafter contained as to general meetings and proxies shall *mutatis mutandis* apply to every such meeting with the exception that a quorum at any such meeting shall be a member or members holding or representing by proxy three-fourths of the nominal amount of the issued shares of the class.

2I. Article 18 of Table A shall be amended by adding at the end thereof the following words: "excepting in regard to the right to receive dividends in respect of any share mentioned in a properly executed transfer where such transfer and the relevant share certificate shall have been handed to, noted by and retained by a Director or the Secretary of the Company or any person appointed under Article 70A to exercise the powers of an authority within the meaning of such Article (hereinafter called such authority) in which event the transferee mentioned in such transfer shall be entitled to receive all dividends declared by the Company on or after the date that such transfer and share certificate shall have been handed to, noted by and retained by such Director or the Secretary of the Company or such authority.

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2. ARTICLE 9.

Before the words "of any" and the word "share" insert "'A" Preference or "B" Ordinary".

3. ARTICLE 11:

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Between "no" and "share" insert " "A" Preference or "B" Ordinary".

4. ARTICLE 12:

Before the word "share" where it first occurs insert " "A" Preference or "B" Ordinary".

5. ARTICLE 14:

Delete "each class of share" and insert "a "B" Ordinary share".

6. ARTICLE 19 AS AMENDED BY ANY SPECIAL RESOLUTION:

Between the word "holding" and the word "ordinary" wherever they occur in sequence insert "B".

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7. ARTICLE 19A:

Insert "A" before the word "preference" wherever the same occurs.

8. BY ADDING THE FOLLOWING ARTICLES:

26A. Article 42 of Table A shall not apply.

26B. The Directors without affecting their rights under Article 5 may before the issue of any new shares determine that the same or any of them shall be offered in the first instance and either at par or at a premium to all the then holders of any class of shares in proportion to the amount of capital held by them or make any other provisions as to the issue and allotment of the new shares. In every case where new shares are offered to existing shareholders fractional rights shall be dealt with in such manner as the Directors may determine.

26C. Article 60 of Table A shall not apply but the following Article shall be substituted:
Subject to any restriction from time to time affecting any class or classes of shares on a show of hands every member present in person or by proxy shall have one vote and upon a poll every member present in person or by proxy shall have one vote for every share held by him.

9. DELETE ARTICLE 42.10. ARTICLE 71:

Insert "Territory (including the Australian Capital Territory) or any other Territory of the Commonwealth of Australia", before the word "State" wherever the same appears.

11. AFTER ARTICLE 70 INSERT THE FOLLOWING ARTICLE:

70A. The Company may cause to be kept in any country state colony territory or place outside Victoria including the Australian Capital Territory or any other Territory of the Commonwealth of Australia a branch register and such power may be exercised by the Directors. The Directors may from time to time allocate or transfer any share or shares to any such branch register. The directors may subject to Section 104 of the

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continued.

Companies Act 1938 make such provisions as they think fit respecting the keeping of any branch register and may notwithstanding any other provisions of the Articles but subject to Section 32 of the Companies Act 1938 determine the manner in which certificates for shares on the branch register may be sealed and signed or may authorize the issue of an official seal of the Company for use in any country state colony territory or place outside Victoria and determine by whom the same shall be affixed to any certificates deed or other document executed by the Company and the Directors may from time to time appoint such person or persons or any corporation (hereinafter referred to as the "Authority"), as they shall think fit in any place in which a branch register is kept to approve or reject transfers and to direct the registration of approved transfers in the branch register of such place and every such Authority may in respect of transfer or other entries proposed to be registered in the branch register for which such Authority is appointed exercise all the relevant powers of the Directors in the same manner and to the same extent and effect as if the Directors themselves were actually present in the place and exercised the same.

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12. ARTICLE 72:

Insert "Territory" before "State".

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13. ARTICLE 79:

Insert after the word "person" where it first occurs "holding "B" ordinary shares".

14. INSERT THE FOLLOWING ARTICLES:

86A. Article 98 of Table A shall not apply.

86B. As to any profits of the Company which the Company may determine to distribute on the recommendation of the Directors and subject to such preferential rights as may be attached to shares in pursuance of these Articles, the Directors shall apply the same first in paying the preferential dividend or dividends on any shares having preferred or special rights and then in paying a dividend on the capital paid

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up or credited as paid up from time to time on the "B" ordinary shares to the holders of such "B" ordinary shares.

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15. DELETE ARTICLE 90 AND SUBSTITUTE THE FOLLOWING ARTICLE:

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continued.

90. A transfer executed in accordance with these Articles which with the relevant share certificate shall have been handed to noted by and retained by a Director or the Secretary of the Company or such authority shall pass the right to any dividend declared on or subsequent to the date that such transfer and share certificate shall have been handed to noted by and retained by such Director or the Secretary of the Company or such Authority.

16. DELETE ARTICLE 91:

17. INSERT THE FOLLOWING ARTICLE:

95A. If the Company shall be wound up and the assets available for distribution among the members as such shall be insufficient to repay the whole of the paid up capital such assets shall subject to the rights of preferential shareholders (if any) be distributed so that as nearly as may be the losses shall be borne by the members holding "B" ordinary shares in proportion to the capital paid up or which ought to have been paid up at the commencement of the winding up on the shares held by them respectively. And if in a winding up the assets available for distribution among the members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding up the excess shall be distributed amongst the members holding "B" ordinary shares in proportion to the capital at the commencement of the winding up paid up or which ought to have been paid up on the shares held by them respectively but nothing in this Clause contained shall increase or reduce the rights of the holders of shares issued with any special conditions attached thereto or affecting the same.

No. 7 of 1958

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N

LAURI JOSEPH NEWTON, LIONEL NEWTON
FRANCIE UNA CHRISTIAN, HENRY JAMES
LANE, EXECUTORS OF THE ESTATE OF
ROBERT NATHAN, deceased, STELLA
MAUD ADELINE LANE and LEONARD ALFRED
FENTON (Respondents) Appellants

- and -

THE COMMISSIONER OF TAXATION OF THE
COMMONWEALTH OF AUSTRALIA (Appellant)
Respondent

(Consolidated Appeals)

RECORD OF PROCEEDINGS
(IN THREE VOLUMES)

VOLUME III.

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