

(i)

In The Privy Council

No. of 1962.

ON APPEAL from the Supreme Court of New South Wales in its Equitable Jurisdiction in Suit instituted by Statement of Claim No. 593 of 1958.

Between

AUSTRALIAN BLUE METAL LIMITED - - - - - (Plaintiff) Appellant

and

ROBERT FRANK HUGHES CLARENCE
 VIVIAN HUGHES FREDERICK CHARLES
 HUGHES VICTOR RAYMOND HUGHES
 LOGAN HUNTER CALDWELL MARGARET
 FERGUSON CALDWELL LINDSAY GEORGE
 REGAN and NORMAN VIVIAN REGAN
 AND BY AMENDMENT (Defendants) Respondents

Between

AUSTRALIAN BLUE METAL LIMITED - - - - - (Plaintiff) Appellant

and

ROBERT FRANK HUGHES CLARENCE
 VIVIAN HUGHES FREDERICK CHARLES
 HUGHES VICTOR RAYMOND HUGHES
 MARGARET FERGUSON CALDWELL
 LINDSAY GEORGE REGAN NORMAN
 VIVIAN REGAN and STEELE HUNTER
 CALDWELL - - - - - (Defendants) Respondents

AND BY AMENDMENT

Between

AUSTRALIAN BLUE METAL LIMITED - - - - - (Plaintiff) Appellant

and

ROBERT FRANK HUGHES CLARENCE
 VIVIAN HUGHES VIOLET JEAN
 FREEMAN IVY ALMA RICHARDS
 VICTOR RAYMOND HUGHES MARGARET
 FERGUSON CALDWELL LINDSAY
 GEORGE REGAN NORMAN VIVIAN
 REGAN and STEELE HUNTER CALDWELL - - - (Defendants) Respondents

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No. 1

Statement of Claim (as originally filed)

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

—
No. 1.
Statement of
Claim
(as originally
filed).

—
13th May, 1958.

1. The Plaintiff is a Company duly incorporated and entitled to sue in and by its said corporate name and style.
2. In or about the year 1936 the Defendants Robert Frank Hughes, Frederick Charles Hughes, Victor Raymond Hughes and Logan Hunter Caldwell entered into partnership with Joseph Peter Hughes and George Wigham Caldwell for the purpose of carrying on (inter alia) a mining business under the firm name of "Hughes & 10 Caldwell".
3. The said Joseph Peter Hughes died on or about the 17th day of January 1946 and Probate of his last Will and Testament dated the 23rd day of September 1941 was on the 12th day of June 1946 granted by this Honourable Court in its Probate jurisdiction to the Executors named in the said Will, namely, the Defendants Robert Frank Hughes and Clarence Vivian Hughes.
4. Until the death of the said Joseph Peter Hughes the said partnership subsisted and carried on business and after such last-mentioned date the Defendants Robert Frank Hughes and Clarence 20 Vivian Hughes upon grant of Probate to them as aforesaid became successors to the said Joseph Peter Hughes in respect of his interest in such partnership.
5. The said George Wigham Caldwell died on or about the 21st day of July 1956 and Probate of his last Will and Testament dated the 6th day of April 1956 was on the 14th day of November 1956 granted by this Honorable Court in its Probate jurisdiction to the Executors named in the said Will, namely, Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan.
6. From and after the death of the said Joseph Peter Hughes 30 and until the death of the said George Wigham Caldwell the Defendants Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes and Logan Hunter Caldwell carried on the said business in partnership under the said firm-name and after such last-mentioned date the Defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan upon grant of probate to them as aforesaid became successors to the said George Wigham Caldwell in respect of his interest in such last-mentioned partnership.
7. Since the death of the said George Wigham Caldwell the 40 Defendants have carried on the said business in partnership under the aforesaid firm-name; and since such last-mentioned date such business has been continuously carried on by the Defendants under the said

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

—
No. 1.
Statement of
Claim
(as originally
filed).
(Continued)

—
13th May, 1958.

firm name and the partnership constituted by the Defendants is now a subsisting partnership.

8. During his lifetime and during the subsistence of the partnership between the persons mentioned in paragraph 2 hereof the said Joseph Peter Hughes was lessee from the Crown under a certain lease duly registered under the provisions of the Mining Act 1906 (as amended) of (inter alia) the land mentioned and described in each of the documents set out in paragraphs 16 and 25 hereof respectively. The Plaintiff craves leave to refer to such lease when produced as if the same were fully set forth herein. 10

9. The Plaintiff says and it is the fact that the interest of the said Joseph Peter Hughes deceased as such lessee became and was one of the assets of the partnership referred to in paragraph 3 hereof.

10. Prior to the 31st day of January 1957 the Defendants Robert Frank Hughes and Clarence Vivian Hughes as Executors of the Will of the said Joseph Peter Hughes deceased were and they have since been and now are the lessees from the Crown under a certain lease and renewal or renewals thereof duly registered under the provisions of the Mining Act 1906 (as amended) of (inter alia) the land mentioned and described in each of the documents set out in paragraphs 16 and 25 hereof respectively. The Plaintiff craves leave to refer to any such lease or renewal thereof when produced as if the same were fully set forth herein and says that as such Lessees the Defendants Robert Frank Hughes and Clarence Vivian Hughes were before and have since the 31st day of January 1957 been and now are entitled to possession or to grant possession to other persons of the land mentioned and described in each of the documents set out in paragraphs 16 and 25 hereof respectively for the purpose of mining and winning minerals from such land. 20

11. The Plaintiff says and it is the fact that the interest of the Defendants Robert Frank Hughes and Clarence Vivian Hughes as such Lessees has at all material times been one of the assets of the partnership constituted by the Defendants as aforesaid and has been treated by each of the Defendants as part of the assets of such partnership. 30

12. Prior to the 31st day of January 1957 the Defendant Logan Hunter Caldwell acted and since such last-mentioned date he has acted as managing partner of the partnership constituted by the Defendants as aforesaid.

13. Prior to the 31st day of January 1957 the Defendant Logan Hunter Caldwell acted and since such last-mentioned date he has acted as such managing partner as aforesaid with the knowledge and consent of the Defendants other than himself and of each of such other Defendants. 40

14. Prior to the 31st day of January 1957 the Defendant Logan Hunter Caldwell received on behalf of the partnership constituted by the Defendants as aforesaid moneys paid by persons indebted to such partnership; and since such date he has so received moneys paid by persons so indebted, including the royalties hereinafter mentioned and has distributed to and on behalf of the Defendants such moneys including such royalties.

15. The Plaintiff says and it is the fact that in receiving the moneys and distributing the royalties in the last preceding paragraph mentioned the Defendant Logan Hunter Caldwell has acted with the knowledge and consent of the Defendants other than himself and of each of such other Defendants.

16. On or about the 31st day of January 1957 an agreement in writing was made between the Plaintiff of the one part and the Defendant of the other part, which said agreement was in the words and figures following:

AN AGREEMENT made this 31st day of January in the year One thousand nine hundred and fifty seven BETWEEN AUSTRALIAN BLUE METAL LTD. (herein called the Company) of the one part and ROBERT FRANK HUGHES, CLARENCE VIVIAN HUGHES, FREDERICK CHARLES HUGHES, VICTOR RAYMOND HUGHES, LOGAN HUNTER CALDWELL and THE EXECUTORS OF GEORGE WIGHAM CALDWELL (hereinafter called Hughes and Caldwell) of the other part WHEREAS Hughes and Caldwell are entitled to receive royalties from P.M.L. 1 (Young) and the Company wishes to mine for Magnesite on P.M.L. 1 and have agreed to pay to Hughes and Caldwell a flat rate royalty of ten shillings (10/-) per ton in respect of magnesite won and delivered from the said Private Mining Lease NOW THIS AGREEMENT WITNESSETH:—

1. The Company shall have the right to mine for magnesite on P.M.L. 1 east of a line running south from a turn in the fence on the northern boundary of such P.M.L. 1.
2. The Company will pay to Hughes and Caldwell royalty of ten shillings (10/-) per ton in respect of all magnesite won and delivered from such area.
3. The weights for the purposes of ascertaining the amount of royalties payable hereunder shall be ascertained and calculated by weigh-bridge weights at the siding where the metal is taken.
4. The Company will pay such royalties and render statements monthly to the aforesaid Logan Hunter Caldwell.
5. In the event of there arising any difficulties as to weights or

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

—
No. 1.
Statement of
Claim
(as originally
filed).
(Continued)

—
13th May, 1958.

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

—
No. 1.
Statement of
Claim
(as originally
filed).
(Continued)

—
13th May, 1958.

quantities Hughes and Caldwell or their nominee may have access to the Company's books or records for the purposes of ascertaining the quantity of metal delivered hereunder AND the Company will make such books and records available to Hughes and Caldwell or their nominee if so required.

6. The Company will use its best endeavours to ensure that all gates to the said P.M.L. 1 are kept closed and no dogs are taken thereon.

7. The Company will fill in all excavations made by it or its employees except the last excavation which is to be left with 10 three in one batter.

AS WITNESS the hands and seals of the parties hereto the day and year firstly before written.

SIGNED for and on behalf of
AUSTRALIAN BLUE METAL LTD. Thos. M. O'Neil

SIGNED for and on behalf of
HUGHES & CALDWELL Logan H. Caldwell

17. The agreement mentioned and set out in the last preceding paragraph was executed by Thomas Michael O'Neil on behalf of the Plaintiff and by the Defendant Logan Hunter Caldwell on behalf of 20 the Defendants.

18. After the making of the agreement mentioned and set out in paragraph 16 hereof the Plaintiff entered upon the land mentioned and described in such agreement and commenced and continued mining operations for the purpose of winning and did win magnesite from such land.

19. In so entering upon the said land and in so commencing and continuing the said mining operations and in so winning magnesite the Plaintiff acted with the knowledge and consent of the Defendants and each of them. 30

20. In so entering upon the said land and in so commencing and continuing the said mining operations and in so winning magnesite the Plaintiff so entered so commenced and so continued the said mining operations and so won magnesite solely by virtue of the agreement mentioned and set out in paragraph 16 hereof and not otherwise to the knowledge of the Defendants and each of them.

21. After entering upon such land as aforesaid the Plaintiff until the making of a further agreement hereinafter mentioned paid to the Defendants certain sums of money as royalties in respect of magnesite won and delivered by the Plaintiff from the land mentioned 40 and described in the agreement referred to and set out in paragraph

16 hereof. Such sums of money were received and dealt with by the Defendant Logan Hunter Caldwell for and on behalf of the Defendants and were distributed by the said Logan Hunter Caldwell among the Defendants and each of them. Such payments were made at the rate of ten shillings (10/-) per ton of magnesite so won and delivered, being the rate prescribed by the last-mentioned agreement.

22. The Plaintiff says and it is the fact that after the making of the agreement referred to and set out in paragraph 16 hereof the Defendants adopted and ratified such agreement and accepted certain
10 benefits thereunder, namely, the royalties mentioned in the last preceding paragraph.

23. The Plaintiff also says and it is the fact that in accepting the benefits mentioned in the last preceding paragraph the Defendants and each of them well knew that such benefits were solely referable to the agreement referred to and set out in paragraph 16 hereof.

24. Shortly before the 14th day of June 1957 the Plaintiff represented to the Defendant Logan Hunter Caldwell as was the fact that the yield of magnesite from the said mining operations was such that the royalties prescribed by the said agreement referred to and
20 set out in paragraph 16 hereof made the said operations uneconomic whereupon it was agreed by and between the Plaintiff of the one part and the Defendant Logan Hunter Caldwell acting on behalf of the Defendants of the other part that in consideration that the Plaintiff would remain upon the land mentioned and described in the agreement set out in paragraph 16 hereof and would continue to conduct mining operations thereon the said agreement set out in paragraph 16 hereof should be varied by substituting for the said royalty of ten shillings (10/-) a royalty at the rate of six shillings (6/-) per ton of magnesite won and delivered.

30 25. On or about the 14th day of June 1957 the aforesaid variation of the agreement referred to and set out in paragraph 16 hereof was embodied in a written agreement executed by Thomas Ernest Buckley on behalf of the Plaintiff and by the Defendant Logan Hunter Caldwell on behalf of the Defendant. Such last-mentioned document was in the words and figures following:

40 AN AGREEMENT made this 14th day of June in the year One thousand nine hundred and fifty seven BETWEEN AUSTRALIAN BLUE METAL LTD. (herein called the Company) of the One Part and ROBERT FRANK HUGHES, CLARENCE VIVIAN HUGHES, FREDERICK CHARLES HUGHES, VICTOR RAYMOND HUGHES, LOGAN HUNTER CALDWELL and THE EXECUTORS OF GEORGE WIGHAM CALDWELL (hereinafter called Hughes & Caldwell) of the Other Part WHEREAS Hughes and Caldwell are entitled to

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receive royalties from P.M.L. 1 (Young) and the Company wishes to mine for Magnesite on P.M.L. 1 and have agreed to pay to Hughes and Caldwell a flat rate royalty of Six shillings (6/-) per ton in respect of magnesite won and delivered from the said Private Mining Lease NOW THIS AGREEMENT WITNESSETH:

1. The Company shall have the right to mine for Magnesite on P.M.L. 1 east of a line running south from a turn in the fence on the Northern boundary of such P.M.L. 1.
2. The Company will pay to Hughes and Caldwell a royalty of 10 Six shillings (6/-) per ton in respect of all magnesite won and delivered from such area as from 1st June 1957.
3. The weights for the purposes of ascertaining the amount of royalties payable hereunder shall be ascertained and calculated by weigh-bridge weights at the siding where the metal is taken.
4. The Company will pay such royalties and render statements monthly to the aforesaid Logan Hunter Caldwell.
5. In the event of there arising any difficulties as to weights or quantities, Hughes and Caldwell or their nominee may have access to the Company's books or records for the purposes of 20 ascertaining the quantity of metal delivered hereunder AND the Company will make such books and records available to Hughes and Caldwell or their nominee if so required.
6. The Company will use its best endeavours to insure that all gates to the said P.M.L. 1 are kept closed and no dogs are taken thereon.
7. The Company will fill in all excavations made by it or its employees except the last excavation which is to be left with three in one batter.

AS WITNESS the hands and seals of the parties hereto the 30 day and year firstly before written.

SIGNED for and on behalf of
AUSTRALIAN BLUE METAL LTD. } Thos. E. Buckley

SIGNED for and on behalf of
HUGHES AND CALDWELL } Logan H. Caldwell

26. After the execution of the document set out in the last preceding paragraph the Plaintiff continued to conduct mining operations on the land mentioned and described in such document and discovered further deposits of magnesite upon such land.

27. In so continuing to conduct mining operations and to win 40 magnesite from such land the Plaintiff acted with the knowledge and consent of the Defendants and each of them.

28. In so continuing to conduct mining operations and to win magnesite from such land the Plaintiff so continued solely by virtue of the written agreement referred to and set out in paragraph 25 hereof and not otherwise to the knowledge and consent of the Defendants and each of them.

29. After the execution of the written agreement referred to and set out in paragraph 25 hereof the Plaintiff paid to the Defendants certain sums of money as royalties in respect of magnesite won and delivered by the Plaintiff from the land mentioned and described in
10 such agreement. Such sums of money were received and dealt with by the Defendant Logan Hunter Caldwell for and on behalf of the Defendants and were distributed by the said Logan Hunter Caldwell among the Defendants and each of them. Such payments were made at the rate of six shillings (6/-) per ton of magnesite so won and delivered.

30. The Plaintiff says and it is the fact that after the execution of the agreement referred to and set out in paragraph 25 hereof the Defendants adopted and ratified such agreement and accepted certain benefits thereunder, namely, the royalties mentioned in the last
20 preceding paragraph.

31. The Plaintiff also says and it is the fact that in accepting the benefits mentioned in the last preceding paragraph the Defendants and each of them well knew that such benefits were solely referable to the agreement referred to and set out in paragraph 25 hereof.

32. The Plaintiff says and it is the fact that on or about the 19th day of August last a firm known as Tester Porter & Co. acting as agents for the Defendants wrote and sent to the Plaintiff a letter in the following terms:

30 “We desire to convey to you a resolution passed by the Partners of Hughes & Caldwell at a meeting of their syndicate held on 14th August, 1957.

“That the Australian Blue Metal Company, be requested to immediately vacate P.M.L. 1, and therefore cease to work this lease for magnesite.”

We will therefore be pleased if you will kindly cease operations immediately on P.M.L. 1.”

33. The Plaintiff says that in writing and sending the said letter by their said agents as aforesaid the Defendants committed a breach of the said agreement referred to and set out in paragraph 25 hereof.

40 34. The Defendants wrongfully and in breach of the last-mentioned agreement threaten and intend to eject the Plaintiff from the land mentioned and described in such agreement and to prevent the Plaintiff winning magnesite from such land.

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35. The Plaintiff has performed the terms and conditions of the agreements hereinbefore mentioned so far as the same require to be performed on its part and is ready and willing and hereby offers to continue to perform the terms and conditions of the agreement and set out in paragraph 25 hereof.

36. The Plaintiff has requested the Defendants to execute a document registrable under the provisions of the Mining Act 1906 (as amended) embodying the said agreement dated the 14th day of June 1957 for the purpose of enabling the Plaintiff to register such document under the said Act but the Defendants have neglected and 10 refused and still neglect and refuse to execute any such document.

37. The Plaintiff will suffer irreparable loss and damage if ejected from the land mentioned and described in the agreement set out in paragraph 25 hereof.

THE PLAINTIFF THEREFORE CLAIMS:

1. That it may be declared that the agreement set out in paragraph 25 of this Statement of Claim is a valid and subsisting agreement and that the Defendants have not become, nor are they, entitled to rescind the same or to prevent the Plaintiff, its servants and agents from having access to the land mentioned and described in such 20 agreement for the purposes of mining for and winning magnesite and removing any magnesite so won from such land;

2. That the Defendants their servants and agents may be restrained by the order and injunction of this Honourable Court during the subsistence of the last-mentioned agreement from preventing or hindering access by the Plaintiff its servants and agents to the land comprised in such agreement for the purpose of mining for magnesite;

3. That the Defendants their servants and agents may be restrained for so long as the Plaintiff performs and is willing to continue the performance on its part of the terms of the last-mentioned agree- 30 ment from ejecting the Plaintiff its servants and agents from the land comprised in such agreement;

4. That it may be declared that the Defendants ought to execute and deliver to the Plaintiff a form of document registrable under the provisions of the Mining Act 1906 (as amended) embodying the last-mentioned agreement, and that the same may be decreed accordingly;

5. That it may be referred to the Master in Equity or to such other officer of the Court as he may appoint to settle the form of such registrable document;

6. That the Defendants may be ordered to execute and to 40 deliver to the Plaintiff such registrable document within a time to be fixed by this Honourable Court;

7. That in case the Defendants or any of them should neglect or refuse to execute and deliver such document within the time fixed as aforesaid, the Chief Clerk in Equity may be appointed to execute and deliver the same in lieu of them or such one of them as may so neglect or refuse;

8. That the Defendants may be ordered to pay to the Plaintiff the Plaintiff's costs of and incidental to this Suit;

9. That the Plaintiff may have such further or other relief as the nature of the case may require.

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10

T. E. F. Hughes
Counsel for the Plaintiff.

NOTE: This Statement of Claim is filed by Hughes, Hughes & Garvin, Solicitors of 16 Barrack Street, Sydney the Solicitors for Australian Blue Metal Limited the abovenamed Plaintiff whose registered office is at Challis House, 10 Martin Place, Sydney.

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1. The Plaintiff is a Company duly incorporated and entitled to sue in and by its said corporate name and style.

2. In or about the year 1936 the Defendants Robert Frank Hughes, Frederick Charles Hughes and Victor Raymond Hughes and one Logan Hunter Caldwell entered into partnership with one Joseph Peter Hughes and one George Wigham Caldwell for the purpose of carrying on (inter alia) a mining business under the firm name of "Hughes and Caldwell".

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3. The said Joseph Peter Hughes died on or about the 17th day of January 1946 and Probate of his last Will and Testament dated the 23rd day of September 1941 was on the 12th day of June 1946 granted by this Honourable Court in its Probate Jurisdiction to the Executors named in the said Will, namely, the Defendants Robert Frank Hughes and Clarence Vivian Hughes.

4. Until the death of the said Joseph Peter Hughes the said partnership subsisted and carried on business and after such last-mentioned date the Defendants Robert Frank Hughes and Clarence Vivian Hughes upon grant of Probate to them as aforesaid became successors to the said Joseph Peter Hughes in respect of his interest in such partnership.

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5. The said George Wigham Caldwell died on or about the 21st day of July 1956 and Probate of his last Will and Testament dated the 6th day of April 1956 was on the 14th day of November 1956 granted by this Honourable Court in its Probate Jurisdiction to the Executors named in the said Will, namely, Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan.

6. From and after the death of the said Joseph Peter Hughes and until the death of the said George Wigham Caldwell the Defendants Robert Frank Hughes and Clarence Vivian Hughes as executors of the will of the said Joseph Peter Hughes, the said George Wigham Caldwell, the Defendants Robert Frank Hughes, Frederick Charles Hughes and Victor Raymond Hughes and the said Logan Hunter Caldwell carried on in partnership the said business mentioned in paragraph 2 hereof under the said firm name and after such last-mentioned date the Defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan upon grant of Probate to them as aforesaid became successors to the said George Wigham Caldwell in respect of his interest in such lastmentioned partnership.

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6A. Alternatively to the allegations contained in paragraph 6,

the Plaintiff says and the facts are that from and after the death of Joseph Peter Hughes the business carried on until his death by the partnership mentioned in paragraph 4 hereof was until the death of George Wigham Caldwell carried on by a new partnership constituted by and consisting of Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Logan Hunter Caldwell and George Wigham Caldwell. The Plaintiff further says and it is a fact that the profits of such business were shared equally between such partners.

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10 7. After the death of the said George Wigham Caldwell the Defendants Robert Frank Hughes and Clarence Vivian Hughes as executors of the will of the said Joseph Peter Hughes, the Defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as executors of the will of the said George Wigham Caldwell, the Defendants Robert Frank Hughes, Frederick Charles Hughes and Victor Raymond Hughes and the said Logan Hunter Caldwell (until the date of his death hereinafter mentioned) continuously carried on in partnership the said business mentioned in paragraph 2 hereof under the said firm name and the partnership
20 constituted by the aforesaid persons was at the date of the institution of this suit a subsisting partnership.

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7A. Alternatively to the allegations contained in paragraph 7 hereof the Plaintiff says and the facts are that after the death of the said George Wigham Caldwell the Defendants Robert Frank Hughes and Clarence Vivian Hughes as executors of the Will of the said Joseph Peter Hughes, the Defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as executors of the Will of the said George Wigham Caldwell, the Defendants Robert Frank Hughes, Frederick Charles Hughes and Victor Raymond Hughes
30 and the said Logan Hunter Caldwell (until the date of his death hereinafter mentioned) carried on in common under the name "Hughes and Caldwell" a business of (inter alia) mining with a view of profit.

7B. The said Logan Hunter Caldwell died on the second day of January 1959 and Probate of his last Will and Testament dated the 21st day of August 1958 was on the 28th day of April 1959 granted by this Honourable Court in its Probate Jurisdiction to the executor named in the said Will, namely, the Defendant Steele Hunter Caldwell.

7C. Alternatively to the allegations contained in paragraph 7
40 hereof the Plaintiff says and the facts are that after the death of the said George Wigham Caldwell, Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Logan Hunter Caldwell (until the date of his death hereinafter mentioned) and Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as executors of the Will of the said George Wigham

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Caldwell continuously carried on in partnership the said business mentioned in paragraph 2 hereof under the said firm name and that such partnership was at the date of the institution of this suit a subsisting partnership.

The Plaintiff further says and the facts are that the profits of such partnership were from time to time divided into six equal shares and distributed as follows:—

A one-sixth share each to Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes and Logan Hunter Caldwell, and a one-sixth share to and between Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan. 10

7D. Alternatively to the allegations contained in paragraph 7, 7A and 7C hereof the Plaintiff says and the facts are that after the death of the said George Wigham Caldwell, Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Logan Hunter Caldwell (until the date of his death hereinafter mentioned) and Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as Executors of the Will of the said George Wigham Caldwell carried on in common under the name of "Hughes & Caldwell" a business of (inter alia) mining with a view of profit. 20
The Plaintiff further says and the facts are that the profits of such business were from time to time divided into six equal shares and distributed as follows:—

A one-sixth share to Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes and Logan Hunter Caldwell, and a one-sixth share to and between Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan.

8. During his lifetime and during the subsistence of the partnership between the persons mentioned in paragraph 2 hereof the said Joseph Peter Hughes was lessee from the Crown under a certain lease 30
duly registered under the provisions of the Mining Act 1906 (as amended) of (inter alia) the land mentioned and described in each of the documents set out in paragraphs 16 and 25 hereof respectively. The Plaintiff craves leave to refer to such lease when produced as if the same were fully set forth herein.

9. The Plaintiff says and it is the fact that the interest of the said Joseph Peter Hughes deceased as such lessee became and was one of the assets of the partnership referred to in paragraph 2 hereof.

10. Prior to the 31st day of January 1957 the Defendants Robert Frank Hughes and Clarence Vivian Hughes as executors of the Will 40
of the said Joseph Peter Hughes deceased were and they have since been and now are the lessees from the Crown under a certain lease and renewal or renewals thereof duly registered under the provisions

of the Mining Act 1906 (as amended) of (inter alia) the land mentioned and described in each of the documents set out in paragraph 16 and 25 hereof respectively. The Plaintiff craves leave to refer to any such lease or renewal thereof when produced as if the same were fully set forth herein and says that as such lessees the Defendants Robert Frank Hughes and Clarence Vivian Hughes were before and have since the 31st day of January 1957 been and now are entitled to possession or to grant possession to other persons of the land mentioned and described in each of the documents set out in paragraphs 16 and 25 hereof respectively for the purpose of mining and winning minerals from such land.

11. The Plaintiff says and it is the fact that the interest of the Defendants Robert Frank Hughes and Clarence Vivian Hughes as such lessees was at all material times one of the assets of the partnership constituted by each of the persons named in paragraph 7 hereof and was at all material times treated by each of the persons named in such paragraph as part of the assets of such partnership and that certain profits (including the royalties hereinafter mentioned) which have from time to time accrued from or by reason of mining activities carried out on the lands mentioned and described in each of the documents set out in paragraphs 16 and 25 hereof respectively were from time to time after the death of the said George Wigham Caldwell shared between the persons named in paragraph 7 hereof.

11A. Alternatively to the allegations contained in paragraph 11 hereof the Plaintiff says and the facts are that the interest of the Defendants Robert Frank Hughes and Clarence Vivian Hughes as such lessees was at all material times treated by each of the persons mentioned in paragraph 7 hereof as one of the assets of the business carried on by them as mentioned in paragraph 7A hereof and that certain profits (including the royalties hereinafter mentioned) which have from time to time accrued from or by reason of mining activities carried out on the lands mentioned and described in each of the documents set out in paragraphs 16 and 25 hereof respectively were from time to time after the death of the said George Wigham Caldwell shared between the persons named in paragraph 7 hereof.

12. Prior to the 31st day of January 1957 and thereafter until the date of his death the said Logan Hunter Caldwell acted as Managing Partner of the partnership carried on by the persons mentioned in paragraph 7 hereof.

12A. Prior to the 31st day of January 1957 and thereafter until the date of his death the said Logan Hunter Caldwell acted as manager of the business referred to in paragraph 7A hereof carried on by the persons mentioned in the said paragraph.

13. Prior to the 31st day of January 1957 and thereafter until

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the date of his death the said Logan Hunter Caldwell acted as such Managing Partner as aforesaid with the knowledge and consent of the Defendants other than Steele Hunter Caldwell and of each of such other Defendants.

13A. Alternatively to the allegations contained in paragraph 13 hereof the Plaintiff says and the facts are that prior to the 31st day of January 1957 and thereafter until the date of his death the said Logan Hunter Caldwell acted as manager of the business referred to in paragraph 7A carried on by the persons mentioned in the said paragraph with the knowledge and consent of the Defendants other than Steele Hunter Caldwell and of each of such other Defendants. 10

14. Prior to the 31st day of January 1957 the said Logan Hunter Caldwell received on behalf of the partnership constituted by the persons mentioned in paragraph 7 hereof as aforesaid moneys paid by persons indebted to such partnership and after that date he received moneys paid by persons so indebted including the royalties hereinafter mentioned and distributed to and on behalf of the persons mentioned in paragraph 7 hereof such moneys including such royalties.

14A. Alternatively to the allegations contained in paragraph 14 hereof the Plaintiff says and the facts are that prior to the 31st day of January 1957 the said Logan Hunter Caldwell received on behalf of the persons mentioned in paragraph 7 hereof certain moneys paid by persons indebted to the said persons in such paragraph mentioned in respect of transactions entered into by such persons in the course of the business carried on by them as mentioned in paragraph 7A hereof and after such last mentioned date the said Logan Hunter Caldwell received on behalf of the persons mentioned in paragraph 7 hereof moneys paid by persons so indebted to the said persons named in such lastmentioned paragraph including amongst which moneys were the royalties hereinafter mentioned which said royalties the said Logan Hunter Caldwell distributed to and on behalf of the said persons. 20 30

15. The Plaintiff says that and it is the fact that in receiving the moneys and distributing the royalties in the last preceding paragraph mentioned the said Logan Hunter Caldwell acted with the knowledge and consent of the Defendants other than Steele Hunter Caldwell and of each of such other Defendants.

16. On or about the 31st day of January 1957 an agreement in writing was made between the Plaintiff of the one part and the said Logan Hunter Caldwell and the Defendants other than Steele Hunter Caldwell of the other part which said agreement was in the words and figures following:— 40

AN AGREEMENT made this 31st day of January in the year One thousand nine hundred and fifty seven BETWEEN AUSTRALIAN BLUE METAL LTD. (herein called the Company)

of the one part and ROBERT FRANK HUGHES, CLARENCE VIVIAN HUGHES, FREDERICK CHARLES HUGHES, VICTOR RAYMOND HUGHES, LOGAN HUNTER CALDWELL and THE EXECUTORS OF GEORGE WIGHAM CALDWELL (hereinafter called Hughes and Caldwell) of the other part WHEREAS Hughes and Caldwell are entitled to receive royalties from P.M.L. 1 (Young) and the Company wishes to mine for Magnesite on P.M.L. 1 and have agreed to pay to Hughes and Caldwell a flat rate royalty of ten shillings (10/-) per ton in respect of magnesite won and delivered from the said Private Mining Lease.

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10

NOW THIS AGREEMENT WITNESSETH:—

1. The Company shall have the right to mine for magnesite on P.M.L. 1 east of a line running south from a turn in the fence on the northern boundary of such P.M.L. 1.
2. The Company will pay to Hughes and Caldwell royalty of ten shillings (10/-) per ton in respect of all magnesite won and delivered from such area.
3. The weights for the purposes of ascertaining the amount of royalties payable hereunder shall be ascertained and calculated by weigh-bridge weights at the siding where the metal is taken.
4. The Company will pay such royalties and render statements monthly to the aforesaid Logan Hunter Caldwell.
5. In the event of there arising any difficulties as to weights or quantities Hughes and Caldwell or their nominee may have access to the Company's books or records for the purposes of ascertaining the quantity of metal delivered hereunder AND the Company will make such books and records available to Hughes and Caldwell or their nominee if so required.
6. The Company will use its best endeavours to ensure that all gates to the said P.M.L. 1 are kept closed and no dogs are taken thereon.
7. The Company will fill in all excavations made by it or its employees except the last excavation which is to be left with three in one batter.

20

30

AS WITNESS the hands and seals of the parties hereto the day and year firstly before written.

SIGNED for and on behalf of AUSTRALIAN BLUE METAL LTD. } Thos. M. O'Neil

40

SIGNED for and on behalf of HUGHES & CALDWELL } Logan H. Caldwell

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17. The agreement mentioned and set out in the last preceding paragraph was executed by Thomas Michael O'Neil and Logan Hunter Caldwell and in so doing the said Thomas Michael O'Neil and the said Logan Hunter Caldwell acted on behalf of the Plaintiff and the persons mentioned in paragraph 7 hereof respectively.

18. After the making of the agreement mentioned and set out in paragraph 16 hereof the Plaintiff entered upon the land mentioned and described in such agreement and commenced and continued mining operations for the purpose of winning and did win magnesite from such land. 10

19. In so entering upon the said land and in so commencing and continuing the said mining operations and in so winning magnesite the Plaintiff acted with the knowledge and consent of the persons mentioned in paragraph 7 hereof and each of them.

20. In so entering upon the said land and in so commencing and continuing the said mining operations and in so winning magnesite the Plaintiff so acted so commenced and so continued the said mining operations and so won magnesite solely by virtue of the agreement mentioned and set out in paragraph 16 hereof and not otherwise to the knowledge of the persons mentioned in paragraph 7 hereof and 20 each of them.

21. After entering upon such land as aforesaid the Plaintiff until the making of a further agreement hereinafter mentioned paid to the persons mentioned in paragraph 7 hereof certain sums of money as royalties in respect of magnesite won and delivered by the Plaintiff from the land mentioned and described in the agreement referred to and set out in paragraph 16 hereof. Such sums of money were received and dealt with by the said Logan Hunter Caldwell for and on behalf of the persons mentioned in paragraph 7 hereof and were distributed by the said Logan Hunter Caldwell among the said persons and each 30 of them. Such payments were made at the rate of ten shillings (10/-) per ton of magnesite so won and delivered being the rate prescribed by the last-mentioned agreement.

22. The Plaintiff says and it is the fact that after the making of the agreement referred to and set out in paragraph 16 hereof each of the persons mentioned in paragraph 7 hereof adopted and ratified such agreement and accepted certain benefits thereunder, namely, the royalties mentioned in the last preceding paragraph.

23. The Plaintiff also says and it is the fact that in accepting 40 the benefits mentioned in the last preceding paragraph the persons mentioned in paragraph 7 hereof and each of them well knew that such benefits were solely referable to the agreement referred to in paragraph 16 hereof.

24. Shortly before the 14th day of June, 1957 the Plaintiff represented to the said Logan Hunter Caldwell as was the fact that the yield of magnesite from the said mining operations was such that the royalties prescribed by the said agreement referred to and set out in paragraph 16 hereof made the said operations uneconomic for the Plaintiff whereupon it was agreed by and between the Plaintiff of the one part and the said Logan Hunter Caldwell acting on behalf of the persons mentioned in paragraph 7 hereof of the other part that in consideration that the Plaintiff would remain on the land mentioned and described in the agreement set out in paragraph 16 hereof and would continue to conduct mining operations thereon the said agreement set out in paragraph 16 hereof should be varied by substituting for the said royalties of ten shillings (10/-) a royalty at the rate of Six shillings (6/-) per ton of magnesite won and delivered.

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25. On or about the 14th day of June 1957 the aforesaid variation of the agreement referred to and set out in paragraph 16 hereof was embodied in a written agreement executed by Thomas Ernest Buckley on behalf of the Plaintiff and by the said Logan Hunter Caldwell on behalf of the persons mentioned in paragraph 7 hereof.
20 Such lastmentioned document was in the words and figures following:

AN AGREEMENT made this 14th day of June in the year One thousand nine hundred and fifty seven BETWEEN AUSTRALIAN BLUE METAL LTD. (herein called the Company) of the One Part and ROBERT FRANK HUGHES, CLARENCE VIVIAN HUGHES, FREDERICK CHARLES HUGHES, VICTOR RAYMOND HUGHES, LOGAN HUNTER CALDWELL and THE EXECUTORS OF GEORGE WIGHAM CALDWELL (hereinafter called Hughes & Caldwell) of the Other Part WHEREAS Hughes and Caldwell are entitled to receive royalties from P.M.L. 1 (Young) and the Company wishes to mine for Magnesite on P.M.L. 1 and have agreed to pay to Hughes and Caldwell a flat rate royalty of Six shillings (6/-) per ton in respect of magnesite won and delivered from the said Private Mining Lease NOW THIS AGREEMENT WITNESSETH:

1. The Company shall have the right to mine for Magnesite on P.M.L. 1 east of a line running south from a turn in the fence on the Northern boundary of such P.M.L. 1.
2. The Company will pay to Hughes and Caldwell a royalty of Six shillings (6/-) per ton in respect of all magnesite won and delivered from such area as from 1st June 1957.
3. The weights for the purposes of ascertaining the amount of royalties payable hereunder shall be ascertained and calculated by weigh-bridge weights at the siding where the metal is taken.

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No. 2.
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amended).
(Continued)

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4. The Company will pay such royalties and render statements monthly to the aforesaid Logan Hunter Caldwell.

5. In the event of there arising any difficulties as to weights or quantities, Hughes and Caldwell or their nominee may have access to the Company's books or records for the purposes of ascertaining the quantity of metal delivered hereunder AND the Company will make such books and records available to Hughes and Caldwell or their nominee if so required.

6. The Company will use its best endeavours to ensure that all gates to the said P.M.L. 1 are kept closed and no dogs are taken thereon. 10

7. The Company will fill in all excavations made by it or its employees except the last excavation which is to be left with three in one batter.

AS WITNESS the hands and seals of the parties hereto the day and year firstly before written.

SIGNED for and on behalf of AUSTRALIAN BLUE METAL LTD.	} Thos. E. Buckley.
SIGNED for and on behalf of HUGHES AND CALDWELL	

20

25A. Alternatively to the allegations contained in paragraph 25 hereof the Plaintiff says and the facts are that on or about the 14th day of June 1957 an agreement in writing in the words and figures of the document set out in paragraph 25 hereof was made between the Plaintiff of the one part and the said Logan Hunter Caldwell, the said Frederick Charles Hughes and the Defendants other than the Defendants Steele Hunter Caldwell, Violet Jean Freeman and Ivy Alma Richards of the other part.

26. After the execution of the agreement referred to in paragraphs 25 and 25A the Plaintiff continued to conduct mining operations on the land mentioned and described in such agreement and discovered further deposits of magnesite upon such land. 30

27. In so continuing to conduct mining operations and to win magnesite from such land the Plaintiff acted with the knowledge and consent of the persons mentioned in paragraph 7 hereof and each of them.

28. In so continuing to conduct mining operations and to win magnesite from such land the Plaintiff so continued solely by virtue of the written agreement referred to and set out in paragraph 25 hereof and not otherwise to the knowledge and consent of the persons mentioned in paragraph 7 hereof and each of them. 40

29. After the execution of the written agreement referred to and set out in paragraph 25 hereof the Plaintiff paid to the persons mentioned in paragraph 7 hereof certain sums of money as royalties in respect of magnesite won and delivered by the Plaintiff from the land mentioned and described in such agreement. Such sums of money were received and dealt with by the said Logan Hunter Caldwell for and on behalf of the persons mentioned in paragraph 7 hereof and were distributed by the said Logan Hunter Caldwell among the said persons and each of them. Such payments were made at the rate of
10 six shillings (6/-) per ton of magnesite so won and delivered.

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30. The Plaintiff says and it is the fact that after the execution of the agreement referred to and set out in paragraph 25 hereof the persons mentioned in paragraph 7 hereof adopted and ratified such agreement and accepted certain benefits thereunder, namely, the royalties mentioned in the last preceding paragraph.

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31. The Plaintiff also says and it is the fact that in accepting the benefits mentioned in the last preceding paragraph the persons mentioned in paragraph 7 hereof and each of them well knew that such benefits were solely referable to the agreement referred to and
20 set out in paragraphs 25 hereof.

32. The Plaintiff says and it is the fact that on or about the 19th day of August 1957 a firm known as Tester Porter & Co. acting as agents for the persons mentioned in paragraph 7 hereof wrote and sent to the Plaintiff a letter in the following terms:

“We desire to convey to you a resolution passed by the partners of Hughes & Caldwell at a meeting of their syndicate held on 14th August, 1957.

30 “That the Australian Blue Metal Company, be requested to immediately vacate P.M.L. 1, and therefore cease to work this lease for magnesite.”

We will therefore be pleased if you will kindly cease operations immediately on P.M.L. 1”.

33. The Plaintiff says that in writing and sending the letter by their said agents as aforesaid the persons mentioned in paragraph 7 hereof committed a breach of the said agreement referred to and set out in paragraph 25 hereof.

34. The Defendants wrongfully and in breach of the last-mentioned agreement threaten and intend to eject the Plaintiff from the land mentioned and described in such agreement and to prevent
40 the Plaintiff winning magnesite from such land.

35. The Plaintiff has performed the terms and conditions of the agreements hereinbefore mentioned so far as the same required to be performed on its part and is ready and willing and hereby offers to

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continue to perform the terms and conditions of the agreement as set out in paragraph 25 hereof.

36. The Plaintiff has requested the Defendants to execute a document registrable under the provisions of the Mining Act 1906 (as amended) embodying the said agreement dated the 14th day of June 1957 for the purpose of enabling the Plaintiff to register such document under the said Act but the Defendants have neglected and refused and still neglect and refuse to execute any such document.

37. The Plaintiff will suffer irreparable loss and damage if ejected from the land mentioned and described in the agreement set out in paragraph 25 hereof. 10

THE PLAINTIFF THEREFORE CLAIMS:—

1. THAT it may be declared that the agreement set out in paragraph 25 of this Statement of Claim is a valid and subsisting agreement and that the Defendants have not become, nor are they, entitled to rescind the same or to prevent the Plaintiff, its servants and agents from having access to the land mentioned and described in such agreement for the purposes of mining for and winning magnesite and removing any magnesite so won from such land;

2. THAT the Defendants their servants and agents may be 20 restrained by the order and injunction of this Honourable Court during the subsistence of the last-mentioned agreement from preventing or hindering access by the Plaintiff its servants and agents to the land comprised in such agreement for the purpose of mining for magnesite;

3. THAT the Defendants their servants and agents may be restrained for so long as the Plaintiff performs and is willing to continue the performance on its part of the terms of the lastmentioned agreement from ejecting the Plaintiff its servants and agents from the land comprised in such agreement;

4. THAT it may be declared that the Defendants ought to 30 execute and deliver to the Plaintiff a form of document registerable under the provisions of the Mining Act 1906 (as amended) embodying the last mentioned agreement, and that the same may be decreed accordingly;

5. THAT it may be referred to the Master in Equity or to such other officer of the Court as he may appoint to settle the form of such registerable document;

6. THAT the Defendants may be ordered to execute and to deliver to the Plaintiff such registerable document within a time to be fixed by this Honourable Court; 40

7. THAT in case the Defendants or any of them should neglect or refuse to execute and deliver such document within the time fixed

as aforesaid, the Chief Clerk in Equity may be appointed to execute and deliver the same in lieu of them or such one of them as may so neglect or refuse;

8. THAT the Defendants may be ordered to pay to the Plaintiff the Plaintiff's costs of and incidental to this suit;

9. THAT the Plaintiff may have such further or other relief as the nature of the case may require.

DATED the 16th day of March, 1961.

T. E. F. Hughes
Counsel for the Plaintiff.

10

NOTE: This Amended Statement of Claim is filed by Hughes, Hughes & Garvin, Solicitors of 16 Barrack Street, Sydney, the Solicitors for Australian Blue Metal Limited the abovenamed Plaintiff whose registered office is at Challis House, 10 Martin Place, SYDNEY.

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Statement of Defence of all Defendants (as originally filed)

No. 3.
Statement of
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29th Oct., 1958.

WE, ROBERT FRANK HUGHES, CLARENCE VIVIAN HUGHES, FREDERICK CHARLES HUGHES, VICTOR RAYMOND HUGHES, LOGAN HUNTER CALDWELL, MARGARET FERGUSON CALDWELL, LINDSAY GEORGE REGAN and NORMAN VIVIAN REGAN on our respective oaths say as follows:

1. In answer to paragraph 4 of the Statement of Claim the defendants and each of them say that upon the death of Joseph Peter Hughes the said partnership was dissolved and the defendants Robert 10 Frank Hughes and Clarence Vivian Hughes as executors of the will and trustees of the estate of the said Joseph Peter Hughes became entitled to claim as an asset in the estate of the said Joseph Peter Hughes his interest in the said partnership as upon the winding up thereof. Save as aforesaid the defendants and each of them deny that after the death of the said Joseph Peter Hughes the defendants Robert Frank Hughes and Clarence Vivian Hughes upon grant of Probate to them as aforesaid became successors to the said Joseph Peter Hughes in respect of his interest in such partnership.

2. In answer to paragraph 6 of the Statement of Claim the 20 defendants and each of them do not know and cannot admit that from and after the death of the said Joseph Peter Hughes and until the death of the said George Wigham Caldwell the defendants Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes and Logan Hunter Caldwell carried on the said business in partnership under the said firm-name.

3. In further answer to paragraph 6 of the Statement of Claim the defendants and each of them say that upon the death of the said George Wigham Caldwell the defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as executrix and 30 executors of the will and trustees of the estate of the said George Wigham Caldwell became entitled to claim as an asset in the estate of the said George Wigham Caldwell his interest in the said partnership as at the date of death of the said Joseph Peter Hughes as upon a winding up thereof. Save as aforesaid the defendants and each of them deny that after the death of the said George Wigham Caldwell the defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan upon grant of Probate to them as aforesaid became successors to the said George Wigham Caldwell in respect of his interest in such last mentioned partnership. 40

4. In answer to paragraph 7 of the Statement of Claim the defendants and each of them say that since the death of the said Joseph Peter Hughes the defendants Robert Frank Hughes and Clarence Vivian Hughes as to a one sixth interest in the said partnership have carried on the said business as executors of the will and trustees of the estate of the said Joseph Peter Hughes and not otherwise.

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5. In further answer to paragraph 7 of the Statement of Claim the defendants and each of them say that since the death of the said George Wigham Caldwell the defendants Margaret Ferguson Caldwell,
10 Lindsay George Regan and Norman Vivian Regan as to a one sixth interest in the said partnership have carried on the said business as executrix and executors of the will and trustees of the estate of the said George Wigham Caldwell and not otherwise. Save as aforesaid the defendants and each of them deny that since the death of the said George Wigham Caldwell the defendants have carried on the said business in partnership under the aforesaid firm-name and that since such last mentioned date such business has been continuously carried on by the defendants under the said firm-name and the partnership constituted by the defendants is now a subsisting partnership.

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20 6. In answer to paragraph 9 of the Statement of Claim the defendants and each of them admit that the interest of the said Joseph Peter Hughes deceased as lessee from the Crown under the lease referred to in paragraph 8 of the Statement of Claim became and was one of the assets of the partnership referred to in paragraph 2 of the Statement of Claim.

30 7. In answer to paragraph 10 of the Statement of Claim the defendants and each of them say that they do not know and cannot admit that the defendants Robert Frank Hughes and Clarence Vivian Hughes were before and have since the 31st day of January 1957 been
and now are entitled to possession or to grant possession to other persons of the land mentioned and described in each of the documents set out in paragraphs 16 and 25 of the statement of claim respectively or of any part thereof for the purpose of mining and winning minerals from such land.

40 8. In answer to paragraph 11 of the Statement of Claim the defendants and each of them deny that the interest of the defendants Robert Frank Hughes and Clarence Vivian Hughes as such lessees has at all material times been one of the assets of the partnership constituted by the defendants and has been treated by each of the defendants
as part of the assets of such partnership.

9. In answer to paragraph 12 of the Statement of Claim the defendants and each of them deny that prior to 31st day of January 1957 the defendant Logan Hunter Caldwell acted and since such last mentioned date has acted as managing partner of the partnership constituted by the defendants as aforesaid.

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10. In answer to paragraph 13 of the Statement of Claim the defendants and each of them deny that prior to the 31st day of January 1957 the defendant Logan Hunter Caldwell acted and since such last-mentioned date has acted as such managing partner with the knowledge and consent of the defendants other than himself or of any of them.

11. In answer to paragraph 14 of the Statement of Claim the defendants and each of them admit that prior to the 31st January 1957 the defendant Logan Hunter Caldwell received on behalf of the partnership constituted by the defendants certain moneys paid by 10 persons indebted to such partnership but deny that prior to the 31st January 1957 the defendant Logan Hunter Caldwell received on behalf of the partnership constituted by the defendants all moneys so paid.

12. In further answer to paragraph 14 of the Statement of Claim the defendants other than the said Logan Hunter Caldwell do not know and cannot admit that since the 31st January 1957 the defendant Logan Hunter Caldwell has received on behalf of the partnership constituted by the defendants moneys paid by persons indebted to the said partnership which include the royalties therein referred to or has distributed to and on behalf of the defendants the said royalties. 20

13. In further answer to paragraph 14 of the Statement of Claim the defendant Logan Hunter Caldwell does not know and cannot admit that any money received by him since the 31st January 1957 was paid by persons indebted to the partnership constituted by the defendants.

14. In answer to paragraph 15 of the Statement of Claim the defendants and each of them deny that the defendant Logan Hunter Caldwell with the knowledge and consent of each of the defendants other than himself or any of them received the royalties in the said paragraph referred to or distributed the same to and on behalf of the defendants. 30

15. In answer to paragraph 16 of the Statement of Claim the defendants and each of them deny that on or about the 31st day of January 1957 or at any other time an agreement in writing was made between the plaintiff of the one part and the defendants of the other in or to the effect of that set out in the said paragraph.

16. In answer to paragraph 17 of the Statement of Claim the defendants and each of them deny that the document set out in paragraph 16 was executed by the said Logan Hunter Caldwell on behalf of the defendants and they do not know and cannot admit that any such document was executed by Thomas Michael O'Neil on behalf of 40 the plaintiff.

17. In answer to paragraph 18 of the Statement of Claim the defendants and each of them admit that after the 31st day of January

1957 the plaintiff entered upon the land described in the alleged agreement set out in paragraph 16 of the Statement of Claim and commenced and continued mining operations for the purpose of winning and did win magnesite from such land.

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18. In answer to paragraph 19 of the Statement of Claim the defendants and each of them say that they and each of them believed that the plaintiff in entering upon the said land and commencing and continuing mining operations thereon did so in pursuance of an arrangement whereby the plaintiff became entitled to work certain old
10 pits situate on the said land near its eastern boundary but not south of a gully which runs across the said land. Save as aforesaid the defendants and each of them deny that in entering upon the said land and in commencing and continuing mining operations and in winning magnesite the plaintiff acted with the knowledge and consent of the defendants and each of them.

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19. In answer to paragraph 20 of the Statement of Claim the defendants and each of them deny that the plaintiff entered upon the said land and commenced and continued mining operations thereon and won magnesite therefrom by virtue of the alleged agreement
20 mentioned in paragraph 16 of the Statement of Claim either solely or in conjunction with any other facts and they and each of them deny that they knew that the plaintiff so entered and commenced and continued mining operations on the said land and so won magnesite therefrom.

20. In answer to paragraph 21 of the Statement of Claim the defendants and each of them believe that the payments made were in respect of magnesite won from the old pits mentioned in paragraph (18) hereof and in pursuance of the arrangement mentioned in such paragraph. Save as aforesaid the defendants and each of them deny
30 that after entering upon such land as aforesaid the plaintiff until the making of an alleged further agreement in the said paragraph mentioned paid to the defendants certain sums of money as royalties in respect of magnesite won and delivered by the plaintiff from the land mentioned and described in the agreement referred to and set out in paragraph 16 of the Statement of Claim and that such sums of money were received and dealt with by the defendant Logan Hunter Caldwell for and on behalf of the defendants and were distributed by the said Logan Hunter Caldwell among the defendants and each of them.

21. In answer to paragraph 22 of the Statement of Claim the
40 defendants and each of them deny that the defendants adopted and ratified the alleged agreement referred to and that they accepted any benefits thereunder.

22. In answer to paragraph 23 of the Statement of Claim the defendants other than Logan Hunter Caldwell and each of them deny

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that they knew that any sums of money received by them from the plaintiff were referable to the alleged agreement referred to. The said Logan Hunter Caldwell for himself says that he believed that the sums paid by the plaintiff were in respect of magnesite mined from the old pits mentioned in paragraph 18 hereof pursuant to the arrangement in the said paragraph referred to.

23. In answer to paragraph 24 of the Statement of Claim the defendants other than the defendant Logan Hunter Caldwell believe and the said Logan Hunter Caldwell admits that at or about the date mentioned the plaintiff represented to the said Logan Hunter Caldwell 10 that the yield of magnesite from its mining operations in the old pits mentioned in paragraph 18 hereof was uneconomic. Save as aforesaid the defendants other than the said Logan Hunter Caldwell do not know and cannot admit and the said Logan Hunter Caldwell denies that shortly before the 14th day of June 1957 the plaintiff represented to the defendant Logan Hunter Caldwell that the yield of magnesite from its mining operations was such that the royalties prescribed in the said alleged agreement made the said operations uneconomic and that thereupon it was agreed by and between the plaintiff of the one part and the defendant Logan Hunter Caldwell acting on behalf of 20 the defendants or otherwise of the other part that in consideration that the plaintiff would remain upon the land mentioned and described in the alleged agreement and would continue to conduct mining operations thereon the said alleged agreement should be varied by substituting for the said alleged royalty of ten shillings a royalty at the rate of six shillings per ton of magnesite won and delivered.

24. In answer to paragraph 25 of the Statement of Claim the defendants and each of them deny that on or about the date referred to or any other date a written agreement in the terms alleged or any other terms was executed on their behalf by the said Logan Hunter 30 Caldwell and they do not know and cannot admit that any such document was executed by Thomas Ernest Buckley on behalf of the plaintiff.

25. In further answer to paragraph 25 of the Statement of Claim the defendant Logan Hunter Caldwell says that he signed a document which is in the terms of the document set out in the said paragraph on or about the 14th day of June 1957 but save as aforesaid the defendants other than the said Logan Hunter Caldwell do not know and cannot admit and the said Logan Hunter Caldwell denies that a variation in the terms set out in the said paragraph was embodied in any written agreement. 40

26. In answer to paragraph 26 of the Statement of Claim the defendants and each of them say that after the 14th day of June 1957 the plaintiff commenced to conduct mining operations upon the lands referred to in paragraph 8 of the Statement of Claim south of the gully referred to in paragraph 18 hereof but save as aforesaid they and

each of them deny that after the execution of the alleged document set out in paragraph 25 of the Statement of Claim the plaintiff continued to conduct mining operations on the land mentioned and described in such document and discovered further deposits of magnesite upon such land.

27. In answer to paragraph 27 of the Statement of Claim the defendants and each of them deny that to the extent that the plaintiff conducted mining operations upon that part of the lands referred to in paragraph 8 of the Statement of Claim which was to the south of
40 the gully referred to in paragraph 18 hereof the plaintiff acted with the knowledge and consent of the defendants and each or any of them.

28. In answer to paragraph 28 of the Statement of Claim the defendants and each of them deny that in conducting its mining operations upon the said lands after the 14th day of June 1957 and in winning magnesite therefrom the plaintiff was acting by virtue of the alleged document set out in paragraph 25 of the Statement of Claim either solely or in conjunction with any other facts and they deny that they or any of them knew of and consented to the operations of the plaintiff being conducted south of the said gully.

30 29. In answer to paragraph 29 of the Statement of Claim the defendants and each of them say that they believe and each of them believes that all moneys received by them after the said 14th day of June 1957 were paid as royalties in respect of operations of the plaintiff in the old pits referred to in paragraph 18 hereof and not otherwise.

30. In answer to paragraph 30 of the Statement of Claim the defendants and each of them deny that they adopted and ratified the alleged agreement referred to and that they accepted benefits thereunder.

10 31. In answer to paragraph 31 of the Statement of Claim the defendants and each of them say that they believed that the payments received by them related to royalties upon magnesite won by the plaintiff from its operations in the old pits mentioned in paragraph 18 hereof and not otherwise. Save as aforesaid they and each of them deny that they and each of them well knew that the alleged benefits alleged to have been accepted by the defendants were referable either solely or in conjunction with other facts to the alleged agreement in paragraph 25 of the Statement of Claim set forth.

20 32. In answer to paragraph 33 of the Statement of Claim the defendants and each of them deny that in sending the letter in paragraph 32 of the Statement of Claim mentioned they committed a breach of the alleged agreement in paragraph 25 of the Statement of Claim set out or of any other agreement between the parties.

33. In answer to paragraph 34 of the Statement of Claim the

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defendants and each of them deny that their actions or any of them are wrongful or in breach of any agreement with the plaintiff.

34. In answer to paragraph 35 of the Statement of Claim the defendants and each of them deny that the plaintiff has performed the terms and conditions of the alleged agreements in the Statement of Claim set forth so far as the same require to be performed on its part and do not know and cannot admit that the plaintiff is ready and willing to continue to perform the terms and conditions of the alleged agreement set out in paragraph 25 of the Statement of Claim.

35. In answer to paragraph 37 of the Statement of Claim the 10
defendants and each of them do not know and cannot admit that the plaintiff will suffer irreparable loss and damage if ejected from the land described in the alleged agreement set out in paragraph 25 of the Statement of Claim.

36. In answer to the whole of the Statement of Claim the defendants submit that the plaintiff has no equity entitling it to proceed against the defendants in the equitable jurisdiction of this Honourable Court and that the plaintiff's proper remedy (if any) is at law and the defendants crave the same benefit from this defence as if they had pleaded or demurred to the Statement of Claim. 20

37. In further answer to the whole of the Statement of Claim the defendants say that the agreements alleged in paragraphs 16 and 25 of the Statement of Claim create an interest in land and the defendant Logan Hunter Caldwell was not authorised in writing by the other defendants or any of them to execute the same.

38. In further answer to the whole of the Statement of Claim the defendants say that the agreements alleged in paragraphs 16 and 25 of the Statement of Claim are deeds and the defendant Logan Hunter Caldwell was not authorised by deed by the other defendants or any of them to sign seal and deliver the same. 30

Philip Jeffrey

Counsel for Defendants.

NOTE—This Statement of Defence is filed by Messieurs Marshall, Marks, Dezarnaulds and Jones of 67 Castlereagh Street Sydney Agents for Messieurs Campbell Omant and Grant of Lynch Street, Young the solicitors for the abovenamed Defendants.

No. 4

**Statement of Defence of all Defendants other than Steele Hunter
Caldwell (as amended—reamended and further amended)**

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WE, ROBERT FRANK HUGHES, CLARENCE VIVIAN HUGHES, FREDERICK CHARLES HUGHES, VICTOR RAYMOND HUGHES, MARGARET FERGUSON CALDWELL, LINDSAY GEORGE REGAN and NORMAN VIVIAN REGAN on our respective oaths say as follows:

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Statement of
Defence of
all Defendants
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Defendant Steele
Hunter Caldwell
(as amended,
re-amended and
further amended.

1. In answer to paragraph 4 of the amended Statement of Claim
10 the said defendants and each of them say that upon the death of
Joseph Peter Hughes the said partnership was dissolved and the
defendants Robert Frank Hughes and Clarence Vivian Hughes as
executors of the Will and trustees of the estate of the said Joseph Peter
Hughes became entitled to claim as an asset in the estate of the said
Joseph Peter Hughes his interest in the said partnership as upon the
winding up thereof. Save as aforesaid the said defendants and each of
them deny that after the death of the said Joseph Peter Hughes the
defendants Robert Frank Hughes and Clarence Vivian Hughes upon
grant of Probate to them as aforesaid became successors to the said
20 Joseph Peter Hughes in respect of his interest in such partnership.

14th Feb., 1961.
21st Feb., 1961.
28th Feb., 1961.

2. In answer to paragraph 6 of the amended Statement of Claim
the said defendants and each of them do not know and cannot admit
that from and after the death of the said Joseph Peter Hughes and
until the death of the said George Wigham Caldwell the defendants
Robert Frank Hughes and Clarence Vivian Hughes, as executors of
the will of the said Joseph Peter Hughes, the said George Wigham
Caldwell, the defendants Robert Frank Hughes, Frederick Charles
Hughes and Victor Raymond Hughes and the said Logan Hunter
Caldwell carried on in partnership the business mentioned in paragraph
30 2 of the amended Statement of Claim or any business under the said
firm name or under any name.

3. In further answer to paragraph 6 of the amended Statement
of Claim the said defendants and each of them say that upon the death
of the said George Wigham Caldwell the defendants Margaret Fergu-
son Caldwell, Lindsay George Regan and Norman Vivian Regan as
executrix and executors of the will and trustees of the estate of the
said George Wigham Caldwell became entitled to claim as an asset in
the estate of the said George Wigham Caldwell his interest in the
partnership mentioned in paragraph 2 of the amended Statement of
40 Claim as at the date of death of the said Joseph Peter Hughes as upon
the winding up thereof. Save as aforesaid the said defendants and
each of them deny that after the death of the said George Wigham
Caldwell the defendants Margaret Ferguson Caldwell, Lindsay George

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Regan and Norman Vivian Regan upon grant of Probate to them as aforesaid became successors to the said George Wigham Caldwell in respect of his interest in such last mentioned partnership.

3A. In answer to paragraph 6A of the amended Statement of Claim the said defendants and each of them do not know and cannot admit that from and after the death of Joseph Peter Hughes the business carried on until his death by the partnership mentioned in paragraph 4 thereof was until the death of George Wigham Caldwell carried on by any new partnership constituted by or consisting of Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, 10 Victor Raymond Hughes, Logan Hunter Caldwell or George Wigham Caldwell.

3B. In further answer to paragraph 6A of the amended Statement of Claim the said defendants and each of them admit that certain moneys which from time to time accrued from or by reason of mining activities carried out on portion of the land mentioned in each of the documents set out in paragraphs 16 and 25 thereof were from time to time paid to the defendants Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Logan Hunter Caldwell and George Wigham Caldwell. Save as aforesaid 20 the said defendants and each of them do not know and cannot admit that any profits of any business were shared equally between the said persons or that the said persons were partners.

4. In answer to paragraph 7 of the amended Statement of Claim the said defendants and each of them do not know and cannot admit that after the death of the said George Wigham Caldwell the defendants Robert Frank Hughes and Clarence Vivian Hughes as executors of the will of the said Joseph Peter Hughes, the defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as executors of the will of the said George Wigham Caldwell, the 30 defendants Robert Frank Hughes, Frederick Charles Hughes, and Victor Raymond Hughes and the said Logan Hunter Caldwell (until the date of his death) carried on in partnership the said business mentioned in paragraph 2 of the amended Statement of Claim under the said firm name continuously or at all or that there was any partnership constituted by the aforesaid persons or that at the date of the institution of this suit there was any such partnership which was a subsisting partnership.

5. In answer to paragraph 7A of the amended Statement of Claim the said defendants and each of them do not know and cannot 40 admit that after the death of the said George Wigham Caldwell the defendants Robert Frank Hughes and Clarence Vivian Hughes as executors of the will of the said Joseph Peter Hughes, the defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as executors of the will of the said George Wigham

Caldwell, the defendants Robert Frank Hughes, Frederick Charles Hughes and Victor Raymond Hughes and the said Logan Hunter Caldwell (until the date of his death) carried on in common under the name "Hughes & Caldwell" or at all a business of (inter alia) mining with a view of profit.

5A. In answer to paragraph 7C of the amended Statement of Claim the said defendants and each of them do not know and cannot admit that after the death of George Wigham Caldwell the defendants Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes and the said Logan Hunter Caldwell (until the date of his death) and Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as executors of the will of the said George Wigham Caldwell carried on in partnership the said business mentioned in paragraph 2 of the amended Statement of Claim under the said firm name continuously or at all or that there was any partnership constituted by the aforesaid persons or that at the date of the institution of this suit there was any such partnership which was a subsisting partnership.

5B. In further answer to paragraph 7C of the amended Statement of Claim the said defendants and each of them admit that certain moneys which from time to time accrued from or by reason of mining activities carried out on portion of the land mentioned in each of the documents set out in paragraphs 16 and 25 thereof were from time to time paid to the defendants Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Margaret Ferguson Caldwell, Lindsay George Regan, Norman Vivian Regan and the said Logan Hunter Caldwell. Save as aforesaid the said defendants and each of them do not know and cannot admit that the profits of any partnership were from time to time divided into six equal shares or were distributed in the manner in the said paragraph set out.

5C. In answer to paragraph 7D of the amended Statement of Claim the said defendants and each of them do not know and cannot admit that after the death of the said George Wigham Caldwell the defendants Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes and Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as executors of the will of the said George Wigham Caldwell and the said Logan Hunter Caldwell carried on in common under the name "Hughes & Caldwell" or at all business of (inter alia) mining with a view of profit.

5D. In further answer to paragraph 7D of the amended Statement of Claim the said defendants and each of them admit that certain moneys which from time to time accrued from or by reason of mining activities carried out on portion of the land mentioned in each of the documents set out in paragraph 16 and 25 of the amended Statement

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of Claim were from time to time after the death of the said George Wigham Caldwell paid to the defendants Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, and Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as executors of the will of the said George Wigham and the said Logan Hunter Caldwell. Save as aforesaid the said defendants and each of them do not know and cannot admit that the profits of any such business were from time to time divided into six equal shares or were distributed in the manner in the said paragraph set out.

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6. In answer to paragraph 10 of the amended Statement of Claim the said defendants and each of them do not know and cannot admit that the defendants Robert Frank Hughes and Clarence Vivian Hughes as executors of the will of the said Joseph Peter Hughes deceased were before and have since the 31st day of January 1957 been and now are entitled to possession or to grant possession to other persons of the land mentioned and described in each of the documents set out in paragraphs 16 and 25 of the amended Statement of Claim respectively or of any part thereof for the purpose of mining and winning minerals from such land or otherwise.

20

7. In answer to paragraph 11 of the amended Statement of Claim the said defendants and each of them do not know and cannot admit that the interest of the defendants Robert Frank Hughes and Clarence Vivian Hughes as such lessees was at all material times or at all one of the assets of any partnership constituted by each of the persons named in paragraph 7 of the amended Statement of Claim or was at all material times or at all treated by each of the persons named in such paragraph or by any of them as part of the assets of any such partnership.

8. In further answer to paragraph 11 of the amended Statement of Claim the said defendants and each of them say that certain moneys which from time to time accrued from or by reason of mining activities carried out on portion of the land mentioned and described in each of the documents set out in paragraphs 16 and 25 of the amended Statement of Claim were from time to time after the death of the said George Wigham Caldwell paid to the defendants Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Margaret Ferguson Caldwell, Lindsay George Regan, Norman Vivian Regan and the said Logan Hunter Caldwell. Save as aforesaid the said defendants and each of them do not know and cannot admit that profits (including the royalties in the amended Statement of Claim thereafter mentioned) or any profits which have from time to time accrued from or by reason of mining activities carried out on the lands mentioned and described in each of the documents set out in paragraphs 16 and 25 of the amended Statement

40

of Claim were from time to time after the death of the said George Wigham Caldwell or at any time shared between the persons named in paragraph 7 of the amended Statement of Claim.

9. In answer to paragraph 11A of the amended Statement of Claim the said defendants and each of them do not know and cannot admit that the interests of the defendants Robert Frank Hughes and Clarence Vivian Hughes as such lessees were at all material times or at all treated by each of the persons mentioned in paragraph 7 of the amended Statement of Claim or by any of them as one of the assets
10 of any business carried on by them as mentioned in paragraph 7A of the amended Statement of Claim.

10. In further answer to paragraph 11A of the amended Statement of Claim the said defendants and each of them say that certain moneys which from time to time accrued from or by reason of mining activities carried out on portion of the land mentioned and described in each of the documents set out in paragraphs 16 and 25 of the amended Statement of Claim were from time to time after the death of the said George Wigham Caldwell paid to the defendants Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes,
20 Victor Raymond Hughes, Margaret Ferguson Caldwell, Lindsay George Regan, Norman Vivian Regan and the said Logan Hunter Caldwell. Save as aforesaid the said defendants and each of them do not know and cannot admit that profits (including the royalties in the amended Statement of Claim thereafter mentioned) or any profits which have from time to time accrued from or by reason of mining activities carried out on the lands mentioned and described in each of the documents set out in paragraphs 16 and 25 of the amended Statement of Claim were from time to time after the death of the said George Wigham Caldwell or at any time shared between the
30 persons named in paragraph 7 of the amended Statement of Claim.

11. In answer to paragraph 12 of the amended Statement of Claim the said defendants and each of them deny that prior to the 31st day of January 1957 and thereafter until the date of his death or at any time the said Logan Hunter Caldwell acted as managing partner of any partnership carried on by the persons mentioned in paragraph 7 of the amended Statement of Claim.

12. In answer to paragraph 12A of the amended Statement of Claim the said defendants and each of them deny that prior to the 31st day of January 1957 and thereafter until the date of his death
40 or at any time the said Logan Hunter Caldwell acted as manager of any business carried on by the persons mentioned in paragraph 7A of the amended Statement of Claim.

13. In answer to paragraph 13 of the amended Statement of Claim the said defendants and each of them deny that prior to the

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31st day of January 1957 and thereafter until the date of his death or at any time the said Logan Hunter Caldwell acted as managing partner of any partnership carried on by the persons mentioned in paragraph 7 of the amended Statement of Claim with the knowledge or consent of the defendants other than Steele Hunter Caldwell or any of them or at all.

14. In answer to paragraph 13A of the amended Statement of Claim the said defendants and each of them deny that prior to the 31st day of January 1957 and thereafter until the date of his death or at any time the said Logan Hunter Caldwell acted as manager of any business carried on by the persons mentioned in paragraph 7A of the amended Statement of Claim with the knowledge and consent of the defendants other than Steele Hunter Caldwell or any of them or at all.

15. In answer to paragraph 14 of the amended Statement of Claim the said defendants and each of them admit that prior to the 31st day of January 1957 the said Logan Hunter Caldwell received certain moneys but do not know and cannot admit that such moneys were received on behalf of any partnership constituted by the persons mentioned in paragraph 7 of the amended Statement of Claim or that the aforesaid moneys were paid by persons indebted to any partnership constituted by the aforesaid persons.

16. In further answer to paragraph 14 of the amended Statement of Claim the said defendants and each of them admit that after the 31st day of January 1957 the said Logan Hunter Caldwell received certain moneys but do not know and cannot admit that such moneys were paid by persons indebted to any partnership constituted by the persons mentioned in paragraph 7 of the amended Statement of Claim or that the said Logan Hunter Caldwell distributed any moneys to or on behalf of the persons mentioned in paragraph 7 of the amended Statement of Claim and deny that the royalties in the amended Statement of Claim thereafter mentioned or any of them were received by the said Logan Hunter Caldwell.

17. In answer to paragraph 14A of the amended Statement of Claim the defendants and each of them admit that prior to the 31st day of January 1957 the said Logan Hunter Caldwell received certain moneys but do not know and cannot admit that such moneys were received on behalf of the persons mentioned in paragraph 7 of the amended Statement of Claim and do not know and cannot admit that the aforesaid moneys were paid by persons indebted to the said persons in respect of transactions entered into by such persons in the course of any business carried on by them as mentioned in paragraph 7A of the amended Statement of Claim.

18. In further answer to paragraph 14A of the amended State-

ment of Claim the said defendants and each of them admit that after the 31st day of January 1957 the said Logan Hunter Caldwell received certain moneys but do not know and cannot admit that such moneys were received on behalf of the persons mentioned in paragraph 7 of the amended Statement of Claim or that the aforesaid moneys were paid by persons indebted to the said persons in respect of transactions entered into by such persons in the course of any business carried on by them as mentioned in paragraph 7A of the amended Statement of Claim or that the said Logan Hunter Caldwell distributed any moneys
 10 to or on behalf of the persons mentioned in paragraph 7 of the amended Statement of Claim and deny that the royalties in the amended Statement of Claim thereafter mentioned or any of them were received by the said Logan Hunter Caldwell.

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19. In answer to paragraph 15 of the amended Statement of Claim the said defendants and each of them deny that the said Logan Hunter Caldwell with the knowledge and consent of the defendants other than Steele Hunter Caldwell or any of them received all the royalties in the said paragraph referred to or so distributed all the said royalties to or on behalf of the defendants or any of them.

20 20. In answer to paragraph 16 of the amended Statement of Claim the said defendants and each of them deny that on or about the 31st day of January 1957 or at any other time an agreement in writing was made by the plaintiff of the one part and the said Logan Hunter Caldwell and the defendants other than Steele Hunter Caldwell of the other part in or to the effect of that set out in the said paragraph.

21. In answer to paragraph 17 of the amended Statement of Claim the said defendants and each of them do not know and cannot admit that the document set out in paragraph 16 of the amended Statement of Claim was executed by Thomas Michael O'Neil or that
 30 in so doing the said Thomas Michael O'Neil acted on behalf of the plaintiff and deny that in executing the same the said Logan Hunter Caldwell acted on behalf of the persons mentioned in paragraph 7 of the amended Statement of Claim.

22. In answer to paragraph 18 of the amended Statement of Claim the said defendants and each of them say that prior to the 31st day of January 1957 the plaintiff had entered upon portion of the land described in the alleged agreement set out in paragraph 16 of the amended Statement of Claim and had commenced mining operations for the purpose of winning and had won magnesite from the said
 40 portion and that after the said date the plaintiff continued the said operations upon the said portion of the said land for the said purpose and did win magnesite therefrom. Save as aforesaid the said defendants and each of them deny that after the making of the agreement alleged in paragraph 16 of the amended Statement of Claim the plaintiff entered upon the land mentioned and described in such alleged

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agreement or commenced or continued mining operations for the purpose of winning or did win magnesite from the said land.

23. In answer to paragraph 19 of the amended Statement of Claim the said defendants and each of them deny that in entering upon any portion of the said land (other than that portion referred to in the preceding paragraph hereof) or in commencing or continuing any mining operations on such other portion or in winning magnesite therefrom the plaintiff acted with the knowledge or consent of the persons mentioned in paragraph 7 of the amended Statement of Claim and each of them.

10

24. In answer to paragraph 20 of the amended Statement of Claim the said defendants and each of them deny that the plaintiff entered upon any portion of the said land or commenced or continued mining operations thereon or won magnesite therefrom by virtue of the alleged agreement mentioned in paragraph 16 of the amended Statement of Claim either solely or at all or that the persons mentioned in paragraph 7 of the amended Statement of Claim knew that the plaintiff so entered or commenced or continued mining operations on the said land or so won magnesite.

25. In answer to paragraph 21 of the amended Statement of Claim the said defendants and each of them admit that after entering portion of the said land as herein aforesaid the plaintiff until the 14th day of June 1957 paid to Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Margaret Ferguson Caldwell, Lindsay George Regan, Norman Vivian Regan and Logan Hunter Caldwell certain sums of money but deny that the said sums of money were paid by the plaintiff as royalties in respect of magnesite won and delivered from the whole of the said land and do not know and cannot admit that the said payments were made at the rate of ten shillings per ton of magnesite so won and delivered.

30

26. In further answer to paragraph 21 of the amended Statement of Claim the said Defendants and each of them deny that the said Logan Hunter Caldwell received or dealt with the sums of money in the said paragraph referred to or any of them and say that certain sums of money were received by Robert Frank Hughes and Logan Hunter Caldwell on joint account but do not know and cannot admit that either the said Robert Frank Hughes or the said Logan Hunter Caldwell received the said moneys or any of them or dealt with the same for or on behalf of the persons mentioned in paragraph 7 of the amended Statement of Claim.

40

27. In answer to paragraph 22 of the amended Statement of Claim the said defendants and each of them deny that the defendants adopted and ratified the alleged agreement referred to or that they accepted any benefits thereunder.

28. In answer to paragraph 23 of the amended Statement of Claim the said defendants and each of them deny that the persons mentioned in paragraph 7 of the amended Statement of Claim knew that any sums of money received by them from the plaintiff were referable to the alleged agreement referred to either solely or at all.

29. In answer to paragraph 24 of the amended Statement of Claim the said defendants and each of them do not know and cannot admit that shortly before the 14th day of June 1957 or at any time the plaintiff represented to the said Logan Hunter Caldwell that the yield of magnesite from the said mining operations was such that the royalties prescribed by the alleged agreement referred to and set out in paragraph 16 of the amended Statement of Claim made the said operations uneconomic for the plaintiff or that the same was the fact or that it was agreed by and between the plaintiff of the one part and the said Logan Hunter Caldwell of the other part that in consideration that the plaintiff should remain on the land mentioned and described in the alleged agreement set out in paragraph 16 of the amended Statement of Claim and would continue to conduct mining operations thereon the said alleged agreement set out in paragraph 16 of the amended Statement of Claim or any agreement should be varied by substituting for the said royalties of ten shillings a royalty at the rate of six shillings per ton of magnesite won and delivered and deny that in so doing the said Logan Hunter Caldwell acted on behalf of the persons mentioned in paragraph 7 of the amended Statement of Claim.

30. In answer to paragraph 25 of the amended Statement of Claim the said defendants and each of them do not know and cannot admit that any variation of the alleged agreement referred to and set out in paragraph 16 of the amended Statement of Claim or of any agreement was embodied in a written agreement or that any written agreement in the terms alleged was executed by Thomas Ernest Buckley or that in so doing the said Thomas Ernest Buckley acted on behalf of the plaintiff and deny that in executing the same the said Logan Hunter Caldwell acted on behalf of the persons mentioned in paragraph 7 of the amended Statement of Claim.

31. In answer to paragraph 26 of the Amended Statement of Claim the said defendants and each of them admit that after the 14th day of June 1957 the plaintiff continued to conduct mining operations on portion of the land referred to in the said paragraph but deny that the plaintiff discovered further deposits of magnesite upon the said land or any portion thereof. Save as aforesaid the said defendants and each of them deny that after the execution of the document set out in paragraph 25 of the amended Statement of Claim the plaintiff continued to conduct mining operations on the land mentioned and described in such document.

32. In answer to paragraph 27 of the amended Statement of

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Claim the said defendants and each of them deny that in continuing to conduct mining operations on any portion of the said land (other than that referred to in paragraph 22 hereof) or in winning magnesite from such other portion the plaintiff acted with the knowledge or consent of the persons mentioned in paragraph 7 of the amended Statement of Claim and each of them.

33. In answer to paragraph 28 of the amended Statement of Claim the said defendants and each of them deny that the plaintiff continued to conduct mining operations or to win magnesite from any portion of the land in the said paragraph referred to by virtue of the alleged agreement mentioned in paragraph 25 of the amended Statement of Claim either solely or at all or that the persons mentioned in paragraph 7 of the amended Statement of Claim knew that the plaintiff so continued to conduct mining operations or to win magnesite from the said land or consent thereto.

34. In answer to paragraph 29 of the amended Statement of Claim the said defendants and each of them admit that after the 14th day of June 1957 the plaintiff paid to Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Margaret Ferguson Caldwell, Lindsay George Regan, Norman Vivian Regan and Logan Hunter Caldwell certain sums of money but deny that the said sums of money were paid by the plaintiff as royalties in respect of magnesite won and delivered by the plaintiff from the whole of the land mentioned and described in the alleged agreement referred to and set out in paragraph 25 of the amended Statement of Claim and do not know and cannot admit that the said payments were made at the rate of six shillings per ton of magnesite so won and delivered.

35. In further answer to paragraph 29 of the amended Statement of Claim the said defendants and each of them deny that the said Logan Hunter Caldwell received or dealt with the sums of money in the said paragraph referred to or any of them and say that certain sums of money were received by Robert Frank Hughes and Logan Hunter Caldwell on joint account but do not know and cannot admit that either the said Robert Frank Hughes or the said Logan Hunter Caldwell received the said moneys or any of them or dealt with the same for or on behalf of the persons mentioned in paragraph 7 of the amended Statement of Claim.

36. In answer to paragraph 30 of the amended Statement of Claim the said defendants and each of them deny that the persons mentioned in paragraph 7 of the amended Statement of Claim adopted or ratified the alleged agreement referred to or that they accepted benefits thereunder.

37. In answer to paragraph 31 of the amended Statement of

Claim the said defendants and each of them deny that the persons mentioned in paragraph 7 of the amended Statement of Claim knew that any sums of money received by them from the plaintiff were referable to the agreement referred to and set out in paragraph 25 of the amended Statement of Claim either solely or at all.

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38. In answer to paragraph 33 of the amended Statement of Claim the said defendants and each of them deny that in sending the letter in paragraph 32 of the amended Statement of Claim mentioned the persons mentioned in paragraph 7 of the amended Statement of
10 Claim committed a breach of the alleged agreement in paragraph 25 of the amended Statement of Claim set out or of any other agreement between the parties.

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39. In answer to paragraph 34 of the amended Statement of Claim the said defendants and each of them deny that their actions or any of them are wrongful or in breach of any agreement with the plaintiff.

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40. In answer to paragraph 35 of the amended Statement of Claim the said defendants and each of them deny that the plaintiff has performed the terms and conditions of the alleged agreements in
20 the amended Statement of Claim set forth so far as the same require to be performed on its part and do not know and cannot admit that the plaintiff is ready and willing to continue to perform the terms and conditions of the alleged agreement set out in paragraph 25 of the amended Statement of Claim.

41. In answer to paragraph 37 of the amended Statement of Claim the said defendants and each of them do not know and cannot admit that the plaintiff will suffer irreparable loss and damage if ejected from the land described in the alleged agreement set out in paragraph 25 of the amended Statement of Claim.

30 42. In answer to the whole of the amended Statement of Claim the said defendants submit that the plaintiff has no equity entitling it to proceed against the defendants in the equitable jurisdiction of this Honourable Court and that the plaintiff's proper remedy (if any) is at law and the said defendants crave the same benefit from this defence as if they had pleaded or demurred to the amended Statement of Claim.

43. In further answer to the whole of the amended Statement of Claim the said defendants say that the agreements alleged in paragraphs 16 and 25 of the amended Statement of Claim create an interest in land and the said Logan Hunter Caldwell was not authorised
40 in writing by the defendants or any of them to execute the same.

44. In further answer to the whole of the amended Statement of Claim the said defendants say that the agreements alleged in paragraphs 16 and 25 of the amended Statement of Claim are assurances

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of land and the said Logan Hunter Caldwell was not authorised by deed by the persons mentioned in paragraph 7 of the amended Statement of Claim or by any of them to sign seal and deliver the same.

45. In further answer to the whole of the amended Statement of Claim the said defendants say that the agreements alleged in paragraphs 16 and 25 of the amended Statement of Claim are deeds and the said Logan Hunter Caldwell WAS not authorised by deed by the persons mentioned in paragraph 7 of the amended Statement of Claim or any of them to sign seal and deliver the same.

46. In further answer to the whole of the amended Statement of Claim the said defendants say that the alleged agreement set out in paragraph 25 of the amended Statement of Claim is a transfer or assignment of an interest in a lease under the Mining Act 1906 (as amended) or is a sub-lease of the land comprised in such a lease within the meaning of sub-section (1) of section 109 of the said Act and the same has not been submitted within the time and in the manner prescribed thereunder for the concurrence or sanction of the Minister and registration or for registration. 10

47. In further answer to the whole of the amended Statement of Claim the said defendants say that by reason of the provisions of the alleged agreement set out in paragraph 25 of the amended Statement of Claim the defendants will suffer great hardship if the prayers in the amended Statement of Claim are granted. 20

48. In further answer to the whole of the amended Statement of Claim the defendants say that the plaintiff, in inducing the alleged agreement set out in paragraph 25 of the amended Statement of Claim in the manner alleged in paragraph 24 thereof, unfairly concealed the fact that it had made other arrangements to enable it to carry on mining operations on the land described therein at a further margin of profit over and above that at which it had hitherto carried them on and that it intended to commence mining operations on a part of the said land containing rich deposits of magnesite which it had never previously worked. 30

49. In further answer to the whole of the amended Statement of Claim the said defendants say that having regard to the matters alleged in paragraph 48 hereof and to the nature of the said alleged agreement and to the circumstances of the case it would be unfair and oppressive to the defendants for the prayers in the amended Statement of Claim to be granted.

50. In further answer to the whole of the amended Statement of Claim the said defendants say that on or about 16th October 1957 there was sent to the plaintiff on behalf of Robert Frank Hughes and Clarence Vivian Hughes a letter which, inter alia, was in the words and figures following, that is to say: 40

"We act for Messrs. Robert Frank Hughes and Clarence Vivian Hughes, the executors of the will of Joseph Peter Hughes deceased, who are the registered lessees of Private Lands Lease No. 460 under the Mining Act 1906 as amended.

10 "We are instructed that your company has entered upon the lands of the estate of the deceased without authority and has removed large quantities of magnesite therefrom. You are hereby given notice that our clients do not consent to your entry upon the lands which are the subject of the lease and to your removal
 10 of magnesite or any material therefrom. Your action in entering upon the lands is a trespass and we are instructed to give you sixteen (16) days from the date hereof to vacate such lands."

by reason whereof the defendants say that any right of access to the said land or any part thereof for the purpose of mining for or winning magnesite or removing magnesite won from the said land or for any purpose thereby terminated.

51. In further answer to the whole of the amended Statement of Claim the said defendants say that on or about 11th September 1957 there was sent to the plaintiff on behalf of the defendants a letter
 20 which, inter alia, was in the words and figures following, that is to say:

"Your continued mining of the lease after the letter of the 19th August is an open defiance of our clients and an unwarranted removal of mineral in respect of which our clients will file a claim for damages. Furthermore, unless the property is vacated by you immediately we will seek appropriate orders for an injunction and to be put into sole possession of the lease."

and the said defendants further say that on or about 19th November 1957 there was commenced a suit in the Supreme Court of New South Wales in Equity by the said Robert Frank Hughes and Clarence Vivian
 30 Hughes as plaintiffs against the plaintiff as defendant seeking, inter alia, an injunction restraining the plaintiff from entering upon all or any part of the land referred to in the alleged agreement set out in paragraph 25 of the amended Statement of Claim and from working or winning minerals in or upon the said land and an order that the plaintiff remove its mining plant machinery and equipment from the said land and the said defendants say that by reason of the letter referred to in paragraph 32 of the amended Statement of Claim and the said letter of 11th September 1957 mentioned herein and the letter of 16th October 1957 mentioned in paragraph 50 hereof and
 40 the said suit or some one or more of them any right of the plaintiff to have access to the said land or any part thereof for the purpose of mining for or winning magnesite or removing magnesite won from the said land or for any purpose was terminated prior to the institution of this suit.

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52. In further answer to the whole of the amended Statement of Claim the said defendants say that the alleged agreement set out in paragraph 25 of the amended Statement of Claim is void and unenforceable for lack of consideration and that in so far as the same purports to be a deed the said Logan Hunter Caldwell was not authorised by the defendants by deed to execute the same nor have the said defendants ratified the same by deed.

53. In further answer to the whole of the amended Statement of Claim the said defendants say that this Honourable Court ought not grant the plaintiff the relief sought therein or any relief for the reasons 10 that:—

- (a) No consideration passed from the plaintiff to the said defendants for the alleged agreement set out in paragraph 25 of the amended Statement of Claim nor is there otherwise any consideration to support the same;
- (b) The said alleged agreement lacks mutuality.

54. In further answer to the whole of the amended Statement of Claim the said defendants say that the lease referred to in paragraph 8 of the amended Statement of Claim expired by effluxion of time on 2nd September 1957 and the said defendants say that any right of 20 the plaintiff to have access to the land referred to in the alleged agreement set out in paragraph 25 of the amended Statement of Claim or any part thereof for the purpose of mining for or winning magnesite or removing magnesite won from the said land or for any purpose thereupon terminated.

Philip Jeffrey

Counsel for the said Defendants.

NOTE: This Statement of Defence and Counterclaim is filed by Messieurs Marshall, Marks, Dezarnaulds & Jones of 67 Castlereagh Street, Sydney Agents for Messrs. Campbell Omant and Grant of 30 Lynch Street, Young, the Solicitors for the above named Defendants.

No. 5**Statement of Defence of Defendant Steele Hunter Caldwell (as originally filed)**

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No. 5.
Statement of
Defence of
the Defendant
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—
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I, STEELE HUNTER CALDWELL do on my oath say as follows:—

1. I am the Executor named in the last Will and Testament of Logan Hunter Caldwell who died on the 2nd day of January 1959 and of whose said last Will and Testament dated the 21st day of August 1958 Probate was on the 28th day of April 1959 granted to me by this Honourable Court in its Probate Jurisdiction.

2. In answer to paragraph 4 of the amended Statement of Claim I do not know and cannot admit that until the death of Joseph Peter Hughes the partnership mentioned in the said paragraph subsisted and carried on business or that after such last mentioned date the defendants Robert Frank Hughes and Clarence Vivian Hughes upon grant to them of Probate as set out in the said amended Statement of Claim became successors to the said Joseph Peter Hughes in respect of his interest in such partnership.

3. In answer to paragraph 6 of the amended Statement of Claim I do not know and cannot admit that from and after the death of the said Joseph Peter Hughes and until the death of George Wigham Caldwell the defendants Robert Frank Hughes and Clarence Vivian Hughes as executors of the Will of the said Joseph Peter Hughes, the said George Wigham Caldwell, the defendants Robert Frank Hughes, Frederick Charles Hughes and Victor Raymond Hughes and the said Logan Hunter Caldwell carried on in partnership the business mentioned in paragraph 2 of the said amended Statement of Claim or any business under the firm name therein mentioned or under any name or that after the death of the said George Wigham Caldwell the defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan upon grant to them of Probate as set out in the said amended Statement of Claim became successors to the said George Wigham Caldwell in respect of his interest in such last mentioned partnership.

4. In answer to paragraph 7 of the amended Statement of Claim I do not know and cannot admit that after the death of the said George Wigham Caldwell the defendants Robert Frank Hughes and Clarence Vivian Hughes as executors as aforesaid, the defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as executors of the Will of the said George Wigham Caldwell, the defendants Robert Frank Hughes and Frederick Charles Hughes and the said Logan Hunter Caldwell (until the date of his death) carried

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on in partnership or at all the business mentioned in paragraph 2 of the said amended Statement of Claim under the said firm name or otherwise continuously or at all or that there was any partnership constituted by the aforesaid persons or that at the date of the institution of this suit there was any such partnership subsisting.

5. In answer to paragraph 7A of the amended Statement of Claim I do not know and cannot admit that after the death of the said George Wigham Caldwell the defendants Robert Frank Hughes and Clarence Vivian Hughes as executors as aforesaid, the defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman 10 Vivian Regan as executors as aforesaid, the defendants Robert Frank Hughes, Frederick Charles Hughes and Victor Raymond Hughes and the said Logan Hunter Caldwell (until the date of his death) carried on in common under the name "Hughes and Caldwell" or at all a business of (inter alia) mining with a view to profit.

6. In answer to paragraph 10 of the amended Statement of Claim I do not know and cannot admit that the defendants Robert Frank Hughes and Clarence Vivian Hughes as executors as aforesaid were before or have since the 31st day of January 1957 been entitled or now are entitled to possession or to grant possession to other persons 20 of the land mentioned and described in each of the documents set out in paragraphs 16 and 25 respectively of the said amended Statement of Claim or of any part thereof for the purpose of mining and winning minerals from such land or otherwise.

7. In answer to paragraph 11 of the amended Statement of Claim I do not know and cannot admit that the interest of the defendants Robert Frank Hughes and Clarence Vivian Hughes as lessees as set out in the said amended Statement of Claim was at all material times or at any time one of the assets of any partnership constituted by each or any of the persons named in paragraph 7 of the said 30 amended Statement of Claim or was at all material times or at any time treated by each or any of the persons named in such paragraphs as part of the assets of any such partnership and I do not know and cannot admit that certain profits including the alleged royalties in the said amended Statement of Claim thereafter mentioned or any profits have from time to time accrued from or by reason of mining activities carried out on the lands mentioned and described in each of the documents set out in paragraphs 16 and 25 respectively of the said amended Statement of Claim or that any such alleged profits were from time to time after the death of the said George Wigham Caldwell or at any 40 time shared between the persons named in paragraph 7 of the amended Statement of Claim or any of them.

8. In answer to paragraph 11A of the amended Statement of Claim I do not know and cannot admit that the interests of the defendants Robert Frank Hughes and Clarence Vivian Hughes as

lessees as aforesaid were at all material times or at any time treated by each or any of the persons named in paragraph 7 of the said amended Statement of Claim as one of the assets of any business carried on by them as alleged in paragraph 7A of the said amended Statement of Claim or that certain profits (including the alleged royalties in the said amended Statement of Claim thereafter mentioned) or any profits alleged to have from time to time accrued from or by reason of mining activities carried out on the lands mentioned and described in each of the documents set out in paragraphs 16 and 10 25 respectively of the said amended Statement of Claim were from time to time or at any time after the death of the said George Wigham Caldwell shared between the persons mentioned in the said paragraph 7 or any of them.

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9. In answer to paragraph 12 of the amended Statement of Claim I do not know and cannot admit that prior to the 31st day of January 1957 and thereafter until the date of his death or at any time the said Logan Hunter Caldwell acted as managing partner of any partnership carried on by the persons mentioned in paragraph 7 of the said amended Statement of Claim.

20 10. In answer to paragraph 12A of the amended Statement of Claim I do not know and cannot admit that prior to the 31st day of January 1957 and thereafter until the date of his death or at any time the said Logan Hunter Caldwell acted as manager of the business referred to in paragraph 7A of the said amended Statement of Claim or of any business carried on by the persons mentioned in the said paragraph 7A or any of them.

30 11. In answer to paragraph 13 of the amended Statement of Claim I do not know and cannot admit that prior to the 31st day of January 1957 and thereafter until the date of his death or at any time the said Logan Hunter Caldwell acted as managing partner of any partnership carried on by the persons mentioned in paragraph 7 of the said amended Statement of Claim with the knowledge or consent of the defendants herein other than myself this defendant or of any of them or at all.

40 12. In answer to paragraph 13A of the amended Statement of Claim I do not know and cannot admit that prior to the 31st day of January 1957 and thereafter until the date of his death or at any time the said Logan Hunter Caldwell acted as manager of any business carried on by the persons mentioned in the said paragraph 7A of the said amended Statement of Claim with the knowledge or consent of the defendants herein other than myself this defendant or any of them or at all.

13. In answer to paragraph 14 of the amended Statement of Claim I do not know and cannot admit that prior to the 31st day of

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January, 1957, the said Logan Hunter Caldwell received on behalf of any partnership constituted by the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them or at all moneys paid by persons indebted to any such partnership or that any person or persons were indebted to any partnership constituted by the said persons or any of them and I do not know and cannot admit that after the said date or at all the said Logan Hunter Caldwell received moneys paid by persons indebted to any partnership constituted by the said persons or any of them or that the said Logan Hunter Caldwell distributed any moneys to or on behalf of the persons or any of them 10 mentioned in the said paragraph or that the alleged royalties in the said amended Statement of Claim thereafter mentioned were received by the said Logan Hunter Caldwell or distributed by him to or on behalf of the persons mentioned in the said paragraph 7 or any of them.

14. In answer to paragraph 14A of the amended Statement of Claim I do not know and cannot admit that prior to the 31st day of January 1957 or at any time the said Logan Hunter Caldwell received on behalf of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them moneys paid by persons alleged to be indebted to the said persons in the said paragraph mentioned or 20 any of them in respect of transactions entered into by them as mentioned in paragraph 7A of the said amended Statement of Claim or at all and do not know and cannot admit that after such last mentioned date or at any time the said Logan Hunter Caldwell received on behalf of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them moneys paid by persons so indebted to the said persons named in such last mentioned paragraph or any of them or at all and do not know and cannot admit that after such last mentioned date the said Logan Hunter Caldwell received on behalf of the persons mentioned in the said paragraph 7 or any of them the 30 alleged royalties in the said amended Statement of Claim thereafter mentioned or distributed the said royalties to or on behalf of the said persons or any of them or at all.

15. In answer to paragraph 15 of the amended Statement of Claim I do not know and cannot admit that the said Logan Hunter Caldwell with the knowledge or consent of the defendants other than myself this defendant or of any of them received the alleged royalties in the said paragraph mentioned or any part thereof or distributed the said royalties or any part thereof to or on behalf of the defendants other than myself this defendant or any of them. 40

16. In answer to paragraph 16 of the amended Statement of Claim I do not know and cannot admit that on or about the 31st day of January 1957 or at any time an agreement in writing was made between the plaintiff of the one part and the said Logan Hunter Caldwell

and the defendants other than myself this defendant of the other part in or to the effect set out in the said paragraph.

17. In answer to paragraph 17 of the amended Statement of Claim I do not know and cannot admit that any document in or to the effect set out in paragraph 16 of the said amended Statement of Claim was executed by Thomas Michael O'Neil and Logan Hunter Caldwell or either of them or that in so doing the said Thomas Michael O'Neil or the said Logan Hunter Caldwell acted on behalf of the Plaintiff or the persons mentioned in paragraph 7 of the said amended
10 Statement of Claim or any of them.

18. In answer to paragraph 18 of the amended Statement of Claim I do not know and cannot admit that after the making of the agreement as alleged in paragraph 16 of the said amended Statement of Claim the plaintiff entered upon the land mentioned and described therein or any part of the said land or commenced or continued mining operations for the purpose of winning or did win magnesite from the said land.

19. In answer to paragraph 19 of the amended Statement of Claim I do not know and cannot admit that in entering as alleged
20 upon the said land or any portion thereof or in commencing or continuing as alleged any mining operations thereon or in winning as alleged any magnesite therefrom the plaintiff acted with the knowledge or consent of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them.

20. In answer to paragraph 20 of the amended Statement of Claim I do not know and cannot admit that in entering as alleged upon the said land or any portion thereof or in commencing or continuing as alleged any mining operations thereon or in winning as alleged any magnesite therefrom the plaintiff so acted or so commenced or con-
30 tinued any mining operations or so won any magnesite therefrom by virtue of the alleged agreement as mentioned in paragraph 16 of the said amended Statement of Claim solely or at all or with the knowledge of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them.

21. In answer to paragraph 21 of the amended Statement of Claim I do not know and cannot admit that after entering as alleged upon the said land as aforesaid or at any time the plaintiff paid to the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them certain sum or sums of money as royalties
40 in respect of magnesite won and delivered by the plaintiff from the land mentioned and described in the alleged agreement mentioned in paragraph 16 of the said amended Statement of Claim or at all and do not know and cannot admit that such sum or sums of money were received or dealt with by the said Logan Hunter Caldwell for or on

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behalf of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them or at all or was or were distributed by the said Logan Hunter Caldwell among the said persons or any of them or at all or that such alleged payment or payments was or were made at the rate of Ten shillings (10/-d.) per ton of magnesite won and delivered.

22. In answer to paragraph 22 of the amended Statement of Claim I do not know and cannot admit that each or any of the persons mentioned in paragraph 7 of the said amended Statement of Claim adopted or ratified the alleged agreement therein mentioned or that each or any of the said persons accepted any benefits thereunder. 10

23. In answer to paragraph 23 of the amended Statement of Claim I do not know and cannot admit that the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them knew that any sum or sums of money received by them as alleged from the plaintiff were referable to the alleged agreement therein mentioned solely or at all.

24. In answer to paragraph 24 of the amended Statement of Claim I do not know and cannot admit that shortly before the 14th day of June 1957 or at any time the plaintiff represented to the said Logan Hunter Caldwell that the yield of magnesite from the said mining operations was such that the royalties prescribed in the alleged agreement referred to and set out in paragraph 16 of the said amended Statement of Claim made the said operations uneconomic to the plaintiff or that the same was the fact and I do not know and cannot admit that it was agreed by and between the plaintiff of the one part and the said Logan Hunter Caldwell of the other part that in consideration that the plaintiff would remain on the land mentioned and described in the alleged agreement set out in paragraph 16 of the said amended Statement of Claim and would continue to conduct mining operations thereon the said alleged agreement as set out in paragraph 16 of the said amended Statement of Claim or any agreement should be varied by substituting for the said royalties of Ten shillings (10/-d.) a royalty at the rate of Six shillings (6/-d.) per ton on magnesite won and delivered and I do not know and cannot admit that in doing as so alleged the said Logan Hunter Caldwell acted on behalf of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them. 20 30

25. In answer to paragraph 25 of the amended Statement of Claim I do not know and cannot admit that the alleged or any variation of the alleged agreement referred to and set out in paragraph 16 of the said amended Statement of Claim or of any agreement was embodied in a written agreement or that any written agreement in the terms alleged in the said paragraph was executed by Thomas Ernest Buckley on behalf of the plaintiff or at all or by the said Logan 40

Hunter Caldwell on behalf of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them or at all.

26. In answer to paragraph 26 of the amended Statement of Claim I do not know and cannot admit that after the execution of the document as alleged in paragraph 25 of the said amended Statement of Claim or at any time the plaintiff continued to conduct mining operations on the land mentioned and described in such document or any portion thereof or discovered further or any deposits of magnesite upon the said land or any portion thereof.

10 27. In answer to paragraph 27 of the amended Statement of Claim I do not know and cannot admit that in continuing as alleged to conduct mining operations and to win magnesite from such land the plaintiff acted with the knowledge or consent of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them.

28. In answer to paragraph 28 of the amended Statement of Claim I do not know and cannot admit that in continuing as alleged to conduct mining operations and to win magnesite from such land the plaintiff so continued by virtue of the alleged written agreement 20 referred to and set out in paragraph 25 of the said amended Statement of Claim solely or at all or that the plaintiff so continued to the knowledge or consent of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them.

29. In answer to paragraph 29 of the amended Statement of Claim I do not know and cannot admit that after the 14th day of June 1957 the plaintiff paid to the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them certain sum or sums of money as royalties in respect of magnesite won or delivered by the plaintiff from the land mentioned and described in the alleged 30 agreement referred to in the said paragraph or any portion thereof or at all and do not know and cannot admit that any such sum or sums of money were received or dealt with by the said Logan Hunter Caldwell for or on behalf of the said persons or any of them or at all or that any such sum or sums of money were distributed by the said Logan Hunter Caldwell among the said persons or any of them or at all or that any such payments were made at the rate of Six shillings (6/-d.) per ton of magnesite won or delivered or otherwise.

30. In answer to paragraph 30 of the amended Statement of Claim I do not know and cannot admit that the persons mentioned in 40 paragraph 7 of the said amended Statement of Claim or any of them adopted or ratified the alleged agreement mentioned in the said paragraph or that they or any of them accepted benefits thereunder.

31. In answer to paragraph 31 of the amended Statement of Claim I do not know and cannot admit that the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them

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knew that any such alleged benefits were referable to the alleged agreement set out in paragraph 25 of the said amended Statement of Claim either solely or at all.

32. In answer to paragraph 33 of the amended Statement of Claim I do not know and cannot admit that in writing and sending the letter set out in paragraph 32 of the said amended Statement of Claim by their agents as therein mentioned the persons mentioned in paragraph 7 of the said amended Statement of Claim committed a breach of the agreement alleged in paragraph 25 of the said amended Statement of Claim or of any agreement. 10

33. In answer to paragraph 34 of the amended Statement of Claim I do not know and cannot admit that the actions of the defendants or any of them are wrongful or in breach of any agreement with the plaintiff.

34. In answer to paragraph 35 of the amended Statement of Claim I do not know and cannot admit that the plaintiff has performed the terms and conditions of the agreements alleged in the amended Statement of Claim so far as the same require to be performed on its part and do not know and cannot admit that the plaintiff is ready and willing to continue to perform the terms and conditions of the alleged 20 agreement set out in paragraph 25 of the said amended Statement of Claim.

35. In answer to paragraph 37 of the amended Statement of Claim I do not know and cannot admit that the plaintiff will suffer irreparable loss and damage if ejected from the land mentioned and described in the alleged agreement set out in paragraph 25 of the said amended Statement of Claim.

36. In answer to the whole of the amended Statement of Claim I submit that the plaintiff has no equity entitling it to proceed against the defendants in the Equitable Jurisdiction of this Honourable Court 30 and I crave the same benefit from this defence as if I had pleaded or demurred to the said amended Statement of Claim.

37. In further answer to the whole of the amended Statement of Claim I say that by reason of the provisions of the alleged agreement set out in paragraph 25 of the said amended Statement of Claim the defendants will suffer great hardship if the prayers in the said amended Statement of Claim are granted.

(signed) John O'Brien
Counsel for the Defendant Steele
Hunter Caldwell.

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NOTE: This Statement of Defence is filed by Messieurs McLeod, White, McKeon & Sons of 11c Castlereagh Street, Sydney, Agents for Messieurs Gordon, Garling & Giugni of Young, Solicitors for the abovenamed Defendant.

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**Statement of Defence of Defendant Steele Hunter Caldwell
(as amended)**

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I, STEELE HUNTER CALDWELL do on my oath say as follows:—

1. I am the Executor named in the last Will and Testament of Logan Hunter Caldwell who died on the 2nd day of January 1959 and of whose said last Will and Testament dated the 21st day of August 1958 Probate was on the 28th day of April 1959 granted to me by this Honourable Court in its Probate Jurisdiction.

2. In answer to paragraph 4 of the amended Statement of Claim I do not know and cannot admit that until the death of Joseph Peter Hughes the partnership mentioned in the said paragraph subsisted and carried on business or that after such last mentioned date the defendants Robert Frank Hughes and Clarence Vivian Hughes upon grant to them of Probate as set out in the said amended Statement of Claim became successors to the said Joseph Peter Hughes in respect of his interest in such partnership.

3. In answer to paragraph 6 of the amended Statement of Claim I do not know and cannot admit that from and after the death of the said Joseph Peter Hughes and until the death of George Wigham Caldwell the defendants Robert Frank Hughes and Clarence Vivian Hughes as executors of the Will of the said Joseph Peter Hughes, the said George Wigham Caldwell, the defendants Robert Frank Hughes, Frederick Charles Hughes and Victor Raymond Hughes and the said Logan Hunter Caldwell carried on in partnership the business mentioned in paragraph 2 of the said amended Statement of Claim or any business under the firm name therein mentioned or under any name or that after the death of the said George Wigham Caldwell the defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan upon grant to them of Probate as set out in the said amended Statement of Claim became successors to the said George Wigham Caldwell in respect of his interest in such last mentioned partnership.

3A. In answer to paragraph 6A of the amended Statement of Claim I do not know and cannot admit that from and after the death of the said Joseph Peter Hughes the business carried on until his death by the partnership mentioned in paragraph 4 of the said amended Statement of Claim was until the death of George Wigham Caldwell carried on by a new partnership constituted by and consisting of Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Logan Hunter Caldwell and George

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Wigham Caldwell or any of them or at all. I further say that I do not know and cannot admit that the profits of such alleged business were shared equally between such alleged partners or any of them or at all.

4. In answer to paragraph 7 of the amended Statement of Claim I do not know and cannot admit that after the death of the said George Wigham Caldwell the defendants Robert Frank Hughes and Clarence Vivian Hughes as executors as aforesaid, the defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as executors of the Will of the said George Wigham Caldwell, the defendants Robert Frank Hughes and Frederick Charles Hughes and 10 the said Logan Hunter Caldwell (until the date of his death) carried on in partnership or at all the business mentioned in paragraph 2 of the said amended Statement of Claim under the said firm name or otherwise continuously or at all or that there was any partnership constituted by the aforesaid persons or that at the date of the institution of this suit there was any such partnership subsisting.

4A. In answer to paragraph 7C of the amended Statement of Claim I do not know and cannot admit that after the death of the said George Wigham Caldwell, Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Logan 20 Hunter Caldwell (until the date of his death) and Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as executors of the Will of the said George Wigham Caldwell or any of them carried on in partnership the business mentioned in paragraph 2 of the said amended Statement of Claim under the said firm name or otherwise continuously or at all or that there was any partnership constituted by the aforesaid persons or that at the date of the institution of this suit there was any such partnership subsisting. I further say that I do not know and cannot admit that the profits of such alleged partnership were from time to time or at any time divided into 30 six equal shares or distributed to the persons above mentioned or any of them or at all.

4B. In answer to paragraph 7D of the amended Statement of Claim I do not know and cannot admit that after the death of the said George Wigham Caldwell, Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Logan Hunter Caldwell (until his death) and Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as Executors of the Will of the said George Wigham Caldwell carried on in common under the name of "Hughes & Caldwell" or at all a business of (inter 40 alia) mining with a view to profit. I further say that I do not know and cannot admit that the profits of such alleged business were from time to time or any time divided into six equal shares or distributed to the persons above mentioned or any of them or at all.

5. In answer to paragraph 7A of the amended Statement of

Claim I do not know and cannot admit that after the death of the said George Wigham Caldwell the defendants Robert Frank Hughes and Clarence Vivian Hughes as executors as aforesaid, the defendants Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan as executors as aforesaid, the defendants Robert Frank Hughes, Frederick Charles Hughes and Victor Raymond Hughes and the said Logan Hunter Caldwell (until the date of his death) carried on in common under the name "Hughes and Caldwell" or at all a business of (inter alia) mining with a view to profit.

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10 6. In answer to paragraph 10 of the amended Statement of Claim I do not know and cannot admit that the defendants Robert Frank Hughes and Clarence Vivian Hughes as executors as aforesaid were before or have since the 31st day of January 1957 been entitled or now are entitled to possession or to grant possession to other persons of the land mentioned and described in each of the documents set out in paragraphs 16 and 25 respectively of the said amended Statement of Claim or of any part thereof for the purpose of mining and winning minerals from such land or otherwise.

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20 7. In answer to paragraph 11 of the amended Statement of Claim I do not know and cannot admit that the interest of the defendants Robert Frank Hughes and Clarence Vivian Hughes as lessees as set out in the said amended Statement of Claim was at all material times or at any time one of the assets of any partnership constituted by each or any of the persons named in paragraph 7 of the said amended Statement of Claim or was at all material times or at any time treated by each or any of the persons named in such paragraphs as part of the assets of any such partnership and I do not know and cannot admit that certain profits including the alleged royalties in the said amended Statement of Claim thereafter mentioned or any profits have from
30 time to time accrued from or by reason of mining activities carried out on the lands mentioned and described in each of the documents set out in paragraphs 16 and 25 respectively of the said amended Statement of Claim or that any such alleged profits were from time to time after the death of the said George Wigham Caldwell or at any time shared between the persons named in paragraph 7 of the amended Statement of Claim or any of them.

40 8. In answer to paragraph 11A of the amended Statement of Claim I do not know and cannot admit that the interests of the defendants Robert Frank Hughes and Clarence Vivian Hughes as lessees as aforesaid were at all material times or at any time treated by each or any of the persons named in paragraph 7 of the said amended Statement of Claim as one of the assets of any business carried on by them as alleged in paragraph 7A of the said amended Statement of Claim or that certain profits (including the alleged royalties in the said amended Statement of Claim thereafter men-

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tioned) or any profits alleged to have from time to time accrued from or by reason of mining activities carried out on the lands mentioned and described in each of the documents set out in paragraphs 16 and 25 respectively of the said amended Statement of Claim were from time to time or at any time after the death of the said George Wigham Caldwell shared between the persons mentioned in the said paragraph 7 or any of them.

9. In answer to paragraph 12 of the amended Statement of Claim I do not know and cannot admit that prior to the 31st day of January 1957 and thereafter until the date of his death or at any time 10 the said Logan Hunter Caldwell acted as managing partner of any partnership carried on by the persons mentioned in paragraph 7 of the said amended Statement of Claim.

10. In answer to paragraph 12A of the amended Statement of Claim I do not know and cannot admit that prior to the 31st day of January 1957 and thereafter until the date of his death or at any time the said Logan Hunter Caldwell acted as manager of the business referred to in paragraph 7A of the said amended Statement of Claim or of any business carried on by the persons mentioned in the said paragraph 7A or any of them. 20

11. In answer to paragraph 13 of the amended Statement of Claim I do not know and cannot admit that prior to the 31st day of January 1957 and thereafter until the date of his death or at any time the said Logan Hunter Caldwell acted as managing partner of any partnership carried on by the persons mentioned in paragraph 7 of the said amended Statement of Claim with the knowledge or consent of the defendants herein other than myself this defendant or of any of them or at all.

12. In answer to paragraph 13A of the amended Statement of Claim I do not know and cannot admit that prior to the 31st day of 30 January 1957 and thereafter until the date of his death or at any time the said Logan Hunter Caldwell acted as manager of any business carried on by the persons mentioned in the said paragraph 7A of the said amended Statement of Claim with the knowledge or consent of the defendants herein other than myself this defendant or any of them or at all.

13. In answer to paragraph 14 of the amended Statement of Claim I do not know and cannot admit that prior to the 31st day of January, 1957 the said Logan Hunter Caldwell received on behalf of any partnership constituted by the persons mentioned in paragraph 40 7 of the said amended Statement of Claim or any of them or at all moneys paid by persons indebted to any such partnership or that any person or persons were indebted to any partnership constituted by the said persons or any of them and I do not know and cannot admit that

after the said date or at all the said Logan Hunter Caldwell received moneys paid by persons indebted to any partnership constituted by the said persons or any of them or that the said Logan Hunter Caldwell distributed any moneys to or on behalf of the persons or any of them mentioned in the said paragraph or that the alleged royalties in the said amended Statement of Claim thereafter mentioned were received by the said Logan Hunter Caldwell or distributed by him to or on behalf of the persons mentioned in the said paragraph 7 or any of them.

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14. In answer to paragraph 14A of the amended Statement of
10 Claim I do not know and cannot admit that prior to the 31st day of
January 1957 or at any time the said Logan Hunter Caldwell received
on behalf of the persons mentioned in paragraph 7 of the said amended
Statement of Claim or any of them moneys paid by persons alleged
to be indebted to the said persons in the said paragraph mentioned or
any of them in respect of transactions entered into by them as men-
tioned in paragraph 7A of the said amended Statement of Claim or
at all and do not know and cannot admit that after such last mentioned
date or at any time the said Logan Hunter Caldwell received on behalf
of the persons mentioned in paragraph 7 of the said amended Statement
20 of Claim or any of them moneys paid by persons so indebted to the
said persons named in such last mentioned paragraph or any of them
or at all and do not know and cannot admit that after such last
mentioned date the said Logan Hunter Caldwell received on behalf of
the persons mentioned in the said paragraph 7 or any of them the
alleged royalties in the said amended Statement of Claim thereafter
mentioned or distributed the said royalties to or on behalf of the said
persons or any of them or at all.

15. In answer to paragraph 15 of the amended Statement of
Claim I do not know and cannot admit that the said Logan Hunter
30 Caldwell with the knowledge or consent of the defendants other than
myself this defendant or of any of them received the alleged royalties
in the said paragraph mentioned or any part thereof or distributed the
said royalties or any part thereof to or on behalf of the defendants
other than myself this defendant or any of them.

16. In answer to paragraph 16 of the amended Statement of
Claim I do not know and cannot admit that on or about the 31st day
of January 1957 or at any time an agreement in writing was made
between the plaintiff of the one part and the said Logan Hunter
Caldwell and the defendants other than myself this defendant of the
40 other part in or to the effect set out in the said paragraph.

17. In answer to paragraph 17 of the amended Statement of
Claim I do not know and cannot admit that any document in or to
the effect set out in paragraph 16 of the said amended Statement of
Claim was executed by Thomas Michael O'Neil and Logan Hunter
Caldwell or either of them or that in so doing the said Thomas Michael

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O'Neil or the said Logan Hunter Caldwell acted on behalf of the plaintiff or the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them.

18. In answer to paragraph 18 of the amended Statement of Claim I do not know and cannot admit that after the making of the agreement as alleged in paragraph 16 of the said amended Statement of Claim the plaintiff entered upon the land mentioned and described therein or any part of the said land or commenced or continued mining operations for the purpose of winning or did win magnesite from the said land.

10

19. In answer to paragraph 19 of the amended Statement of Claim I do not know and cannot admit that in entering as alleged upon the said land or any portion thereof or in commencing or continuing as alleged any mining operations thereon or in winning as alleged any magnesite therefrom the plaintiff acted with the knowledge or consent of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them.

20. In answer to paragraph 20 of the amended Statement of Claim I do not know and cannot admit that in entering as alleged upon the said land or any portion thereof or in commencing or continuing as alleged any mining operations thereon or in winning as alleged any magnesite therefrom the plaintiff so acted or so commenced or continued any mining operations or so won any magnesite therefrom by virtue of the alleged agreement as mentioned in paragraph 16 of the said amended Statement of Claim solely or at all or with the knowledge of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them.

21. In answer to paragraph 21 of the amended Statement of Claim I do not know and cannot admit that after entering as alleged upon the said land as aforesaid or at any time the plaintiff paid to the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them certain sum or sums of money as royalties in respect of magnesite won and delivered by the plaintiff from the land mentioned and described in the alleged agreement mentioned in paragraph 16 of the said amended Statement of Claim or at all and do not know and cannot admit that such sum or sums of money were received or dealt with by the said Logan Hunter Caldwell for or on behalf of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them or at all or was or were distributed by the said Logan Hunter Caldwell among the said persons or any of them or at all or that such alleged payment or payments was or were made at the rate of Ten shillings (10/-d.) per ton of magnesite won and delivered.

22. In answer to paragraph 22 of the amended Statement of

Claim I do not know and cannot admit that each or any of the persons mentioned in paragraph 7 of the said amended Statement of Claim adopted or ratified the alleged agreement therein mentioned or that each or any of the said persons accepted any benefits thereunder.

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23. In answer to paragraph 23 of the amended Statement of Claim I do not know and cannot admit that the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them knew that any sum or sums of money received by them as alleged from the plaintiff were referable to the alleged agreement therein mentioned
10 solely or at all.

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24. In answer to paragraph 24 of the amended Statement of Claim I do not know and cannot admit that shortly before the 14th day of June 1957 or at any time the plaintiff represented to the said Logan Hunter Caldwell that the yield of magnesite from the said mining operations was such that the royalties prescribed in the alleged agreement referred to and set out in paragraph 16 of the said amended Statement of Claim made the said operations uneconomic to the plaintiff or that the same was the fact and I do not know and cannot admit that it was agreed by and between the plaintiff of the one part
20 and the said Logan Hunter Caldwell of the other part that in consideration that the plaintiff would remain on the land mentioned and described in the alleged agreement set out in paragraph 16 of the said amended Statement of Claim and would continue to conduct mining operations thereon the said alleged agreement as set out in paragraph 16 of the said amended Statement of Claim or any agreement should be varied by substituting for the said royalties of ten shillings (10/-d.) a royalty at the rate of six shillings (6/-d.) per ton on magnesite won and delivered and I do not know and cannot admit that in doing as so alleged the said Logan Hunter Caldwell acted on behalf of the
30 persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them.

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25. In answer to paragraph 25 of the amended Statement of Claim I do not know and cannot admit that the alleged or any variation of the alleged agreement referred to and set out in paragraph 16 of the said amended Statement of Claim or of any agreement was embodied in a written agreement or that any written agreement in the terms alleged in the said paragraph was executed by Thomas Ernest Buckley on behalf of the plaintiff or at all or by the said Logan Hunter Caldwell on behalf of the persons mentioned in paragraph 7 of the
40 said amended Statement of Claim or any of them or at all.

26. In answer to paragraph 26 of the amended Statement of Claim I do not know and cannot admit that after the execution of the document as alleged in paragraph 25 of the said amended Statement of Claim or at any time the plaintiff continued to conduct mining operations on the land mentioned and described in such document or

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any portion thereof or discovered further or any deposits of magnesite upon the said land or any portion thereof.

27. In answer to paragraph 27 of the amended Statement of Claim I do not know and cannot admit that in continuing as alleged to conduct mining operations and to win magnesite from such land the plaintiff acted with the knowledge or consent of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them.

28. In answer to paragraph 28 of the amended Statement of Claim I do not know and cannot admit that in continuing as alleged to conduct mining operations and to win magnesite from such land the plaintiff so continued by virtue of the alleged written agreement referred to and set out in paragraph 25 of the said amended Statement of Claim solely or at all or that the Plaintiff so continued to the knowledge or consent of the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them. 10

29. In answer to paragraph 29 of the amended Statement of Claim I do not know and cannot admit that after the 14th day of June 1957 the plaintiff paid to the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them certain sum or sums of money as royalties in respect of magnesite won or delivered by the plaintiff from the land mentioned and described in the alleged agreement referred to in the said paragraph or any portion thereof or at all and do not know and cannot admit that any such sum or sums of money were received or dealt with by the said Logan Hunter Caldwell for or on behalf of the said persons or any of them or at all or that any such sum or sums of money were distributed by the said Logan Hunter Caldwell among the said persons or any of them or at all or that any such payments were made at the rate of Six shillings (6/-d.) per ton of magnesite won or delivered or otherwise. 20

30. In answer to paragraph 30 of the amended Statement of Claim I do not know and cannot admit that the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them adopted or ratified the alleged agreement mentioned in the said paragraph or that they or any of them accepted benefits thereunder. 30

31. In answer to paragraph 31 of the amended Statement of Claim I do not know and cannot admit that the persons mentioned in paragraph 7 of the said amended Statement of Claim or any of them knew that any such alleged benefits were referable to the alleged agreement set out in paragraph 25 of the said amended Statement of Claim either solely or at all. 40

32. In answer to paragraph 33 of the amended Statement of Claim I do not know and cannot admit that in writing and sending the letter set out in paragraph 32 of the said amended Statement of Claim by their agents as therein mentioned the persons mentioned in

paragraph 7 of the said amended Statement of Claim committed a breach of the agreement alleged in paragraph 25 of the said amended Statement of Claim or of any agreement.

33. In answer to paragraph 34 of the amended Statement of Claim I do not know and cannot admit that the actions of the defendants or any of them are wrongful or in breach of any agreement with the plaintiff.

34. In answer to paragraph 35 of the amended Statement of Claim I do not know and cannot admit that the plaintiff has performed
 10 the terms and conditions of the agreements alleged in the amended Statement of Claim so far as the same require to be performed on its part and do not know and cannot admit that the plaintiff is ready and willing to continue to perform the terms and conditions of the alleged agreement set out in paragraph 25 of the said amended Statement of Claim.

35. In answer to paragraph 37 of the amended Statement of Claim I do not know and cannot admit that the plaintiff will suffer irreparable loss and damage if ejected from the land mentioned and described in the alleged agreement set out in paragraph 25 of the
 20 said amended Statement of Claim.

36. In answer to the whole of the amended Statement of Claim I submit that the plaintiff has no equity entitling it to proceed against the defendants in the Equitable Jurisdiction of this Honourable Court and I crave the same benefit from this defence as if I had pleaded or demurred to the said amended Statement of Claim.

37. In further answer to the whole of the amended Statement of Claim I say that by reason of the provisions of the alleged agreement set out in paragraph 25 of the said amended Statement of Claim the defendants will suffer great hardship if the prayers in the said amended
 30 Statement of Claim are granted.

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.....
 Counsel for the defendant Steele
 Hunter Caldwell.

NOTE: This Statement of Defence is filed by Messieurs McLeod, White, McKeon & Sons of 11c Castlereagh Street, Sydney, Agents for: Messieurs Gordon, Garling & Giugni of Young, Solicitors for the abovenamed defendant.

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**Replication to the re-amended Statement of Defence of the Defendants
other than Steele Hunter Caldwell**

No. 7.
Replication to
the re-amended
Statement of
Defence of the
Defendants other
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1. The plaintiff accepts the statement of the defendants Robert Frank Hughes, Clarence Vivian Hughes, Victor Raymond Hughes, Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan and of Frederick Charles Hughes (now deceased) contained in the first sentence of paragraph 8 and the first sentence of paragraph 10 of the re-amended Statement of Defence.

2. The plaintiff accepts the admissions contained in paragraphs 10 3B, 5B, and 5D of the re-amended Statement of Defence.

3. The plaintiff accepts the admissions of the defendants Robert Frank Hughes, Clarence Vivian Hughes, Victor Raymond Hughes, Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan and of Frederick Charles Hughes (now deceased) contained in paragraphs 15, 16, 17, 18, 25, 31 and 34 of the re-amended Statement of Defence.

4. Save as aforesaid the plaintiff joins issue with the defendants (other than the defendant Steele Hunter Caldwell) upon the re-amended Statement of Defence.

T. E. F. Hughes 20
Counsel for the Plaintiff.

No. 8

**Replication to the amended Statement of Defence of the Defendant
Steele Hunter Caldwell**

The plaintiff joins issue with the defendant Steele Hunter Caldwell upon his amended Statement of Defence herein.

T. E. F. Hughes
Counsel for the Plaintiff.

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No. 9

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Tuesday, 14th February, 1961

Australian Blue Metal Limited v. Hughes & Ors

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before
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MR LARKINS, Q.C., with MR T. HUGHES appeared for the plaintiff.
MR ST. JOHN, Q.C., with MR HOLLAND and MR JEFFREY
appeared for all defendants except the last-named defendant.

MR ISAACS, Q.C., with MR O'BRIEN and MR J. C. SMYTH
appeared for the last-named defendant.

10

Mr LARKINS: At some stage we would like leave to file in Court our replication to the statement of defence of Steele Hunter Caldwell which was only filed on Friday last.

At the end of last month the defendant Steele Hunter Caldwell gave notice of intention to seek leave to amend further his amended statement of defence by adding certain paragraphs. That application is not opposed. It may be appropriate if application was made in pursuance of that notice and the matter dealt with now.

Mr ST. JOHN: I have here a typescript of the proposed amendments.

HIS HONOR: By consent, I allow amendments of the statement of defence of defendants other than the last-named defendant in the manner set forth in the typescript of proposed amendments, initialled by me and placed with the papers.

ARTHUR BRUCE WALKER

On subpoena duces tecum

Mr ST. JOHN: Q. What is your full name? A. Arthur Bruce Walker.

Q. You are an officer of the Department of Mines? A. Yes.

Q. Do you produce on subpoena duces tecum certain documents?

A. Yes. 30

Q. Did you receive two subpoenas? A. Yes.

Q. Do the packages you produce include Departmental files relating to P.L.L. 460? A. Yes, they are included with the others.

Q. Including all royalties, statements and returns? A. Yes.

Q. All assessments issued thereon? A. Yes.

Q. And all correspondence relating thereto? A. Yes.

(Allowed to leave.)

Exhibit A—Private Lands Lease No. 460, dated 2nd September 1937 from His Majesty The King to Joseph Peter Hughes.)

Mr LARKINS: Also I tender the endorsement thereon, which is the 40 registration of transmission of the 27th February, 1947.

HIS HONOR: That is included as part of the document.

(Exhibit B—Renewal of that lease from Her Majesty The Queen to Robert Frank Hughes and Clarence Vivian Hughes, dated 31st July 1958.)

Mr LARKINS: I ask leave to read the amended statement of claim.
(Mr Hughes reads amended statement of claim.)

JOHN PATTERSON
On subpoena duces tecum

Mr ST. JOHN: Q. What is your full name? A. John Patterson.
10 I am a clerk of the B.H.P. Co. Limited.

Q. Do you produce certain documents and the subpoena? A.
Yes.

HIS HONOR: Q. Are they all the documents in the subpoena?
A. Yes.

(Allowed to leave.)

HIS HONOR: I will allow counsel to inspect these documents. Is there any objection?

(Counsel signify that there is no objection to the inspection.)

HIS HONOR: All counsel may inspect the documents produced
20 by the B.H.P.

(Mr Hughes continues reading amended statement of claim.)

(Exhibit C—Letter dated 19th August 1957 from Tester Porter & Co. to plaintiff company.)

(Statement of Defence read by Mr Jeffrey.)

(Mr Isaacs addresses the Court on his statement of defence.)

(Mr Hughes reads replication.)

(Short adjournment.)

ON RESUMPTION:

HIS HONOR: Would you indicate the main defences, Mr St. John?
30 Mr ST. JOHN: The first and principal submission we make is that these agreements of January and June 1957 were, on their true construction terminable at will, and were in fact duly terminated.

The second thing is we will submit Logan Hunter Caldwell had no authority to sign or to execute this deed on behalf of his co-proprietors and we do in fact dispute that a partnership existed at the relevant time.

Thirdly, we would submit the agreement in any event was defective in point of form, and that in order to be binding on his co-partners it should be in the form of a deed executed by them or on
40 their authority for two reasons: one was that this agreement of June lacked consideration and simply produced a royalty without making any other variation of the terms, and therefore needed to be in the form of a deed.

As regards both of them we would say on one view at any rate

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they would be interests in land which, in order to be binding, needed to be in the form of a deed—ss. 23 (e) and 23 (c) of the Conveyancing Act and it would be our submission that a deed binding on the coproprietors can only be executed by Logan Hunter Caldwell if he had been authorised by deed or it had been ratified by deed.

Fourthly, that the agreement is not such as would be enforced by the Equity Court for several reasons, to summarise: lack of consideration; want of mutuality; and the submission that in the circumstances it would be oppressive. See our statement of defence and the most recent amendment.

10

(Exhibit D—Original statement of claim and original statement of defence.)

HIS HONOR: I note that I do not consider it necessary to tender the original statement of claim and the original statement of defence.

(Mr Hughes addresses the Court in regard to admissions to be made.)

LINDSAY GEORGE REGAN

On subpoena duces tecum

Sworn and examined:

Mr LARKINS: Q. What is your full name? A. Lindsay George 20 Regan.

Q. On subpoena duces tecum do you produce certain documents?

A. Yes, but not the subpoena.

HIS HONOR: Q. You have not got the original subpoena? A. No.

(Mr St. John indicated that he understands that all the documents called for are produced but he does not wish income tax papers to be inspected unless the Court is satisfied that they are relevant and should be made available.)

(Exhibit E—Affidavit of Robert Frank Hughes giving answers to interlocutories No's: 1, 2, 17, 18, 19, 20, 20A, 20B, 25, 26, 27, 28, 29, 29B, 31, 32, 33, 34, 36, 35, 41, 48, 49, 50, 51, 52, 57, 60, 63(a), 63(b), 63(e), 63(f), 63(g), 64(a), 64(b), 64(e), 64(f), 64(g), 66, 71, 74, 78, with those interlocutories.)

(Exhibit F—Affidavit of Clarence Vivian Hughes giving answers to interlocutories No's: 1, 2, 17, 18, 19, 20, 20A, 20B, 28, 29, 29B, 31, 33, 34, 36, 35, 41, 48, 49, 50, 51, 52, 60, 63(a), 63(b), 63(e), 63(f), 63(g), 64(a), 64(b), 64(e), 64(f), 64(g), 66, 71, 74, 78.)

(Exhibit G—Affidavit of Frederick Charles Hughes giving answers to interlocutories No's: 1, 2, 19, 20, 20A, 20B, 28, 29, 29B, 32, 33, 34, 36, 35, 41, 48, 49, 50, 51, 52, 57, 60, 63(a), 63(b), 63(e), 63(f), 63(g), 64(a), 64(b), 64(e), 64(f), 64(g), 66, 71, 78.)

(Exhibit H—Affidavit of Victor Raymond Hughes giving answers to interlocutories No's: 1, 2, 14, 15, 16, 17, 18, 19, 20, 20A, 20B, 25, 26, 27, 28, 29, 29B, 30, 31, 32, 33, 34, 35, 36, 41, 48, 49, 50, 51,

52, 57, 60, 63(a), 63(b), 63(e), 63(f), 63(g), 64(a), 64(b), 64(e), 64(f), 64(g), 66, 71, 74, 78.)

(Exhibit J—Affidavit of Margaret Ferguson Caldwell giving answers to interlocutories No's: 1, 2, 19, 20, 20A, 20B, 28, 29, 29B, 33, 34, 35, 36, 41, 48, 49, 50, 51, 52, 57, 60, 63(a), 64(b), 63(e), 63(f), 63(g), 64(a), 64(b), 64(e), 64(f), 64(g), 66, 71, 74, 78, 89.)

(Exhibit K—Affidavit of Lindsay George Regan giving answers to interlocutories No's: 1, 2, 17, 18, 19, 20, 20A, 20B, 28, 29, 29B, 33, 34, 35, 36, 41, 48, 49, 50, 51, 52, 57, 60, 63(a), 63(b), 63(e), 63(f), 63(g), 64(a), 64(b), 64(e), 64(f), 64(g), 66, 71, 74, 78, 89.)

(Exhibit L—Affidavit of Norman Vivian Regan giving answers to interlocutories No's: 1, 2, 17, 18, 19, 20, 20A, 20B, 28, 29, 29B, 31, 32, 33, 34, 35, 36, 41, 48, 49, 50, 51, 52, 57, 60, 63(a), 63(b), 63(e), 63(f), 63(g), 64(a), 64(b), 64(e), 64(f), 64(g), 66, 71, 74, 78, 89.)

HIS HONOR: It is noted that the interlocutories administered to each of the deponents in Exhibits E to L inclusive were the same. The interlocutories will be tendered under Exhibit E.

(Exhibit M—The collated answers to the interlocutories tendered in Exhibits E to L inclusive.)

HIS HONOR: There are in Court the following documents called on subpoena duces tecum:—

Australian New Zealand Bank Account of Clarence Vivian Hughes.

Australian New Zealand Bank Account of Joseph Peter Hughes.

Australian New Zealand Bank Account of Robert Frank Hughes and Norman Vivian Hughes.

Australian New Zealand Bank Account of Robert Frank Hughes and Logan Hunter Caldwell.

Registrar-General's document under the Business Names Act and the Companies Act.

Commonwealth Trading Bank Account of Victor Raymond Hughes.

Document from the Probate Office and a document from the Stamp Office.

ROBERT FRANK HUGHES

On subpoena duces tecum

Sworn and examined:

Mr LARKINS: Q. What is your full name? A. Robert Frank Hughes.

Q. Do you produce certain documents on subpoena duces tecum?

A. Yes.

Q. Do you produce the subpoena? A. I believe it is in here, yes.

Mr LARKINS: We ask for access to that.

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HIS HONOR: Q. Are they all the documents called for in the subpoena? A. Yes.

(Allowed to leave.)

Mr LARKINS: I am calling Clarence Vivian Hughes, Victor Raymond Hughes and Robert Frank and Clarence Vivian Hughes Pty. Limited on subpoena duces tecum.

I am calling Robert Frank Hughes and Clarence Vivian Hughes as executors and the trustees of the will of Joseph Peter Hughes, on subpoena duces tecum.

HIS HONOR: Are all the documents in the subpoena produced? 10

Mr ST. JOHN: I am instructed yes, Your Honor.

(Mr St. John indicates that a number of documents will require to be separated from the one bundle in order to answer the respective subpoenas.)

Mr LARKINS: I do not mind accepting the subpoenas in global form if everything that is called for is produced.

(Noted: Robert Frank Hughes produces all documents referred to in the subpoenas and that the Company subpoena is answered by Robert Frank Hughes and all documents are produced.)

(Norman Vivian Regan called on subpoena duces tecum.) 20

Mr ST. JOHN: Certain documents in the subpoena are not produced because they are not available. I am objecting to the production of income tax papers unless the Court is satisfied they are relevant and makes them available.

HIS HONOR: All documents are produced except for certain income tax returns?

Mr ST. JOHN: That is so.

(Margaret Ferguson Caldwell and Norman Vivian Regan called on subpoena duces tecum.)

REGINALD BRIAN OMANT

30

On subpoena duces tecum

Sworn and examined:

Mr LARKINS: Q. What is your full name? A. Reginald Brian Omant.

Q. Do you produce certain documents on subpoena duces tecum?

A. I do.

Q. Do you produce the original subpoena? A. I produce a copy of the subpoena.

Mr ST. JOHN: I understand Mr Omant wishes to make a claim for legal professional privilege. (Mr. Omant signifies assent.) 40

HIS HONOR: I will look at the document. (To Mr Omant:)

Q. In what circumstances? A. Solicitor and client, Your Honor. Only as to the diary notes, Your Honor.

Mr ISAACS: Q. That is your own diary notes? A. Yes.

HIS HONOR: What do you say, Mr Larkins?

Mr LARKINS: Should not this claim be made on oath, Your Honor?

HIS HONOR: I do not know that it should. Mr Omant is bound to make the claim. He has no discretion.

Mr LARKINS: But on whose behalf? He says it is legal professional privilege, but it is the privilege of the client, not his privilege. It is not for him to make the claim. It is the client's privilege, not his. (Argument ensued.)

Mr ISAACS: My client does not claim such privilege.

10 HIS HONOR: Does your client direct that privilege be waived?

Mr ISAACS: Insofar as I am able to say that, I do. It may be that Mr Omant may have been acting for other persons as well as my client, the testator. If the position is, so far as my client the testator is concerned, that he is unable in law to waive any claim for privilege, he does so (argument ensued).

(File handed back to Mr Omant.)

Mr ST. JOHN: Insofar as Mr Omant was acting for all six co-proprietors, as we believe that he was, on our instructions, our clients do not waive their privilege.

20 (Mr Omant confers with Mr St. John.)

MR OMANT: (To the Court) I respectfully claim privilege in relation to all documents. They were prepared in . . .

Mr LARKINS: I submit this should be on oath.

HIS HONOR: What I have to determine is whether it should be put on oath in the suit.

Mr LARKINS: Not in the suit, on the subpoena I think, Your Honor. There is one case of O'Born v. Commissioner of Government Transport, in Vol. 77 W.N. p. 81. That is a recent decision of the Court.

30 Mr ST. JOHN: We make no objection and we understand Mr Omant makes no objection, to going into the witness box.

REGINALD BRIAN OMANT

Sworn to answer:

Mr LARKINS: Q. What is your full name? A. Reginald Brian Omant.

Q. What is your address? A. 27 Lynch Street, Young.

Q. You are a solicitor of the Supreme Court? A. Yes.

Q. Have you produced to His Honor the whole of the documents referred to in the subpoena? A. I have.

40 Q. And were you solicitor for Logan Hunter Caldwell? A. I was, in conjunction with the other defendants.

Q. In conjunction with the other defendants? A. Yes.

Q. Did you act for him personally? A. No, not personally.

Q. Did you receive communications from him in connection with the operations carried on at P.M.L. No. 1, Young? (No answer.)

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Q. Did you not receive communications from him alone in connection with operations carried on at P.M.L. No. 1, Young? (No answer.)

HIS HONOR: Q. Alone and on his own behalf? A. No, Your Honor.

Mr LARKINS: Q. You did receive, did you not, a letter dated 15th October 1957 from Gordon, Garling & Giugni? A. I did.

Q. Is that produced? A. Yes.

Q. Is that included in the documents which are produced? A.

Yes.

10

Q. Are you claiming privilege on that? A. I do.

HIS HONOR: Q. Who is the letter from? A. Gordon, Garling & Giugni. They are solicitors in Young. They were acting as solicitors for the executors of George Caldwell, deceased.

Q. Who is George Caldwell? A. George Wigham Caldwell.

Mr LARKINS: He is the one who died prior to the suit, his executors were joined in the suit.

HIS HONOR: Q. That letter was written by certain parties. Nothing to do with Logan Hunter Caldwell, is it? He is not their representative. He was not the personal representative of George Caldwell? A. No. 20

Mr LARKINS: Q. From time to time Mr Logan Hunter Caldwell gave you instructions in connection with the preparation of income tax returns, did he not? A. He gave me those instructions, yes.

Q. Are these documents produced? A. Yes, they are in Court now—of Hughes and Caldwell.

HIS HONOR: Q. No privilege is claimed in regard to them? A. No.

Mr LARKINS: Q. And you did make notes in connection with interviews you had with Logan Hunter Caldwell? A. I did.

Q. When he saw you alone? A. Both when he saw me alone 30 and with other co-defendants.

Q. I did not ask about the others. When he saw you alone? A. Yes.

Q. And you also received communications from him alone? A. No.

HIS HONOR: You mean alone physically, Mr Larkins?

Mr LARKINS: Yes, Your Honor.

HIS HONOR: Or on his own behalf?

Mr LARKINS: Alone physically.

WITNESS: I am a bit embarrassed by this question, Your Honor. 40 There is a letter here.

HIS HONOR: Q. Who is the letter from? A. Logan Caldwell, addressed to my firm.

Q. Was it in answer to any letter? A. No, Sir.

Q. You say you had instructions to act in the previous proceedings for Logan Hunter Caldwell? A. And the others, Your Honor.

Mr LARKINS: Q. And the others? A. Yes.

Q. At all times? A. Yes.

Q. Do you claim privilege for that letter? A. Subject to His Honor's direction, I do.

Q. And in relation to these other matters in which you say you saw him alone and with others, who gave you your instructions; who retained you in connection with those matters? A. I was retained by all of the co-defendants at the particular time.

Q. When? A. From 1957 onwards.

10 Q. You say you received a specific retainer from them all. Is that so? A. I did, and this is the arrangement that . . .

Q. Would you be kind enough to deal with my question? I am asking you if you had a retainer? You have told His Honor that all the notes and memoranda relating to attendances upon Logan Hunter Caldwell and communications you received from him related to matters in which you were acting for him and the others together. That is what you have sworn? A. Yes.

20 Q. What I am asking you is, who gave you your instructions; who retained you to act on behalf of Logan Hunter Caldwell and those other persons? A. That is what I am going to explain to you. Several Hughes brothers have undertaken the expenses and risk in this particular matter.

Q. Look, Mr Omant, you are a solicitor of the Supreme Court? A. Yes, I am.

Q. Who instructed you first in these matters, the transactions in respect of which you now say privilege attaches; who first instructed you? A. Logan Caldwell and Victor Hughes and Frank Hughes, Clarence Hughes, and I am not clear whether Mr Regan did. That is prior to the initiation of the litigation.

30 HIS HONOR: Does that appear in your diary notes?

Mr LARKINS: Q. That relates only to the litigation. You say the subpoena does not relate to any notes, memoranda or interviews in connection with either suit or dealings or transactions by the deceased with any of the defendants in connection with P.M.L. No. 1, Young. You have told His Honor in relation to these dealings, apart from the suit, that you had instructions off him in conjunction with them? A. Yes.

40 Q. Will you please put either suit out of your mind. Before any talk of a suit, who gave you your instructions to act on behalf of Logan Hunter Caldwell in conjunction with others in relation to P.M.L. No. 1, Young? A. Logan Caldwell and the others, other than—I am not clear about—Regan.

Q. How were the instructions given? A. Verbally.

Q. Have you any record of it? (No answer.)

HIS HONOR: Q. This is not in relation to the litigation. You are being asked at any earlier time prior to the litigation. A. No,

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Your Honor. All I have done prior to the litigation, or questions arising on the litigation, is normal income tax work and general advice in relation to the Hughes and Caldwell group. That runs back a few years.

Mr LARKINS: Q. Do any documents which are produced in answer to this subpoena relate to dealings or transactions or interviews prior to the commencement of any litigation? (No answer.)

HIS HONOR: Q. You mean the actual commencement or the contemplated litigation?—

Mr LARKINS: Your Honor means ante litem mostam in the legal sense?

HIS HONOR: Yes.

Q. Do any of these notes or memoranda or any document which you have produced, relate to any dealings with Logan Hunter Caldwell before there was any talk or threat of litigation? A. No, not in regard to this lease.

Mr LARKINS: Q. Not in regard to this lease? A. Yes, P.M.L. 1.

Q. Do you say that you have at no time had in your possession or custody any documents relating to interviews or dealings with you from or by Logan Hunter Caldwell in relation to P.M.L. No. 1, Young, prior to any dispute? (No answer.)

HIS HONOR: Prior to any contemplated litigation.

Mr LARKINS: Q. Prior to any contemplated litigation? A. Yes, only general legal work for the Hughes and Caldwell group.

Q. You have told us that you have produced all documents which should comply with this subpoena. Have you carefully considered the subpoena? A. Yes.

Q. Would you have a look at it? A. Yes (shown to witness).

Q. Do you see the first paragraph? A. Yes.

Q. The first four lines obviously deal with one or other of the suits. You do appreciate that it calls for "all statements, notes, memoranda of or concerning any interviews with yourself or any member of your firm, with the late Hogan Hunter Caldwell in connection with"—Now, look at the last line—"Any dealings or transactions by said deceased with any of the defendants in connection with P.M.L. No. 1, Young"? A. Yes.

Q. Have you produced all documents in answer to that portion of the subpoena? A. Yes.

Q. Now, you have told us that all documents you have there only came into being after this dispute commenced; is that so? A. I don't recall.

Q. Have you not said this morning, only a few minutes ago, the only documents which are produced in answer to this subpoena came into being after this dispute arose? A. After the dispute itself, but not the litigation.

Q. Do you now say that prior to the dispute you at no time had

any notes, memoranda, notes or statements, concerning any interview with Mr Logan Hunter Caldwell, with yourself, or any members of your firm, in connection with any dealings or transactions by the deceased with any of the defendants in connection with P.M.L. No. 1, Young? A. I would say No.

Q. Never? A. No. All I have got there is information dealing with this particular litigation. Notes in respect of interviews dealing with this particular litigation. The only thing dealing with Hughes and Caldwell syndicate, which I thought was not covered by the 10 subpoena . . .

Q. You thought it was not covered by the subpoena? A. I am talking about the income tax returns and general advice.

Mr ST. JOHN: The income tax returns are here.

Mr LARKINS: I am not concerned with the income tax returns, Mr St. John.

Q. May we take it you do have documents, that you do have documents, which in nature are statements, notes or memoranda, relating to interviews, either by yourself or other members of your firm, with Mr Logan Caldwell, prior to any dispute relating to the 20 transactions by him with the other defendants, in connection with P.M.L. No. 1, Young? A. I am afraid you have me confused.

HIS HONOR: Q. You have already dealt with all matters leading up to this litigation and in the course of this litigation? A. Yes.

Q. What Mr Larkins is asking you is: Prior to that course of affairs, have you any record or documents of transactions or dealings by Logan Hunter Caldwell on the one hand and Hughes and others on the other hand—dealings and transactions by him with them in which you acted for Logan Hunter Caldwell, relating to this lease?

A. All I can say again is I have got an agreement here which probably 30 Your Honor has not seen, dated 15th October 1957.

HIS HONOR: No. I have not seen it.

Q. Going back, it might be about ten years? A. I have not got anything dealing with P.M.L. 1 prior to this litigation in the nature of any note or conversation with Caldwell.

Q. You have not? A. No.

(Luncheon adjournment.)

AT 2 P.M.:

Mr LARKINS: Q. You say that the documents you produced all came into being after there was some controversy between A.B.M. 40 and your client about the operations being carried on at P.M.L. No. 1?

A. I do.

Q. When do you take as the time when that controversy arose?

A. It would be during August-July/August, in 1957.

Q. July/August 1957? A. Yes.

Q. So, you have produced nothing prior to that date? A. I

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have produced income tax returns. At least I have produced income tax returns.

Q. Apart from income tax returns prior to that date you produce nothing else? A. Nothing at all.

Q. You did in fact, did you not, on many occasions over the years preceding July/August 1957 make notes or memoranda and obtain statements from Logan Hunter Caldwell in respect to operations being carried out on P.M.L. 1? A. On no occasion.

Q. Do you say at no time over the years that preceded that did you act for Logan Hunter Caldwell? A. I did not. 10

Q. Or for any of the other people associated with him? A. Since 1950 I acted for Hughes.

Q. In connection with P.M.L. 1? A. No. I cannot recall any time when I did anything on P.M.L. 1, for them except possibly the extension of the lease, which was probably a bit earlier.

Q. When was that? A. I think in May. Between May, June and July in 1957, I think it was.

Q. Do you say in connection with that you did not see Logan Hunter Caldwell at all? A. No, I did not.

Q. Or receive any instructions or letters from him? A. I did not receive any at all. None at all. 20

Q. I think you directed His Honor's attention once to a letter from the deceased which I think you said caused you some embarrassment? A. Yes.

Q. Was that the document? (No answer.)

Mr ST. JOHN: It was not from the deceased.

WITNESS: I have one from Logan Hunter Caldwell here. I am referring to one from Gordon, Garling & Giugni.

Q. I thought you said a letter from the deceased was the one that caused you embarrassment. You did say it caused you embarrassment? A. I did say that but I do not know in respect of what, now. 30

Q. Was that letter included in the affidavit of discovery? A. I would think not.

Q. No privilege was claimed over it in the affidavit of discovery? A. Unless en bloc. I don't recall.

Q. Was it included in these documents in respect of which privilege was claimed? A. I do not recall.

Q. You do not recall? A. No.

Q. Would you have a look? Who drew the affidavit of discovery? A. I did. 40

Q. Have a look at it and satisfy yourself? (Witness appears to look at affidavit.) A. In the affidavit which I drew for Robert Frank Hughes I allowed him to object to the production of documents set out in Part II of the Schedule and Part II speaks of cheque butts . . . (affidavit read).

HIS HONOR: Q. But those are the ones that say: "We had had but do not now have in our possession". Part II is the part privilege is claimed for which is a compendious reference to various things?

A. Part II is what I think I read. "In this suit and in the other suite 1414 of 1957 . . . and statements". I beg your pardon—Schedule II.

Mr LARKINS: Q. You do not suggest privilege was intended to be claimed for that letter by that paragraph in that affidavit, do you? A. That is the letter from Logan Hunter Caldwell to me, yes.

(Witness retired.)

10 HIS HONOR: Q. I have seen all the documents, Mr Larkins. They all fall into different categories. In the circumstances since it appears that Mr Omant did not act for Mr Logan Hunter Caldwell personally and apart from the other defendants, but only communicated with him and received communications in writing or of and from him as one client jointly with the other client who are the other defendants, represented by Mr St. John, the claim for privilege is sustained and I do not require Mr Omant to produce those documents under the subpoena duces tecum. It would be desirable that they be marked for identification, but I do not think I have power to do it.

20 Mr LARKINS: I do not think Your Honor has, either; but we shall not press that question.

HIS HONOR: Therefore, I uphold the claim for privilege. I allow inspection for documents produced by the Probate Office and by the Stamp Office. What about the Australian New Zealand Bank Account of Norman Vivian Hughes (counsel signify no objection). I will allow inspection of that bank account by all counsel.

Then there is the bank account of Joseph Peter Hughes.

Mr ST. JOHN: In relation to all of them we have no objection.

Mr ISAACS: Insofar as anything affects the estate of Logan Hunter Caldwell I have no objection.

HIS HONOR: What about the Commonwealth Trading Bank Account of Victor Raymond Hughes?

Mr ST. JOHN: No objection.

HIS HONOR: As to the subpoena to Robert Frank Hughes, what is the position there, Mr St. John?

Mr ST. JOHN: We have no objection to the inspection of any documents produced by any of the Hughes or Regans except in relation to the Regans who object to a perusal of their income tax returns until Your Honor has looked at them and satisfied yourself that they 40 have some relevance. Perhaps we might be allowed to uplift the income tax return of the Regans.

HIS HONOR: All counsel may inspect all documents produced on subpoena duces tecum other than the personal income tax returns of Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan.

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ROBERT MITCHELL DRISCOLL

On subpoena duces tecum

Sworn and examined:

Mr ST. JOHN: Q. What is your full name? A. Robert Mitchell Driscoll.

Q. You are an officer of Australian Blue Metal Limited? A. Yes.

Q. Do you produce certain documents on subpoena duces tecum and the subpoena itself? A. Yes.

Q. You produce all documents referred to in that subpoena, do you? A. All documents referred to.

Mr LARKINS: It is pointed out to me that documents referred to in the first paragraph of the subpoena are the ones which have been discovered and have been kept isolated in a folio in accordance with the serial numbers used on discovery, so that it would be better to keep them like that.

(Counsel request short adjournment to enable documents to be collated, etc.)

ON RESUMPTION:

Mr LARKINS: In connection with some of the documents produced, 20 privilege has been claimed in the affidavit of discovery.

GORDON FRANCIS GIUGNI

On subpoena duces tecum

Mr LARKINS: Q. What is your full name? A. Gordon Francis Giugni.

Q. Do you produce on subpoena duces tecum certain documents, and the subpoena? A. Yes. Your Honor, there are certain of these diary sheets which are entries which we make to other matters not connected with this suit. Some of them relate to matters concerned with Australian Blue Metal Limited and may not be very important. 30

Mr ST. JOHN: We would be happy to take a copy of those which Mr Giugni says fall within the subpoena and the others can be locked up for the night.

HIS HONOR: The originals will be retained. The others may be made available to the parties.

There are certain documents produced on subpoena duces tecum for the plaintiff for which privilege is claimed. Is it "privilege" or do you ask me, Mr Larkins, not to allow inspection. Which is it?

Mr LARKINS: It is not to allow inspection.

HIS HONOR: Could you indicate those documents? 40

Mr LARKINS: They are contained in the folder which I now hand up to Your Honor.

(Later:) I withdraw what I said. I do claim privilege.

HIS HONOR: You claim privilege?

Mr LARKINS: Yes.

HIS HONOR: I had better deal with that. What is the general nature of these documents mainly, Mr Larkins? Are they communications between legal advisers and client? I do not quite see the basis of the privilege in most of them.

Mr LARKINS: Quite a number are communications between solicitor and client. The present grouping was related entirely to the privilege one was entitled to claim on discovery.

HIS HONOR: I will start afresh and allow you to claim privilege against production of the documents.

10 Mr LARKINS: I think I had better have them back because they will fall into different categories.

Mr ST. JOHN: These are documents which I think we would need to see before cross-examination of the plaintiff's witnesses. (Discussion ensued.)

Mr LARKINS: If the file is made available I will break it up into those documents in respect of which privilege is claimed and in respect of which it is not.

HIS HONOR: I will hand the file back at this stage, and the subpoena has only been partly answered.

20 (Short adjournment.)

ON RESUMPTION:

Mr LARKINS: One of the documents Your Honor saw, correspondence between my clients and their solicitors was not even covered by subpoena and so it has been withdrawn. That also formed part of the discovery documents in respect of which privilege was claimed. I have satisfied myself in relation to the remaining documents which are those in respect of which privilege was claimed by the affidavit of discovery on the basis that they were documents which related solely to our own case and tended in no way to cut down or add or assist the defendants' case. We say the same privilege attaches at this stage. I can assure Your Honor each one of them was considered and they are in that category.

HIS HONOR: There is no particular distinction to be drawn between those preceding the commencement of the proceedings or thereabouts, and those thereafter.

Mr LARKINS: There is no distinction so far as the claim of privilege is concerned. Some are ante litem and some post litem.

HIS HONOR: Those post litem could be discussions of the case itself inside the Company.

40 Mr LARKINS: Yes. There is one document which is in that category. (Discussion ensued.)

(Two documents in folder previously handed up to His Honor referred to by Mr Larkins who objects to their production on the basis of privilege—states they are documents supporting the case for the plaintiff.)

HIS HONOR: I allow inspection of those documents. I do not

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consider the plaintiff is entitled to have them regarded as documents for the purpose of litigation or possible litigation. I think that the position of statements taken immediately after an incident for purposes partly of being used in litigation which did commence, was the type of case to which reference was made in the argument, is a similar type of case.

These documents are incidental documents not of that nature. It has also been argued that the inspection should not be allowed because they wholly support the case of the plaintiff and do not cut down the case or support the case of the defendant. I do not find it possible to say that that is so and in the circumstances I consider that the documents reporting as they do the results of conversations with the defendants and proposals to have conversations with the defendants, are of a type which ordinarily would be discoverable, but I think in the circumstances I am bound to allow inspection of them.

The documents are produced.

(Further hearing adjourned to Wednesday, 15th February, 1961 at 10 a.m.)

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Second Day: Wednesday, 15th February, 1961

(Mr Larkins addresses Court on amendment of exhibits re 20 interlocutories.)

HIS HONOR: I will add to each of the exhibits after the number "29" the number "29A".

(Mr Hughes reads Exhibit M.)

Mr ST. JOHN: Yesterday both the original statement of claim and the original statement of defence were tendered. I do not know whether Your Honor has read them. I would like to observe in relation to the partnership there is something to which we would like to direct Your Honor's attention. Both Logan Hunter Caldwell and the other defendants deny that he had any authority to sign those two agreements.

(Exhibit N—manuscript document of the 15th June 1936 signed by J. P. Hughes on the one hand and by Logan H. Caldwell on the other, with R. F. Hughes as witness.)

(Exhibit O—Deed of partnership entered into on 14th August 1943 between Joseph Peter Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Robert Frank Hughes, and George Wigham Caldwell and Logan Hunter Caldwell—read.)

(Exhibit P—Agreement dated 6th October 1942 made between the same parties as are parties to the partnership agreement above on the one hand and Joseph Peter Hughes of the second part, and then a number of people by the name of O'Neill trading as Australian Blue Metal Company.

Also supplementary agreement attached to the above dated 11th October 1943.)

Mr LARKINS: I tender copies of partnership returns for the year ended 30th June 1949 and up to and including 30th June 1957.

(Proposed tenders objected to by Mr St. John.)

Mr ISAACS: Yesterday I did indicate to Your Honor that there had been informal discovery between my solicitors acting on behalf of my client and the plaintiff's solicitors, and, Your Honor, so that the other defendants will not be disadvantaged I will make available to them all the documents which were so informally discovered. They are available at my chambers.

10 HIS HONOR: Discovered by you.

Mr ISAACS: Yes, there were documents informally discovered between my solicitors and the plaintiff's solicitors.

HIS HONOR: What do you make available, the documents discovered by you to the plaintiff.

Mr ISAACS: Yes, so that the other defendants may have the same opportunity of seeing those documents. I have already indicated that to them.

(Mr Larkins presses tender indicated above.)

Mr LARKINS: This subpoena was addressed to all the defendants.

20 In the circumstances I think it proper that I should tender the subpoena. I hand to Your Honor the subpoena addressed to Robert Frank Hughes and Clarence Vivian Hughes. It is a fact a subpoena in identical terms was served upon each of the defendants, other than my learned friend Mr Isaacs' client. The terms of paragraph one of the subpoena directed to each defendant, except Mr Isaacs' client, could be read on to the notes.

Mr ST. JOHN: I am prepared to admit these are copies of documents which were put in on behalf of the mine proprietors as income tax returns, but it is not evidence of the admission by each
30 and every one of the six unless each and every one of the six signed them. If in fact only one signed it is really no evidence against the others, whatever. (Argument ensued.)

HIS HONOR: Do you admit that it was signed by Logan Caldwell?

Mr ST. JOHN: Yes, I am instructed it was. I do not actually know. These are copies of the returns which were put in on behalf of six mine proprietors. I am instructed that is so.

HIS HONOR: I propose to admit them. They may or may not be of assistance eventually, but as they are returns on behalf of Hughes and Caldwell constituted by the defendants I think they can become
40 relevant.

(Exhibit Q—income tax returns referred to above.)

Mr LARKINS: I tender the subpoena to Robert Frank Hughes and Clarence Vivian Hughes which was produced with the document which I now tender.

Then I call for subpoenas to the remaining defendants other than Steele Hunter Caldwell.

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(Exhibit R—two subpoenas addressed to R. F. Hughes and Clarence Vivian Hughes respectively.)

Mr LARKINS: May it be noted that in lieu of a call on each of these defendants that we have accepted production of the documents from which Exhibit Q has come from counsel, as an answer to the subpoena.

HIS HONOR: It may be noted that in lieu of the strict answer to the call on subpoena by Robert Frank Hughes and Clarence Vivian Hughes, the plaintiff's counsel accepts production of the documents under those subpoenas, by counsel for those persons. 10

Mr LARKINS: I call for the subpoena addressed to Victor Raymond Hughes (produced).

HIS HONOR: The subpoena addressed to Victor Raymond Hughes will be Exhibit S.

Mr LARKINS: I tender the subpoena addressed to Norman Vivian Regan and I tender with that the subpoena addressed to Margaret Ferguson Caldwell. I tender them together because Your Honor will remember that a statement was made from the Bar Table that by reason of the age of Margaret Ferguson Caldwell, Norman Vivian Regan was permitted to attend on her behalf. 20

I call on my friend to produce the subpoena addressed to Margaret Ferguson Caldwell—(produced).

(Subpoena referred to above tendered and marked: Exhibit T.)

(Exhibit U—Subpoena in like terms addressed to Lindsay George Regan.)

Mr LARKINS: I would like to direct Your Honor's attention to certain matters in Exhibit Q, that is the partnership returns. In statement number five on the second page "By trustee or partnership" the shares to which each partner is entitled or on distribution to each beneficiary, is shown in each case as one-sixth. I particularly draw 30 Your Honor's attention that there is no reference to the estate of Joseph Peter Hughes, but C. V. Hughes is shown as a partner receiving one-sixth share on his own behalf. That of course emerges from other documents and may necessitate amendment of our pleadings. Each statement of the share of income to which each partner is entitled in all these returns makes no reference to the estate of Joseph Peter Hughes, but to C. V. Hughes as beneficiary on his own account and in his own right, and later documents which we will tender seem to support that. Based on that we will be seeking amendment to our pleadings. 40

The years 1949 and 1950 show that. In the year ending 1951 it is statement number three, and then in 1952 it is the same six people in their own right. In the year 1953 it is statement number one again; and in 1954 number one, and in 1955 and in 1956; and in 1957 in lieu of George W. Caldwell is shown the Caldwell Pasturing Company as entitled to one-sixth of the partnership beneficially.

(Mr Larkins continues to address the Court.)
(Short adjournment.)

ON RESUMPTION:

Mr LARKINS: I tender the personal returns of Robert Frank Hughes for the years ending 30th June 1949 and up to and including the year ending 30th June 1957.

(Exhibit V—above returns.)

Mr LARKINS: Your Honor will see that although in the earlier years the income of Robert Frank Hughes from the partnership appears
10 under “personal exertion” its form varies from year to year. It is shown from the income of Hughes and Caldwell in later years . . . (continues addressing). (Mr Larkins refers to the returns and indicates items under various headings to the Court.)

I desire to tender so many of those returns for the years ending 30th June 1949, 30th June 1957 as have been produced in answer to the subpoena by Clarence Vivian Hughes. They are incomplete and they are for the years ending 30th June 1949 and 30th June 1950, 1954, 1955, 1956, and 1957.

(Exhibit W—above returns.)

20 (Exhibit X—Copies of the personal returns of Victor Raymond Hughes for the years ending 30th June 1949 and up to and including 30th June 1957.)

(Mr Larkins continues to address Court.)

(Exhibit Y—subpoena to Robert Frank Hughes and Clarence Vivian Hughes jointly; particular reference made to paragraph five.)

HIS HONOR: It may be noted that it is stated by Mr St. John that no income tax returns in the estate of the late Joseph Peter Hughes were lodged in respect of the years 30th June 1946 to 30th June 1959 inclusive.

30 Mr ST. JOHN: The 1960 return has been produced.

Mr LARKINS: I tender the will—the last will and testament of Joseph Peter Hughes, dated 23rd September 1941.

(Exhibit Z—will and testament referred to above.)

(Exhibit AA—will of George Wigham Caldwell dated 6th April 1956.)

I tender, produced from the joint custody of Robert Frank and Clarence Vivian Hughes four books of cheque butts commencing 24th August 1937 to May 20th 1938 with commencing serial number A-335521.

40 I understand they are on the Union Bank of Australia although that is not indicated on the butts.

The second one is commencing on May 20th 1938 with serial number 344461 up to May 1939.

The third book commences 1st July 1939 with serial number A 355921 up to March 1st 1940.

Mr ST. JOHN: Perhaps my friend will say what they go to.

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Mr LARKINS: They go to the managership of Logan Hunter Caldwell, and they are in his handwriting.

Mr ST. JOHN: I am instructed it is in the handwriting of Logan Hunter Caldwell, and on that basis I raise no objection.

Mr ISAACS: I have no objection to them.

(Exhibit AB—cheque butts above referred to.)

(Exhibit AC—similar book of cheque butts for the period from 5th February 1947 to 10th October 1947 with serial number A 430801.)

Does my friend admit that they are in the handwriting of Logan 10
Hunter Caldwell. (Discussion ensued.)

HIS HONOR: It is admitted by the defendants that the handwriting on the cheque butts is in the handwriting of Logan Hunter Caldwell.

Mr LARKINS: I draw Your Honor's attention to cheque number A 430809, dated 4th July 1947. In this one the entry is "C. V. Hughes now one of the syndicate, taking the late Mr. J. P. Hughes' share—profits £100". On the same date cheques are drawn to K.F., V.R., and F. C. Hughes, and to G. W., and L. H. Caldwell, of equivalent amounts of £100.

HIS HONOR: Do you take that to be an admission by Steele Hunter 20
Caldwell as representative of Logan Hunter Caldwell, that Clarence Vivian Hughes became a partner?

Mr LARKINS: Yes, Your Honor, but I will show of course that the amounts were all paid into the private account of Clarence Vivian Hughes for himself alone.

HIS HONOR: You do not seek to rely on that as evidence against Mr St. John's clients.

Mr LARKINS: Oh yes I will.

HIS HONOR: How?

Mr LARKINS: Because it is an admission made in the course of 30
carrying on a partnership business. . . . (Discussion ensued—submissions made by Mr Larkins.)

Mr ST. JOHN: I am not conceding for one moment that it is able to prove the various things which my friend has put.

HIS HONOR: Subject to the relevant sections of the Evidence Act 1954 it is in for whatever it will prove under the law of evidence.

Mr LARKINS: I desire to tender a number of cheques which have been produced on subpoena by the Australian New Zealand Bank and I now ask my learned friend Mr Hughes to make the tenders.

Mr HUGHES: The first cheque, together with other documents, 40
relates to the joint banking account that has been referred to in answers to the interlocutories of Robert Frank Hughes and Logan Hunter Caldwell.

I tender the authority relating to the opening of that account, that is the current account, in their names at that bank, dated 22nd June 1955.

I also tender another authority relating to the opening of a savings bank account signed by Robert Frank Hughes and Logan Hunter Caldwell, dated 7th August 1957.

(Exhibit AD—documents above referred to.)

Mr HUGHES: I understand from Mr St. John that on behalf of those defendants whom he represents he will admit that the signature "R. F. Hughes," on each of those documents is that of the defendant Robert Frank Hughes.

I understand Mr St. John also admits the signature of Logan
10 Hunter Caldwell on each of those documents.

I tender a group of six cheques drawn on the Bank of Australasia, Young, dated 8th July 1953, on the account of Robert Frank Hughes and Logan Hunter Caldwell.

(Exhibit AE—above cheques.)

(Exhibit AF—cheque dated 21st September 1953 signed by Logan Hunter Caldwell and R. F. Hughes in favour of Eric Campbell Omant and Grant, number A 465565.)

(Exhibit AG—four cheques dated 3rd August 1954, signed by
20 Logan Hunter Caldwell and R. F. Hughes, each of the amount of £90. Also another cheque signed by the same people on the same date for £15 in favour of V. R. Hughes, and a cheque for £75 respectively, also dated 3rd August, 1954.)

(Exhibit AH—two cheques as follows: one signed by Logan Hunter Caldwell and Robert Frank Hughes, drawn on the ANZ Bank, Young, one dated 23rd August 1954 and the other dated 21st June 1955.

The one of 23rd August in favour of Eric Campbell Omant and Grant in the sum of £2. 2. 0, and the other cheque in favour of the Burrenong Shire Council for £57. 1. 0.)

30 (Exhibit AJ—six cheques, all dated 3rd August 1955 and signed by Logan Hunter Caldwell and Robert Frank Hughes, each for £107, respectively drawn in favour of R. F. Hughes, C. W. Caldwell, F. C. Hughes, L. H. Caldwell, C. V. Hughes and V. Hughes.)

(Exhibit AK—six cheques, each dated 17th December 1955, drawn by Logan Hunter Caldwell and Robert Frank Hughes on the joint account ANZ Bank, Young. Each cheque for £100, respectively drawn in favour of the same six people mentioned in the last tender.)

HIS HONOR: I take it these all fall in the same category, Mr St. John. (Mr St. John signifies assent.)

40 (Exhibit AL—group of six cheques each for £130, each dated 1st June 1956, signed by the same signatories as those mentioned above, in favour of the same six people respectively.)

(Exhibit AM—six cheques dated 22nd December 1956, each for £80, drawn respectively in favour of each one of the six parties abovementioned.)

(Exhibit AN—six cheques each dated 13th May 1957, drawn

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by the same people respectively in favour of the same people, each for £100.)

(Exhibit AO—six cheques each dated 25th May 1957, each for £140 drawn as before in favour of the persons abovementioned.)

(Exhibit AP—six cheques dated 27th June 1957, drawn as before in favour of the people mentioned before and each for £140.)

(Exhibit AQ—six cheques dated 7th August, drawn by the same people in favour of the same persons as before, each for £140.)

(Exhibit AR—six cheques dated 21st September 1957, drawn as before in favour of the same people as before, and each for £100.) 10

(Exhibit AS—six cheques drawn as before in favour of the persons abovementioned, dated 15th November 1957, each for £100.)

(Exhibit AT—group of twelve cheques drawn by Robert Frank Hughes and Logan Hunter Caldwell on this account, between 9th August 1955 and 26th May. Cheques being in favour of various payees for expenses of various sorts—payees as follows:—E.C.O.G.; Under-Secretary of Mines; Gordon Garling; Giugni, solicitors, Young; Burrenong Shire; Eric Campbell Omant and Grant; Wardens Clerk; Shire of Burrenong; Under-Secretary of Mines (£284); Eric Campbell Omant and Grant; Department of Mines; Under-Secretary of Mines (£324); Cash £25. 0. 9).

(Luncheon adjournment.)

AT 2.00 P.M.

ALFRED WILLIAM HENRY

On subpoena duces tecum

Mr LARKINS: Q. What is your full name? A. Alfred William Henry.

Q. Are you an officer of the Registrar-General? A. Yes.

Q. Do you produce certain documents on subpoena duces tecum with the subpoena? A. Correct. 30

Q. Do you produce a subpoena directed to the Registrar-General? A. Correct.

(Allowed to leave.)

(Exhibit AU—Crown Grant dated 3rd October 1907, of portion 27 in the Parish of Bribaree, County of Monteagle—vol. 1823, fol. 48.)

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GORDON FRANCIS GIUGNI

Sworn, examined, deposed:

Mr LARKINS: Q. What is your full name? A. Gordon Francis Giugni.

Q. You are a solicitor of the Supreme Court of New South Wales? A. Yes. 40

Q. Practising at Young? A. Yes.

Q. You are a member of the firm of Gordon, Garling & Giugni? A. That is so.

- Q. And you live at Demondrille Street, Young? A. Yes.
- Q. Would you look at two documents. First of all at the document of 31st January 1957. (Shown to witness.) Are you familiar with the writing of Logan Hunter Caldwell? A. Yes.
- Q. You knew him personally? A. Yes.
- Q. Is that his signature? A. That is, yes.
- Q. Did you witness that signature? A. I did.
(Exhibit AV—document above referred to.)
- Q. Would you now be good enough to look at the other document.
10 (Shown to witness.) Is that the signature of Logan Hunter Caldwell?
A. Yes.
- Q. Did you witness that? A. I did.
(Exhibit AW—document above referred to.)
- Q. I think you have certain diary entries there and you have refreshed your recollection? A. The diary entries are produced in Court.
- Q. Having regard to those diary entries, would you like to look at them? A. Yes, I would not be sure what is in them without looking at them. (Shown to witness.)
- 20 Q. I am showing you a photostat . . .
- HIS HONOR: Are you asking him to refresh his recollection?
- Mr LARKINS: Yes, Your Honor.
- Mr ISAACS: It is agreed that he has no independent recollection.
- Mr LARKINS: Q. Having regard to your diary entries, do they show that on the 9th January 1957 you received instructions from Logan Hunter Caldwell to prepare the agreement which is now Exhibit AV?
- A. Yes, that is the one of the 31st January.
- Q. Then, if you look at the same page, on the 23rd May 1957 did you attend Mr Caldwell and discuss with him a proposed reduction
30 of royalties? A. Yes.
- Q. If you go back to the page, that is to say on the 7th June 1957, did you receive from Mr Caldwell instructions to prepare a fresh royalty agreement? A. That is so.
- Q. Then turn to page 4 of that. Did you, on the 10th June 1957, attend Mr Tom Buckley when he signed a fresh royalty agreement?
A. That is correct.
- Q. And would you have a look at Exhibit AW. (Shown to witness.) A. That would be the agreement.
- Q. You witnessed Mr Buckley's signature there? A. Yes.
- 40 Q. He signed on the 10th. Does your note say that you attended Logan Caldwell and executed a fresh agreement on the 13th? A. That would be correct, yes.
- Q. I think on 13th June 1957? A. Yes.
- Q. Then you I think, in your handwriting, dated the agreement 14th June the following day? A. Yes, the 14th June is my writing.
- Q. I think then on the 14th June you forwarded the agreement

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to Australian Blue Metal under cover of a letter of the same date. I do not think that shows from your diary? A. I do not think it shows in there—I did so.

Q. Then would you look at p. 5. I think on 7th August you attended Mr Omant advising particulars of the royalty agreement between Hughes and Caldwell and A.B.M., and handed him a copy? A. Yes, on the 7th August 1957.

Q. Is this your letter to the secretary, Australian Blue Metals Limited, enclosing the agreement which is Exhibit AW. (Shown to witness.) A. Yes, that is the letter. I wrote that. 10

(Exhibit AX—letter dated 14th June 1957 to Australian Blue Metal Ltd.)

CROSS-EXAMINATION:

Cross-
Examination.

Mr ST. JOHN: Q. It appears quite inadvertently that you inserted the wrong date in the agreement? A. Yes.

Q. It was really executed, or signed, by the second party on 13th June 1957? A. Yes.

Q. Possibly you dated it the same time as you sent the letter off to A.B.M., the next day? A. Yes, possibly that is what would have happened. 20

Q. You had been, I think, retained by the Australian Blue Metal Co. Ltd. for some years prior to 1957, had you not, as their regular solicitor in Young? A. I had been doing work for about two years. I think it started at the end of 1955.

Q. And you had never, I think, previously been invited to do any work on behalf of Hughes and Caldwell? A. No, I think that during 1956 Mr Caldwell asked me to appear for him on an authority to enter.

Q. That was Logan Caldwell? A. Yes. I can check that. I have diary entries in regard to that. 30

Q. That would be a solitary occasion? A. Yes. No other work.

Q. You probably would have known for many years that Mr Omant's firm had been doing whatever work was necessary to be done in connection with income tax returns and so on for Hughes and Caldwell? A. I would not have known.

Q. You would not have known? A. No.

Q. The only instructions you received in connection with these two agreements came from Logan Caldwell himself? A. That is so.

Q. You never had any communication whatever with any of the other five parties interested in connection with these agreements? 40
A. I never had any instructions from the Hughes Bros. I would not have had any instruction from George Caldwell although it could have been Logan Caldwell. I cannot recall.

Q. I think he had died in fact prior to this, had he not. Do you know that? A. He had died in 1956.

Q. So that it gets back to the fact that Logan was the only one

with whom you had any communication at any time in relation to that until Mr Omant came along and got a copy from you on the 7th August? A. Yes.

Q. And it is perfectly clear you regarded yourself as acting for both parties in connection with these two agreements. Is that so? A. No.

Q. You certainly acted for Australian Blue Metal in relation to those two agreements, did you not? A. No, I would say I regarded myself as acting for Hughes and Caldwell only.

10 Q. And not for Australian Blue Metal? A. Yes.

Q. You never sent them an account for work, did you? A. No.

Q. Did you ever send an account to Australian Blue Metal? A. No.

Q. You made out a diary sheet in the name of Australian Blue Metal, did you not? A. Yes. There were some entries on the Blue Metal sheet that are also on the Hughes and Caldwell sheet. They were merely cross-indexing.

Q. Would not that indicate normally that you regarded yourself as acting for both parties? A. Yes.

20 Q. Australian Blue Metal had no other solicitors acting in the matter, did they? A. No.

Q. Mr Buckley did come and discuss a form of agreement with you on behalf of Australian Blue Metal? A. I can only say that from my entries. I have no clear recollection of it. Oh yes—on the 25th January 1957 the entry is “attending Tom Buckley—he approved same”.

Q. You are not suggesting that you were doing that work for him gratuitously? A. No.

Q. Or for Australian Blue Metal gratuitously? A. No.

30 Q. Do you recall if you sent an agreement to Australian Blue Metal when they consulted you about certain phraseology used? A. Yes, they asked me to define some questions in the agreement.

Q. You wrote back? A. Yes.

Q. And explained it? A. I think I interviewed Tom Buckley and wrote back and gave him an interpretation.

Q. Do you suggest you did that work gratuitously for Australian Blue Metal? A. I do not think I did it for Australian Blue Metal.

Q. You think you did it for Hughes and Caldwell? A. Yes.

40 Q. So for the benefit of Hughes and Caldwell you explain what the agreement meant to Australian Blue Metal, is that so? A. Perhaps I should qualify it. I explained it, yes.

Q. Your counsel said that you had no independent recollection? A. That is so.

Mr ISAACS: No independent recollection of what is in the diary notes.

Mr ST. JOHN: Q. The diary notes after all did indicate you were

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acting for Australian Blue Metal as well as Hughes and Caldwell?

A. No sir.

HIS HONOR: I understood the witness had no independent recollection as far as the knowledge he was going to depose to in this Court.

Mr ISAACS: And those are matters which were in the diary notes.

HIS HONOR: Mr St. John put that to him and you corrected him and said "independent recollection of what is in the diary notes".

Mr ISAACS: What I understood Mr St. John said was that he had no independent recollection of whether he acted for Australian Blue Metal or not. It was only in that respect.

10

Mr ST. JOHN: Q. Could you show that to me? A. On the 25th January?

Q. Witness points to the sheet of Australian Blue Metal commencing entry being January 18th 1957—you see? A. The entry is January 25th 1957. I do not see the entry of the attendances, reflecting the entry of January 25th 1957. I do not see Australian Blue Metal was attended, nor did I charge for attendance on Tom Buckley nor for the attendance on Logan Caldwell. On the entry of 7th June 1957 "attending Logan Caldwell—instructions to draw agreement—attending drawing same". That is not included in my charge. 20

Q. When did you cost this out, as you say? (No answer.)

Q. When did you enter the cost? A. I could not say.

Q. After the dispute had arisen, anyhow? A. Yes.

Q. And although, as you say, you did not send a bill to Australian Blue Metal, you did not send one to Hughes and Caldwell either? A. That is so.

Q. Do you recollect why you omitted to render a bill for that at the same time as you rendered any other bill? A. I rendered an account to Hughes and Caldwell for earlier work. From the first agreement to the second agreement was only a short lapse of time. I 30 received instructions for the second agreement and in the normal way rendered an account for the first agreement. Then the dispute arose in regard to the second agreement, almost immediately it was signed and I then decided, or I did not render an account for it.

Q. Might it not have been the true reason that it was not included in the Australian Blue Metal Account although it occurred on the entry sheets, that this dispute had blown up in the meantime? A. No.

Q. Would you normally have put on their entry sheets matters in respect of which you were not acting for them? A. Not normally, no.

Q. Can you suggest now any reasons why you did that in this 40 case? A. Only for cross-indexing reasons.

Q. Was there any necessity to do that if you were not charging for it and not acting for them? A. No.

Q. So you cannot offer now an explanation as to why they are there can you? A. No.

Q. When Mr Buckley came in to see you on the 10th June did

he then make any mention of the opening up of a new pit? A. I cannot recall any.

Q. Do you remember any conversation about opening up a new pit at any time prior to the dispute arising? A. No.

Q. And you sent a copy of the January agreement to Australian Blue Metal on the 25th January, did you not? A. Yes. I think I sent it by letter dated 31st January. The diary note shows the 25th. I checked back on the calendar. It was a holiday weekend. The 25th was a Friday.

10 Q. It is quite possible the diary entry relates to the time when you dictated the letter? A. Yes.

Q. And on the 31st is when it actually went off, is that so? A. That could be.

HIS HONOR: Q. Did you have any retainer from Australian Blue Metal in regard to this matter at that time? A. No sir.

Q. What did you mean when you said that you held the agreement jointly for Australian Blue Metal and for the partnership? A. I had only one copy signed. I felt it was wrong to forward it to them. I assume I thought—I have no recollection—but really my letter—I
20 thought it was wrong to let it out of my possession. This was the second agreement which was only against Australian Blue Metal, if I could put it that way. It was on all fours with the previous agreement except in regard to the reduction in royalties.

Q. Would you hold the agreement for your client or would you hold the agreement for strangers? A. Well, I should hold it for my own client.

RE-EXAMINATION:

Re-examination.

Mr LARKINS: Q. You were asked when you sent a copy of the first agreement and also you were asked whether or not you asked some
30 questions concerning the boundary. First of all would you look at this letter dated 31st January 1957. (Shown to witness.) Is that the letter under cover of which you forwarded the first agreement, Exhibit AV? A. That is so, yes.

(Exhibit AY—letter dated 31st January 1957 to Australian Blue Metal from Gordon, Garling and Giugni.)

Q. With that letter you received from Australian Blue Metal you received a query about. . . . A. I have not got it with me. I have it here in Sydney.

Q. Have a look at these two documents; firstly of the 15th
40 February. Is that your own letter; is that the letter that you sent in reply to that query? A. That is the letter I sent in reply to that query.

Q. Would you have a look at the other document. (Shown to witness.) A. That is a copy of the letter I received.

(Exhibit AZ—copy of letter from Australian Blue Metal dated 5th February 1957 to Messrs. Gordon, Garling and Giugni and reply

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dated 15th February 1957. It was stated both those documents were disclosed on discovery.)

Q. You have been asked certain questions about whether you had ever acted for the Hughes and Caldwell syndicate prior to January 1957 and I think you told us that you appeared on an application for authority to enter? A. That is so, at the Mining Wardens Court.

Q. Was that in respect to a mining lease? A. Yes. I think it was an application to enter in regard to P.M.L. 19 but I have no recollection.

Q. Were you paid for these services? A. Yes. 10

Q. Would you have a look at Exhibit AT, at the cheque of 21st April 1956. Does that refresh your memory at all as to whether it would have been about that time that you were paid for these services? A. I have recently looked up a copy of the account I rendered. I have no recollection, but from the copy of the account I have I know that cheque was the amount owing for that.

Q. £5. 6. 6 would have been your fees for that appearance? A. Yes.

Q. And that would be payment for it? A. Yes.

Q. That was in respect of P.M.L. 19? A. I would not be 20 certain about P.M.L. 19, about what P.M.L. it was. I think it was P.M.L. 19. It was an application for authority to enter, I know. I can ascertain that by checking the diary entries.

Q. Have you papers here in Court from which you could check or would you rather postpone it? A. I do not know that I have them here. I have other papers out where I am staying.

Q. There is one other matter. You were asked about instructions that you obtained from Logan Caldwell in connection with the agreement which is Exhibit AB. How did you obtain those instructions. Were they written or . . . A. That was the first agreement of 31st 30 January?

Q. Yes? A. From my entry I saw Mr Caldwell. But from the notes that I have he handed me some written instructions which I assume he amplified verbally.

Q. Have you retained the original instructions that he gave you? A. Yes.

Q. Are they available? A. Yes.

Q. May I see them? A. Yes, in my brief case. Those instructions are in Logan Caldwell's writing. (Witness hands document to counsel.) 40

Q. This is one of the documents covered by the subpoena duces tecum, is it not? A. That is so.

(Mr St. John objects to proposed tender.)

HIS HONOR: Q. Do you make any claim in regard to this document? A. How do you mean, sir?

Q. Are you claiming privilege in regard to it? A. No. I am

only acting for the estate of Logan Caldwell and I have not been instructed to waive any claim there.

Q. You had better take some advice on the nature of professional privilege, I think. (No answer.)

Mr ST. JOHN: Whether Mr Giugni claims it or not I certainly do claim it on behalf of my clients.

HIS HONOR: Can you claim it?

Mr ST. JOHN: I would think with respect either client or solicitor can claim it. . . . (Discussion ensued.)

10 WITNESS: (Later) Perhaps I might be able to reconsider that matter now. I would like to claim privilege.

(Mr St. John presses his objection to proposed tender.)

(Short adjournment.)

ON RESUMPTION

Mr ISAACS: May I say this. I have spoken to my learned friend, Mr St. John, and inquired whether he desires that the claim of privilege be made by the witness on behalf of his clients in respect of that document, and he has instructed me "no". That disposes of his clients.

20 We make no claim for privilege in respect either to Steele Hunter Caldwell or the estate of Logan Hunter Caldwell.

Mr ST. JOHN: That is correct. The only objection I now take is what I have already taken on the score of relevance.

HIS HONOR: I will have a look at the document.

How do you make it relevant Mr Larkins?

(Mr Larkins addresses Court. Argument ensued.)

HIS HONOR: I will allow it because no part of the conversation or instructions was extracted in cross-examination and therefore I do not consider that it lets in a document which would not otherwise be admissible. The witness was asked in chief from whom had the
30 instructions come, for whom he was acting. He was cross-examined on that. On my recollection he was not cross-examined on the contents of those instructions.

The document will be Exhibit BA, instructions slip in the handwriting of L. H. Caldwell, admitted against S. H. Caldwell.

Mr LARKINS: I would like to have it noted when I first tendered it my learned friend claimed privilege on behalf of his clients and claimed that the privilege would not be waived.

HIS HONOR: It can be noted that a claim was made and withdrawn on the ground that those defendants had no interest in the document.
40 The matter arising out of that was raised by me with Mr Giugni who said that he was acting on behalf of Mr St. John's clients at that time. There was the question as to whether or not he should claim that privilege for it.

(Mr St. John asks leave to further cross-examine—objected to by Mr Larkins—leave granted.)

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FURTHER CROSS-EXAMINATION:

Mr ST. JOHN: Q. Are you sure that in relation to P.M.L. 19 you acted for Hughes and Caldwell or was it not simply Logan Hunter Caldwell personally and George Caldwell personally? A. I can only go on the account. I have no recollection. I can only go on my entries. I rendered accounts for Hughes and Caldwell.

Q. I appreciate that. A. I have no recollection of specific instructions.

Q. You may take my assertion this was a document produced by the Mines Department. On that you will agree the applicant is shown there as Logan Hunter Caldwell? A. Yes. 10

Q. In the light of that may it not have been that your firm was simply acting for Logan Hunter Caldwell personally? (No answer.)

Q. I am suggesting to you in the light of that application you may well have been acting for Logan Hunter Caldwell personally? A. In the light of that, yes.

Q. But you do not really remember? A. I do know that Logan Hunter Caldwell treated this lease, or intended to treat this lease . . .

Q. Do you recall this? A. I have an agreement which Logan Hunter Caldwell signed treating this lease as belonging to himself and other members of the syndicate. 20

Q. Have you got that here? A. Yes.

Q. A declaration of trust, is it, or something of that kind? A. It is an agreement between Logan Caldwell and the four beneficiaries that George Wigham Caldwell set out in relation to certain entitlements to royalties.

HIS HONOR: Q. You said beneficiaries and George Wigham Caldwell, but not Hughes? A. No.

Mr ST. JOHN: Q. Is that simply explained by the fact that this application was in respect of land originally owned by George Wigham Caldwell of which they later became owners? A. No, they would receive as owners royalties direct from the Mines Department. 30

Q. There is nothing to preclude a partnership agreement between them, lessee and owner? A. No.

Q. That is what happened in relation to this matter originally? A. I do not follow you there.

Q. Despite this agreement do you state that is intended as such between Logan Hunter Caldwell and the daughters of George Wigham Caldwell? A. I only mentioned the agreement to show the profit, or Logan Caldwell agreed that the profits, I think of P.M.L. 19, or the royalties, were to be shared in six ways, from which I drew the inference. 40

Q. Six ways between his four daughters, George Wigham Caldwell's daughters? A. No, they were entitled to a one-sixth share. I have taken that as being derived from the holdings on behalf of this group or syndicate.

Q. All your instructions came from Logan Hunter Caldwell?
A. Yes.

Q. There is nothing specific to indicate certainly that he was acting for Hughes and Caldwell, regarded as a syndicate? A. No.

Mr LARKINS: Q. You see the agreement? A. Yes, this is the first agreement. I feel I should claim privilege on behalf of members of the Caldwell family. I have no authority from them . . .

HIS HONOR: Q. Is this an executed agreement? A. Yes, Your Honor.

10 HIS HONOR: I think you are not obliged to claim privilege for that. What do you say, Mr Larkins?

Mr LARKINS: It is not a communication, no . . . (Discussion ensued.)

HIS HONOR: It is a document which is not only bound to be stamped, but also bound to be registered with the Mines Department. Under those circumstances it could not be intended to be executed other than for public disclosure and I think you can disclose it.

Mr LARKINS: Q. Will you have a look at this document. Is that the signature of Logan Caldwell? (Shown to witness.) A. Yes.

Q. Was that signed in your presence? A. Yes.

20 Q. As to the other signatories, who are they? A. Mary Peggy Regan; Lorna (?) Wigham Regan; Nancy Wigham Regan and Jean Heather Caldwell. They are the four daughters of George Wigham Caldwell.

HIS HONOR: Is that stamped?

Mr LARKINS: No, Your Honor.

(Mr St. John objects to document on the ground of irrelevance.)

HIS HONOR: Apart from the question of an undertaking about stamp duty, what is the relevance of it, Mr Larkins?

(Mr Larkins addresses Court on relevance of the document.)

30 Undertakes to make it relevant without conceding that it is not at present relevant.)

HIS HONOR: I would require an undertaking to make it relevant, because I am not satisfied with a mere statement that a royalty or two paid into Hughes and Caldwell is any evidence that it is owned by a partnership known as Hughes and Caldwell, although it may be, that anything could be drawn from the statement in the last paragraph. I reserve that question, but it is admissible against Logan Hunter Caldwell in regard to his dealings with Gordon, Garling and Giugni.

Mr. LARKINS: Your Honor is not satisfied that it is a declaration
40 against interest.

HIS HONOR: No, I am not satisfied that it is a relevant declaration against interest.

Mr LARKINS: I do not wish to be taken as abandoning my submission that it is against them all.

HIS HONOR: I am admitting it against them all on your undertaking to make it relevant.

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(Further argument ensued.)

HIS HONOR: You also undertake to get the document stamped.

Mr LARKINS: Yes, Your Honor.

(Exhibit BB—Mining agreement.)

Mr LARKINS: Q. At any time in connection with the execution of the document which is now Exhibit BB was Mr Norman Regan present? A. Mr Norman Regan according to my entry perused the agreement before it was executed by his wife and sisters-in-law, but whether he was present when it was executed I would not know.

Q. Would you tell us which of the parties to the agreement was his 10 wife? A. Mrs. Nancy Regan.

Q. May we take it the other two Mesdames Regan were his sisters? A. Yes.

Mr ISAACS: (By leave). Q. Can you tell me where was Mr Logan Hunter living at the date of his death? A. In Demondrille Street, Young.

Q. Where was Steele Hunter Caldwell living at the date of Logan's death? A. Katherine Bank near Theaddingra.

Q. What is the distance between those two places and Young? A. I think about approximately 20 miles. 20

Q. Do you know for how long Logan Hunter had been living at Young, at his address at Young at which he died—approximately?

A. I think during two or three years.

Q. During that period do you know where Steele Hunter was living? A. Yes. He was living at the homestead at Katherine Bank.

Q. Within a couple of days of the death of Logan Hunter Caldwell did Steele Hunter Caldwell call upon you at your office? A. Yes.

Q. Did he have something with him? A. Yes.

Q. Did he have a suitcase? A. Yes.

Q. And were there some books and papers in it? A. Yes, there 30 were some books and papers in it belonging to (not heard).

Q. Have you preserved those books and papers that were brought to you on that occasion by Mr Steele Hunter Caldwell? A. Yes, I have.

Q. At that time of course you knew Mr Steele Hunter Caldwell was executor under the deceased's will? A. That is so.

Q. Did he bring them to you in his capacity as executor? A. Yes.

(Witness retired.)

Mr LARKINS: The Secretary of the plaintiff company, Mr Driscoll, 40 is in Court. He will be called as a witness. If my learned friend does not wish him to remain he will be asked to leave. . . . (Discussion ensued.)

HIS HONOR: I think Mr Guigni's evidence is special evidence. In that case, being short, it is hardly necessary that he need leave the Court.

Mr. ST. JOHN: I have no objection to Mr Driscoll remaining but if I have an objection at a later stage it may be if other witnesses cover the same ground as Mr Driscoll.

FRANK ELLERSLEY ROBERTS

Sworn, examined, deposed:

- Mr LARKINS: Q. What is your full name? A. Frank Ellersley Roberts.
- Q. Where do you reside? A. 36 Campbell Street, Young.
- Q. You are a member of the firm of Tester Porter & Co., Public Accountants? A. Yes.
- Q. You carry on practice in the town of Young? A. Yes.
- Q. Were you present on 14th August 1957 at a meeting which was held in your office? A. Yes.
- Q. Would you tell us who was present? A. Present at that meeting there were Messrs., as I know them, Vic Hughes; Clarrie Hughes; Frank Hughes; Mr Logan Hunter Caldwell; Mr Norman Regan; Mr Matthew George Porter and myself.
- Q. Mr Porter being your partner? A. Yes.
- Q. They were all together, were they, in a room in your offices? A. Yes, they were in my own office.
- Q. Had these people you have mentioned already assembled when you came into the room? A. No sir, I was in the room as they came in one or two at a time.
- Q. And were you asked by someone to take notes of whatever transpired? A. Yes.
- Q. Did you in fact make notes? A. I did.
- Q. Have you still those notes? A. Yes.
- Q. Were the notes which you have of the meeting at the time? A. Yes.
- 30 Q. Did the meeting last for several hours? A. Yes, I would say it lasted for an hour and three quarters to two hours.
- Q. Would you be able to recall the detail of what was said without reference to your notes? A. Oh no, not at all sir, no.
- (Mr Larkins requests permission for witness to refer to notes—granted.)
- Q. His Honor says you may refer to your notes, Mr Roberts. A. Thank you.
- Q. Looking at your notes what was the first thing that occurred? A. The first thing that occurred was the appointment or election of a 40 chairman to chair their meeting.
- Q. Was that moved and seconded? A. Yes, it was moved by Mr Frank Hughes and seconded by Logan Caldwell.
- Q. What was the motion? A. The motion was along the lines that Mr M. G. Porter be appointed chairman of the meeting.
- Q. He being your partner? A. Yes.

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Gordon Francis
Giugni.

Further
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Frank Ellersley
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—

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—

Q. What was the next thing that was said by any of those whom you have mentioned as being present? A. Mr Logan Hunter Caldwell made the statement that Mr Regan was responsible for, or asked for the meeting to be called.

Q. Then who spoke next? A. Mr Regan replied. He agreed that he was partly responsible for calling it and wanted to know the details of the partnership on behalf of the estate of the late George Caldwell so that the estate could be put into the picture, re certain contentious matters that apparently had arisen.

Q. Who spoke next? A. Mr Logan Hunter Caldwell drew Mr 10
Regan's attention to the discussion that took place at the Bank. He also went on to say that a solicitor said that it was not necessary to advise the estate of George Caldwell concerning the details of any partnership or agreement that had taken place.

Q. Who spoke next? A. The chairman, Mr Porter.

Q. What did he say? A. He asked a question "Do you have an agreement?"

Q. Did anybody reply to that? A. Frank Hughes replied, "Yes."

Q. What was said then? A. Logan Caldwell then said that the 20
agreement that coupled his name with the late Peter Hughes was still in operation.

Q. What next? A. Frank Hughes said that the agreement could not be located.

Q. Did Mr Porter then say something? A. Yes. Mr Porter then asked a question, "Was the management equal?"

Q. Would you be good enough to put just what Mr Porter would have said "Is the management equal?" A. Yes, I would think so.

Q. Did Mr Logan Caldwell then say something? A. Yes, he said that Mr Peter Hughes and himself, Logan Hunter Caldwell, 30
conducted the management.

Q. Did Mr Porter then say something? A. Mr Porter then apparently went on and said that the partners now are the Caldwell Bros. and the Hughes Bros. and that the purpose of the meeting was to bring the agreement up to date with the present partners.

Q. Did Mr Caldwell say something? A. Yes, Logan Hunter Caldwell said that this brought up the matter of the amount of magnesite taken from the mine not supporting the amount in question from Tom Buckley's statement on the daybook and the records, and then went on and said that Australian Blue Metal pay on the Weedallion 40
weights and Vic Hughes would pay it and to submit the accounts and pay on the B.H.P. weights.

Q. That was the process at the railway siding at P.M.L. 1, the most convenient one? A. I would think so, yes.

Q. Did Mr Caldwell go on to say something about the manner in which those royalties were ascertained? A. Yes. He went on to

say that Australian Blue Metal forwarded statements with their cheques and he would check the statements against the day books and at a later stage he would make enquiries etc., re the trucks.

Q. Who spoke then? A. Frank Hughes spoke then and said that Mr Logan Hunter Caldwell's services were very much appreciated.

Q. What happened then? A. Logan Caldwell said that Mr Vic Hughes had not forwarded certain figures to date.

Q. Then did Mr Regan say something? A. Mr Regan then felt that there should be a permanent secretary appointed and he proceeded to move that Tester Porter & Co. be requested to handle everything. That motion was seconded by Frank Hughes. Logan Hunter Caldwell agreed to the suggestion of the change.

HIS HONOR: This is on the 9th August, was the date announced in the interrogatories.

Mr LARKIN: Yes.

Q. Do you recall what the change was. You said Logan Hunter Caldwell agreed to the suggestion of the change? A. Yes.

Q. What was that referring to? A. Mr Regan first thought that Logan Hunter Caldwell was keeping certain records of Hughes and Caldwell and on Mr Norman Regan's suggestion those records should be handed over to Tester Porter and Co. to maintain.

Q. Then did the chairman of the meeting say something? A. Yes, the chairman then asked a question about getting together to make decisions—he said—"Do you get together to make decisions", and Norman Regan replied, "No".

Q. Then what did the chairman say? A. The chairman then said a meeting should be held to discuss arrangements etc.

Q. What was said then? A. Mr Norman Regan went on to say that decisions were not known and that he had no knowledge of any agreement with Australian Blue Metal.

Q. Who spoke then? A. Mr Logan Hunter Caldwell then said that a solicitor advised him that there was no need to advise the other parties.

Q. What was said then? A. Norman Regan then said that the decision had already been made re Australian Blue Metal and Hughes' lease and P.M.L. 1. Mr Regan also went on and asked "Have you got the agreement between A.B.M.?"

Q. What did Mr Caldwell say? A. Logan Hunter Caldwell replied, "No." Frank Hughes then said that Mr Omant could not find the agreement.

Q. What did Mr Caldwell say? A. Mr Caldwell then replied that the Australian Blue Metal Co. would like to go into P.M.L. 1. He said that Vic Hughes and Frank Hughes had been interviewed on that.

Q. Did he say by whom they had been interviewed? A. I would say that Logan Caldwell . . .

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HIS HONOR: I do not know about the witness' recollection.

Mr LARKINS: Q. Do you recollect from the note you have what Mr Caldwell said as to who had interviewed Vic and Frank? A. No, sir.

Q. How does your precise note read? A. On that aspect "Vic and Frank interviewed".

Q. What did Mr Caldwell go on to say? A. Mr Caldwell went on to say that he asked Mr Vic Hughes where to go in. I take it where to go in to P.M.L. 1. He said a point south of the turn in the fence and mine on the eastern side of the fence. Vic Hughes considered that "It is of little use", and that they should be let in and pay 10/- per ton. 10

Q. Who spoke next? A. Frank Hughes spoke next. He said—"I do recall the discussion"—but had no recollection of the discussion re the turn in the fence and the point south. He did recall a discussion concerning, I think, certain holes near the hut.

Q. Did Vic Hughes say something? A. Vic Hughes then said that they could go to the edge of the wheat. That we would not work it ourselves and that he understood—that he explained to Tom Buckley not to go across the gully into the wheat. And he then said "They have now jumped into the wheat".

Q. Did Logan Caldwell say something? A. Logan Caldwell 20 said that the question of the gully was not mentioned until six months after the agreement.

Q. What was said next? A. Norman Regan then said that a share farmer named Starr had certain land fallowed and that a miner had started to mine on fallowed ground and the miner concerned said that he had a lease of that land and that the statement that he had the lease of the land was the first Norman Regan knew about it.

Q. What was said then? A. Logan Caldwell went on and mentioned a verbal agreement re the fallow and also mentioned the name of Craig and Giuliano. 30

Q. Did Norman Regan say something? A. Norman Regan then said that Caldwell Bros. were no longer interested, that since the death of George Caldwell deceased, the Caldwell Pastoral Co. were now in business and that the lease included 56 acres of wheat country and that they strongly resented there being further intrusion.

Q. Did the chairman say something? A. Mr Porter, the chairman, asked a question, "Is the entry into P.M.L. 1 determined or questioned". Norman Regan replied that the question was as to the agreement with A.B.M. to mine on Hughes' lease.

Q. Did the chairman say anything? A. Mr Porter asked, "Are 40 you aware of the portions signed over?" and Logan Caldwell replied, "Yes."

Q. What was next? A. Frank Hughes then drew attention of the meeting to the agreement. Mr Porter said that there was an objection from Mr Hughes re the portion signed over in that particular agreement.

Q. Who spoke then? A. The next speaker was Clarrie Hughes.

Q. That was the first time he spoke? A. Yes, that was the first time he had spoken at the meeting. He said that he recalled the area was a chain on each side of the heavy rock and no more and Mr Porter then said "Are they, Australian Blue Metal, insisting on rights of the licence", and Logan Hunter Caldwell then said that he could get the agreement in question. He then left the meeting to obtain that agreement.

HIS HONOR: Is that the same agreement as Frank Hughes said Mr
10 Omant had mislaid.

Mr ST. JOHN: He did not say "mislaid". He said "could not find".

HIS HONOR: Nothing was said by Logan Caldwell about knowing where it was.

Mr LARKINS: No. He said that he could get the agreement and he left to get it.

WITNESS: Yes. He left the meeting to get the agreement.

Q. Did the chairman then say something? A. To my recollection the chairman then spoke to the meeting concerning an agreement, that if such an agreement was signed by Logan Caldwell that he felt
20 it would possibly "hold water".

Q. At that stage did Mr Caldwell return? A. Mr Caldwell then returned with a copy of the agreement that he produced and handed to the chairman. The chairman read the agreement to the meeting.

Q. Was the copy which he produced then retained by you and annexed to those notes? A. Yes.

Q. (Exhibit AW shown to witness.) I show you Exhibit AW. You have satisfied yourself that the copy that you read is a copy of that. I take it the copy that was read to the meeting and which is
30 annexed to the notes you made at the time—it was dated 14th June?
A. Yes.

Q. And it had inserted into Clause 2 in ink "as from 1st June 1957"? A. Yes.

Q. But there were no copies of either signatories or of the attesting witnesses? A. No.

Q. And so that was what Mr Porter read to the meeting? A. Yes.

Q. Then what took place? A. Norman Regan turned to Frank Hughes and asked "Did you know about the agreement?" Frank
40 Hughes replied "No". He asked the same question of Mr Clarrie Hughes and Clarrie Hughes replied, "No". He posed the same question to Vic Hughes and he replied "Yes, but portion only," and he said that the Caldwell Pastoral Co. had no knowledge of the agreement.

Q. Following on that did Mr Porter say something? A. He said from memory—he went on to explain to the meeting the validity of the agreement.

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Q. Did he mention anything about the absence of anything affecting it? Did he say anything to them about the validity of the agreement, about their knowledge of it? (Objected to by Mr St. John.) HIS HONOR: I will allow it. It is Mr Porter's opinion on the validity but I do not think it will assist a great deal.

Mr LARKINS: Q. What did Mr Porter say about its validity? A. Mr Porter then spoke to the meeting and said—drew their attention to the fact, that one partner could bind a partnership.

Q. Then following on that what did Mr Regan say? A. Mr Regan then said that he felt that the legal position should be deter- 10
mined before any further discussions took place.

Q. Then what did Mr Caldwell say? A. Mr Caldwell then said that the manager, Tom Buckley, had told him that if there was any trouble he felt Blue Metal would withdraw, and Tom Buckley also said, as stated by Mr Caldwell, that no further action would be taken unless directed by his head office.

Q. Did Frank Hughes then observe something? A. Frank Hughes observed that Mr Omant said that the agreement was merely a licence that could be terminated at a minute's notice.

Q. What followed on that? A. Norman Regan asked a ques- 20
tion "Is there anything in the original agreement whereby one person could sign".

Q. What did the chairman say? A. The chairman then reiterated his earlier remarks and said that a partner could bind the firm.

Q. What followed then? A. Mr Porter then felt and said that the reason should be sought between two solicitors.

Q. What was said next? A. Frank Hughes then said that he had asked Mr Omant for advice and that Mr Omant had recommended to him that the agreement should be cancelled and a fresh agreement drawn. Mr Porter then asked the question "If you cancel the agree- 30
ment, what do you want?"

Q. Who answered that? A. Frank Hughes then went on to say that he was sorry he ever saw Australian Blue Metal. That they were too big and he wished it could be terminated. He then said that he would start to have the agreement terminated if legal advice at all recommended it.

Q. Who spoke next? A. Logan Caldwell felt that someone should approach Australian Blue Metal re the termination of the licence before any legal proceedings were entered into.

(Further hearing adjourned to 10 a.m., Thursday, 16th February, 40
1961.)

16th Feb., 1961.

Third Day: Thursday, 16th February, 1961

FRANK ELLERSLEY ROBERTS

Further examined:

Mr LARKINS: Q. Mr Roberts, at the adjournment yesterday you had

told us that after Mr Frank Hughes had said something to the effect that he was sorry that he ever saw A.B.M. that the next person who spoke was Logan Caldwell and you said that he felt someone should approach Australian Blue Metal re a termination of the licence before any legal proceedings were entered into. Have you found that portion of your notes? A. Yes.

Q. What was said next? A. Frank Hughes went on to say that they had been mining 30 tons a day, now 1500 tons and A.B.M. would not give any consideration at all.

10 Q. What was said after that? A. Mr Logan Caldwell then remarked that if he had overstepped the mark on any occasion it was all done in good faith.

Q. Who spoke next? A. Norman Regan then said that there was no thought of anything underhand at all. His only objection was that he had no knowledge of the agreement.

Q. Did Logan Caldwell then say something? A. Logan Caldwell then said that Mr Vic Hughes had said to him that Hughes and Caldwell were doing no good and that they should let A.B.M. in "to get a few bob".

20 Q. Who spoke next? A. Mr Frank Hughes said that they had overstepped the original area.

Q. Did Logan Caldwell then say something? A. Mr Logan Caldwell then said to the meeting that he considered that A.B.M. would only mine the portion already mined—he said "now they are in virgin country".

Q. Did the chairman then say something? A. The chairman then asked the question, "Are they within the line", and Logan Caldwell replied, "Yes."

30 Q. What did the chairman say? A. The chairman asked the question: "Do you want the agreement cancelled and start again", and the reply was "Yes", from those at the meeting.

Q. From everybody at the meeting? A. Yes, sir.

Q. Just read on. A. The chairman turned and asked Logan Caldwell the same question, "Do you want the agreement cancelled and start again?"

40 Q. Pausing there for the moment. When I asked you earlier when the chairman said, "Do you want the agreement cancelled and start again", you said everyone present at the meeting said, "Yes". Did Mr Caldwell say "Yes"? A. I don't know. I would say that the party opposite me would have said "Yes". Mr Caldwell was sitting on my right.

Q. You say that he put some questions directly to Mr Caldwell? A. Yes. He turned to Mr Caldwell and asked the same question, "Do you want the agreement cancelled and start again?"

Q. What did Mr Caldwell say? A. Mr Caldwell replied that

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he felt they should keep to their word but he said, "If the meeting decides I am happy to agree".

Q. What happened then? A. From memory a discussion then took place on termination of the agreement and Mr Porter framed a resolution that Gordon Garling & Giugni be approached re the determination and that Australian Blue Metal be required to stop work until the legal position was determined. That was seconded by Clarrie.

Q. That was carried, was it? That motion was carried? A. I don't remember. I take it it would be put to the meeting and carried.

Q. Following on that what was said? A. Mr Logan Caldwell 10 went on to say that they had taken 534 tons from the mine for the month of August and 634 tons were taken out for the month of July at 6/- per ton, as from the date of the agreement under dispute.

Q. Did he then ask something? A. Logan Caldwell then asked the meeting "What about the moneys", as one question. The second question he asked was "Are they still to be given to me" and the reply was "Yes".

Q. Then did Frank Hughes say something? A. Frank Hughes said that the policy adopted previously was to continue.

Q. Did Mr Caldwell then say something? A. Mr Caldwell 20 then drew the attention of the meeting to the fact that he had transferred the sum of £500 from moneys received by him to a savings bank account for purposes of meeting royalties.

Q. Did Frank Hughes then say something? A. Frank Hughes then said that he supported and endorsed Mr Caldwell's action. He made reference to 22/6d. going back to the Department and from memory the meeting in chorus agreed to that endorsement.

Mr LARKINS: I do not know whether Your Honor knows what that reference to the 22/6d. is, whether Your Honor heard that.

HIS HONOR: To the Department?

30

Mr LARKINS: Yes.

HIS HONOR: I would think that undoubtedly it would be one and one-eighth percent. of the gross value of the magnesite which is referred to in the list Exhibit A.

Mr LARKINS: Q. Having mentioned 22/6d. I do not know whether you told him of the authority on that? A. The meeting agreed to the endorsement put forward by Frank Hughes.

Q. Was some other topic adverted to by Norman Regan? A. Yes. Norman Regan asked the question should not the moneys due to the estate of the late G. W. Caldwell—George Wigham Caldwell 40 be paid direct to him, that is Norman Regan.

Q. Did Logan Caldwell reply? A. Logan Caldwell replied as well as asked who were the cheques made out to. I am not sure of the next note.

Q. What does the note read? A. I feel that it was said "If you give me the cheques I will pay them into the bank".

Q. As you are not sure would you give us the precise note that you have? A. "Who made out to"—"Give it to me and I will pay into bank".

Q. It is not in quotations in your notes? A. No.

Q. And it is on a separate line, is it? A. Yes.

Q. That is the best of your recollection? A. Yes.

Q. Perhaps you could give us the precise note that followed?
A. My note then followed "Mr Logan Caldwell pay estate into bank."

Q. Followed by? A. "Mr Norman Regan replied 'Yes'".

10 Q. You are uncertain as to precisely what was said on that?
A. Yes. The actual conversation I am not certain.

Q. Following on that was there another topic then brought up?

A. Yes. Norman Regan then asked Mr Vic Hughes "What about royalties?"

Q. Who spoke in answer to that? A. Frank Hughes replied. He said—suggested—that the royalty be 12/- for P.M.L. 1 for a period to be determined, "If legal dissolution successful".

Q. Did he go on to say something? A. He went on to say that he considered the royalty should be reviewed every three months
20 taking solid rock into consideration.

Q. Did Logan Caldwell say something then? A. Logan Caldwell said that the royalty should be based on production over a three-monthly period.

Q. Did the chairman then intervene? A. The chairman suggested that the parties should meet when a change was considered necessary on the question of the royalty which should be further discussed.

Q. Did Mr Logan Caldwell then say something on that? A. Mr Logan Caldwell then said that the question of the royalty crept
30 up during the war. Australian Blue Metal told the manager "that the carriers don't care". He went on to say, "The carriers would not give load dockets showing where", I take it "where the magnesite comes from". The note just reads "showing where it comes from".

Q. Was there some other matter discussed? A. Mr Logan Caldwell asked a question as to who would sign the cheques. Mr Porter, the chairman of the meeting, replied that the same authority as in the past.

Q. Did Mr Caldwell then say something? A. Mr Caldwell then drew the attention of the chairman to an appointment he had re income
40 tax returns.

Q. Did he say what income tax returns? A. I don't recall. No—I do not know.

Q. Did the chairman say something? A. The chairman then told Mr Caldwell that he should go ahead with the appointment as arranged and clean up the income tax returns as a partnership.

Q. Did Mr Caldwell then ask some further questions? A. Mr

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—

Caldwell asked the chairman should he in preparing the income tax returns take some of the sundry debtors into consideration or return it on a ready cash basis only. The chairman replied that the returns should be lodged on a cash basis only.

Q. Did the chairman then wind up the meeting? A. The chairman then said that he would line up the position and that he would advise members present and approach Australian Blue Metal re the agreement.

Q. What time did the meeting terminate? A. The meeting terminated at 3.55 p.m. 10

Q. Did you tell us the time it commenced? A. It would have commenced approximately at 10 past 2.

Q. Although I have put a series of questions to you while you have been giving your evidence I believe the answers that you have given indicate the sequence of the notes that you made? A. Yes.

Q. Your answers indicate everything that you noted of what was said in that period of time? A. Yes. I have enlarged in some instances on the notes.

Q. You have amplified from your notes where it has been within your recollection? A. Yes. 20

Q. In certain instances you have been unable to tell us as to precisely what was said from the form of the notes that you made? A. That is correct.

Q. May we take it if there had been any dissent by any member of the meeting to anything that was said that you would have noted—that you would have made a note of that dissent? A. Yes, I would have noted it.

Q. Would you go back, would you just refresh your memory from the early portion of your notes. From early on in your notes. I think you remember telling us that Mr Logan Caldwell told the meeting that Mr Regan had asked for the meeting? A. Yes. 30

Q. At the beginning? A. Yes.

Q. And then Mr Regan had said he agreed that he was partly responsible for calling it and wanted to know the details of the partnership on behalf of the estate of the late George Caldwell so that the estate could be put into the picture re certain contentious matters that had arisen. I asked who spoke next and you said Mr Logan Caldwell drew Mr Regan's attention to things that took place at the bank and also went on to say something about a solicitor said that it was not necessary to advise the estate of George Caldwell concerning the details of the partnership or the agreement that had taken place. Do you recall anything further as to anything more that was said about the discussion at the bank between Mr Caldwell and Mr Regan? A. No, sir. 40

CROSS-EXAMINATION

Mr ST. JOHN: Q. Mr Roberts, I think in this matter you were not actually the principal. Mr Porter I think was handling this end of the business and you were called in simply as a minute secretary, as we might call it? A. That is correct.

Q. You really had no recollection of what had taken place at the meeting until you referred to your notes a few weeks ago? A. The text of the meeting I could not have recalled. I would have known the parties present.

10 Q. I suppose having read through your notes a certain amount of reconstruction of the notes in your mind took place as you read them, is that so? A. In some instances, yes.

Q. But the notes themselves would be based, I assume, on what was really said? A. Yes.

Q. I am not suggesting you consciously departed from the notes for one moment, but taking it to where you commenced your evidence today you see there to 30 tons a day now 1500 per day? A. Yes.

Q. I will come back to that in a moment. But the next thing is "Logan Caldwell has overstepped the mark—all done in good
20 faith". Does that correctly indicate what was said was that he overstepped the mark but it was all done in good faith? A. No, sir. I will interpret that as "If I have overstepped . . ."

Q. I do not want your interpretation. Do you tell us now that although your notes said that he had overstepped the mark you recollect him saying something different to that? (Objected to.)

Q. Do you now tell us that you have any recollection of words being said different from the notes? (Objected to—question allowed: discussion: question withdrawn.)

Q. Have you any independent recollection of what was said in
30 relation to this question other than what appears in the notes? A. Yes, that Mr Caldwell said that if he had—"If I have", or "If I had overstepped the mark".

Q. "If I had", or "If I have overstepped the mark"? A. He did not admit that he had overstepped the mark or if he had done anything that was out of order that it was all done in good faith.

Q. You recall an "if" which does not appear in your note? A. That is correct.

HIS HONOR: Q. Do you remember when Mr Larkins asked you yesterday—did he say that he had not overstepped the mark? A.
40 No, he did not say that, Your Honor.

Mr ST. JOHN: Q. In fact he admitted that what was done was done without authority of the others? A. He did not admit that at all.

Q. At any rate, when they claimed that he had not consulted them he did not contradict them, did he? A. No, not to my knowledge.

Q. You told us a moment ago if anyone had dissented to anything your note would have shown it? A. Yes, that is correct.

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Q. Is that correct? A. Yes.

Q. So can we take it that when the others claimed that he had not authority from them he did not demur? A. I do not recall that at any time they said he did not have authority.

Q. Do you not recall each one being asked whether he had been consulted—whether they knew about the agreement? A. Yes.

Q. Each one said “No” to it, did they not? A. Frank Hughes said, “No” and Logan Caldwell said “No”. I think Vic said he knew part of it.

Q. Portion only? A. Yes. 10

Q. Leaving aside that portion only reference, they all said they knew nothing about that agreement? A. Yes.

Q. He did not suggest that they did? A. No.

Q. And your note does not make any reference to any dissent on his part to that? A. No, no dissent.

Q. You remember when Mr Larkins first asked you about your recollection yesterday. He said, “Would you be able to recall details of what was said without referring to your notes”, and you said, “Oh, no, not at all, sir”—“not all, sir”. Do you remember that? A. Yes.

Q. I think you can remember seeing Mr Holland the other day? 20
A. Yes.

Q. You told him that until you read your notes you had no recollection of what was said at that meeting? A. I have no recollection of the text of the meeting. The only recollection I have would be those present.

Q. You now tell us having read the whole of your notes you are now able to supply some of the gaps? A. The notes refresh my memory.

Q. You are now able to remember something that did not appear in the notes. The word “if” I am referring to. You are now able to 30
remember “if”? A. Yes.

Q. To start off that word was inserted? A. Yes.

Q. You cannot recall now whether he said “If he had”, or if he—“If I had” or “If I have”? A. “If I have overstepped the mark”.

Q. I think you said he could have said, “If I had”, or “If I have”?
A. Yes.

Q. Your record shows “have”? A. Yes, which makes me interpret it as “If I have overstepped the mark it was all done in good faith”, which makes me interpret it that way.

HIS HONOR: “If I have overstepped the mark”, or “If I had . . .”? 40
A. “If I have”, I would interpret it, Your Honor.

Mr ST. JOHN: Q. What you are really doing is seeking to interpret your note. That is the long and short of it. You are seeking to interpret your note? A. Yes.

Q. You are not able to swear as to what he said, are you? A. I could swear . . .

Q. From your recollection you are not able to swear? (No answer.)

Q. I will put the question again. From your unaided recollection . . . (Objected to.)

Q. From your unaided recollection you cannot remember, can you, what was said in relation to that particular matter. From your unaided recollection? A. Yes. I can swear that Mr Caldwell replied that if he had overstepped the mark—he was endeavouring to explain to the meeting . . .

10 Q. You were attempting to justify your recollection by reference to the word “have” rather than the word “had”? (Objected to: question allowed.)

Q. You were attempting to justify, or recall by reference, the word “had” instead of the word “have”, were you not? Do not look at your note. Please look at me. (Objected to.)

Q. You were attempting to justify your recollection of the use of the word “have” or the use of the word “had”? A. Yes.

HIS HONOR: The witness has sworn as to his unaided recollection, that is his recollection apart from any notes, that at no time could
20 he recall use of the word “had”. Is that it?

Mr ST. JOHN: Yes, Your Honor.

Mr ST. JOHN: Q. Did you not tell us a moment ago that he either said “had” or “have”. You don’t recollect. Just listen carefully to my question. Is that so. You did say a moment ago you did not know whether he said “have” or “had”? A. That is correct.

Q. So that your note does not really assist you, does it, to decide whether he said the word “if” or not? A. The note does not assist me but my memory does.

Q. Your memory, too, is faulty because you do not know whether
30 he said “have” or “had”, do you? A. I can recall that.

Q. Does your note . . . (interrupted). A. I can recall that Mr Caldwell sat opposite me and his statement that if he had overstepped—and my note was “have”, I would interpret that as “if he had overstepped” not admitting that he had overstepped.

Q. You have not really answered my question at all. You do not know, you could not recall, could you, you told us this, whether he said “have” or “had”? A. That is correct.

Q. Therefore your note does not assist you to decide whether he said this word “if” or not? A. No, it does not assist me.

40 Q. Your memory does not assist you either, does it, because you were not sure whether he said “had” or “have”? A. It depends how the word “have” or “had” was used.

Q. Then it does assist you by reference to the word “had” or “have” to tell us that he used the word “if”? A. I am not definite that he did not admit that he had.

Q. If he had said he had overstepped the mark the word “have”

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would be the word, the natural word for you to take in your notes. "I have overstepped the mark", just as appropriate as "had"; is that not so? A. Yes.

HIS HONOR: Q. Are you certain that he used the word "if" because you remember him saying that word or because you remember his attitude? (No answer.)

Q. As a general recollection? A. A general recollection would be Mr Caldwell's attitude.

Q. So that you do not recall the actual saying by him of the word "if"? A. I do not recall the actual word "if" but I can only 10 interpret it as being used. I do not recall him actually saying "if".

Q. So it is an interpretation when you say that he said it? A. Yes. I recall his attitude quite definitely.

Mr ST. JOHN: Q. Do you recall making a statement to Mr Holland the other day? A. I was speaking to Mr Holland.

Q. Do you remember him taking a note and reading it back to you? A. He took several notes.

Q. And reading it back to you? A. He did read some notes back to me.

Q. Do you remember that you told him your knowledge and 20 independent recollection today—that is when you saw him—of things at the meeting varies on what was said—one, two, three, four—do you remember that being read back? A. Yes.

Q. In fact you made a correction at one point when he read it back to you? A. Yes.

Q. I will read it all to you if you wish, but I put it to you that there is no mention there of this use of this word "if" at all, is there? A. No.

Q. You never told Mr Holland about it? A. No.

Q. You had no independent recollection of it, then? A. I 30 don't remember being asked the question.

Q. You went through the notes with him? A. Yes.

Q. Word by word? A. Yes.

Q. And you never suggested to him when he did that, that the word "if" had been used, did you? A. I did not tell it to him.

Q. You told him only your independent recollection? A. I went through the notes independently with him. I think my interpretation of that would have been the same as I have given to you.

Q. But you did not tell him anything about it? A. No, I did not tell him. 40

Q. There were some notes which you told Mr Holland about as you went through that were corrected to what appeared in his copy of the notes? A. Yes.

Q. No mention was made of that? A. No.

Q. If we go back to the immediately preceding question—30 tons a day now 1500 tons a day. You may have no independent

recollection of this, but I put it to you Frank Hughes was talking in what I think you call hyperbole—he was exaggerating—do you recollect. It was one of those statements that people make by way of emphasis, it was not really stated that they were mining 1500 tons a day? A. I just took the note.

Q. You may have noticed later on that they only took 534 tons in the month of August and 634 tons in the whole of July? A. If it was said—I would not know.

Q. We go back to the previous statement when he was asked
10 about the agreement “Yes, portion only”. Have you no recollection of it. If you have not, say so and if you have, I should like to know: Do you recollect Vic when he said that he knew about portion only, referring merely to an oral agreement of which he knew? A. I had no recollection.

Q. Up to the point this happened, see if you can pick it up in the notes—do you see where they were talking about the agreement. Just before that you will see “Frank Hughes re agreement”? A. Yes.

Q. Your evidence was I think that Frank Hughes at that stage referred to the agreement? A. Yes.

20 Q. I think you will agree a written agreement was not yet in the room, was it? A. No.

Q. Can you recall what reference he made to the agreement, what was said, just on your note? A. Just my note “re agreement” indicates that he referred to an agreement.

Q. But not of course to any written agreement because there was none there? A. Yes.

Q. P. 42 of the transcript—I draw your attention to something which I think was not taken down. The third last question on p. 42. The question was “What was said next? A. Norman Regan then said
30 that a sharefarmer named Starr had certain land fallowed and that a miner had started to mine on fallowed ground and the miner concerned said that he had a lease of that land and that the statement that he had the lease of the land . . .” and here should be inserted “was the first” and then “Norman Regan knew about it.”? A. That is correct.

Q. Whilst I am on that page, I just notice about the middle of the page, “Did Vic Hughes say something?” and your answer was “Vic Hughes then said that they could go to the edge of the wheat”. I take it Vic Hughes was referring to what he said had been agreed with Buckley. Do you understand my question. I am not referring
40 to your note, I am actually referring to your evidence. Can you pick up the relevant passage in your note? A. The statement by Vic Hughes?

Q. Would you agree with me in your recollection that he was referring to what he said had been agreed with Mr Buckley. Just getting the context of it? A. I would not know who he would be speaking of when he said “Come to the edge of the wheat”.

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Q. You would not? A. No.

Q. And it goes on "Would not work it ourselves". Do you recollect what he was referring to there? A. The only recollection I have is the Hughes' would not work the area.

Q. It was under crop . . . A. Themselves (sic).

Q. The area under crop, the area under wheat? A. I would not know. I do not know.

Q. Just towards the end of your notes there is a question by Mr Logan as to where the money would still come to him. Do you remember that? A. Yes. 10

Q. See if you can pick that up, will you? A. Yes.

Q. Would you agree that he was referring to moneys which would be due in respect of the metal that had been taken out, as referred to in the previous question? A. I would not know what moneys he was referring to.

Q. You would not? A. No.

Q. At the time of this meeting Mr Logan Caldwell was a very old man, was he not. An old man, anyhow? A. Yes.

Q. Over 70 or thereabouts? A. Thereabouts.

Q. And deaf. Do you recall that? A. Yes, he was partially deaf. 20

Q. He could hear all right in normal conversation? A. Yes.

Q. Sitting close together, but he could sometimes miss something, is that so? A. He did have a deafness, yes.

Q. Would you pick up the passage where he said something about overstepping the mark. Having shown it to you would you agree that there is a dash after the word "mark"—a hyphen? A. Yes.

Q. And having considered that would you agree with me that it tends to show that the answer did not take the form which you suggested in evidence "Have overstepped the mark—all done in good faith", whereas if he had said "If I have overstepped the mark I can 30 only say it was all done in good faith" one would not expect the hyphen? (Objected to: question read to witness.)

Q. What is your answer to that? (Objected to.)

Q. Did you understand my question? A. Yes.

Q. Perhaps you can answer it. What is your answer? A. The dash would indicate, or I interpreted that there were other words said or another sentence. I did not have time to take everything down.

Q. So it really does not assist to decide which form he used in your opinion? A. No.

HIS HONOR: Q. Could you tell me what, if any, other part of your 40 transcript shows a statement by Logan Caldwell which shows that he did not consider, that he adopted the attitude that he had not overstepped the mark? A. I think his statement when there was a question of pending legal—or taking legal proceedings—against A.B.M. His statement that he or someone should first approach A.B.M. prior to taking out legal proceedings.

Q. Any other part? A. If I might add, he was aware that an agreement had been drawn up and knowing Mr Caldwell very well, that would be the first thing that he would want to do . . .

Q. Only from what he said. Is this from your own knowledge?

A. Yes. There was nothing else, Your Honor.

Mr ISAACS: Q. His Honor asked you to point to any reference in your notes where Mr Logan Caldwell took the attitude that he had not overstepped the mark. Would you look at the first page of your notes. Do you see where Mr Porter asked the meeting had they got
10 together to make decisions and Mr Norman Logan said, "No", and then Mr Porter said something about the meeting should be held to discuss arrangements, and Mr Norman Regan said decisions were not known and that he had no knowledge of the agreement with A.B.M., and does your note read then, "L.H.C.", that is Logan Hunter Caldwell, "Solicitor advises no need advise either party."? A. Yes.

Q. Can you recall what it was that Logan Hunter Caldwell said previously to that? A. No.

Q. That is your note? A. Yes, it is a quotation.

Q. Does that assist you to recall that Mr Logan Hunter Cald-
20 well's attitude was that he had done nothing himself which was outside his authority? A. His attitude would indicate that, yes.

Q. Does that not assist you in recalling that attitude? A. Yes.

Q. That he had said a solicitor had advised him that there was no need to advise other parties? A. Yes.

Q. And that he had apparently acted in accordance with that authority? A. Yes, I interpreted it that way.

Q. Then just below that you have a note where Norman Regan asked whether he had an agreement between A.B.M. and he said that he had not, and Frank Hughes said "Omant can't find the agreement".
30 Did you understand they were referring to a written agreement or an oral agreement at that stage? (Objected to by Mr St. John.)

Mr ISAACS: I press the question. From what was said did you understand they were referring to an oral agreement or a written agreement when you had down in your notes "Have you got agreement between A.B.M.—no—Omant can't find agreement"? A. I did understand that would be a written agreement.

Q. I wonder if you would be good enough to tell me what your full note is after that—the next matter? A. The next matter after "Omant can't find agreement", is "L.H.C.—A.B.M. would like to go
40 on P.M.L. 1".

Q. Does that mean that Mr Logan Caldwell said that Australian Blue Metal would like to go on P.M.L. 1? (No answer.)

Q. What is your next note? A. The next part I have written is "Vic and Frank interviewed".

Q. Who said that? A. Mr Caldwell.

Q. That he had interviewed Vic and Frank? A. Yes.

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Q. Was that in relation to A.B.M. wanting to go on P.M.L. 1?
A. I understood that.

Q. As you understood it? A. Yes.

Q. What was the next note that you have? A. The next note was "Ask Vic where to go in".

Q. Who said that? A. Mr Caldwell.

Q. Does that continue on from that previous note? "Vic and Frank interviewed—ask Vic and Frank where to go in"? A. "Ask Vic where to go in." The word is "ask" "A-S-K".

Q. What do you recall of that portion of the conversation starting 10 from "L.H.C.—A.B.M. like to go to P.M.L. 1", down to "Ask Vic where to go in"? A. Mr Caldwell following Mr Frank Hughes' statement that "Omant can't find agreement" went on to explain that A.B.M. would like to go in to P.M.L. 1. That he had in fact interviewed Mr Vic Hughes and Frank Hughes and that he had also asked Mr Vic Hughes where A.B.M. were to go in.

Q. Did Vic say anything in respect of that when that was asked, according to any note that you have got? A. No, not according to my notes.

Q. Did Frank say anything, in answer to that statement, according 20 to any note that you have got? A. Frank said that he could recall the discussions but he had no recollection of discussion re turn in the fence in point south. His recollection was that they go in amongst the holes near the hut.

Q. Mr St. John asked you about the entry that you have got a little below that about the lease "The edge of the wheat—would not work it ourselves—explained T.B. not to go across the gully—only to wheat—now jumped into wheat."

Q. Is it correct that Logan Hunter Caldwell said that this question of the gully was not mentioned until six months after the agreement? 30
A. Yes, as I understand it.

Q. That is substantially the note that you have got there? A. Yes.

Q. Your note is "L.C.—question of gully not mentioned until six months after agreement"? A. Yes.

Q. You remember a little lower down when Logan Hunter Caldwell said, "Can get agreement" your note is "Gone to get copy"?
A. Yes.

Q. Up to that time had there been any reluctance displayed by Logan Hunter Caldwell to getting a copy of the agreement? A. No, 40 sir.

Q. What had been asked earlier by Norman Regan was whether there was an agreement itself? A. Yes.

Q. And he had said that he did not have an agreement? A. Yes.

Q. Then Frank said "Omant can't find it"? A. Yes.

- Q. A little later on Logan Hunter Caldwell offered to go and get a copy. He said that he thought he could get a copy? A. Yes.
- Q. Then he left to get a copy? A. He left the room.
- Q. The document that he came back with, was it in fact a copy? A. Yes.
- Q. Is that the document that you have got there? (Shown to witness.) A. Yes, may I see it?
- Q. The copy that he brought back and which you retained is an unsigned copy? A. Yes.
- 10 Q. Did it bear the date 14th June? A. Yes.
(Document referred to mfi.1.)
(M.f.i. 2—handwritten notes made by witness.)
- Q. Would you be good enough to go back again to this matter of the gully I asked you about, according to your notes? A. Yes.
- Q. You see your note on Logan Hunter Caldwell on the question of the gully not being mentioned until six months after the agreement. Now, when Logan Caldwell said to the meeting that the question of the gully was not mentioned until six months after the agreement, did any of the others present dissent from that? A. I cannot recall.
- 20 Q. If there had been any dissent the probability is you would have noted it, would you? A. Yes.
- Q. There is nothing indicative of anybody's dissent from it? A. No.
- Q. I want to ask you about the last matter, your last note. It reads "M.G.P.", that indicates a department? A. The chairman, Matthew George Porter.—
- Q. The note is "Line up position—and advice". The next line, "Approach A.B.M. re agreement." Is that how the note reads? A. Yes.
- Q. I understood you to say that your recollection was that Mr Porter said that he would line up the position and advise them and that he would approach A.B.M. re agreement. May I suggest to you that it is more likely that Mr Porter told the meeting to line up the position and advise him and that they should approach A.B.M. re the agreement. Not that Porter was saying that he would do it but that Porter was advising the meeting? A. No, sir. I understand it that Mr Porter would line up the position.
- Q. That is your recollection of all those things. A. Yes.
- Q. At the top of that page you see a reference to £500 savings bank to meet royalties? A. Yes.
- 40 Q. Would you be good enough to tell me what it was that Logan Hunter Caldwell said in relation to that from your recollection aided by your note? A. That from certain moneys held by him he had transferred the sum of £500 to a savings bank account to meet royalties.
- Q. Can you recollect anything Mr Logan Hunter Caldwell said as to how or where he would have got this money that had been accumulated by him? A. No.

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Q. Your next note is "F.H.", that is Frederick Hughes, "Supported and endorsed L.C. action". Would you tell us what it was that Frank Hughes said about that. That relates to the transferring of the £500?

A. Yes.

Q. From a savings bank to meet royalties? A. Yes.

Q. What was it that Frank Hughes said in reply to that that indicated that he supported and endorsed Logan Hunter Caldwell's action? A. He made a general statement of support for his action in transferring that money.

Q. Did any of the others expressly approve? A. Not that I can 10 recall.

Q. Was that supported, apparently, with the support of everybody else, with the support and endorsement of the meeting itself, because you have a note "meeting agreed"? A. Yes.

Q. That reference in the note "22/6d. back to department" and also to the note "F.H. supported and endorsed L.C. action", the meeting agreed to both of those things? A. Yes.

Q. Is that right? A. Yes.

Q. That meeting supported and endorsed Logan Caldwell's action in transferring £500 from the savings bank in respect of moneys 20 received by him to meet royalties, and also supported and endorsed the proposal that 22/6d. be paid back to the department.

HIS HONOR: 22/6d. per ton?

Mr ISAACS: Yes, Your Honor. Per ton to be paid back to the department—I am sorry, I do not think it is per ton. It is 22/6d. per £100.

Q. At any rate the proposal to pay back 22/6d. to the department was one of two matters, the second of two matters that the meeting agreed upon, according to that note? (No answer.)

HIS HONOR: Not agreed to, Mr Isaacs. He says that is what he says about Frank Hughes. 30

Mr ISAACS: Q. First of all this is what your note reads, "Frank Hughes supported and endorsed L.C. action"? A. Yes.

Q. That refers to the immediately preceding note of the transfer of £500 and the accumulation of royalties? A. Yes.

Q. Then under a second heading "Frank Hughes"—"22/6d. back to the department"? (No answer.)

Mr ST. JOHN: There is a question mark in my copy.

Mr ISAACS: There is no question mark. That is your note—"22/6d. back to the department"? A. Yes.

Q. So there was a proposal to pay back 22/6d. to the department? 40 A. Yes, in that conversation.

Q. Then underneath that you have got "meeting agreed"? A. Yes.

Q. Does that refer to both of these matters that were referred to by Mr Hughes? A. Yes.

Q. In support and endorsement of L.C. action in respect of the £500 and secondly of the 22/6d. back to the department? A. I could not be sure of the 22/6d. back to the department.

Q. But you are sure of the other? A. Yes, I am sure of the other. The meeting apparently did agree to the 22/6d. going back to the department.

Mr ST. JOHN: Q. Are you sure of that? A. Yes, the meeting did agree. I am not sure of the reference "22/6d. back to the department".

Mr ISAACS: Q. What are you sure about? A. I would have
10 thought that the note is a notation of the substance of the conversation as to why the £500 would be transferred to a savings bank account.

Q. Do you know whether the 22/6d. had already been paid back to the department or was to be paid back? A. No knowledge at all.

Q. You do not know? A. No.

Q. Did you know this man Logan Hunter Caldwell well? A. Yes.

Q. Had you known him for some years? A. I have known him since March 1946 approximately.

Q. Did you know him on a personal basis or on a business
20 footing? A. I knew him more on a business basis and I knew him on a personal basis.

Q. You were about to say something when Mr St. John asked about something. He was about to ask about your knowledge of him as a businessman and you were interrupted.

HIS HONOR: I think it was I who interrupted because it was not an answer to the question.

Mr ISAACS: Q. What was it that you were about to say about your knowledge of Mr Logan Hunter Caldwell as a businessman? A. His actions were ones of great detail in business transactions. There were
30 no verbal instructions issued to me. They were all in writing.

Q. From your knowledge of him would you say that he was a careful business man? A. Yes, sir.

Q. And a man who had a tendency to keep records? A. Yes.

Q. And keep records extending over long periods? A. Yes.

Q. Did you know that he had been a trustee of certain trusts and did you know that he had been a trustee in connection with certain trusts? A. Yes.

Q. That he had kept records in relation to these trusts? A. Yes.

Q. And that he kept records in relation to his own investments?
40 A. Yes.

Q. Personal investments? A. Yes.

Q. As well as matters in respect of which he was in one way or another connected? A. Yes.

Q. Did you have anything to do with any activity of Mr Caldwell under the heading of Hughes and Caldwell? A. Only in relation to

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his share in the income tax return relative to income derived from Hughes and Caldwell.

HIS HONOR: Q. Do you recall Mr Logan Hunter Caldwell said that a solicitor advised him there is no need to advise other parties? A. Yes.

Q. That was in answer to Mr Norman Regan who said that he had no knowledge of any agreement with Australian Blue Metal? A. Yes.

Q. Was that said particularly in regard to Mr Regan as one of the parties being executor of the deceased member of that firm, or was it said in relation to all the partners of Hughes and Caldwell. Have you any recollection of that? A. No, sir. I do not know whether it was in relation to the executor or the other parties.

Mr ST. JOHN: It does say "Other parties".

HIS HONOR: Q. There was no discussion of the limited rights of executors to information about certain matters? A. Not that I can recall.

Mr ISAACS: Q. Would it be correct at this stage Mr Logan Hunter Caldwell was justifying to the meeting what he had done. What he was saying to the meeting was, "Even if I have not told you expressly a solicitor said I don't have to tell you"? A. That is what I understood him to say. (Discussion ensued.)

Mr ST. JOHN: Q. (By leave.) You were asked about certain people not having dissented to particular things. Would you go back to the passage in your notes where there is a reference to the gully. Pick up the point where Logan Hunter Caldwell said that Vic and Frank were interviewed and then he told you what Vic had said. Then Mr Isaacs asked you whether Vic or anyone had dissented. Do you remember that? A. About the gully?

Q. You said that he had not dissented? A. Yes. 30

Q. Obviously two people could not speak at once—Frank and Vic? A. No.

Q. If you look at your notes I think you will agree that both Frank and Vic did dissent but in turn. First Frank and then Vic gave different accounts of what was said and from your notes the inferences that Frank said that he recalled the discussion but that he had no recollection of the turn in the fence to the point south going among holes near the hut. So Frank dissented, did he not? A. He did not dissent from the gully. (Objected to.)

Q. The point is both Frank and Vic did make comment as to what the discussion had been? A. Yes. 40

Q. Immediately after Logan Caldwell's statement? A. Yes.

Q. That was the statement by Frank and Vic which purported to state their recollection of what had been said? A. Yes.

Q. It differed from what Logan Caldwell said? A. In some places; yes.

Q. The only other thing is, Logan then replied that the question of the gully was not mentioned until six months after the agreement, and my friend put it to you no one dissented from that and you agreed. But Logan was dissenting from what Vic had said immediately before, is not that so? A. I would not say dissenting. He was making a statement.

Q. Whereas Vic had said that he explained to Buckley that he was not to go across the gully into the wheat Logan says the gully was not mentioned until six months later, so he did contradict Vic, 10 did he not? A. Yes.

Q. You would not expect Vic to go on arguing the point indefinitely, would you. Do you recall whether he did or whether he did not? A. I do not recall.

Q. At any rate that is a fact, they were at issue, as it were, on that point? A. The conversation was in connection with the gully, yes.

Q. And one contradicted the other as to when it was first mentioned, is that so. Logan contradicted Vic as to when it was first mentioned? A. I do not recall that he was contradicted. He reiterated on the gully question.

20 Q. Gave a different version as to when it was first mentioned. (No answer.)

Q. Do you recall when Vic said that he explained to Buckley that he was not to go across the gully that he was referring to the conversation when they first went in? A. Yes.

Q. And so when Logan said it was not mentioned until six months later he was differing from Vic's account, was he not? A. Yes.

Q. Do you mind leaving those notes in Court, with His Honor's concurrence? A. No.

(Mr Larkins addresses the Court qua certain remarks passed by 30 His Honor concerning advice stated to have been given re other parties not being advised, etc.)

Mr LARKINS: Q. You came here under subpoena from the com- Re-Examination.
plainant company to give evidence? A. Yes.

Q. And you were also subpoenaed to produce any notes which you had of this meeting? A. Yes.

Q. And you brought the notes here in answer to that subpoena? A. Yes.

Q. You were not subpoenaed on behalf of the defendants? A. No.

40 Q. Either to give evidence or produce documents? A. No.

Q. And you made yourself available for a consultation with my learned friend's junior, Mr Holland? A. Yes.

Q. How long did you spend with him? A. Approximately forty minutes.

Q. And your firm had made available to the defendants a type-

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written copy of the notes to which you had referred? A. Our firm made a typewritten copy and handed it to Mr Omant.

Q. And Mr Holland had that in front of him at the time of your conference with him? A. Yes.

Q. These are the notes to which you referred? A. Yes.

Q. The very first entry is made in pencil, that is of the names of the people present? A. Correct.

Q. And then the next entry is made in blue ink? A. In biro pen.

Q. With a biro pen? A. Yes, with a biro.

Q. And then that entry, the last two are concluded in green ink? 10
A. Yes.

Q. Is that with the same pen? A. No.

Q. And then the third entry, in green ink, is completed in pencil?

A. Yes.

Q. And from then on the notes are made in pencil? A. Yes.

Q. Would you just explain to His Honor how that came about?

The changing from one type of writing material to another—

HIS HONOR: Is the first one an entry or a heading?

Mr LARKINS: Q. How would you describe that? A. It is the names of those present at the meeting, in pencil. I cannot recall why I took 20 up the biro; I think the biro would run out and I then picked up the green pen—I had it on my table amongst many other pens, and proceeded to use it. I recall it was a difficult pen to use and was used mainly for ticking purposes, and I know the ink would not flow freely. The conversation taking place was proceeding rather quickly and I found it more convenient to make notes with a pencil.

Q. And the whole document is a continuous record made by you at the time? A. Yes.

HIS HONOR: Q. Those persons whose names are indicated in pencil were noted during the conversation? A. I think they were noted at 30 the top, during the course of the meeting.

(Exhibit BC—document m.f.i. 2, being notes of meeting held on 14th August.)

Mr LARKINS: Q. Would you have a look at the document which is attached to Exhibit BC and which is m.f.i. 1? (shown). That is the document which, in your evidence in chief, you compared with Exhibit AW, the signed agreement, and said after comparing them that it was a copy except as to the signatures? A. Yes.

(Exhibit BD—copy agreement, formerly m.f.i. 1.)

HIS HONOR: There is a copy letter attached which will be handed 40 back to the witness.

Mr LARKINS: I think you told Mr Isaacs that Mr Caldwell, in your business dealings with him, had always shown himself to be a precise and careful man? A. Yes.

Q. You also told Mr St. John that he appeared to be slightly deaf? A. Yes.

Q. Did you ever observe that his business efficiency was impaired by his deafness? A. No.

Q. Was there any unfriendly atmosphere at this meeting? A. Not unfriendly; there was an atmosphere of tension, I would say, at the beginning of the meeting.

Q. And after the beginning of the meeting did it proceed in an ordinary way? (Objected to by Mr St. John.)

Q. You say there was some tension at the beginning of the meeting. What happened as the meeting progressed so far as the atmosphere was concerned? A. The meeting progressed quite orderly and without interruption.

(Witness retired.)

(By agreement of the parties the last paragraph on p. 34 of the transcript was amended to read: "His Honor: It can be noted that a claim was made and withdrawn on the ground that those defendants had no interest in the document. The matter arising out of that was raised by me with Mr Giugni who said that he was acting on behalf of Mr St. John's clients at that time—there was the question as to whether or not he should claim that privilege for it.")

20

MATTHEW GEORGE PORTER

Sworn, examined, deposed:

To Mr LARKINS: My name is Matthew George Porter. I reside at Young and I am a member of the firm of Tester Porter & Company, public accountants.

Q. You were present at a meeting held at your office on the 14th August 1957? A. Yes.

Q. How did that meeting come to be called? A. Mr Regan had asked me on several occasions.

Q. Is that Mr Norman Regan? A. Yes, Mr Norman Regan, if my firm would be interested in looking after his affairs and the affairs of the Mine and so forth. And I told him "Yes" that it would be necessary to get the boys together and arrange a meeting.

Q. How long before the meeting was that? A. He spoke to me on several occasions but it would be only some months before the meeting.

Q. What was the purpose of the meeting as you understood it from Mr Regan? A. To arrange for my firm to take over the book-work and accounting work of their business.

Q. Did you finally, after these discussions, nominate the 14th August at your office, at 2 p.m., as being the time and place of the meeting? A. Yes.

Q. I think you were, at the outset of the meeting, appointed chairman on the motion of Mr Frank Hughes and seconded by Mr Caldwell? A. Yes.

Q. You yourself did not keep any notes of what was said? A. No, I kept no notes.

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Q. Would you tell us your recollection of the subject matter of the meeting? What was said and what was done? A. The meeting opened after they appointed me chairman and a question was asked what was the business of the meeting, and Mr Caldwell said, "Well, Regan called the meeting, let him speak his piece". Norman Regan said, "Well, I want to be put in the picture," some words to that effect — "with the business of the Mines".

Q. Would you tell us what was the first thing that was discussed? A. I asked them several questions to get myself into the picture; I knew originally that the people concerned in this business were the late Peter Hughes and the two Caldwell brothers, George and Logan Caldwell. I did not appreciate the other names in it at all. I had nothing to do with the business professionally at all, but from my local knowledge I knew that was the position and I asked them did they have any agreement that they were working under and what the position was. I have a recollection that that agreement could not be found. 10

Q. Was some reference made to an agreement? A. There was a reference made to an agreement and somebody mentioned that the agreement could not be found; I do not know exactly what agreement it referred to, but that was the answer at that stage. Then a discussion took place on the particular places where mining was going on; some descriptions were given as to certain places where the excavators could work and where they could not work. One point that is very firm in my mind is reference was made to a fallow or cultivation paddock which appeared to be very vital to the people at the meeting. That stands out in my mind. Further, I have a distinct recollection of somebody asking if an agreement was made or in reference to work there and where it was and who signed it, and I remember Mr Logan Caldwell saying he would go and get an agreement, and he went away and got it and I read it to the meeting. 20 30

Q. Would you have a look at the document which is Exhibit BD? (shown). A. I do not remember the exact words, but I believe that is the document I read.

Q. You read that out to the meeting? A. I read that out to the meeting, yes.

Q. Did you say anything to them as to your views as to its effect? A. One of the members of the meeting asked me who signed the agreement and I just forget what happened at that stage, but I said—"If Logan Caldwell signed it it would possibly be all right" or I used the words, "it would hold water", or something to that effect.

Q. Did you tell them why? A. I explained to them as plainly as possible that a partner could bind a firm.

Q. In the early stages of the meeting was there some resolution that your firm should, in effect, be appointed permanent secretary?

A. Yes, that was the original intention of the meeting so far as I was 40

concerned, that my firm be appointed to look after the records and accounting of the business.

Q. When you expressed your views about the possibility of one party being able to bind the firm, was there anyone present at the meeting suggested it was not a firm? A. No, there was no suggestion it was not correct, what I said.

Q. You say there was some discussion as to differing points of view put as to where the various people present thought the land should or should not be mined? A. Yes, there were various discussions
10 which did not mean a great deal to me, but there were references made to a point in a fence and a big tree, which did not mean much to me.

Q. Was there any discussion as to the legal position? A. There was some discussion but I did not enter into it and I recollect saying that I thought the parties should make their arrangements between their legal offices.

Q. I think you have told us that the resolution about the appointment of your firm was carried at an early stage of the meeting? A. There was no dissension to it at the meeting.

Q. Did you at some stage direct any question as to what they
20 wanted to do? A. Yes. When the meeting had reached a stage of almost conclusion I gave them information as to procedure to carry on; that they should get together and determine their policies and agree on their instructions, having in mind that it was necessary to my office if I was to look after the accounting, and right to the close of the meeting quite a few points arose on the completion of matters that apparently were in hand, and I advised Logan Caldwell what to do and it was conceded that was the clean-up of the meeting.

Q. Did you at any stage ask them what their wishes were in regard to the agreement, the copy of which you read to them? A.
30 No, I do not think I did.

Q. Would you tell us then, apart from the matters which you mentioned and the other matters you recall being discussed, was there any other discussion that you have not mentioned in relation to those matters which you have told us about? A. I remember a point being raised that it was a pity that they had ever seen Blue Metal, that it was a big show—something to that effect, but I do not remember any other clear points.

Q. Was anything said about whether your firm should enter upon the management of their affairs at that stage or not? A. No, the
40 reference was to the accounting so far as my firm was concerned and the question was raised as to whether Mr Caldwell was in agreement, and he said he was quite happy about it.

Q. And then was there any discussion as to what should be done about management after the meeting? A. No, not to my knowledge.

Q. Was there any discussion as to the manner in which their

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affairs had been managed prior to the meeting? Details of management? A. Yes, in this respect, that Mr Logan Caldwell had always looked after the records side of it and towards the close of the meeting he asked for some direction as to the clean-up, particularly in regard to the completion of taxation returns, and I made some references to the basis of a method by which he was to do it—right towards the end of the meeting.

Q. Do you remember anything being said as to moneys being deposited in a savings bank? A. Yes, I remember quite distinctly the fact that Mr Caldwell said he had an account for £500 in the Bank and what would he do with it and it was agreed he and one of the Mr Hughes should carry out what they had normally done. 10

CROSS-EXAMINATION

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Mr ISAACS: Q. You said that Mr Regan had asked you to look after his affairs and those of the mine. This is prior to this meeting? A. No, not his affairs; it was only the mine affairs.

Q. Did you know he was an executor of George Wigham Caldwell's estate? A. Mr Regan's affairs and Mr George Caldwell's affairs had been in my office for very many years.

Q. You knew there had been this partnership that was spoken of, a partnership in relation to the mine? A. Yes. 20

Q. And it is perfectly clear Mr Regan was still claiming to be interested in this partnership? A. I knew Mr Regan as the executor in the estate of the late George Caldwell.

Q. He was claiming to be interested in this partnership in some capacity or other, either person or as executor? A. I did not appreciate any claim he was making; I did not think about that at all.

Q. But you say you remember that he was representing George Caldwell's estate? A. And the rest of the parties as far as I was concerned. 30

Q. When he attended the meeting did you gather the impression there, from what he was saying and what he had said to you previously, that he was claiming to be interested as a partner? A. No, I do not think so.

Q. In what way did you think that Norman Regan was interested in this mine? A. As the executor of the estate of the late George Caldwell; he was one of the Caldwell brothers in Hughes & Caldwell in the original issue.

Q. George Caldwell had died when? A. He died about 1956.

Q. And these mining operations had been carried on since his death? A. Yes, as far as I knew they had been. 40

Q. And Norman Regan was wanting to know what was happening to the royalties and the carrying on of the mine since the death? A. I would say so.

Q. And he wanted to know by virtue of whatever rights his testator had? A. That is so.

Q. And he was exercising those rights as you understood it, at this meeting? A. That is right.

Q. The meeting was one of all the partners? A. Yes.

Q. And nobody suggested they were not a partner? A. No.

Q. Everybody was there on the footing they were partners? A. As far as I was concerned that was the way I saw it.

Q. Nobody drew any distinction between his position? A. No.

Q. Mr Regan particularly was not saying "Since Mr George Caldwell has died I am not interested as a partner"—he was never 10 saying that? A. No.

Q. Never at any time took that attitude? A. No.

Q. On the contrary, you took it from his presence there and attitude that he was there as a partner claiming interest as a partner? A. That was my view.

Q. And he was wanting to be put into the picture about what was happening to the partnership assets? A. That is right.

Q. And there was a bit of demurring or complaint by him that something had been going on of which he himself did not have personal knowledge? A. That was the way it appeared.

20 Q. And he was asking to be supplied that information so that he could be put into the picture? A. That is right.

Q. As any other partner was entitled to be put into the picture? A. That is right.

Mr. ST. JOHN: No questions.

RE-EXAMINATION

Re-Examination

Mr LARKINS: Q. (By leave of His Honor to open fresh matter) I think you came here to give evidence under subpoena from the plaintiff company? A. Yes.

30 Q. You did not receive any subpoena from the defendants? A. No.

Q. And your firm supplied the defendants with a copy of the notes taken by Mr Roberts at this meeting? A. Yes.

Q. And you have had a conference with the defendants' counsel? A. Yes.

(Witness retired.)

Mr LARKINS: I hand up to Your Honor a copy of the amended statement of claim.

Mr ST. JOHN: I have no objection.

Mr ISAACS: I have no objection.

40 HIS HONOR: I grant to the plaintiff leave further to amend the statement of claim, by adding paras. 6A, 7C and 7D, as set out in the document handed to me.

Mr ST. JOHN: We have leave to amend?

HIS HONOR: Yes, you have that automatically if you wish. You have to uplift this and not re-type it.

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Mr LARKINS: There are subpoenas duces tecum on the defendants, other than Mr Isaac's client, and if my friend agrees we may shorten proceedings somewhat by having them produced.

Mr ST. JOHN: I can produce the documents, although these were documents produced by Mr Omant and inspected by Your Honor and the subject of Your Honor's ruling that they were the subject of privilege.

HIS HONOR: Mr Larkins? Have you anything to refer me to particularly? You know the nature of the documents. Why is not the letter covered as a letter of instruction and a confidential communication? 10

Mr LARKINS: I agree I cannot argue that if the clients themselves claim privilege, but I want the benefit of that claim being made. If privilege is claimed by the clients individually in relation to the letter written by Mr Logan Caldwell to their solicitor, then I agree I cannot press it.

Mr ST. JOHN: We do not waive the claim of privilege which Your Honor has ruled attaches to these two documents. Admittedly it is in a different category from the letter—that is the agreement—and the agreement is also in a different category to the other documents that Mr Omant produced and is more arguable, but I submit it is covered 20 by the same principle that it is confidential information in the hands of Mr Omant as solicitor for these people. I seek to resist inspection of the document by my friend, firstly because it is covered by privilege and secondly, we would say, on Your Honor's perusal of the agreement, it will be seen not to be relevant to any of the issues in this suit. I object to the production on the ground of privilege and object to my friend looking at the document on the ground that it is irrelevant to any issue in the suit. I am happy for Your Honor to retain that document and if you rule it is not the subject of privilege at any time you rule it is relevant, then it should be handed to my friend. 30

HIS HONOR: I consider one document is the subject of privilege and the other I do not consider is a privileged document. I will have to consider the question whether I shall allow inspection of it.

(Exhibit BE—Affidavit by the manager of the Australian New Zealand Bank, Young, annexing copy of debit and credit entries in the account of Clarence Vivian Hughes from 3rd January 1946 to 3rd February 1961.)

HIS HONOR: Mr St. John, on behalf of the defendants other than Steele Hunter Caldwell, makes the admission that the distribution from the account of Robert Frank Hughes and Logan Hunter Caldwell in 40 the Australian New Zealand Bank, to the various defendants was, in the case of the payment of 1/6th share paid out at the death of Joseph Peter Hughes to Clarence Vivian Hughes who received the same into his account and used the same for his own purposes.

Mr HUGHES: We are able to establish that the very first royalty distribution after the death of Joseph Peter Hughes was sometime in

1947. A cheque was made out in favour of the estate of the late Joseph Peter Hughes, signed by the operators on the account and paid into Clarence's account.

(Luncheon adjournment.)

UPON RESUMPTION:

HIS HONOR: I have considered the matter of the agreement and I have not been able to find anything which seems to me to bear on it, either in the text book or authorities. I think it is a document which bears on the case, even though it may not be admissible in evidence
10 in any way, and I will allow counsel to inspect it.

Mr HUGHES: It is now admitted, on behalf of the defendants whom my learned friend Mr St. John represents, that the first cheque paid to Clarence Vivian Hughes after the date of Peter Hughes' death was drawn on the 1st August 1947, was a distribution cheque, and drawn in favour of the estate of the late J. P. Hughes and paid into the personal bank account of Clarence Vivian Hughes and used personally by him for his own purposes.

HIS HONOR: Does that displace the previous one?

Mr HUGHES: No. That is supplementary to the previous admission.

20 Mr LARKINS: My learned friend reserved his admission on that.

HIS HONOR: I said it could be renewed.

(Exhibit BF—Bundle of deposit slips of Hughes & Caldwell cheques, respecting payments made into the account of Clarence Vivian Hughes from and including 7th August 1954 to and including 7th June 1958—tendered as containing the signature of the defendant R. F. Hughes as the person making the deposit in each case.)

(Exhibit BG—Affidavit under Evidence Act, sworn by Sidney Knox McDowell, Bank Manager, Boorowa Street, Young verifying copies of entries in three accounts in the A.N.Z. Bank, Young: (1)
30 Joseph Peter Hughes and Logan Hunter Caldwell from 28th July 1937 to the date when that account was closed, April 16, 1943; (2) Joseph Peter Hughes and Logan Hunter Caldwell from 19th November 1942 to 19th January 1945; (3) Robert Frank Hughes and Logan Hunter Caldwell from 19th January 1945 to 30th June 1959.)

(Exhibit BH—Bundle of deposit slips commencing 29th June 1953 and ended 3rd May, 1958. Tendered as deposit slips in respect of payment of moneys into the account styled "R. F. Hughes and L. H. Caldwell".)

40 Mr HUGHES: Each document is tendered as having been signed, as the paying-in party, by the person whose signature appears in the appropriate place and as indicating the identity of the person from whom the payment originated. They represent payments in of various cheques by, among other person, R. F. and C. V. Hughes Pty. Limited and Hughes & Hughes.

Mr ST. JOHN: I have no objection to this.

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HIS HONOR: You understand the grounds on which Mr Hughes tenders them?

Mr ST. JOHN: Some of them are signed by Logan Hunter Caldwell, some by R. F. Hughes and no doubt they are some evidence against someone, and some are signed by the accountant of Frank and Clarence and their Company.

(Exhibit BJ—Bank records relating to the opening of the Savings Bank Account in the name of Logan Hunter Caldwell and Robert Frank Hughes and the subsequent operations on that account.)

(Exhibit BK—Registration of names, "Hughes & Caldwell" dated 10 11th August 1937 filed at the office of the Registrar-General.)

(Letter dated 26th August 1950, signed by Logan Hunter Caldwell, for Hughes & Caldwell and addressed to the Registrar-General tendered.)

Mr HUGHES: This is tendered against all defendants on the footing that it is a statement made by a deceased person in the course of duty and I will refer to the relevant section of the Business Names Act. This was in reply to an enquiry made by the Registrar-General pursuant to the Business Names Act. The file does not contain a copy of the letter.

(Tender of letter objected to by Mr St. John.)

20

(Tender of letter not objected to by Mr Isaacs.)

Mr HUGHES: I put it on the basis that the inference is clearly and probably open that that letter was written in response to an inquiry by the Registrar-General under that Section of the Act, and it was therefore the duty of the writer of the letter to answer the inquiry.

HIS HONOR: Is this under the Common Law?

Mr HUGHES: Yes, I put it under the common law and also under 14B of the Evidence Act. If it is tendered on the common law basis its weight may be greater.

HIS HONOR: Under the amended section it is a statement of fact to 30 his own knowledge and he is now dead.

Mr ST. JOHN: On those grounds I feel I cannot resist it.

HIS HONOR: I admit it on that ground.

(Tender of letter dated 26th August 1950 admitted—letter marked Exhibit BL.)

(Exhibit BM—Order dated 1st September, 1955, which came from the custody of Victor Raymond Hughes, from the Broken Hill Co. Pty. Limited to Magnesite Ex Weedallion. Letter dated 29th May 1957 to Victor Raymond Hughes from the Broken Hill Company Pty. Limited and a further Order dated 29th May 1957 from Broken Hill 40 Company Pty. Limited to Mr Victor Hughes.)

Mr ST. JOHN: I do not know what this is supposed to prove?

Mr HUGHES: It has been alleged that we kept something up our sleeve at or about the time of the making of the second agreement. We want to show that the agreement granted to us was granted to Mr Victor Hughes at the very same time.

(Tender of Exhibit BM withdrawn at this stage and documents m.f.i. 3.)

Mr HUGHES: I now seek to call upon the defendant Steele Hunter Caldwell to produce to the Court certain documents on subpoena duces tecum. I understand Mr Isaacs will answer the call.

Mr ISAACS: Before answering the subpoena I would like to correct a portion of the transcript at p. 31, in Mr Giugni's evidence. In the last question on the page Your Honor was reported as saying, "What did you mean when you said you held the agreement only for Australian Blue Metal?" That word "only" should be "jointly" and the word "not" should not appear.

HIS HONOR: That is so.

Mr ISAACS: In respect of the call my learned friend agrees that the documents need not be produced by my client personally; they may be produced by my solicitor, Mr Giugni, having sworn the documents came into his possession when brought to him by Steele Hunter Caldwell as executor. I wish to make it clear that these documents I produce are from Mr Giugni's custody in the way in which they have been brought to him by his client.

20 Mr HUGHES: The first I call for are the originals of a number of letters written by Australian Blue Metal to Mr Hughes c/o Logan Hughes & Caldwell.

Mr ISAACS: Perhaps this could be done during the adjournment as there are quite a number of documents to be separated. I produce the following documents and books:

Book with notation "Aston Caldwell",

I formally produce these documents to the Court to enable my friend to look at them. I produce:

30 Exercise book entitled "Hughes & Caldwell financial statement subject Australian Blue Metal Company".

Exercise book entitled "B. A. Craig and B.H.P. and Australian Blue Metal".

Book entitled "Mining 1956".

Notebook called "The Goldsbrough notebook".

Bank passbook with the Bank of Australasia, Young, in the name of Robert Frank Hughes and Logan Hunter Caldwell commencing January 19, 1945.

Bank book for same names and bank commencing 28th December, 1950.

40 Mr ST. JOHN: I understand these are documents which were seen under an informal discovery; they could all go in as a bundle of documents.

Mr ISAACS: I prefer to identify them in this way. I produce:

Receipt Book dated 23rd January 1943.

Four books of cheque butts—August 1954; September 1950; December 1956 and August 1957.

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Mr. ISAACS: I produce:

Number of ledger sheets and bank statements of the joint account of Robert Frank Hughes and Logan Hunter Caldwell.

21 deposit slips of the account of Hughes and Caldwell dated between 3rd August 1955 and 7th June 1958.

HIS HONOR: Is the purpose of this to show that he did produce them even though they are lost?

Mr ISAACS: No, the purpose is to show what I have produced. (Discussion ensued.)

(Mr Larkins refers to four books of cheque butts proposed to be 10 tendered in evidence. Asks permission to mark them in blue pencil 1, 2, 3, 4. Permission granted.)

(Exhibit BM—four cheque books dated from September 16th, 1950 to September 1958.)

Mr ISAACS: I also produce three copies of mining leases relating to P.M.L. 21, P.M.L. 19 and another P.M.L. 21.

(Mr Hughes sought to tender P.M.L. 19, Logan Caldwell, tender objected to by Mr St. John.)

(Exhibit BN—marked pages in book in the name of Aston 20 Caldwell.)

(Exhibit BO—lease P.M.L. 19.)

Mr ISAACS: I produce authority to enter to Joseph Peter Hughes dated 10th July 1936, together with a bundle of miscellaneous papers.

(Exhibit BP—folder with contents consisting of number of bank statements of Robert Frank Hughes and Logan Hunter Caldwell, together with notes and calculations on certain of those statements by Logan Hunter Caldwell.)

(Exhibit BQ—an exercise book entitled on the outside “Hughes and Caldwell—Financial Statement—Australian Blue Metal Co.”)

(Mr Hughes sought to tender another exercise book entitled “D. 30 A. Craig, B.H.P. and Australian Blue Metal”. Tender objected to by Mr St. John: withdrawn.)

(Exhibit BR—exercise book “Mining 1956”.)

(Exhibit BS: documents re mining submitted by B. R. Hughes to Logan Hunter Caldwell.)

(Exhibit BT: documents submitted to Logan Hunter Caldwell by the company called R. F. and C. V. Hughes Pty. Ltd. including Mr Caldwell’s writing on them.)

(Also produced by Mr Isaacs: bundle of letters on letterhead of Australian Blue Metal Ltd. addressed to L. H. Caldwell, most of the 40 letters with envelopes attached.)

(Exhibit BU: correspondence and bills of costs from Eric Campbell, Omant and Grant to Hughes and Caldwell in respect of various transactions: one document objected to by Mr St. John, namely a bill of costs: Mr Hughes addresses Court in this connection: discussion ensued.)

HIS HONOR: The only document objected to is the last one.

Mr ST. JOHN: Yes, the others all relate to the preparation of income tax returns.

(Exhibit BV: Bundle of rate notices and rate receipts relating to the discharge of the liability for rates on mining lease PL. 1.)

Mr. LARKINS: There was correspondence between Australian Blue Metal Limited and the deceased Caldwell dating from May 1957 to March 1958, from the custody of Mr Isaac's client. Letters received by my client from Logan Hunter Caldwell have been inserted in their
10 proper order. There are certain letters that have not been produced but copies have been inserted in lieu of the originals.

There is a number of letters from A.B.M. to Logan Hunter Caldwell, a number of letters from him and several copies of letters from A.B.M. to Logan Hunter Caldwell.

(Exhibit BW: copy of joint return for the year ending 30th June 1956 of Robert Frank Hughes and Clarence Vivian Hughes. Also annexure to this return.)

Mr ST. JOHN: In relation to the amended statement of defence there are four persons now parties who have very little personal knowledge
20 of these matters and who live in Newcastle and Young respectively. . . . (Mr St. John addresses Court.)

HIS HONOR: I dispense with swearing the parties Margaret Ferguson Caldwell, Lindsay George Regan, Violet G. Freeman and Ivy Alma Richards.

(FURTHER HEARING ADJOURNED TO 10 A.M. MONDAY,
20th FEBRUARY, 1961)

Fourth Day: Monday, 20th February, 1961

20th Feb., 1961.

Mr LARKINS: I notice in the transcript that a bundle of correspondence with which I was busying myself just before the adjournment
30 has in fact been described as "Exhibit BT". If Your Honor looks at p. 82.

HIS HONOR: I have "Documents submitted to Logan Hunter Caldwell from R. F. & C. V. Hughes Pty. Limited".

Mr LARKINS: That is not my note. I misread that Your Honor as being . . .

HIS HONOR: If one crosses out "Exhibit BT" and in the next line instead of the word "also" you put "Exhibit BT" with a colon it will then read "EXHIBIT BT: Documents submitted to Logan Hunter Caldwell by the company . . ." and then cross out "Exhibit BT" down
40 below and put "Produced by Mr Isaacs: Bundle of letters . . ." and that will correct itself.

Mr LARKINS: With regard to errors in the transcript, what I propose to do is to hand a list of errors we have observed in the transcript to my learned friends and we will mention it at some later stage.

I ask for the bundle of letters referred to, produced by Mr Isaacs.

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

—
Proceedings
before
His Honour
Mr. Justice
Jacobs.

—
16th Feb., 1961
(Continued)

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

—
Proceedings
before
His Honour
Mr. Justice
Jacobs.

—
20th Feb., 1961.
(Continued)

—

What I am tendering, as I hope will become Exhibit "BX" is a number of original letters from Australian Blue Metal to Logan Hunter Caldwell, which came from the custody of my learned friend Mr Isaacs. I have insinuated where appropriate the original replies from, or letters from, Mr Caldwell, to the secretary, A.B.M. Those are documents which have been taken from files produced in answer to my learned friend's subpoena.

In two instances where the original has not been available a copy has been inserted. I have had typed out—there are 22 letters in all—a list of what they are.

10

Mr ST. JOHN: I have no objection.

Mr ISAACS: I have not had opportunity to examine fully the interleaved letters. Subject to that I have no objection.

(Exhibit "BX": 22 letters between the plaintiff and Logan Hunter Caldwell.)

Mr LARKINS: I call Mr Buckley—Mr Hughes will lead this witness.

THOMAS ERNEST BUCKLEY

Sworn, examined, deposed:

Plaintiff's
Evidence.
Thomas Ernest
Buckley.
Examination.

Mr HUGHES: Q. Is your full name Thomas Ernest Buckley? A. Yes.

Q. You are an officer of the Australian Blue Metal Limited, the 20 plaintiff company? A. Yes.

Q. You are employed by the company as manager of its mining activities at Theaddungra, near Young? A. Yes.

Q. What is your home address? A. 133 Adelaide Street, St. Marys.

Q. Your first acquaintance with magnesite mining at Theaddungra was, I think, acquired during the war years, was it not? A. That is right.

Q. In what years? A. I think about 1942. I am not sure.

Q. At that time were you an employee of what was then known 30 as The Australian Blue Metal Company? A. Yes.

Q. In those days were you employed down there not in any managerial capacity? A. That is right.

Q. When working down there during the war years did you come to meet some of the defendants in this case? A. I did.

Q. Whom did you meet? A. I met Mr Frank Hughes, Mr Clarrie Hughes and Vic Hughes.

Q. Did you work with them in those days? A. Alongside of them.

Q. Were they in fact employed by the Australian Blue Metal 40 partnership on activities down there? A. That is right—I think they were.

Q. You might tell His Honor, just so it is in the record, how far is Young from Sydney by road? A. About 243 miles I think.

Q. I think you, having been down there during the war years, did not go back there until 1956, is that correct? A. That is correct.

Q. In February 1956 were you sent by the company to manage certain mining activities at Theaddungra? A. That is right.

Q. Did you supervise the transportation of certain mining equipment from the company's depot at St. Marys, by road to Theaddungra? A. The first item that went down I did, but thereafter it was arranged at St. Marys.

10 Q. Could you tell His Honor how far it is from St. Marys to Theaddungra by road? A. Approximately the same. About 243 from St. Marys.

Q. Then, when you went down there in February 1956 did you have a team of men with you? A. When I first went down there were two men working there.

Q. Employees of the company? A. Yes. As we started up I arranged for others to go.

Q. You started up and then arranged for others to go down? A. Yes.

20 Q. When you went down and commenced activities in February 1956 on what area of land did you start these activities in the first place? A. P.M.L. 15 and 16.

Q. Did they adjoin, or practically adjoin an area known as P.M.L. 1? A. There is a little lease between them.

Q. The activities you started on P.M.L. 15 and 16, were they of the nature of open cut mining for magnesite? A. Yes.

Q. Would you describe to His Honor the equipment that is used, or was used, in this activity? A. Yes. There was a bulldozer, a diesel shovel or loading device, a compressor, a jackhammer, drills, and four trucks.

30 Q. When you refer to four trucks do you mean four large trucks? A. Yes, blitz waggons like those used in the war years.

Q. From February to April 1956 did you carry out open cut mining for magnesite on these two leases you have mentioned, namely P.M.L. 15 and 16? A. That is right.

Q. On your return to Theaddungra in February 1956 had you met up with Mr Vic Hughes, one of the defendants, again? A. Yes, I saw Vic up there.

Q. Whereabouts did you see him? A. I think on the mine.

Q. On the mining leases? A. Yes.

40 Q. Some time after you commenced in February 1956, did you have a conversation with Vic Hughes about some matter? A. When was that?

Q. Some time after you commenced these operations in February 1956, did you have a conversation with Mr Vic Hughes? A. Yes, I did have a conversation with Mr Vic Hughes just after we started the equipment.

*In the
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Wales in its
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—
Plaintiff's
Evidence.
Thomas Ernest
Buckley.
Examination.
(Continued)
—

*In the
Supreme Court
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Examination.
(Continued)

Q. Do you recall the conversation. Would you tell His Honor what you said and what he said? A. I asked Vic could we tip dirt in the old pit on P.M.L. 1.

Q. This dirt you are referring to was overburden from mining operations, was it? A. Yes.

Q. What did Vic say? A. "I think it will be all right. You had better see Logan Caldwell about it."

Q. Did you know who Logan Caldwell was? A. I knew of him. I doubt whether I had spoken to him at the time.

Q. You say that you knew of him. How did you know of him? 10
A. I knew that Caldwells were part of the district, from the war years.

Q. Did you, in this conversation with Vic Hughes, say anything about anything? A. After he said that he thought it would be all right?

Q. After he said that he thought it would be all right and that you had better see Logan Caldwell? A. Yes, I asked "Where does Mr Caldwell live?"

Q. What did Victor Hughes say? A. "He lives in town".

Q. Then did you go into town and seek Logan Caldwell out? 20
A. I did, that night.

Q. That same day? A. Yes.

Q. What did you find about him? A. I went up to a house, to the address that I was given and I was informed that Mr Caldwell was dead.

Q. So your search was unsuccessful? A. That is right.

Q. The next day did you see Mr Victor Hughes at the mine again?
A. Yes.

Q. What did you say to him. The next day at the mine did you see Mr Victor Hughes? A. I did.

Q. What did you say to him? A. "You're a beauty sending me 30
up to a chap that is dead".

Q. What did he say? A. He laughed and said "He's not dead. Never mind, I will see him myself tonight."

Q. Then the day after that conversation did you and Mr Vic Hughes have another conversation? A. Yes. Thereafter we did—
just after that.

Q. The day after? A. Yes.

Q. What was said? A. Victor said "I have seen Logan Caldwell. It will be quite all right to tip dirt there."

Q. Have you seen this survey plan before (shown to witness)? 40
A. Yes.

Q. You see P.M.L. 1 and the adjoining mining leases? A. Yes.

Q. On this plan P.M.L. 15 and P.M.L. 16 were operating early in 1956, from the time you have been speaking of, to the north of P.M.L. 1 they are separated by some small mining leases of rather minute size, P.M.L. 4 and 5 and P.M.L. 24. (No answer.)

HIS HONOR: Does this show the gully?

Mr HUGHES: Yes, Your Honor. I will tender that, Your Honor.

(Exhibit "BY": sketch of P.M.L. 1 and surrounding leases.)

Mr HUGHES: Q. Mr Buckley, would you be good enough if I get you a pencil to mark approximately the position on P.M.L. 1 of the old pit into which you requested permission to tip dirt in April 1956? (Plan handed to witness.) Would you mark on this plan of P.M.L. 1 the approximate position of the old pit into which you wanted to tip dirt, and asked permission? A. (Witness marks plan.) That showed
10 the spot, where I put the cross. I think it would be approximately where it was (noted plan marked with a red cross).

Q. After this conversation in which Mr Vic Hughes told you that he had seen Logan Caldwell and before I think that you commenced to tip, did you in fact act on the permission and tip overburden from the area of P.M.L. 15 and 16 at this other lease, No. 1? A. Yes.

Q. Did you tip it into the old pit that you have mentioned? A. That is right.

Q. After this conversation you last mentioned with Mr Vic Hughes did Mr Logan Caldwell go out to the lease one day? A.
20 Yes, he came out there shortly after.

Q. He came out shortly afterwards? A. Yes.

Q. Did you meet him? A. Yes.

Q. Did you have a conversation with him? A. Yes I did.

Q. Can you recall anything of that conversation? A. Yes, Mr Caldwell said it would be quite all right to tip dirt there. He just said "Would you please keep the gates and any opening in the fences closed."

Q. From April 1956 onwards where were your mining activities carried out until the month of November? A. P.M.L. 15 and 16 and the pit in 4.

30 Q. I think you worked those. As well as the mobile plant that you described as having been used in these operations, did you cause to be sent down from St. Marys, or have sent down from St. Marys, certain other equipment? A. Yes, a compressor and a bulldozer.

Q. What about accommodation, or other sheds, and things like that? A. We had two store sheds and a little shed, a magazine for storing explosives.

Q. Was all that equipment necessary to carry on operations? A. Yes, it would be, yes.

Q. Do you recall having a conversation with Mr Vic Hughes in
40 November 1956? A. Yes.

Q. Just before you had this conversation did you yourself notice something? A. Yes, I did.

Q. What did you notice? A. I noticed when Vic was leaving the area—he had been mining up near P.M.L. 1 and he was shifting his navvies down to the lower section of P.M.L. 1 on the western side.

Q. You say that you had a conversation with Vic Hughes. Do

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Evidence.
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Buckley.
Examination.
(Continued)
—

you remember the conversation, what took place? A. Yes, I asked Vic if we could work where he was coming out for 10/- a ton royalty.

Q. Do you recall what Vic Hughes said? A. Yes. "I think it will be all right, but you will have to see Logan Caldwell."

Q. Did he say anything else. Were any other people mentioned? A. He said that he would have to see the others regarding it.

Q. Did he say who the others were? A. I don't think so. He just said those words, "I will see the others."

HIS HONOR: Q. Could you repeat the conversation after you asked him could you mine at 10/- a ton royalty. What was then said? A. 10 Vic said "I will have to see the others. I think it will be all right, but I will have to see the others."

Mr HUGHES: Q. Was there any mention made of Logan Caldwell in that conversation, that you recall? A. Yes, like—"See Logan Caldwell."

Q. Do you recall your next conversation with Mr Vic Hughes? A. Yes, a couple of days after or something like that.

Q. What did he say as you recall? A. "It will be all right to work in the old pits. Keep in the area this side of the turn in the fence", or "The break in the fence." "It will be all right to mine in 20 the old pits. Keep in anywhere in the area this side of the break in the fence", which I could see and he pointed out.

Q. Did he point out the break in the fence to you? A. Yes, waved his hand "Just keep in that area."

Q. Did he say anything else? A. I don't think so. Just—"See Logan Caldwell regarding it."

Q. First of all I show you a large photograph. What does that photograph show? A. That shows our place of working in P.M.L. 15 and 16.

Q. The background of the photograph shows what? A. Tip- 30 ping dirt on P.M.L. 1 over here (indicating).

Q. From the foreground to the background that photograph looks in a general southerly direction from P.M.L. 15 and 16 over towards No. 1? A. Yes.

Q. I show you another photograph which has a number "A.622" on the back of it. What does that photograph show? A. That shows the turn in the fence.

Q. From the foreground to the background which way does that photograph look? A. I would say it is looking south.

Q. I show you a third photograph. What does that photograph 40 show? A. That is a photograph of the turn in the fence showing our sheds and the background, that is looking north.

Q. You see in that photograph a corner post in the fence with a piece of wood stuck into the ground beside it. A small short piece of wood stuck into the ground beside it? A. Yes.

Q. Is that the southern corner post of the turn in the fence?
A. Yes.

Q. When were they taken? A. The bigger one was taken by a photographer at Young, I think it would be in 1956. The smaller photographs are recent.

Q. The smaller photographs were taken recently? A. Yes.

Q. And the big one? A. 1956—I think.

HIS HONOR: Those photographs in that order will be Exhibit "BZ". They may be marked one to three in the order in which you referred
10 to them in the evidence.

(Exhibit "BZ": three photographs as above.)

Mr HUGHES: Q. You mentioned earlier Mr Vic Hughes told you to keep in the area this side of the break in the fence? A. That is right.

Q. They were your words? A. Yes.

Q. Did you understand which side he was referring to from what was pointed out? A. Yes, the eastern side.

Q. In that conversation was there any mention made of anything like a gully or watercourse? A. No.

Q. You said that he told you you would have to see Logan Cald-
20 well about it. Do you remember that? A. Yes.

Q. Did you see Logan Caldwell about the matter? A. Yes, I saw Mr Caldwell shortly after that.

Q. Before you saw Mr Caldwell did you commence any activities of a mining nature on P.M.L. 1? A. I had sent a bulldozer over to do a little bit of stripping—I just forget now—I did send a bulldozer over.

Q. Before you sent the bulldozer over did you speak to anyone?
A. That was with Mr Vic's permission.

Q. In what portion did you do bulldozing? A. In the portion
30 that we were discussing, the eastern side, on that pit. I think it was stripping. I am not sure, just a blade wide.

Q. Would you mark on the exhibit with a blue cross the area to which you have just referred, or the pit to which you have just referred?

HIS HONOR: Q. Is that where Mr Vic Hughes was coming out of?
A. Yes, that is the pit, yes.

Mr HUGHES: Q. You said you spoke to Mr Logan Caldwell in response to Mr Vic Hughes' suggestion. Do you recall where the conversation took place with Mr Caldwell? A. Yes, in the field.

Q. Could you tell His Honor when approximately the conversa-
40 tion with Mr Logan Caldwell took place? A. It would be in November.

Q. In November? A. Yes.

Q. Did you write reports or letters to the head office of your company? A. Yes, I did.

Q. About matters going on down there at Theaddungra? A. Yes.

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Plaintiff's
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Examination.
(Continued)

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—
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(Continued)

Q. Were those reports written contemporaneously soon after the event? A. Practically on the day. They would be the dates shown on the letter.

Q. Would you be able to refresh your recollection of the date by reference to anything that you wrote at the time? A. I probably would.

Q. You mentioned that you had a conversation with Mr Logan Caldwell in the field? A. That is right.

Q. And you said it was in November. We will try to fix the date more accurately later but I want you to tell His Honor if you can what 10 you recall of that conversation with Mr Logan Caldwell? A. Mr Caldwell came out and said it would be quite all right to mine here.

Q. Did he go on to say anything? A. Yes, "Anywhere in this area," taking the boundary.

Q. Did he describe the boundary? A. As a line drawn south from the turn in the fence, and for me to keep on the eastern side of it.

Q. At the time you spoke to him did you understand what line—you appreciated what line was meant and where it ran? A. That is right.

Q. Can you recall anything else that was said in that conversation 20 between you? A. Yes. He asked me to give him a copy of the weights and numbers of the trucks that were railed from Weedallion and make cheques out to Hughes and Caldwell for the royalties and to send them on to him. He did say "I will get an agreement drawn up by Gordon Giugni."

Q. When he described the boundary to you by reference to this line did you say anything that you can recall about the boundary? A. Yes.

Q. What did you say? A. "That is practically similar to what 30 Vic told me."

Q. In that conversation did you discuss any other mining areas apart from No. 1? A. Yes. I asked if we could mine P.M.L. 21 and 7 as well.

Q. What did he say? A. "You can mine P.M.L. 21 on a ten shillings a ton basis." I asked also if we could buy those leases if we found any rock on them and he said he would not consider selling them, "You can only go on a ten shilling ton royalty".

Q. Was there any reference to mining on No. 7? A. Yes. I said "What about P.M.L. 7?"

Q. What did he say about No. 7? A. "We won't discuss that 40 at the moment. We may be working it later. It will have to be discussed with all concerned in it".

Q. Did he say who the people concerned in it were? A. To my recollection four Hughes-es, Miss Heather Caldwell and himself.

Q. You mentioned that he said something about railway truck numbers and the lists showing the weights of each truck? A. Yes.

Q. When he told you to direct those to him did he say anything else that you can recall? A. Yes. He said he used to get a copy similar to that during the war years.

Q. I do not know whether you said this before but in case you have not I will ask you. Was there anything said in that conversation about the method of paying royalties? A. He did ask to send the cheques, to make them out to Hughes and Caldwell—to make them out to Hughes and Caldwell and send them to him.

Q. Will you have a look at this document which will be handed up to you, Mr Buckley. Is that document in your handwriting (shown to witness)? A. Yes.

Q. Is it one of your reports to Mr Driscoll at the office of the plaintiff company? A. That is right.

Q. I ask you to notice the date of it. Read it so that you will know what is in it.

Mr ST. JOHN: What is the date?

Mr HUGHES: 27th November 1956.

Mr ST. JOHN: This document does not appear to have been produced on discovery. Does it appear in the document produced on subpoena?

Mr HUGHES: I say it was in the privileged bundle on discovery on the basis that it supported our case and did not cut it down or assist the other parties. I take full responsibility for its inclusion in the privileged bundle. (Discussion ensued.)

Q. On that letter are you able to fix that date? A. Yes, it would probably be the 26th or the 27th. Probably the 27th. The day it was written.

Q. That is the date of the conversation with Logan Caldwell which you have just told His Honor of? A. Yes, that is right.

Q. Late in January 1957 do you remember going to Mr Gordon Giugni's office in Young and reading a document? A. Yes I do.

Q. (Calls for Exhibit "AV"—shown to witness.) Is that the document which you saw and read in Mr Giugni's office late in January 1957? A. Yes, that is the document I saw.

Q. When you read through the document did you notice anything in particular about it? A. I noticed it complied with all we had spoken of on the boundaries out at the site.

Q. When you say you noticed it complied "with all we had spoken about concerning the boundaries", to whom are you referring as "we"? A. Mr Caldwell and I discussed the line of the mine and the area, and that complied with what he told me on the site.

Q. So far as the month of January was concerned, what was the extent of your activities on P.M.L. No. 1. Were you working throughout January? A. Probably we would have been working but not too much in January. That was our long leave, at Christmas time.

Q. During February, March, April and May of 1957 did you mine more or less continuously on P.M.L. No. 1? A. Yes.

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(Continued)
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(Continued)

Q. And was Mr Vic Hughes about the site during those months?
A. Oh yes, quite often.

Q. Quite often? A. Yes.

Q. Did you have conversations with him from time to time on the field? A. I think so, yes.

Q. And when you first commenced operations on P.M.L. 1, whereabouts did you start. In what area? A. The area that is shown there on that map.

Q. In what way is it shown? A. It is shown there "Old workings by A.B.M." (referring to Exhibit "BY").

10

Q. Prior to the commencement of June 1957 did you work on other portions of the area allotted to you other than that described as "Old workings by A.B.M."? A. Yes. We worked different other positions further south on it. I did also a lot of working with the bulldozer and the ripping around the area, right out to the boundary.

HIS HONOR: Q. You said you worked different other positions further south on it. Would you go on with your answer from that point? (No answer.)

Mr HUGHES: Prior to the month of June? A. We worked further south. I did a lot of working going on right down to what is shown here as the gully. I did testing with the bulldozer and the ripper, on contract mining all round that area.

Q. Not south of the gully? A. That is right.

Q. And when you were working outside the area of the pit shown on the plan as old A.B.M. Workings—and when you were testing in that area, but north of the gully, did Vic Hughes ever speak to you or pass the time of day with you? A. Often.

Q. Whilst you were actually working? A. Yes.

Q. And is Mr Vic Hughes in Court? Can you see him in Court? A. Yes, I see Vic.

30

Q. Would you point him out? A. Sitting on the second last row on the right.

Q. On the left you mean? A. Looking my way—what would it be?

Q. The tall gentleman with the green and grey tie? A. That is right.

Q. And do you recall an occasion prior to the month of June 1957 when you were doing some testing or digging, one or the other, near the western boundary of your area? A. Yes.

Q. Do you recall a conversation with Mr Vic Hughes at that time? A. Yes I can.

Q. What conversation can you recall? A. Vic showed me this place to try. I had a couple of men there with me, two men on the bulldozer and ripper. We were looking for rock there, and I noticed—or I noticed where some rock seemed to be good rock on the line of our boundary or a bit on Vic's side of the boundary.

Q. Which boundary are you referring to? A. This line drawn from the turn of the fence.

Q. The line drawn south from the turn of the fence? A. That is right.

Q. Did you draw Vic's attention to that? A. Yes, I said "I think we are a bit over the wrong side here, over the wrong side of the line".

Q. Do you recall what Vic said? A. "It doesn't matter much. As long as you are getting a bit of rock."

10 Q. Would you mark with a circle in red pencil the approximate area to which you are just referring and in relation to which you had this conversation with Mr Vic Hughes. (Witness marks plan with red circle.)

Q. Did you take the truck numbers and particulars of the weights up to Mr Caldwell at his home? A. Yes, that was my practice.

Q. How often did you do that? A. Once a month.

Q. When you went up there did you have a conversation with him? A. Quite often, yes.

20 Q. Do you recall an occasion when you took these documents up to him some few months after you had been mining on P.M.L. 1? A. Yes.

Q. Can you recall the particular occasion? Do you recall anything of what Mr Caldwell said to you on that particular occasion? A. Yes, Mr Caldwell said "How are you going—how are you working".

Q. What did you say? A. "Not too good. It is pretty big and dirty stone and requires a lot of breaking and cleaning and it is pretty costly".

30 Q. What did he say? A. He said, "Well, over the other side of the lease there is an old shaft that was put down there near a fence. They got a bit of rock out of it. It was just a hole I think. I don't know how much, but you ought to have a look around there."

Q. And did you say anything? A. I asked would it be all right to go over there as it was part of the wheat paddock. Would it be all right to go over there.

Q. You said "Would it be all right to go over there, it is part of the wheat paddock"? A. That is right.

Q. What did Mr Caldwell say? A. That it would be all right, "There is nothing in your agreement says you can't".

40 Q. Are you able to say approximately when that conversation took place—what month? A. I think it would be in May.

HIS HONOR: I am not quite clear about "Other side of the lease".

Mr HUGHES: I was going to take the witness to the plan again."

Q. When Mr Caldwell said, referred, to this area, "The other side of the lease near the fence", did you understand the area to which he was referring. Did you identify it in your mind? (No answer.)

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Plaintiff's
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(Continued)

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Plaintiff's
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Thomas Ernest
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Examination.
(Continued)

Q. On that occasion do you recall anything else that Mr Caldwell said? A. Yes, he asked to have the royalty cheques made out to Hughes and Caldwell.

HIS HONOR: Q. He had asked you that before? A. Yes, he had, Your Honor.

Mr Hughes: Q. That was on the 27th May. Can you recall what was the nature of the first mining activities you carried out south of the gully that is shown on the survey plan Exhibit "BY"? A. Yes.

Q. What was the nature of them? A. The first was drilling. Using a compressor for air with a jackhammer and steel for the drills. 10

Q. Can you say when it was that you first commenced testing in that way south of the gully? A. I would say early in June.

Q. While you were testing was Mr Vic Hughes about the area at all? A. Yes, he was there.

Q. Was he anywhere near where you were testing? A. Right alongside of us at times.

Q. Do you recall anything that he said while you were carrying out those tests? A. I remember Vic saying "It looks promising in the drilling."

Q. Can you say approximately how many days the tests lasted. 20 How many days you were occupied in testing? A. Probably a week.

Q. Probably a week? A. Yes.

Q. How far down did you put the drills? A. All depths, about an average of eight feet.

Q. Can you tell His Honor over what area of the ground, the approximate dimensions of the area of the ground, in which the tests were carried out? A. I think it would be around about 30 or 40 square yards.

HIS HONOR: Q. A very small area? A. Well, it is 40 yards, that is a fair way. That would be about . . . 30

Q. Is it 40 yards each way? A. Yes, about that.

Mr HUGHES: Q. 40 yards square, not 40 square yards? A. Yes.

(Short adjournment.)

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RONALD GEORGE CHRISTIE

On subpoena duces tecum

Mr ST. JOHN: Q. What is your full name? A. Ronald George Christie.

Q. You are an officer of the B.H.P. Co. Ltd.? A. Yes.

Q. Do you produce certain documents on subpoena duces tecum? A. Yes. 40

Q. You have not brought the subpoena back with you have you? A. Yes.

Q. Will you produce that also? A. Yes.

Q. Do you produce all the documents referred to in the subpoena? A. Yes.

Q. What you have actually produced is a copy which you certify as a true copy of the original, being in Newcastle? A. Yes.

HIS HONOR: All counsel may inspect the documents. (Allowed to leave.)

Mr ST. JOHN: There was a further subpoena served on the plaintiff.

Mr LARKINS: The subpoena was only served late on Friday and a search is being made to see if there are any documents to cover that.

HIS HONOR: None are produced at present?

Mr LARKINS: No.

10 Mr HUGHES: Q. (To T. E. Buckley.) Just before the adjournment I was asking you about these tests you started to carry out south of the gully in the early part of June 1957. After the carrying out of these tests in the way you have described did you then open up a new pit? A. Yes, I did.

Q. And how was that done? A. I took a mechanical shovel with a navvy and started to dig down into the ground.

Q. On what date was the new pit opened up? A. 10th June.

Q. Do you recall anything else that you did that day? A. Yes, I think it was the day I signed an agreement in Mr Giugni's office.

20 Q. (Exhibit "AW" shown to witness.) Would you have a look at that document, Mr Buckley. Is that the document you signed in Mr Giugni's office on the 10th June? A. That is it.

Q. And your signature is on the second page. When that document was signed did you see any other signature on the document? A. No, mine was first on it.

Mr LARKINS: If I could interpose might I say that we would have no objection to these copy documents being used from the B.H.P.

Mr. HUGHES: Q. After the 10th June 1957 did you continue to dig down into this new pit and extend it? A. I pulled the plant out
30 and overhauled it.

Q. When was that? A. Shortly after we started. It may be a few days after. I just forget the date.

Q. A few days after the 10th June you overhauled your plant, did you? A. That is right.

Q. You mentioned that Mr Vic Hughes was present during the period when the tests were being carried out south of the gully? A. That is right.

Q. Preparatory to opening up the new pit? A. Yes.

40 Q. What about after the new pit was opened up. Did you see him about? A. He was about, yes.

Q. Did he go down to the new pit from time to time? A. Yes, I think he came down—he was down there talking during repairs to the shovel.

Q. Did he say anything. Did he make any comment about the place where you were operating? A. None whatever.

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—
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Q. When you were testing prior to opening up the pit did he make any comment about the location in which you were carrying on tests? A. No.

Q. Do you recall speaking to Mr Norman Regan on any occasion after the new pit had been opened up? A. Yes, I recall that. I did talk to Norman on the field, at the site.

Q. At the site of the new pit? A. That is right.

Q. Can you tell His Honor approximately when—exactly if you can—if you don't know, approximately—when it was that this conversation took place with Norman Regan to which you have just 10 referred? A. It would be pretty close to the 10th. I am not sure of the date.

Q. Pretty close to the 10th June? A. Yes. Just when we were started over there, I know that.

Q. You mentioned it was at the site of the pit? A. Yes.

Q. Will you tell His Honor whether you recall approximately the conversation, the terms of the conversation at all? A. Yes, I think so.

Q. What was it? A. Norman asked me—he said “What are you doing over here”. I replied “This is part of P.M.L. 1 and we 20 have an agreement to work it.

Q. What did he say? A. He was a bit astounded to know it was part of P.M.L. 1. He said “I don't even know where the flaming leases are”, or words to that effect.

Q. Did you say anything then? A. Yes, when he mentioned—when he said that I said “I have got a map showing where the lease is” and I'd be only too pleased to show him where the corners of those leases were.

Q. Did he say anything else? A. He asked me how far I was going to go towards the cultivation and I told him I would not inter- 30 fere with the crop and we set out the boundary with white magnesite rocks—stones—we placed them across the ploughing and I told him I would not go beyond that until the crop had been harvested.

Q. You have not actually mentioned the crop until now. Perhaps it might help if it was marked on the plan, the approximate position of the crop. Could you mark with parallel blue lines where approximately this crop had been planted? A. (Witness marks plan.) It followed the gully area, if you get what I mean. Could I put a little dot showing where the stones were rolled?

HIS HONOR: Yes. Put the dots where the magnesite was laid. 40

Mr HUGHES: Q. Put red dots. You have shown red dots. They run through the area “Workings by A.B.M.” on this plan. Do you say you extended beyond that line before or after the crop had been planted? A. After.

Mr ST. JOHN: After the crop had been . . .

Mr HUGHES: Harvested.

WITNESS: After the crop had been finished.

Mr HUGHES: Q. Would you please mark on the plan whereabouts it was that you opened up the new pit and where you were operating when Mr Norman Regan spoke to you? A. That's a tall order.

HIS HONOR: Q. Mark it in blue? A. The blue dot dot dot.

HIS HONOR: Put in an "R" beside that blue dot, Mr Buckley.

Mr HUGHES: Q. Now throughout June and July with the exception of the maintenance period when you were overhauling your equipment, did you carry on these operations in the new pit? A. Yes, all the 10 time.

Q. And during the months of June and July as your operations proceeded did you see Mr Vic Hughes in the area of the pit at all? A. Yes, he was over there.

Q. Did he have conversations with you and pass the time of day with you? A. Oh, yes.

Q. During June and July? A. Yes.

Q. At any time during those months did he raise any objection to you operating where you were? A. None whatever.

Q. Do you remember whether any of the other defendants were 20 out there during June and July, on any occasion when you saw them? A. They may have been. I don't recall.

Q. Did your operations continue without any disturbance, a peaceful situation, until some time early in August? A. That is right.

Q. During the few days in August, the first few days, did anything happen to ruffle the calm of things, at this pit? A. Yes, in August, I think it was the 6th August, Mr Vic Hughes had a conversation with me.

Q. Mr Vic Hughes had a conversation with you, you say, on the 6th August? Is that the date you are able to fix by reference to a 30 document? A. That is right.

Q. I will show you a document in a moment. Do you recall the conversation that Mr Vic Hughes had with you? A. Yes.

Q. Where did it take place? A. On the field.

Q. And what was said? A. Vic said "Did Driscoll say anything to you about not railing too much rock, or too much stone?"

Q. What did you say? A. "No."

Q. Did he say something then? A. He said that he told me— Vic said that Driscoll had told him that we were not to rail more than eight thousand tons a year.

40 Q. What did you say in answer to that? A. That my instructions were to rail a thousand tons or eleven hundred tons a month.

Q. Did Vic Hughes then say anything? A. Words to the effect "You don't want to be too hungry".

Q. At that conversation did Vic Hughes make any mention about work, where you should not be working? A. No.

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Q. The next day after the conversation did Vic Hughes come to you and have another conversation? A. He did.

Q. And can you describe his demeanour on this occasion? A. It wasn't—he was a bit upset.

Q. And do you recall what he said? A. Yes.

Q. What did he say? A. He sounded a bit of a bombshell. He said "You got no right to be there where you are. Come out here to the fence." He took me out to the line, the break in the fence. He said, "Look, you have no right to be over there where you are at all, on the other side of the gully. You had no right to cross that gully. 10 I never gave you any permission".

Q. What did you say? A. I said there was nothing in the agreement about stopping at the gully and he said "That line was only meant to be the gully".

Q. He said, "That line was only meant to the gully"? A. That is right. He said, "Look, you've got all the land. We have got none."

Q. That is what he said to you? A. Yes.

Q. When he said, "That line was only meant to the gully" was that just after you mentioned the agreement? A. Yes. 20

Q. When he said "You've got all the land and we've got none" do you recall anything you said to him? A. I said "Why didn't you yell out before this?"

Q. "Why didn't you yell out before this"? A. Yes.

Mr HUGHES: Q. And when you said that to him, "Why didn't you yell out before this?" did he say anything? A. Yes; he said, "You will have to see Vic about this. You will have to see Frank about it. Something will have to be done about it."

Q. You mentioned conversation with Vic Hughes in which he asked you whether you had instructions about how much stone to rail. 30 You said that that took place on the 6th August? A. Yes.

Q. Do you refresh your recollection that that took place on that date from a document which you made at the time? A. I do.

Q. I show you document "B.10" (document handed to witness). Just read that, if you will, to yourself. Is that the document from which you refreshed your recollection in fixing the date of the conversation with Vic Hughes, as being the conversation on the 6th August? A. Yes, that is right.

(Document dated 6th August 1957 m.f.i. "4"; handed to Mr St. John.) 40

Q. And is there another document that you wrote on the next day that enables you to be certain that the date of the second conversation, as you have just given it, with Vic Hughes, was on the 7th August? A. That is right.

Q. Will you have a look at this document which has been marked "B.11" (document handed to witness). A. Yes.

Mr ST. JOHN: While the witness is looking at that document, I accept what my friend says, that it was produced on discovery; it was not amongst the documents set out in the affidavit.

Mr HUGHES: It was not produced on discovery. It was one of the documents produced on subpoena, according to my recollection.

Mr ST. JOHN: No, it was not.

Mr HUGHES: Well, if it was not, I am instructed that it was on the basis of the date.

HIS HONOR: I do not think anything turns on it.

10 (Document dated 7th August 1957 m.f.i. "5"; handed to Mr St. John.)

Mr HUGHES: Q. Did you go to see Frank Hughes? A. Yes, I went in that evening.

Q. And did you have a conversation with Frank Hughes at his home? A. I did.

Q. And do you recall what was said in that conversation? A. Yes. I said "Vic told me that I had to come and see you. I suppose you think we should not be over mining where we are. I want to know what the trouble is. Can we fix it up? Do you want more money?"

20 Do you want to go back to ten shillings a ton royalty?"

Q. And what did he say? A. Frank was not very talkative about it at all. I said "You have our agreement. There is nothing in that which says that we should not be over there," and he remarked on the agreement—he said, "Logan says he rang me up about that, but I don't remember that. Logan is getting pretty old and forgetful—a bit doddery"—and he said "We wrote to Australian Blue Metal and asked them to pay the Government royalties, and they have not even bothered to answer us."

30 Q. Did you say anything else? A. I could have. I forget. I was there for a long while.

Q. Did you say anything else? A. I did ask him—I said "How would you feel if you were over there for a couple of months on a good show and getting a bit of rock? How would you feel? Would you get out without questioning it?"

Q. Did he say anything to that? A. No; Frank was very non-committal.

Q. And is there anything else of that conversation that you can recall? A. I think that is as much of it that I can remember.

40 Q. By the way, prior to this occasion on the 7th August, when Vic Hughes told you to go and see Frank, had there been any occasion when anyone had referred you to Frank in relation to anything to do with the mine? A. No; that was the first occasion I had ever been told to go and see Frank.

Q. As the manager of operations up there, did you decide for yourself where mining was to be carried out? Was that within your discretion? A. Oh, yes.

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Q. And as manager can you say whether or not you would ever have gone south of the gully and opened up this new pit if you had not thought that the agreement entitled you to? (Objected to by Mr St. John; pressed; argument ensued; rejected in that form.)

Q. You dealt with the conversation with Mr Frank Hughes—? HIS HONOR: It can be put in a more positive form—"On what basis did you go over there?"

Mr HUGHES: Q. Did you act on any basis in going over there? A. Only on the basis that that was our agreement—to keep on the eastern side of it. 10

Q. Do you remember an occasion later in 1957—in August—when Mr Vic Hughes handed a document, or endeavoured to hand a document to you, out at the mine? A. Yes; I do remember an occasion. I could not tell you the date, but I remember him trying to give me a document or a letter.

Q. And did you take it into town? A. I would not accept it. It was thrown into my utility.

Q. Later again did you have a conversation with Mr Norman Regan that you can recall? A. Very late after that—about September. 20

Q. Of 1957? A. Of 1957.

Q. Do you recall anything you said? A. Yes, just what he told me, more or less. He told me that day that Frank and Clarrie were going to make a case of this and that Vic was going to throw in a thousand pounds towards it or had thrown in a thousand pounds. I forget which.

Q. Did he say anything about his position? A. His position was that he was not going to help them and was not going to accept anything from it.

Q. Did he say anything about A.B.M.? A. He said he was quite happy to have A.B.M. working in the lease. He said that they 30 had got plenty of royalty cheques.

Q. In this book that I hand up to you there are a number of sheets of paper with what appear to be truck numbers and weights on them. Perhaps I might show you first of all this book which is marked "100" in red print. (Document handed to witness.) Is that document in your writing? A. Yes; they are my figures.

Q. Is that a typical sort of specimen of the truck numbers and weights in documentary form, which you took up once a month? A. Yes, that is right.

Q. And there would be many others of those, of course? A. 40 Yes, plenty of them.

(Document incorporated in Exhibit "BR".)

(At this stage Mr Hughes tendered, as part of Exhibit "BR", certain loose papers.)

Q. Will you have a look now at what is shown to you? (Documents handed to witness.) A. I do not know—

Q. Do you recognise that writing? A. I do not.

(Mr Hughes suggested that His Honor might prefer the loose sheets of paper to be put in an envelope and marked as a separate Exhibit. In reply to His Honor Mr Hughes stated the documents contained writing which was purely calculations. His Honor then directed that the documents should remain as they were and be incorporated into Exhibit "BR".)

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CROSS-EXAMINATION

Mr ISAACS: Q. I would like you to tell me something, if you can,
10 about the general contour of this land P.M.L. 1. Assuming that you
were standing on the northern boundary and looking south—what
sort of land was it—level, or uphill or downhill, the way you were
looking? A. Well, looking at it now, on that side where there has
been plenty of work was all hills and hollows, but it would slope down
towards the gully.

—
Cross-
Examination.
—

Q. That is the general slope—down towards the gully? A. Yes.

Q. And some general undulating country in between? A. Yes.

Q. If you stood at the northern boundary and looked south, could
you see where that southern boundary was? A. You could if you
20 put a peg up there—you would see the peg, I think.

Q. Was there any fence along that southern boundary? A. On
the southern boundary there was a fence there, but it did not run true
to the line of the boundary.

Q. And if you were standing on the northern boundary and
looking south, could you see that fence? A. Yes; I think you could
see it because the hill would be rising up so that you could see it.

Q. What about the eastern boundary? There was a fence on that
boundary, was there not? A. Yes; there was a paddock up there,
but that paddock did not run parallel with the mining boundary.

30 Q. Was there a fence on the eastern boundary? A. Yes.

Q. And if you stood on the northern boundary at the point
where this turn in the fence was, could you see that eastern boundary
from there? A. Yes.

Q. You could see it quite well from there, could you not? A.
Yes; you could see the fence.

Q. And what was the general nature of the land on P.M.L. 1?
Was it overgrown with trees or was it fairly free from trees? A.
Most of it was fairly free from trees—the majority of it.

Q. So that there was nothing to prevent you seeing fencing on
40 the southern side and fencing on the eastern side? A. That is right.

Q. From the time that you first came there in 1956 down to the
7th August 1957 did anybody—either Vic Hughes or the other
Hughes-es or Logan Caldwell—ever say to you, "You can only mine
here and you cannot mine there?" A. No.

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—

Q. Was anything ever mentioned about fallow land—not touching fallow land? A. No; there was nothing mentioned about not touching fallow land.

Q. You yourself, when you were talking to Logan about the pit near the eastern boundary, mentioned that there was wheat growing there? A. That would be the southern boundary, wouldn't it?

Mr ST. JOHN: The southeastern boundary.

Mr ISAACS: Q. The southeastern boundary, yes? A. Yes.

Q. And you mentioned that there was some wheat growing there and you said that there was nothing under your agreement—I am 10 sorry. The conversation with Norman Regan—do you remember that? A. Yes.

HIS HONOR: There were two conversations. I think you mean the earlier one?

Mr ISAACS: Q. Do you remember that you had a conversation in May? Can you remember a conversation that you had with somebody where you were asked how you were going, and you said, "Not too good", and that there was a lot of dirt on the stone and that it required a lot of breaking and treating? A. Yes; that was with Mr Caldwell. 20

Q. That was with Mr Logan Caldwell? A. Yes.

Q. And that was somewhere about May of 1957? A. Yes.

Q. And it was Mr Logan Caldwell that said that over on the other side of the lease there was an old shaft near a fence? A. Yes.

Q. And that you ought to have a go over there? A. Yes; ought to have a look around.

Q. And it was then that you mentioned that it was part of a wheat paddock? A. Yes.

Q. And may I take it that you were not anxious to disturb any existing cultivation if you could avoid it? A. No. That had been, 30 I think, the general arrangement—"Whatever you can get elsewhere get it".

Q. And when you marked the area of the wheat later on—do you remember doing that later on? A. Yes.

Q. That was with Mr Regan? A. Yes.

Q. And that was with the same objective—that you did not want to disturb the cultivation if you could avoid it? A. Yes. (Objected to by Mr St. John as leading questions; argument ensued.)

Mr ST. JOHN: In the circumstances we would be much happier to cross-examine first. 40

HIS HONOR: You have the right to cross-examine first. What do you say, Mr Isaacs?

Mr ISAACS: I am in Your Honor's hands.

HIS HONOR: As Mr St. John thinks that he should, I give him the right to cross-examine first, and Mr Isaacs may cross-examine after him.

Mr ISAACS: I might say that I have had no consultation with this witness at all.

Mr. ST. JOHN: Q. Could I begin by asking you this? You have told us that Mr Vic Hughes, of course, was working the lease near to you. Where were the other Hughes situated—Frank Hughes, for a start? A. Would you repeat that question?

Q. Where did Frank Hughes live? A. I never knew at that time.

Q. Where did you see him? A. I saw Frank once or twice, or 10 it may be three times, on the field. I could not tell you when.

Q. Not after you commenced to mine south of the gully, may I take it? A. I saw Frank a couple of times before we crossed that gully.

Q. And then the first time you saw him after that was on this occasion in August, that you told us about? A. On my memory.

Q. And on that occasion where did you see him—at the field? A. No; I saw Frank at his house.

Q. And his house is a long way from the field? A. That is right.

Q. Where is it? A. I do not know the name of the street. It is a continuation of Burrowa Street, I think.

20 Q. It is in Young? A. Yes.

Q. And how far is the field from Young? A. The mines are approximately twenty miles.

Q. Did you know the late Frederick Hughes? A. Yes I knew Fred.

Q. You know now, of course, that he has an interest in the mining lease? A. That is right.

Q. Or that his Estate now has. When did you first become aware that Fred had any interest in the lease? A. I could not very well answer that question. I never took Fred into consideration with that 30 lease because he was never there at all.

Q. Nor did you discuss the matter with him? A. No.

Q. Can you say whether there were any discussions that you had with those whom you now know to be interested in the lease? A. I have had others. Those are those that I recall at the time.

Q. Those are all that you recall at this time and at any time? A. Yes.

Q. You cannot say that you recall at this time whether Fred had any interest? A. I cannot recall that at all.

Q. Did you ever have any dealings with Mr George Wigham 40 Caldwell? A. Would that be Mr Logan Caldwell's brother?

Q. Yes? A. I saw Mr George Caldwell.

Q. At what stage would that be? A. From memory I have only seen him once on this area we are talking about now.

Q. And that was long before any dispute arose? A. It would be.

Q. The date of his death was some time in 1956, was it not? A. Yes.

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—

Q. And did he refrain from sowing there? A. He said he did not care what it was—it was pretty rocky anyway.

Q. The area that you tested was in the south-eastern corner? (Indicating on map.) A. Yes, round about there. (Indicating.)

Q. Where was it in relation to this point marked "R" where you spoke to Mr Regan? You have marked a point "R" (indicating)?

A. Yes.

Q. Where you spoke to Mr Regan? A. Yes.

Q. Was it at that point you tested, or some other point? A. Round about in that area. This little blue line will tell you how the 10 crop—the cultivation—came in, into a point.

Q. It was not a crop at that point; it was simply a cultivation? A. Yes, a cultivation.

Q. And you asked him not to sow it about the point marked "R"? A. That is right.

Q. And did he in fact sow there or not? A. He did not.

Q. When Mr Regan came there and you marked out a line—it ran across the cultivation—is that right? A. Yes.

Q. And had there been any sowing to the east of it? A. No sowing to the east, no. 20

Q. You told us that in January and in June you signed an agreement which had also been signed by Mr Logan Caldwell alone? A. I did not sign the first agreement.

Q. I am sorry—who signed that? A. I think Mr Thomas O'Neill.

Q. But you were certainly aware of it? It was shown to you and you approved of it? A. Yes.

Q. And did you know that it had been signed by anyone other than by Mr Logan Caldwell, purporting to sign on behalf of Hughes & Caldwell? A. No; as he was the man that asked for it to be drawn up— 30

Q. Just answer my question. Did you know that it had not been signed by anyone other than by Mr Logan Caldwell, purporting to sign on behalf of Hughes and Caldwell? A. Well, I thought that.

Q. You thought that did you? A. Yes. I think I have that question right, haven't I?

Q. Well, no one but Logan had signed it on behalf of Hughes & Caldwell? A. Which agreement?

Q. The agreement in January and in June? A. The agreement in June, I signed that one—

Q. But I am talking about the person who signed on behalf of 40 Hughes and Caldwell. Take the January one. Did you know that Logan Caldwell signed it on behalf of Hughes and Caldwell? A. I did not know at the time.

Q. When did you become aware of it? A. When the second one was drawn up.

Q. Take the second agreement. Were you aware that the only person who had signed that on behalf of Hughes and Caldwell was Logan Caldwell? A. Mr Giugni told me that he was going to sign it.

Q. And so far as you knew no one else was going to sign it on behalf of Hughes and Caldwell, but Logan Caldwell himself? A. Yes.

Q. Does your memory go back to the agreements during the war years? A. I never saw those.

Q. Have you seen them since? A. I have not seen them yet.

10 Q. You never, in any of your conversations with anyone other than Logan Caldwell, referred to either of these written agreements? A. Would you repeat that, please?

Q. You have told us about the signing of the agreements, and you told us you had conversations with various people after that? A. Yes.

Q. With Vic and with Regan and with Frank? A. Yes.

Q. And as far as your evidence goes this morning, I think you would agree that you never expressly mentioned any of these written agreements in either of those discussions? (Objected to by Mr Hughes; 20 pressed; argument ensued.) (Question rejected.)

Mr ST. JOHN: I will put the question in another form?

HIS HONOR: Yes.

Mr ST. JOHN: Q. Have you, in your evidence this morning, expressly mentioned any reference made by you to the written agreement when you spoke with Vic and Frank and Regan after the making of those written agreements? A. I think I spoke to Vic on the subject—

Q. You think you spoke to Vic on the subject? A. I mentioned the agreement then.

Q. Have you told us anything about that this morning? A. Yes.

30 Q. When did you mention the written agreement to Vic—when did you make express mention of a written agreement to Vic? A. When I said that there was no mention of stopping at the gully in our agreement.

Q. You did not refer to a written agreement in so many words, did you? A. No; I just took it for granted that they knew it was an agreement.

Q. And you tell us that you had made an agreement by word of mouth with Vic as to where you were to go? A. That is right.

40 Q. So that when you said to Vic, "It is covered by our agreement", for all Vic knew, you could have been referring to the agreement made by word of mouth? That is so, is it not? A. No.

Q. Why is it not so? A. Well, Mr Caldwell said that he would have an agreement drawn up a few days after that.

Q. But you do not know what Mr Logan Caldwell said to Vic, did you? A. No.

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Q. So that he could have thought that you were referring back to your conversation? A. It is possible, but I doubt it.

Q. The answer is that it is possible. Was there any mention of "written agreement" in your discussions with Frank—was there any mention of a written agreement in your conversation with Frank?

A. Well, the only time I can recall mentioning an agreement with Frank was when I was at his house. I said: "You know our agreement?"

Q. And that was the only reference to it? A. As far as talking to Frank was concerned, that was the only time I mentioned it to him.

Q. And what about Regan—you told him you had an agreement? 10
A. Yes.

Q. And you did not refer to a written agreement did you? You thought it was unnecessary perhaps? (Objected to by Mr Hughes; rejected.)

Q. You did not say, in so many words: "A written agreement", when you were talking to Regan? A. I said that the agreement had been drawn up by Giugni.

Q. When you were talking to Regan did you make any mention of a written agreement in so many words—when you were talking to Regan. (Objected to by Mr Hughes; admitted.) 20

Q. What is your answer to that? When you were talking to Regan did you make any mention, in so many words, of a written agreement, or did you simply refer to an agreement? A. I cannot recall. I know I referred to the agreement.

(Luncheon adjournment.)

AT 2 P.M.

Mr ST. JOHN: Q. I think you told us that when you first went into P.M.L. 1 it was on the basis of dumping some dirt, as you called it?

A. Yes.

Q. Or spoil as it is called? A. Yes. 30

Q. And on that occasion you spoke in the first instance to Vic?
A. Yes.

Q. And I put it to you that he said: "I alone could not consent. You had better see the others"? A. No, he did not say that.

Q. Well, what did he say? A. He said, "I think it will be all right, but I will have to see the others."

Q. Subsequently did he tell you that he had seen the others?
A. Yes.

Q. And that they had agreed? A. He said that he thought it would be all right to go in there. 40

Q. Did he tell you specifically to see Logan Caldwell yourself? He told you that, did he not? A. Yes.

Q. And you have told us what steps you took to get in touch with Logan Caldwell? A. That is correct.

Q. Subsequently Logan Caldwell, whom you had attempted to see but had not seen, ordered you to stop dumping spoil? A. Into that pit in P.M.L. 1?

Q. Yes? A. No; he never told us that.

Q. There was trouble about it—the fact that you had not made the approach to Logan Caldwell? A. No, he said it would be all right.

Q. Logan said it would be all right? A. When he came out.

Q. But I put it to you that in the first instance, not having been
10 consulted he ordered you off? A. Not to my knowledge.

Q. Not to your memory? A. No.

Q. But you are not prepared absolutely flatly to deny it, are you?
A. I cannot imagine it.

Q. You were dumping dirt presumably during the few months preceding November 1956—is that so? A. Yes.

Q. And you have told us that in November you made a request to Vic to be allowed to come in to the old pits that he was about to leave? A. That is right.

Q. And in fact when you spoke to him had he already left—the
20 old pits? A. I think he just had.

Q. And did you ask him why he was leaving? Do you remember any conversation about that? A. I remember Vic saying that it was too big for them to keep.

HIS HONOR: Q. What did he say? A. The rock was—

Q. No; what did he say? A. He said, “We are getting out because it is too big for us to mine”.

Mr ST. JOHN: Q. And when he said that it was too big “for us”, he was referring to his equipment—it was not adequate to deal with that sort of thing? A. Yes, that is right.

30 Q. So it was on that basis that he agreed that you should go in and work where he had left off? A. That is right.

Q. And at that stage you were prospecting throughout that district trying to find a suitable place to carry out your mining? A. On P.M.L. 1.

Q. But you were looking about generally, were you not? A. Yes.

Q. To find a suitable place to work after you had finished on P.M.L. 15 and 16? A. Yes.

Q. And you continued to look during the period you were on P.M.L. 1? A. Yes; I continued to look on the section P.M.L. 1.

40 Q. Of course, magnesite there runs over a considerable area? A. Yes.

Q. There are lots of leases in that area? A. Yes.

Q. All yielding magnesite, amongst other things? A. Certain quantities of it, yes.

Q. Did you know that this lease referred to magnesite and

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chromite—did you know that the head lease referred to magnesite and chromite? A. It could have.

Q. You did not actually know that? A. Well, I knew magnesite was there.

Q. Did you know anything about the terms of the lease prior to that written agreement that Logan had signed in January? A. In what way do you mean "terms"?

Q. Did you know what term it had to run? A. No.

Q. Did you make any inquiries? A. No.

Q. Were you interested? (The reply of the witness was inaudible.) 10

HIS HONOR: You were asked did you know the term, and you said "No". I will ask that the shorthand notes be read.

(At the direction of His Honor the following questions and answers were read from the shorthand notes:

"Q. Did you know anything about the terms of the lease prior to that written agreement that Logan had signed in January?

A. In what way do you means 'terms'?

Q. Did you know that term it had to run? A. No.

Q. Did you make any inquiries? A. No.

Q. Were you interested?" 20

WITNESS: Was I interested?

Mr ST. JOHN: Q. Yes, and did you know how long it had to run? A. No.

Q. At that stage you regarded this permission to mine P.M.L. 1 as a purely temporary arrangement did you not? (Objected to by Mr Hughes; pressed; rejected.)

Q. I will reframe it. When you first sought permission to move in November, at any rate, you regarded this as a purely temporary arrangement, did you not? (Objected to by Mr Hughes; pressed; rejected.) 30

Mr ST. JOHN: Perhaps I will withdraw that question and put this to him.

Q. Did you not say words to this effect, "Do you think I can get in here until I find another site"? A. I do not think so.

Q. You do not think so? A. No.

Q. But that is the fact is it not, that you were looking for another site? A. This was while we were actually on P.M.L. 1?

Q. Yes? A. I never looked for another site. I looked all over P.M.L. 1.

Q. You did not look for another site while you were on P.M.L. 40 1? A. I looked on the other side of 19, but I was prospecting on P.M.L. 1.

Q. You were looking for another situation? A. I was looking for more rock.

Q. That means you were looking for magnesite wherever you could find it? A. Yes; I will put it that way, yes.

Q. And at the time you asked permission to move into P.M.L. 1 you were looking for another site? A. Yes.

Q. Where you could employ your men? A. Yes.

Q. And your equipment? A. Yes.

Q. And did you not think it would be surprising if you said, "Do you think I can get in here until I can get another site"? (Objected to by Mr Hughes.)

HIS HONOR: I will not allow you to put that particular question in that form.

10 Mr ST. JOHN: Q. Well now, are you quite sure of the details of the conversation? A. Yes.

Q. After this lapse of time? A. I think so.

Q. Quite sure are you? A. The conversation with Mr Vic?

Q. Yes, with Mr Vic? A. Yes.

Q. And are you prepared to swear positively that you did not say something to that effect: "I want to get in here until I can find another site"? A. Well, I do not remember saying it.

Q. But at that stage you thought you were only going to work over these old pits, did you not? A. In the first place, yes.

20 Q. And at that stage you contemplated that they would have a very short life, did you not? A. Well, that would depend on what was found there.

Q. But you were only going to work over the ground that Vic had already worked and left? A. He had not worked a lot of it.

Q. But that was within your contemplation at the time? A. I was working on that area—no.

Q. Not working over new ground? A. Opening new ground as well.

30 Q. But when you went in November, all you contemplated was working in the old pits that he was abandoning? A. Well, I had in mind the area at the break in the fence.

Q. That came later, did it not? A. No.

Q. That was when you first went in? A. In November, yes.

Q. I put it to you that you first of all asked whether you could move into the old pits, and then after you had been there for a while you went and said that you would like to have a bit of a boundary to work to? A. Mr Caldwell suggested a boundary.

Q. Before you went in? A. After I had been in there about a week.

40 HIS HONOR: Q. When was this? Was this in November? A. Yes.

Mr HUGHES: That was said in chief.

HIS HONOR: Yes.

Mr ST. JOHN: Q. Before Mr Caldwell suggested a boundary, the conversation had only related to working in the old pits? A. And the area this side of that post—the break in the fence.

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Q. Your evidence in chief was to the effect that you would work where he was coming out? A. In that area.

Q. The area of the old pits? A. Yes.

Q. And later there was a discussion about a boundary? A. Yes.

Q. In the first place with Mr Logan Caldwell? A. In the first instance with Vic.

Q. But you told us a moment ago that it was Logan Caldwell who suggested a boundary? A. Well, Vic gave me that area from the break in the fence.

Q. To whom did you mention "boundary"? A. The first time 10 was when Vic said: "You can keep this side of the break in the fence".

Q. And what happened at the conversation with Logan Caldwell? A. He said I should keep to the south of the turn in the fence.

Q. You had first a conversation with Vic? A. Yes.

Q. And then a conversation with Logan? A. Yes.

Q. Are you very clear about that now? A. Yes.

Q. I put it to you that it was the other way about—first with Logan and then with Vic? A. I do not remember that.

Q. Do you remember that? A. I remember talking to Vic first 20 and then with Logan.

Q. What did you say to Vic? A. I said: "Could we work in the place", that he was coming out of.

Q. When did you speak to Vic about the boundaries? A. When he said: "I think it will be all right, but you keep on this side—that area".

Q. And then you spoke to Logan? A. Yes; it was to keep this side of the turn in the fence.

Q. But at one stage or another you and Vic actually walked over the site together in deciding where the boundary should be? A. We 30 never walked too far.

Q. But you walked? A. We probably met over at the pit.

Q. You have already told us that when you spoke to Vic about dumping spoil, or dirt as you called it, he said that he would have to talk to the others, and you would have to see Logan? A. Yes.

Q. On this second occasion when you asked him could you move into the old pits, was much the same thing said? A. Yes, something similar.

Q. That the others would have to be consulted—is that right? A. Yes.

Q. And was anything specific said about "lease"? A. Oh, "You 40 will have to see Logan".

Q. Was it at that conversation that you and Vic discussed an actual boundary, or some later conversation? A. With Logan?

Q. No; with Vic? A. Just a rough boundary—a rough area before that.

Q. Before what? A. Before I spoke to Logan.

Q. What I am asking you about is did you discuss the actual boundary with Vic when you mooted with him the question of working the old pits? A. The only thing that was discussed—

Q. Was the boundary mentioned at the same time that you discussed with him the working of the old pits? A. Not as I knew the boundary later.

Q. But was there the one conversation, or were there two with Vic? A. I only remember the one.

10 Q. So that on this one you asked him whether you could go into the old pits? A. Yes.

Q. And he said: "The others will have to be consulted"? A. Yes.

Q. And there and then you discussed the boundaries with him? A. Not then.

Q. Well, there was a second conversation? A. Yes, I am sorry.

Q. So that we have two conversations? A. Yes.

Q. The second conversation—was that before or after you spoke to Logan? A. Before.

20 Q. And how did that second occasion arise? A. Well, Vic came and said that it would be all right to go in there, but I would have to see Logan.

Q. And what was said about boundaries on that second occasion? A. Well he said I would have to keep this side of the turn of the fence.

Q. Where were you standing? A. I could not remember.

Q. Somewhere near the turn of the fence? A. Yes, my camp was close to it.

Q. And was the gully visible from there? A. You could not see it from there.

Q. But you knew where it was? A. Yes.

Q. And the gully was quite a clear line? A. Yes.

30 Q. And the only crop was beyond the gully? A. Yes.

Q. Did Vic tell you there was magnesite beyond the gully? A. He said there was some of it somewhere over there; he remembered it being ploughed.

HIS HONOR: Q. I could not hear that. Just repeat it? A. He said he had seen it over there somewhere; he remembered it being ploughed.

Mr ST. JOHN: Q. And he told you that somewhere about this time, in November? A. He could have. I do not remember when that conversation took place.

40 Q. And I put it to you that he said to you that there was good magnesite there? A. I would not say that.

Q. Well, he gave you the impression that it was certainly available beyond the gully? A. No, I would not say that. He said that there was magnesite beyond the gully, but he did not say how much. He had seen it ploughed.

Q. And he said that the syndicate wanted to save that for itself, did he not? A. No; that was not mentioned.

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Q. Are you sure? A. I am sure.

Q. You stood at his side—I put it to you that he said: “You can have a line running due south from the turn in the fence; you are not to go over the gully”? A. No, he did not.

Q. Did he mention any line at all? A. He said: “You keep to this side of the turn in the fence”.

Q. Which side was that? A. The eastern side.

Q. Did he say “East”? A. Well, “this side”—we must have been standing on the east.

Q. Are you just reconstructing this, or do you remember it? 10
A. Well, it is three and a half to four years ago.

Q. And you cannot swear to the exact words? A. No.

Q. So that nothing was said about south of the line of the turn of the fence? A. Not with Vic.

Q. So that that was mentioned at a subsequent discussion between you and Logan? A. Yes.

Q. Did Vic tell you that it had been agreed that they were not to go into the crop until the area had been exhausted? A. Yes, he said that that was a gentleman's agreement—that they would not cross if they could help it. 20

Q. And that was said in November? A. I could not say that.

Q. And I put it to you that you yourself were not to go south of the gully, or in the crop area? A. I would say “No”.

Q. When did this become important to you? A. What do you mean?

Q. Just where your boundary extended to?—

HIS HONOR: Perhaps you might withdraw the question.

Mr ST. JOHN: Yes.

Q. At that stage you contemplated merely going into the old pits? A. After my discussion with Logan Caldwell on the boundaries, 30 I understood that the boundary was right across the lease.

Q. Just answer my question? (Objected to by Mr Hughes; pressed; argument ensued.)

(At this stage His Honor directed the following question and answer to be read from the shorthand notes:

“Q. At that stage you contemplated merely going into the old pits? A. After my discussion with Logan Caldwell on the boundaries, I understood the boundary was right across the lease”.)

HIS HONOR: Just make it clear will you? 40

Mr ST. JOHN: Q. Before any conversation with Logan Caldwell, and before you had your first conversation with Vic, all you thought about was just moving into the old pits to keep your men and plant going? A. In the first place in and around the pits, yes.

Q. And when Vic told you about this gentleman's agreement,

whereby they were not to go into the crop until they had exhausted the rest of the area—? (Objected to by Mr Hughes; admitted.)

Q. That was mentioned to you by Vic, the gentleman's agreement?
A. Yes.

Q. Did he ask you whether you would observe the gentleman's agreement? A. No, but I carried on and tried to observe that.

Q. And would you say that that was the reason why you showed a little reluctance about going into the crop? A. I went right into the creek itself.

10 Q. Wholly and solely because of the gentleman's agreement?
A. Yes, because it was reserved as much as possible for wheat.

Q. Until Logan made the suggestion to you that you move south of the gully the only prospecting you had done was north of the gully?
A. That is right.

Q. And I put it to you that you prospected north of the gully at the suggestion of Vic himself? A. Well, Vic told me one or two places. I tried others.

Q. And Vic put it to you on the basis: "Well, there is good stuff below the gully, and you should try above"? A. I do not remember.

20 Q. Well, that would be natural for him to do that? A. Yes. Vic told me places to try.

Q. But Vic told you that because there was good stuff below the gully there should be good stuff above—? (Objected to by Hughes; admitted.)

Q. Would that, or would that not be a sensible thing for a miner to say—"There is good magnesite below the gully I know, and I suggest to you that you go for it above"? A. No, he never said that—

30 HIS HONOR: But you are asked as a miner—because there is magnesite on one side of the gully, is it sensible that there would be magnesite on the other side? A. I would not say that about magnesite. It could be anywhere or nowhere.

Mr ST. JOHN: Q. Anyhow, you do not recollect anything like that being said? A. No, I do not. Could I give you—

HIS HONOR: No; do not say anything.

Mr ST. JOHN: Q. I put it to you that on that same occasion you actually walked on a line roughly south from the step in the fence to the shallow creek? A. No; I have never walked that yet.

Q. Why—is it too long a distance to walk? A. Well, it is up and down and pits all around—you would need protection.

40 Q. You have never walked it? A. I have walked up and down the gully, but I would not walk a straight line.

Q. I put it to you that you walked in a straight line? A. I walked past the gully.

HIS HONOR: Q. You are being asked about the occasion with Victor Hughes in November 1956. You were asked did you walk around to the gully? A. With Mr Hughes?

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Mr ST. JOHN: Q. Yes? A. No.

Q. And it was on that occasion that he told you about this so-called gentleman's agreement that had been made by the syndicate?

A. No; I think I have heard that previously.

Q. I put it to you that when you had got as far as the gully he said to you: "You cannot go across the creek; only for the drought the crop would be in"? A. No; that was not said.

Q. "Creek" or "gully" would mean the same thing on P.M.L. 1? A. Yes, but your suggestion is that Vic said to me: "You cannot cross this gully"? 10

Q. Yes. "Creek" and "gully" would mean the same thing, would they not? A. Yes, they would mean the same.

Q. You referred to a test hole? A. Yes.

Q. Was that the one that was dug by a man named Beasley? A. Yes.

Q. And was it news to you when Logan mentioned it to you? A. It was news to me.

Q. But Vic had told you that there was magnesite there? Had he not mentioned Beasley's hole to you? A. He may have mentioned that like a lot of places. 20

Q. But in any case you do not recall him mentioning it when Logan mentioned it to you? A. No.

Q. But he could have mentioned it to you? A. Yes.

HIS HONOR: Q. In November, 1956? A. Yes.

Mr ST. JOHN: Q. Did Logan actually take you over and show you this hole that Beasley had driven? A. No, he told me about it.

Q. Well now, you have told us that things went on amicably until, I think, May—well, on your story, up until August; is that so? A. Yes.

Q. Never a cross word between you up until the 6th August? 30 A. I think it was the 6th August—I had no trouble; no bad friendship or anything.

Q. You had, in fact, been having a "hard trot" you told us—a difficult time? A. Yes.

Q. In the old pits, and from time to time had you had some discussions with Vic about that? A. I could have. He was there often.

Q. And you exchanged notes as you went along as to how you were both doing? A. Yes. He could have watched me and saw how I was going. 40

HIS HONOR: Q. Where was Vic working at this time? A. On P.M.L. 1, on the western end of it.

Mr ST. JOHN: Q. Do you remember that when you first put down your test bores north of the creek, Vic said that the bores were too shallow and that you should drive deeper. Do you remember that? A. No. I did put a couple over the eight feet, which was the average.

Q. Did you in fact go deeper at any stage? A. No; I just put a couple down twelve feet.

Q. In April, I put it to you, there was a discussion between you about these test bores, and Vic said that the test bores should have turned out better as the metal was definitely on the other side? A. In April?

Q. Yes, or thereabouts? A. On the northern side of the gully?

Q. Yes. He told you that the test bores should have shown better results, as the metal was definitely on the other side—that is to say, on the southern side? A. I have no recollection of that.

Q. And I put it to you that he said to you: "I know that it is under cultivation definitely, but you cannot go over there because we want that for ourselves"? A. No, he never mentioned it, but I did say before that he said that he had seen magnesite brought up with the ploughs.

Q. But I put it to you that that was in or before November that he told you that? A. It could have been. I would not say that it was not.

Q. You were doing so badly on P.M.L. 1 that you were in fact thinking of pulling out of it? A. That was the Company's attitude as I got a letter to say.

Q. And that was the position when—May or June? A. Towards May, yes.

Q. So that without ever prospecting south of the creek you were on the verge of pulling out? A. Yes; well, I was still trying—testing all the time.

Q. Yes, but you were not testing south of the creek? A. No; I had not gone over it then. That was the last resort.

Q. Just answer my question. Without even testing below the creek, and although Vic had told you there was good metal there, you were of half a mind to pull out in May? A. You said that Vic told me. I do not remember that, but—

HIS HONOR: Not "good metal".

Mr ST. JOHN: I am sorry—I withdraw the word "good".

Q. Vic had told you that there was metal there? A. Yes; he told me that there was stone over there.

Q. You were doing very badly on the northern part? A. Yes.

Q. And you had no suitable place to go to? A. No, not at that moment.

Q. And yet in May you were half-minded to pull out? A. Yes; the Company was.

Q. And you yourself? A. Well, I was still going my hardest to find it.

Q. And all of this, despite the fact that you never bothered to put down a single bore south of the creek where you say you were

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entitled to prospect? A. Yes; that was the position up until I crossed the creek.

Q. When did you first become aware of the contents of the agreement in January? A. The agreement signed on 31st January?

Q. Yes? A. I think just before it was signed, or just after it was signed, or something like that.

Q. Did you pay any particular attention to what was in it? A. No; I just read through it. I cannot remember one thing that was in it now.

Q. And I put it to you that you did not know, up until June, 10 what was in it, really? A. The new one was drawn up in June.

Q. And you thought by that agreement—the January agreement—that you were not entitled to go beyond the creek? A. All that interested me was the boundary.

Q. But you said that you still can't remember what was in it? Do you say that in regard to the boundaries? A. Well, that was all that stuck.

Q. I put it to you that you did not remember what was in it until you looked at its successor in June? A. It could be.

Q. You never went down to drive any bores in May? A. Well, 20 I tried everywhere I could at that time.

Q. And that is your only explanation for not boring south of the creek prior to that? A. Yes.

Q. And when you went over the creek it was on direct instructions from someone at head office? A. When I crossed the creek?

Q. Yes? A. No. I crossed it of my own accord.

Q. Did you consult Driscoll about it beforehand? A. No.

Q. Did you ever discuss it with Driscoll on the telephone before you did it? A. The only time I discussed it with Driscoll was when he asked me to give him the northern boundary. 30

Q. And did you never discuss with Driscoll on the telephone before you went in, about moving south of the creek? A. No. I told him how I was going, and I was trying to find rock, and that that was my job.

Q. Were you constantly on the telephone with him? A. No, not constantly. I rang him up on the Friday when I got home once a fortnight.

Q. And you made your reports? A. Yes.

Q. And they would reveal most things? A. Yes.

Q. But you still had your telephone conversations once a fortnight 40 with him? A. Yes.

Q. When you started to test-bore south of the creek, did you tell him about that? A. I probably would have, but I do not remember that.

Q. You did not tell him about a letter about that? A. No; I do not remember that.

Q. The probability is that you discussed it with him by telephone?
 A. The probability is that if I discussed it with him, it would be by telephone.

Q. I put it to you that before you test-bored south of the creek you discussed it with him? A. I do not think I did.

Q. Did you check the wording of the January agreement before you moved south of the creek? A. No; I just read it through, saw what it contained, and then let it go.

Q. Did you have a copy of it? A. No.

10 Q. And when you say that you checked it over and saw what it said, do you mean that you did that in January? A. In January I did read it, and said that I thought it would be all right.

Q. And when did you see it again? A. The next one I saw was the one I signed.

Q. Yes, but when did you next see the January agreement, if ever? A. I do not know that I saw it again, to tell you the truth.

Q. When did you next see a copy of it? A. The January one?

Q. Yes? A. I do not think I ever saw or noticed it again. I do not think I did.

20 Q. I suggest to you that after Logan suggested that you move south of the creek you looked at a copy of it, or got Mr Driscoll to? A. No; I cannot recollect that.

Q. So that your recollection is that the January agreement extended south of the creek? A. Yes.

Q. And you made no attempt to check it at all? (Objected to by Mr Hughes.)

Q. No attempt to check the wording of the agreement? Did you take any step at all to check the wording of the agreement? A. No; just to take—

30 Q. Answer my question. After Logan put you up to the idea of crossing the creek, did you check the wording of the January agreement? A. No.

Q. But you are not quite sure? A. I can almost say that I did not.

Q. But you may perhaps have asked Mr Driscoll to look at it? A. No; I do not recollect that either.

Q. Are you absolutely sure of it? A. I think so.

Q. You think so? A. Yes.

40 Q. When the question arose as to whether you were entitled to move south of the creek, would it not have been the natural thing to say: "Well, we have a written agreement; that makes it absolutely clear"? A. When the question arose?

Q. Yes? A. That is what would come up, yes.

Q. But you did not? A. Well, Mr Caldwell said: "There is nothing in your agreement to say that you cannot go through".

Q. But would it not have been a natural thing to speak to the

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others and say, "Well, there is a written agreement dealing with this"?
A. Well, I do not recall that.

Q. Because Vic was protesting about going beyond the boundary you had agreed to? A. It was a long time after.

Q. And Frank also? A. Yes.

Q. Well, could you not have said: "There is a written agreement that clears all this up"? A. Well, there was nothing in the agreement that it terminated at the gully.

Q. But you did not make any reference in so many words to a written agreement, did you? A. No, I do not think so. 10

Q. You went over and put down some bores, as you told the Court, in early June, or could it have been late May? A. I think it would have been June—early in June.

Q. And may I take it that the result of those bores was sent down for analysis? A. No.

Q. It was not? A. No.

Q. What was sent down for analysis? A. Well, there would be nothing sent down for analysis out of the testing.

Q. Well, was anything sent down by way of a sample? A. I do not remember sending a sample away of it. 20

Q. It could not have been sent down without your knowledge, could it? A. Well, hardly.

Q. Do you know there is a letter of 13th June which speaks of a report on the sample coming down from the B.H.P. and being very satisfactory? A. I think that must have been from the north of the gully.

Q. Well, if it referred to your new workings, it could not very well have referred to north of the gully, could it? A. Well, we only started on 10th June and I could not imagine the stuff getting to Newcastle in three days. 30

Q. I put it to you that it was something that was taken out as a result of your test-boring early in June? A. No, I definitely sent nothing away from that area.

Q. You sent nothing away for testing from that area—you mean the area south of the creek? A. South of the creek.

Q. So that you feel sure that any sample would refer to something north of the creek, do you? A. I should say "Yes".

Q. As at 13th June, if you or Mr Driscoll referred to the "New magnesite", what do you think you would be referring to? A. On 13th June? 40

Q. Yes? A. That letter was written to me?

Q. Yes? A. Written and posted on 13th June?

Q. Yes? A. It must have been in respect of the northern side. It could have been a patch that I was pulling up with the bulldozer, and two men on contract rates.

Q. Do you remember any new magnesite on the northern side

that could have been the subject of that letter of 13th June? A. Well, I tried other pits on the northern side of the gully, just before we crossed over.

Q. As at 13th June 1957 Mr Driscoll would be well aware of the fact that you were operating only south of the gully? A. On the 13th?

Q. Yes. You had opened it up on the 10th, fully? A. Yes.

Q. So that he would be fully aware that you were only working south of the gully? A. On the 10th he would.

10 Q. And on the 13th? A. Yes.

HIS HONOR: That is Mr Driscoll?

Mr ST. JOHN: Yes.

Q. And he knew that you had left the northern side behind you and had concentrated your attention on the area south of the gully? A. Yes; I think that would be so.

HIS HONOR: Q. How long would it take you to move the equipment? A. You can move most of it quickly, but a "navvy" is a slow-moving thing; it does about a mile an hour, or something like that.

Mr. ST. JOHN: Q. But it could all be moved in a very short time? 20 A. A reasonable time, yes.

Q. Lock, stock and barrel? A. It all depends on where you are taking it to.

Q. But it could be moved inside 24-hours anyhow? A. Well, if you could get enough transport you could, I suppose.

Q. It is all non-permanent equipment? A. Yes.

Q. Built so that it could be easily moved to another site? A. Yes; barring the floors.

Q. Yes—they are of concrete. But apart from that, it is quite moveable? A. Yes; you could pull it down.

30 Q. And readily moveable? A. Well, it depends on what you are speaking of. Plant and things like that.

Q. It could all be moved within 24-hours without difficulty? A. Yes; low-loaders and things like that.

Q. First of all you might look at that letter and tell us whether you remember receiving it (document handed to witness) or a copy of it rather—the original of it? A. It looks as though it was sent to me all right, but I still say that the 13th June it would be north of the gully.

40 Q. Just let us take it step by step. This is what it says—"I have just had a ring from McAndie from B.H.P.". He was the gentleman who came down to see about the increased price? A. Yes.

Q. The letter goes on—"They have apparently just received the first section of the new magnesite"? That was taken out from the area north of the gully was it? A. That is right—

Q. But you are not sure, are you? A. Well, I will put it this

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way, that I dumped my magnesite. I had a thousand tons on the ground and I only railed it at the week-end.

Q. You had a lot of stuff stock-piled, did you? How many thousands of tons? A. I always estimated that I would be safe on railing one thousand tons a month. I made sure—I would make sure that I had sufficient to rail. I might have five hundred or six hundred tons on the ground, and I would—

Q. The letter goes on—"And he agrees that it looks to be a very good sample, very heavy, but he said that there was three per cent or four per cent of brown clay adhering to the magnesite, which will nullify the actual bonus that can be gained by good quality stone if it does not cut out"? Do you still say that that is referring to north of the gully? A. I am sure of it, because when we went into the new pit the stone was clean. 10

Q. Even in your test-bores? A. You cannot tell from your test-bores; they are only an inch wide.

Q. And when he says it would nullify the actual bonus if it does not cut out, is he referring to the stuff which was stock-piled, or to the stuff that was mined? A. I think he would be referring to stuff that is being mined. 20

Q. And he knew that the actual area you were mining was on the south side? A. On 13th June?

Q. Yes? A. Could I have a look at this for a moment?

HIS HONOR: What do you say?

Mr ST. JOHN: Well, how would it help you?

Mr HUGHES: This document has been brought over in response to a subpoena, and it is a record.

Mr ST. JOHN: Q. Do you produce certain documents on subpoena?

A. The only document I can produce is the book.

Q. Can you produce the book? A. Yes, I have had that all 30 the time.

Q. With His Honor's permission will you produce it?

HIS HONOR: Yes. (Witness produced book.)

Mr ST. JOHN: May I have a look at it?

HIS HONOR: Have you any objection?

Mr HUGHES: We have no objection.

Mr LARKINS: We have no objection.

HIS HONOR: Yes; very well.

(Book handed to Mr St. John.)

(Short adjournment.) 40

Mr ST. JOHN: Q. Now, Mr Buckley, that first paragraph says, and you have agreed with me, that when it refers to bonuses that can be gained by good quality stone if it does not cut out, that he is clearly referring to mining that was then proceeding, is he not. That is a fact. That it is clearly referring to that—would you not take that to refer

to mining that is actually proceeding then? A. I would say that is the letter addressed to me by Mr Driscoll . . .

Q. He is referring to mining which is actually proceeding at the present. That is the letter addressed to you by Mr Driscoll dated 13th June? A. Yes.

Q. Mr Driscoll was well aware of course that the only mining then proceeding was south of the border—south of the creek line? A. He may have been but that seemed to me to mean to the boundary.

Q. I put it to you he is clearly referring to mining which was 10 then proceeding? A. I read that . . .

Q. He said “We all appreciate the fact that the B.H.P. are pretty tough . . . for our magnesite”. (Letter read.) You will agree that he is clearly referring to mining then proceeding is he not? (Objected to.)

Q. You take that to be referring to mining then proceeding do you not? A. Yes.

Q. And the mining then proceeding was south of the creek? A. Yes.

HIS HONOR: Q. Was the only mining then proceeding south of the creek? A. On the 13th?

20 Q. Yes. A. Yes.

Mr ST. JOHN: Q. And Mr Driscoll knew that, did he not? A. Well, he would just know it.

Q. He would just know it, three days before? A. On June 10th.

Q. So it is quite clear is it not that his letter, when he refers to “new magnesite” was referring to the magnesite taken from the area south of the creek. Is that not clear? A. I do not agree with it.

Q. Can you tell us what else he would have been referring to? A. I do not agree that he is referring—I had not sent any magnesite from south of the creek until a week or more after this.

30 Q. What you really mean is that you cannot remember sending any? A. I can remember sending it. It was after—I know the difference—because I dumped it on the ground and it could not have gone.

Q. Can you suggest what he was referring to? A. It must have been that he misunderstood.

Q. If that is so, if he was proceeding under the misapprehension, then he would still think that you were mining north of the creek?

A. I am not suggesting that because we only started on June 10th.

40 Q. You reported that, did you not? A. On the 10th I wrote a letter. I remember that. But not in relation to the magnesite sent to the B.H.P.

Q. You had no reason to assume that he had not got your letter of the 10th? A. No.

Q. In fact it was produced on subpoena? A. Yes.

Q. And normally it would have got there by the 13th would it not? A. I will grant you that.

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Q. So that he definitely knew that you had opened up a new pit by the 13th? A. Yes, he would know.

Q. Can you suggest what he is referring to if he was not referring to a sample taken from the area south of the creek. Can you explain? A. Can I explain in my own words?

Q. Can you suggest what he was referring to if he was not referring to the sample taken from south of the creek? (Objected to.)

HIS HONOR: Q. You are being asked can you understand why that letter is referring to the sample taken from the area south of the creek. I understand you want to make some explanation. You may proceed. A. I want to say this, Your Honor, that magnesite was got out of P.M.L. 1 and was put on the ground. None was railed to Newcastle until possibly a good while after because I had taken the first hundred tons on the weekend from the P.M.L. south of the creek to make up 250 tons from the other section on the other side. 10

Mr ST. JOHN: Q. That still does not suggest what he is referring to if he is not referring to mining south of the creek, does it? A. No.

Q. It does not give an explanation, does it? A. Of the rock?

Q. No. A. No. I cannot agree. I know what I did with the stone. 20

Q. Your answer merely reaffirms what you have already said. A. Yes.

Q. It does not provide any suggestion why the letter appears in that form? A. I can only say the stone came from the north side.

Q. You cannot suggest what Mr Driscoll was referring to on the northern side? A. I cannot remember that. I would say it was stone got on the other side.

HIS HONOR: Q. You do not take into account the sending of samples? A. I don't remember sending samples from the other side of the gully.

Mr ST. JOHN: Q. In the light of that letter do you positively swear that no sample from mining south of the creek, on P.M.L. 1, prior to the 10th June was done. Do you positively swear that in the light of that letter? A. I do swear it. 30

Q. You are prepared to let your credit stand or fall on that, are you? (Objected to, question rejected.)

Q. At any rate it is perfectly clear that in late May or early June you had taken or prospected—I won't call them samples? A. Yes.

Q. It looked as though there was good metal there? A. Early in June it looked as if there could be. 40

Q. It looked as if there was good quantity? A. It looked as if there was good quality but I would not say there was a lot there until later on.

Q. You would not say there was a lot there until later on? A. I had only dug one day.

Q. Were you not prospecting to see whether there was likely to

be a good quantity there? A. I had just as good borings at other places which turned out as good.

Q. The answer is that it showed promise? A. I will say that.

Q. Both as to quality and quantity? A. It is hard to tell. But it showed there were signs there, but how much I would not know.

Q. Whereas on the northern side I think it had definitely, for some months, been petering out? A. Yes, it had been getting slowly worse.

Q. The quality had been getting worse? A. Yes, I think it had.

10 Q. You had not been able to keep up the quantity? A. That is correct.

Q. Although you got a bonus for quantity? A. Yes, I believe there was a bonus.

Q. You had been told of this prior to the increase in price which occurred on the 29th May had you not, that there was a bonus for anything above certain quantities per month? A. The first I knew of a bonus was on that document you took off me, whatever date that was.

20 Q. That is the letter of 13th June? A. It is the big one out of the book.

Q. I am sorry, this one. That was something that you produced with the book? A. Yes.

Q. That is the memorandum of 4th June from Mr Driscoll to yourself? A. Yes.

Q. Including a copy of the B.H.P. letter? A. Yes.

Q. As to the increase in price? A. Yes.

Q. You told us that was the first you knew of any bonus? A. Yes, receiving a bonus like on the changed rate.

30 Q. I think under the old price or under the new price? A. That is the first I knew of the bonus.

Q. Did you know there was any bonus for quality? A. Yes, I knew there was a bonus for quality.

Q. And there is no doubt there was a bonus for quantity prior to your memo of the 4th June? A. That is right.

Q. Do you remember that you were being asked to produce 1,000 tons per month? A. Yes. I was asked to get at least a thousand tons per month.

Q. Do you know that related to the bonus? A. No, I did not know there was a bonus.

40 Q. Mr Driscoll never told you that? A. The company does not tell me everything that goes on in its affairs.

Q. You were asked to let him have a thousand for the month? A. Yes. He said, "I've got to get a thousand to make it up."

Q. You were asked by him to send a thousand a month? A. Yes.

Q. Later on, after it had come in dribs and drabs? A. Yes.

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Q. What was the most you had stock-piled? How many tons?
A. I suppose there were times when I probably had a thousand tons there.

Q. You put up a thousand, did you? A. Yes, I think it would have been. I might not have had quite that much.

Q. Now the quantity generally dropped off as well as the quality?
A. That is right.

Q. On the northern side? A. Yes.

Q. Getting steadily worse? A. Yes, that is right.

Q. It did not pick up at all during the last days, did it? A. 10
In May I think it picked up a bit. You would get one good day and not so good the next.

Q. At any rate you were not optimistic about the area north of the creek and at the time you moved south of the creek? A. No, I was not.

Q. At the time you wrote the letter of 2nd June to Mr Driscoll, you said, "I have every hope of getting a thousand away this month"?
A. Yes, I think I did.

Q. Did you at that time have it in mind that you would probably get it from the area south of the creek? A. No. You mean the area 20 would come off the mine . . .

Q. Did you at that stage look to the possibility of getting metal from the area south of the creek? A. On the 2nd June I would not have.

Q. How early had this prospecting occurred? A. It would have started about then, I think.

Q. It would have started about then—about when? A. Around about the beginning of June.

Q. It could have been late May, could it? A. I doubt it.

Q. How long were you there? A. I do not recall. I did a 30 couple of reports about that time but I had not mentioned it.

Q. You did not mention the prospecting in your reports? A. No.

Q. But you would have mentioned it verbally, by word of mouth, to Mr Driscoll? A. I may have mentioned it if I was at home around about that time, about the beginning of June.

Q. You are quite sure that was the fact, that he told you—that you had every hope of getting a thousand away "this month"? A. My main thought was that he should get it and with a little bit of mining and a majority of what I had on the ground he would get it. 40

Q. When was your prospecting done, on week days or during weekends? A. I did weekends but mostly that was done during the week.

Q. It could have been done whilst Vic was not there? A. Most of it was done while Vic was there.

- Q. Most of the prospecting was done while Vic was there?
A. Yes.
- Q. How long did it take? A. Not long because the hole showed white.
- Q. Which means that it showed magnesite? A. Yes. It is like white powder, that is how you drill it.
- Q. Did you invite Vic to come down and watch them? A. No, he came there of his own accord.
- Q. He must have seen that you moved down? A. Yes, he
10 would have seen that we moved down. The first day I was there I think he would have been there.
- Q. I put it to you from the first Vic protested to you? A. No.
- Q. I put it to you that you told him it had been arranged, although you did not say that to him? A. No, I had not discussed with him. I had no discussion with Vic whatever.
- Q. Not at any time? A. No, Vic never mentioned to me when I was testing, he did not say I should not be there or anything.
- Q. I put it to you that he protested for some time? A. And I say that he did not.
- 20 Q. And you told him that it had been arranged. I put it to you you told him when he said you should be running north of the creek, "I only want to get some good metal for a fortnight or so to make up for the losses"? A. No.
- Q. Was it ever put on that basis? A. I never spoke on that basis at all.
- Q. You had in fact been losing money north of that creek?
A. The company said we were not doing so well.
- Q. Did you see the accounts relating to that? A. No, I never received advice about accounts.
- 30 Q. You knew Mr Driscoll was complaining? A. Yes, he wrote me a letter to that effect.
- Q. I suppose you were rather anxious to make up the losses that were made? A. Naturally I was doing my best to get rock.
- Q. You complained to Vic and Frank that you had a very bad run north of the creek, did you not? A. Prior to crossing the creek?
- Q. Yes. A. I probably would have mentioned that we had not done well.
- Q. I put it to you you sought to justify your action in crossing the creek on the basis that you had had a very bad run and wanted
40 to make up the quantity. I put it to you that you put this to Vic and that is the reason why he should go through south of the creek? A. I never discussed it, about going over the creek. He saw me go over and he never questioned me.
- Q. You deny any such conversation? A. Yes, when I crossed the creek.
- Q. Do you tell us the first mention of any dispute was on the

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6th August? A. That was the first time Vic came and questioned anything.

Q. I anticipate from what you have already said that you would probably give me a negative reply to this, but I have to put it to you. It put it to you Mr Vic Hughes said "You know you are over the boundary here". "You will have to pull out. You have no right here . . . (document read)". Was anything like that said? A. Not entirely like that.

Q. Anything like that? A. You read it again and I will tell you what was not said. 10

Q. I put it to you this was when he first saw you working over near the cultivation? A. When he first saw me over the creek?

Q. That is right. "You know you are over the boundary." Did he say that? A. No.

Q. "You will have to pull out. You have no right to be there?" A. Never mentioned.

Q. And that there was a sharefarmer who had his crop there? A. There was no mention of that.

Q. "You had better see Frank . . ." (document read)? A. Frank was never mentioned that day at all. 20

Q. I put it to you you replied, "It is all right, it has all been arranged"? A. I never said it. I presume that you are talking about the vicinity of early June.

Q. The 10th, or perhaps a day or so after that? A. That is in my mind, that you are referring to.

Q. I put it to you that he came to you on several occasions and on one such occasion you said to him, "We are only in here for a week or two to get some good metal to make up for what we lost in the old pits"? A. Never mentioned it.

HIS HONOR: Q. At that time was anything said between you and 30 Vic on the previous agreement between you about mining the area referred to? Was there any further reference to them? A. There was no reference to them at that time.

Mr ST. JOHN: Q. You told us shortly after that you pulled out and then you came back and proceeded to work it again? A. That is right.

Q. You proceeded to work it very rapidly, including weekends, is that so? A. Could be from there on.

Q. That would be July then, would it? A. Yes, I suppose it probably would have been July. 40

Q. Probably would have been July? A. Yes.

Q. Then immediately after that—it was before any dispute arose that you say? A. The first real dispute was I would say on the letter of the 7th.

Q. When you say "real", was there some warning of a dispute

prior to that? A. Vic questioned my being there, I think, on the 6th August.

Q. You say that was the only mention, as far as you were concerned, of any dissatisfaction on his part? A. That is right.

Q. When did Mr Regan come in? A. Mr Regan came in I think around about when we started digging with shovels, about the 10th. It would be the 10th June.

Q. I am not suggesting that you were present on this occasion but did you hear of a visit to P.M.L. 1 after you started south of the 10 creek, by Frank and Clarrie in your absence? A. I could not remember back that far. Someone could have told me—that would be secondhand.

Q. I am putting to you one of your workmen may have told you that Frank and Clarrie and Vic came down and looked at your workings? A. That could have happened. I do not recollect that.

Q. I put it to you that occurred shortly after you started, about the 12th June? (No answer.)

Q. I put it to you that shortly after such visit—you say you did not know of any such visit—he said to you, “I have shown Frank 20 over . . .”? A. Who said that?

Q. Vic? A. I don't remember that at all.

Q. And your reply was, “I am staying there about a fortnight and I am going back to the old pits”? A. I never mentioned that.

Q. Did you talk about going back to the old pits? A. No. That was the agreement. I found it there and that is where I was going to stay. Once it turned out all right I went ahead.

HIS HONOR: Q. What did you say about the agreement? A. Did I mention an agreement. I may have been talking too fast for myself.

Mr ST. JOHN: Q. You were saying that it turned out all right, that 30 the magnesite turned out all right? A. It turned out all right by the 19th June.

Q. Did you not intend to stay once it turned out that the agreement entitled you to be there. You were determined to stay? A. I don't believe I said that at all. But as far as the agreement was concerned I think I could have been there a month before I was and if I did not—you know—if I had wanted to go out there—I tried on the northern side.

Q. And only on the northern side? A. I practically exhausted that area, looking.

40 Q. And do you recollect this, that Vic reproached you that you had no right to go into the area and you said, “I have this area right through and I am going to peg it off”? A. I say that the time I was ordered off and told I had to get out was in August.

Q. I think you were ordered off, and at the time was there any suggestion about pegging off the area which was covered by the

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agreement? A. The only thing I remember pegging off was on some other ground to get some kind of settlement on it.

Q. You remember that you talked over the area which you were entitled to, as you said, under a written agreement? A. I don't think I did that. I definitely never pegged it off, anyhow.

Q. I put it to you you kept pointing out where the line ended, you said, on the boundary across the creek. Do you remember that? A. I do remember Vic getting up on the post, not myself.

Q. You do remember pointing it out, where, you say, the line ended? A. It was in line with the turn in the fence. I possibly 10 could have said that was the area, right across.

Q. Did not Vic say you could only go to the creek? A. The creek was never mentioned.

Q. Surely it was, at this stage. After you had been ordered off you pointed out the line where you say that boundary ended? A. I possibly did when we had discussed that fence and Vic told me I was finished there. That was in August.

Q. I want to get the details of the conversation. You pointed out the line where, you say, your lease terminated, on the southern boundary. You say you pointed out where the line terminated on the 20 southern boundary? A. As I recall Vic said it was only intended to terminate as far as the gully.

Q. What did you say to that? A. As far as I know it was right.

Q. What did you say? A. I said, "There is nothing in our agreement about terminating at the gully, Vic".

Q. Is it correct that you then said, "There is nothing in our agreement"? A. Yes, I said that.

Q. You did not refer to the written agreement, did you? A. I referred to an agreement that I know that I had signed.

Q. What did you say. Did you say not in so many words, "Writ- 30 ten agreement" or "agreement"? A. I said "In our agreement". "It is not in our agreement."

Q. Did you say anything to this effect, "No . . . I have got it fixed up to go right through"? A. I don't remember saying that.

Q. You told us that you did not refer in so many words to a written agreement, did you? A. I referred to an agreement.

HIS HONOR: Q. Did you speak about that—not referring in your mind—did you speak to Vic about it, about a written agreement? A. No, I cannot say I mentioned "written". I just mentioned the word 40 "agreement".

Mr ST. JOHN: Q. If you knew all the contents of the written agreement then quite clearly it showed the boundary extended south of the creek, so then it would be a very natural thing to say that there is a written agreement "And it says quite clearly", or something like that. "Something in black and white". Did you not refer him to that?

A. I think Vic said, "What agreement?" I said, "The agreement drawn up by Giugni".

Q. You did not tell us about that before, did you? (No answer.)

Mr HUGHES: Yes he did, in chief.

Mr ST. JOHN: Q. Did you tell us about that before in your examination before, in your evidence. Did you tell us before that that you referred Vic to a written agreement in Giugni's office? A. I can't swear to it. I said to Vic, "We have an agreement to open up there".

Q. You cannot swear? A. My words were "We have an
10 agreement".

Q. You cannot swear that you referred to any written agreement?

A. No.

Q. You cannot swear that you referred to any agreement in Giugni's office in that conversation with Vic, can you? A. I think I possibly could. I think I could.

Q. You possibly could? A. When I mentioned the word "agreement" I think Vic then said "What agreement?" I think he was claiming that he did not know of any such agreement.

Q. But you only think that, do you? A. I think I used it.
20 Anyhow we have to be sure, don't we?

Q. I do not want you to swear to it positively unless you can swear it positively? A. I think so, yes.

Q. You only think. Do we leave it at that? A. Yes, for my part.

Q. I put it to you earlier that you had not mentioned "written agreement" in so many words? A. Yes, I recall you saying that.

Q. You did agree to that, didn't you? A. Yes.

Q. So that at that time you had no recollection at all about a written agreement. That is just before the Court rose at one o'clock?
A. Yes, you were talking. You said I could not remember that.

30 Q. You know I think only that reference was made to it in this conversation, is that right? A. I do not think that I did make reference to it.

Q. You think that is as far as it goes? (No answer.)

Q. Despite this dispute you continued working? A. Yes.

Q. He still worked in the western side? A. That is right.

Q. And for that matter he has worked on the eastern side?
A. Yes, he has come up here alongside of me.

Q. So that you have seen one another fairly constantly? A. Yes, definitely.

40 Q. And you have had more or less friendly conversations? A. A number of conversations between the two of us.

Q. I want to ask you about a particular conversation at your hut. You know just where? A. Yes.

Q. Whilst talking at lunch on the 21st January 1959—I do not suggest you will remember that date, but this conversation about that time—January 1959? A. The 21st January?

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Q. Yes, at your hut. I put it to you that you were listening to the wireless together. Have you a wireless at the hut? A. I have a wireless in my utility truck.

Q. So it is not impossible that you could have listened to a wireless together, is it? A. It could be possible. I don't remember it. It could be possible.

Q. I put it to you that you said, "Our quota has got about a week or so to go. I had hoped not to return here next week." "Anyway, I have been here too long. I want to return to Sydney. I have been here three years now." Do you remember something along those 10 lines, a discussion as to how long you had been there? A. No, I don't remember that.

Q. Do you remember talking about Braham, how long a man called Braham had been with you. And trying to place when you first moved into the area south of the creek by reference to Braham? A. Braham was a navvy driver for me.

Q. Do you recollect any conversation in which, by reference to Braham, you first moved in south of the creek. If you don't, say so. A. I do not remember.

Q. Did you say, "Logan always wanted me to go into the crop. 20 He was on my back . . ."? A. I never said that.

Q. Logan did want you to go into the crop? A. He never said that to me.

Q. He suggested, "You go in there" anyhow? A. He never suggested that either. He suggested I have a look around to see if there was anything worthwhile.

Q. At any rate it was then that you finally went into the crop? A. It was about a month after that when I went over and tested it.

Q. Did you tell Vic about Logan having suggested it to you? A. I don't recall telling Vic that. 30

Q. You would not deny that you may have told him? A. I don't think I would have.

Q. You don't think Logan would have told him, do you? A. I never thought of it that way. (Objected to.)

Q. Is there any reason you would not have told Vic? A. I cannot remember. The only reason why I would not have was that I had nothing . . .

Q. I am only asking whether you deny it. I put it to you that you said on some occasion immediately after, "I always knew we could not go in there and could not work it, but when the company 40 told me to go into the crop I was wondering how they came to tell me to go in". A. The company never told me to go in.

Q. Did you say anything like that? A. No.

Q. "After they told me to go in I went and saw Logan and asked him how Vic felt about it and Logan said 'Vic doesn't care a dash where you go' ". Was there anything like that said? A. Not at that

conversation. I remember Logan repeating the conversation something similar to that.

Q. What was that? A. The conversation was this, that Mr Caldwell told me—he said on the question of this area, that was running south, on the question of Vic worrying about it, that Vic said to him, “Oh, don’t worry about it. There is nothing in there anyhow”.

Q. What time was this? A. I would not remember the time but I do remember that in the conversation.

10 Q. It was a conversation with Logan? A. Yes.

Q. Do you think approaching the signing of the June agreement? A. I did not make any report on the conversation. I could not tell you when.

Q. Logan volunteered this to you, did he? A. Logan seemed to question that the area was going to be drawn up so much. He questioned Vic about it. He was talking to me and he said, “I said to Vic ‘Do you think it is all right to give them that area?’ and Vic said, ‘Don’t worry about it. There is nothing much over there. Don’t worry about that’.” I remember that conversation with Mr Caldwell, 20 distinctly.

Q. Did you tell anyone about it before you said it in the witness box? A. I think I recall writing a letter and mentioning it to Mr Hughes.

Q. Of course this occurred, it must have occurred, before the January agreement was signed? A. Not before January, probably before June.

Q. Was there any fresh discussion of boundaries at the time of the June agreement? A. No, there was not. It is a change drawn in the original agreement.

30 Q. How did Logan come to raise the question of new boundaries? A. I cannot recall why he would say that or when he said it but I can recall him saying it at his house, I think.

Q. You cannot recall when he said it but you now swear positively that it occurred before June and not before January? A. I withdraw that remark. I do not know when it was.

Q. I think you will agree with me on a very sound basis it was much more likely to have occurred before January than before June? A. I won’t attempt to try to say when it was said.

40 Q. That was a rather important conversation, was it not? A. I suppose in the light of things which took place it was.

Q. Had you temporarily forgotten about it when you gave your evidence or was it simply that the question was not asked? A. I suppose no question was asked.

Q. When Logan said that to you did it surprise you? A. Yes, it did surprise me that way. The question is impossible that you may think—not the question that Vic knew where I was but Vic . . .

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HIS HONOR: Q. I do not follow that. You were asked did that conversation surprise you, and you said "Yes". A. It surprised me in several ways, that Logan was sort of questioning Vic's remarks about—he said, "Is it all right for them to have that area?" The area as I know it, and Vic in answer said, "Don't worry about it. There is nothing in there anyway."

Q. You did worry about it for a month? A. I never worried about it. It seemed to me it was one of those things in the conversation that cropped up.

Q. But you had worried about that area for a month had you 10
not, about getting off it? A. Yes, I tried to keep off on account of
the wheat, on account of it being under cultivation.

Mr ST. JOHN: Q. Had Vic previously told you that he thought there was magnesite south of the creek at all? A. As I said before there had been talk about it.

Q. Would not that be a reason for Logan's statement surprising you? A. No, I would not say that.

Q. Vic told you that. It was Logan who said that he asked Vic whether you should move south of the creek and Vic said there was nothing there. Does not that surprise you? A. Well, no. 20

Q. It does not? A. No.

Q. Did you scratch your head and think "How does that come about? First Vic says one thing and then he says another?" A. No, those things are told to me. I don't think much of them.

Q. It is perfectly obvious from what Logan said to you at that time that there had been some discussion about moving south of the creek itself, between Logan and Vic? A. Not trying it up the creek?

Q. That you were not to go south of the creek? Between Logan and Vic? A. I do not know what they discussed. Logan was referring to the whole of the area. 30

Q. He told you that he had discussed with Vic whether you should be allowed to move south of the creek? A. Not necessarily south of the creek. He was referring to the area north of the creek.

Q. If I misunderstood you will you please say that again. I understood that you told us that Logan said that he asked Vic whether it was all right for you to go south of the creek? A. No, I never said that at all.

Q. Nothing like that? A. No.

HIS HONOR: Q. Would you repeat that again? (No answer.)

Mr ST. JOHN: Did Logan tell you of his conversation with Vic? 40
A. The conversation with Vic, as I put it, was not drawing the boundary anywhere, any one boundary, it was all sort of part of the area under discussion and Logan said, "Is it all right, Vic?", or words to that effect, "to let them in that ground. Was it in the agreement". And Vic said, "It doesn't matter much because there is nothing there anyhow."

Q. That included all the ground? A. That is what I interpreted it as.

Q. There was no reference whatever to the north side of the creek? A. Not in that conversation, no.

(Further hearing adjourned to 10 a.m. Tuesday, 21st February, 1961.)

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Mr ISAACS: Might I correct something in the transcript? At p. 112 something has been omitted at the top of the page. The question
10 reads: "Do you know that Mr Logan Caldwell had been a share farmer prior to the death of George Wigham Caldwell?" That should read "Did you know that Steele Hunter Caldwell the son of Mr Logan Caldwell had been a share farmer prior to the death of George Wigham Caldwell?". That is confirmed four questions lower down.

Mr HUGHES: I have prepared a list of corrections we suggest. It has been typed, but I would like to check the typed list and deal with it later.

Mr LARKINS: I tender the subpoena duces tecum which was served on the secretary of the plaintiff Company at 4.15 on Friday last.

20 HIS HONOR: This is to found an application in relation to the subpoena?

Mr LARKINS: Yes.

HIS HONOR: I will accept it as an interlocutory application.

Mr LARKINS: My application is to set aside all or such part of the subpoena as Your Honor thinks fit, as being oppressive or abusive, and in the alternative I ask Your Honor to rule some parts of it are too vague and general. . . . (Continues to address—Mr Larkins refers to Small's case.)

30 HIS HONOR: Your application is to set aside the whole of the subpoena?

Mr LARKINS: Yes.

HIS HONOR: It is one view if a subpoena is in part oppressive, the whole can be set aside, but that is not generally adopted as a course as far as I know. (Mr Larkins continues to address.)

(Mr St. John states that the subpoena was only intended to refer to the specific things listed and things of that kind—correspondence or inter-office memoranda, diaries or diary notes, reports—Mr St. John reads from para. 1 of the subpoena—and not receipts and invoices and not books of account, and not financial statements.)

40 Mr LARKINS: (Continues to refer to Small's case.) I would like it placed on record that the subpoena was served by my learned friend's instructing solicitor, Mr Omant's city agent, on the secretary of the Company, and when served he complained that it was too wide and that the task before him was enormous. He then received a message that one of my learned friend's juniors had been spoken to and had

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said, "Do the best you can". I was unaware of this. Whether that is in terms produced, as my learned friend has it in mind, I do not know . . . (continues to address).

HIS HONOR: It is unfortunate that this may have involved you in a lot of work, Mr Larkins, but I do not think that that can prevent it. True it is the wording may be inappropriate but after all it is often said in relation to subpoenas that they involve a lot of work at the hearing. I do not think that one can relieve a party of a lot of work involved in a search because it is merely at a late stage.

Mr LARKINS: What I ask for is a proper adjournment in order to 10 complete it . . . (continues to address).

However, I do not propose at this stage to make an application. We are going to carry on and abide by Your Honor's order, whatever order Your Honor makes in the matter.

I desire to make this application to stress that it was an oppressive subpoena and an abuse of the process of the Court. I am prepared in the alternative to make application to Your Honor to set aside so much of it as Your Honor feels—

HIS HONOR: The way I feel about it is I would strike out the words "directly or indirectly" and the words "other documents" in para. 1. 20 So, it is "correspondence, diaries and reports" all of which I should think would have been in the mind of the plaintiff, bearing in mind that there is discovery.

(Mr Larkins continues to address the Court.)

HIS HONOR: I would think that "correspondence and inter-office memoranda, diaries, diary notes and reports", would be ordinarily within the purvue of a subpoena. (Mr Larkins continues to press his objection.)

HIS HONOR: There is no particular document. I do not think that a subpoena to another party has necessarily to ask for a particular 30 document known to be in existence. I think there is a different rule in relation to the third party. You can never make a third party do it.

The objection to that is that it is fishing, in a way, but I think I will leave it in, Mr Larkins, because if there is anything which ought clearly to be produced . . . (Mr Larkins continues to address—presses objection.)

HIS HONOR: I will cut out "records or other documents"; cut out "directly or indirectly"; cut out "(iii)".

Mr ST. JOHN: Having conferred with my learned juniors, without conceding the whole of 3 is objectionable, it seems to us there is so 40 much covered by (1) that we should not really press for all of 3. It does not really seem to go much beyond what we get under (1).

HIS HONOR: I will not allow (4); (d) is deleted; (b) will remain in.

(Mr Larkins addresses further—asks that a subpoena in an amended form should go in—continues to address.)

HIS HONOR: Mr Larkins has made application to set aside a sub-

poena directed on behalf of the defendants for whom Mr St. John appears, to the Secretary, Australian Blue Metals Limited, on the ground that it is oppressive.

There is a number of paragraphs in the subpoena and Mr Larkins put his application in the alternative that parts of the subpoena were oppressive. Those parts should be dealt with separately. In other words the subpoena should be treated distributively in its various paragraphs. I have adopted this course and I have indicated certain paragraphs of the subpoena which, with amendments, I would allow.

10 Mr Larkins has indicated difficulties in complying with the subpoena even in its limited form, but has undertaken on behalf of the plaintiff that best efforts will be made and will be made immediately, although he asks that a fresh subpoena be directed for the production of the document in the categories which I have indicated that I will allow. I consider this a desirable course, and Mr St. John has indicated that a fresh subpoena in a limited form will be issued. In the meantime, however, Mr Larkins has indicated that the plaintiff will proceed, complying with all the terms of the subpoena as amended.

Mr LARKINS: I would like now to ask for an adjournment for some-
20 thing in the order of an hour so that I can discard and send back those documents which are covered by those portions of the subpoena which have been disallowed, so I can have an opportunity of having available for presentation those on which particular emphasis has been placed, which will be required now.

Mr ST. JOHN: I have no objection.

Mr ISAACS: I have no objection. There is only one thing I would like to do before Your Honor adjourns . . .

HIS HONOR: I will grant that, Mr Larkins.

Mr LARKINS: There is only one other matter. It is a matter dis-
30 tasteful to me. I ask Your Honor that the costs of complying with those portions of the subpoena which have been disallowed by Your Honor should be borne by the defendants for whom Mr St. John appears, in any event . . . (continues to address—argument ensued—opposed by Mr St. John—Mr Larkins presses that costs be allowed as on a motion to set aside a subpoena.)

HIS HONOR: The costs of the application to set this subpoena aside, as on a motion to set aside the subpoena, shall be plaintiff's costs in the suit.

Mr ISAACS: There is only one matter and that is this: now, we have
40 ready the amended statement of defence to the further amendment of the state of claim. Your Honor relieved my client from the necessity of swearing it. It is simply in the form that I foreshadowed.

HIS HONOR: It is not quite in the form that I expected because it seems that it is not going to be sworn. I would have thought you would have put them forward simply as amendments, otherwise one

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has, as it were, two statements of defence. I think I will cut out the line, "I, Steele Hunter Caldwell do further say as follows . . ." then it can be simply a document which can be annexed to the statement of defence already filed without further swearing it.

Mr ST. JOHN: This matter of the further amended statement of defence has not been neglected. The precise form of it was indicated to my friend, I think on a document—first of all a letter and then a document—put before the Court. Your Honor will recall later my friend applied for a formal amended statement of defence, we complied with this also. We have re-drafted the further amendment necessitated by my friend's amendments but they will still have to be incorporated and sworn by everyone. That work is proceeding and will be completed as soon as we possibly can do it. . . . (Mr St. John continues to address.)

HIS HONOR: I give leave to the plaintiff and to the defendants to file amended statements of claim and defence respectively, incorporating the amendments, by insertion in the pages of the statements of claim and defence respectively, without re-engrossing them.

(Short adjournment.)

Mr LARKINS: (Hands subpoena previously referred to, to His Honor.) 20
In relation to 1(a) I produce 24 memoranda passing between Mr Driscoll and Mr Buckley. I do not seek any ruling. As far as I am concerned complete access can be had to them.

Also under that paragraph I produce communications between the Company and Mr Giugni, largely relevant to payments, but they are all covered by letters and memoranda. Once again I have no objection. I do not ask for any ruling from Your Honor on them.

I also produce some communication in November, December and February, between the Company and the B.H.P., in answer to para. 1.

HIS HONOR: No ruling? 30

Mr LARKINS: No, Your Honor. So far as (b) is concerned, nothing is produced.

Also under 1(a) I produce inter-office communication from Mr Hayter to Mr Driscoll. I do not ask for any ruling on that.

Under (c) I produce two copy letters to Mr Vic. Hughes.

So far as (e) is concerned I would like to reserve. There may be correspondence which could refer to it. Similarly so far as (2). There is a document called "The Magnesite Mine at Theaddungra" book, and there are entries in relation to the movement of magnesite from Theaddungra which contain reference to the consignment numbers, dates to trail, truck numbers, tonnages, destination, and on the other side details as to payment and the analyses which could have been made by the B.H.P. As that could be relevant one way or another it is produced in respect to (2). 40

HIS HONOR: No objection to inspection?

Mr LARKINS: No, Your Honor. Other documents have come to

light which could have been referable to the original subpoena. There are certain profit and loss accounts. I think there is one for the year ended 31st December 1956. In this net loss was shown but not net profit and loss account. As they come to light with these other things they are produced, but not in answer to this subpoena.

I produce a miscellaneous bundle of letters from the International Harvester Company, the Mines Department and the Shire Council, which are strictly correspondence between the Company and other persons, relating to conduct of P.M.L. 1: that is under 1(a).

10 There is a thing called "Statement on Magnesite Mine P.M.L. 1" which I think was produced on discovery. I produce it.

In the first bundle of correspondence I think I said "24 memoranda". I could add to that one which was claimed on discovery.

HIS HONOR: Is that one which I had already inspected?

Mr. LARKINS: Yes.

HIS HONOR: That can be added. That will make 25.

Mr LARKINS: Yes. We produce minute book of the Company. There are photostat. copies of the entry. Your Honor will see that the meeting concerned itself with confidential matters quite unrelated
20 to this suit in any way. It was held in February 1961. There is a resolution relating to these proceedings. I would ask Your Honor's ruling on that. (Discussion ensued.)

HIS HONOR: That minute does not add anything at all. I will just hand it all back.

All counsel may inspect the document as no objection is raised.

Mr HUGHES: May I hand up to Your Honor a list of agreed amendments to the transcript of yesterday's proceedings. These only relate to yesterday.

P. 89 is one. In the first line it says "Do you recall you next
30 conversation with Mr Vic. Hughes?" That should read "Do you recall your next conversation . . .".

On the 4th line it should read "Keep in the area **this side of the turn** in the fence".

On p. 90 in the first question "outside that break in the fence" should read "this side of the break".

On the 4th question down that page at the end of the line it should read ". . . of anything like a gully . . .".

On p. 93: 3rd question from the bottom, second-last line should read "I did also a lot of **working** with the . . .".

40 On p. 94: 2nd question beginning of the 2nd line should read—"Plan **as**—old A.B.M. Workings".

P. 95: 3rd question should read ". . . when you took **these** documents up to him".

P. 96: Third line from the top "From about part of May" should read "For about part of May".

P. 96: Halfway down "We know all mining is 'chancy' but when

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you struck . . .” should read “We know all mining is ‘chancy’ but when you **strike**”.

P. 97: 2nd question, 3rd line should read “. . . forgetting about magnesite”.

P. 99: 4th question from bottom of page, 3rd line. “Having regard to the carrying out . . .” should read “After carrying out”.

P. 100: Half-way down the page the answer “Yes, I think he had to come down . . .” should read “Yes, I think he came down”.

P. 101: 6th question from the bottom, 2nd line should read—
“Do you say you extended beyond that line?”.

10

P. 102: 4th question down should read “Did he have conversations with you”.

P. 103: 7th answer down should read “I said there was **nothing in the Agreement**”.

P. 104: 2nd question from the top should read “You mentioned a conversation with **Vic Hughes** . . .”.

My learned friend, Mr Isaacs, drew attention to an alteration at p. 112. That has already been amended.

Mr ST. JOHN: P. 113, 4th question from bottom should read “That it had been signed by no one other than by Mr Logan Caldwell”.

20

Mr HUGHES: P. 125: 4th question from top answer should be “No, but I carried on . . .”.

P. 133: 7th question should read “. . . and tell us whether you remember sending it”.

P. 134A: 4th question from the bottom. Answer should read “On June 10th”.

P. 135: 2nd answer from top should read—“We only started on June 10th”.

P. 134A: Question should read “His Honor: Q. Was **only** mining then proceeding . . .”.

30

P. 136: 7th question from top should read “It looked as if there was good quantity? A. It looked as if there was good quality but I would say there was a lot there until later on”.

P. 136: 6th question from top should read “It looked as though there was good metal there”.

Mr ST. JOHN: P. 135, 3rd question should read—“You reported that immediately . . .”.

P. 137: 3rd last question should read “What was the most you had stock piled; how many tons?”.

P. 138: 4th question down should read—“At any rate you were **40 not** optimistic . . .”

P. 139: 10th question from top should read—“And you told **him** that it . . .”.

Same question quotes should read “I only want to get some good metal”.

P. 199: 6th question from bottom should read—"You had in fact been losing money north of the creek".

P. 147: 4th question from bottom should read—"Vic. told you that. Logan said that he asked Vic. . . .".

P. 148: 2nd question from top should read—"I may have misunderstood you . . .".

P. 147: 2nd last question should read "It is perfectly obvious from what Logan said to you at that time that there had been some discussion about moving the boundary up the creek itself, between
10 Logan and Vic."

THOMAS ERNEST BUCKLEY

Further cross-examined:

HIS HONOR: You are on your former oath.

Mr ST. JOHN: Q. Mr Buckley, I suppose you really have attempted to give a truthful account to the best of your recollection of what happened in relation to this, have you? A. Yes, to the best of my knowledge.

Q. You have not tried to colour it in any way? A. No.

Q. I would like to take you back to a couple of things you said.
20 First, on p. 117 I asked you about seeking permission about dumping spoil. Do you remember that? A. Yes.

Q. Your answer was that you spoke to Vic. about it and I said "And I put it to you that he said 'I alone could not consent. You had better see the others'." Your answer was: "No, he did not say that. Q. Well, what did he say? A. He said 'I think it will be all right, but I will have to see the others'." Is that correct? A. Yes.

Q. "Q. Subsequently, did he tell you that he had seen the others? A. Yes. Q. And that they had agreed? A. He said that he thought it would be all right to go in there. Q. Did he tell you specifically
30 to see Logan Caldwell, yourself? He told you that, did he not? A. Yes." You remember that? A. Yes.

Q. That is correct? A. Yes.

Q. Again, at p. 122. Your evidence is about seeking permission to mine on the old pits—at the foot of the page. You asked him whether you could go into the old pits and he said "I think it will be all right but you keep on this side—that area". Later on I asked you about when you spoke to Vic. about dumping spoil, or dirt as you called it, and he said that he would have to talk to the others, that the others would have to be consulted, and you said "Yes"?
40 A. That is to enter in and work?

Q. Going into the old pits? A. Yes, he said "I think it will be all right but you will have to see Logan Caldwell".

Q. Is that what he said "You will have to see Logan Caldwell"? A. Yes.

Q. No mention of the others? A. Not on that particular occasion.

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Cross-
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Q. Not on that occasion? A. I think that's what I said.

Q. What I am putting to you is that you are really completely at a loss as to what did occur on each occasion because you give contradictory accounts of it? A. That could be a point, too.

HIS HONOR: Q. It is really put to you that you really do not know what was said? A. My recollection is that he said "I think it will be all right if you go and work around the old pits, but you will have to see Logan Caldwell".

Mr ST. JOHN: Q. He did not mention the others at all? A. Not at that point.

10

Q. Are you quite sure of that? A. Yes.

Q. What I am going to put to you is when you were being examined by Mr Hughes you said (pp. 86-87) when you asked permission to dump the spoil, he said "You had better see Logan Caldwell". "Q. What did Vic. say? A. 'I think it will be all right. You had better see Logan Caldwell about it.'" Yet you told me at p. 117 when he said to see the others that he also told you specifically to see Logan Caldwell. A. But the others, that was on tipping spoil into P.M.L. 1, was it not?

Q. You just listen to me. At p. 86 when questioned by Mr 20 Hughes about the dumping of spoil you said that Vic. had said he thought it would be all right but you had better see Logan Caldwell. No mention of the others at all. Do you understand that? A. Yes.

Q. That is what you told Mr Hughes. That appears also at p. 87 when you said Vic. said "I have seen Logan Caldwell", when you failed to see him. He said, "It will be quite all right to tip dirt there". Then when I asked you about it at p. 117 you gave a different account. You said he said that he thought it would be all right but "you would have to see the others". "But I will have to see the others". And then specifically referred to Logan Caldwell? A. Yes. 30

Q. You appreciate those are two different accounts of what happened on that occasion, do you not? A. It could be, but as I recollect . . .

Q. Just answer my question. You understand those are two different accounts of what you remember, different accounts of a conversation? If that was there . . .

Q. I am not suggesting to you you are deliberately lying in relation to this. I am putting it to you that you have given two different accounts. That is obvious, is it not? A. It seems to be.

Q. Are you now able to swear which is the correct account? 40
A. What I said on the first occasion.

Q. Which is dumping the spoil? A. Yes, dumping the spoil. Vic. said "I think it will be all right. I will see the others, but you will have to see Logan Caldwell".

Q. So the account you gave to me in cross-examination is more

correct than the account you gave to Mr Hughes. Is that so? A. I can't just get the two accounts.

Q. You gave two different accounts, but the one you gave me is the correct one, that he said that he would have to see the others and you would have to see Logan Caldwell? A. Yes, "you will have to see Logan Caldwell".

Q. That is the correct version? A. Yes.

Q. Now we go back to the occasion when you asked whether you could work the old pits (p. 88).

10 Mr HUGHES: May I ask Mr St. John not to read so fast, for the purpose of my referring to the transcript as I have great difficulty in following it, myself.

Mr ST. JOHN: Q. That is clear as to the dumping of spoil. The account that you gave then is the correct one? A. Yes.

Q. At p. 88 in regard to permission to go into the old pits—would you just listen and I will read there what you said? About three-quarters of the way down—"Q. Do you recall what Vic. Hughes said? A. Yes. 'I think it will be all right, but you will have to see Logan Caldwell'. Q. Did he say anything else? Were any other
20 people mentioned? A. He said that he would have to see the others regarding it. Q. Did he say who the others were? A. I don't think so. He just said those words 'I will see the others'."

Later on in the same page: "Q. Was there any mention made of Logan Caldwell in that conversation, that you recall? A. Yes, like —'See Logan Caldwell'."

Q. Are you clear on that? You told Mr Hughes when he first said "See Logan Caldwell" that he did go on to say that he would have to see the others. Is that right? A. Yes.

Q. Now when I cross-examined you in regard to that at p. 122,
30 at the foot of the page, about the 4th last question, "So that on this one you asked him whether you could go into the old pits? A. Yes." My question was: "And he said 'The others will have to be consulted'." and your answer was, "Yes". And I asked you: "And there and then you discussed the boundaries with him?". Now, is that correct? A. No.

HIS HONOR: You will have to give the answer to the last question, Mr St. John, if you want to incorporate that at all.

Mr ST. JOHN: Q. "Q. And there and then you discussed the boundaries with him? A. Not then." Now, is it correct that you asked him
40 permission about mining the old pits and he said "The others will have to be consulted"? This is the conversation in which you sought permission to mine the old pits, in November 1956. Is it correct that he replied, "The others will have to be consulted"? A. Later on he thought it would be all right but he said "You will have to go and see Logan Caldwell about mining the old pits".

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Q. Was there anything said about the others? A. Not at that one, I don't think.

Q. You have already sworn both in answer to Mr Hughes and in answer to myself that the others were referred to in that conversation. Now do you tell us that they were not referred to at that conversation? A. I am not too sure now.

Q. The fact is that it could not be said from what you have said in your evidence—it could not positively be said that you believed that Logan Caldwell had the sole authority to speak on behalf of these people? A. I referred to him quite often. Mostly I was 10. referred to Mr Caldwell.

Q. By Vic? A. Yes.

Q. The people you spoke to mostly were Logan and Vic? A. And Vic.

Q. Is that right? A. Yes.

Q. Vic., because he was on the site? A. Yes.

Q. Logan because you were asked to see him? A. Yes.

Q. But it is quite clear that on other occasions other people had to be consulted, is it not? A. I suppose it would be too.

Q. Even when you spoke to Logan? (No answer.)

20

HIS HONOR: Q. Do you wish to add something? A. I was going to say he preferred me to speak to Mr Caldwell, but on one occasion Vic. said "I think it will be all right. I will have to see the others", on the first occasion. The second time I think he said—it has dawned on me—"I think it will be all right but you will have to see Logan Caldwell".

Mr ST. JOHN: Q. You have told Mr Hughes and myself previously that he also said "You will have to see the others", although you do not really remember now. Is that what you tell us? (No answer.)

Q. If I can go back to my question. No one gave you any right 30 to believe that Logan Caldwell was the sole authority to deal with the affairs of these mining leases, did they? A. Only that I always had to see Logan.

Q. At any rate you will agree with me the others obviously had to be consulted from what was said—the others obviously had to be consulted on each occasion? A. Yes, on one occasion.

Q. On one occasion? A. Yes, but I don't think . . .

Q. On at least one occasion? A. On one of those two occasions.

Q. If we accept the evidence you gave yesterday on the two occasions—right—on both occasions? A. I reckon I can't retract 40 from what I said yesterday, myself.

Q. When you approached Logan about the royalty his answer was that he would have to consult the others? A. On the reduction of the royalty?

Q. Yes. A. Yes.

Q. So may we take it on every occasion when an important

question arose obviously other people beside Logan had to be consulted. That was obvious, was it not? A. That was obvious on the royalties.

Q. That was obvious on the royalties and it was obvious on these other occasions too, was it not? A. At least on one.

Q. At least on one; if the evidence you gave yesterday is correct, on both? A. Yes.

Q. Now, you have told us that whilst your drilling proceeded Vic. Caldwell was standing by making no comment? A. Yes.

10 Q. Vic. Hughes, I am sorry. A. Yes, that is correct.

Q. How long did that drilling go on? A. I should imagine it went on for—it would have taken, Oh, two or three days.

Q. Are you sure about that? A. Well, I am confident of that time, by my letters.

Q. Do you know this, that in answer to a question yesterday you said you had thought it was a week? A. Well, I am not only drilling. Also I use a bulldozer for stripping, to strip a patch and prepare it.

Q. I am asking about testing for magnesite south of the creek, 20 before you started to mine? A. I would say a week.

Q. Later on when I asked the same question you said that you could not recall. Do you remember that? “How long you were drilling”—it occurs at p. 98, first of all on the 4th last question: “Q. Can you say approximately how many days the tests lasted? How many days you were occupied in testing? A. Probably a week”. And at p. 138 in cross-examination, two-thirds of the way down, talking about testing I said: “Q. How long were you there?” and you answered “I do not recall. I did a couple of reports about that time but I had not mentioned it”. First you say a couple of days and then, a week?

30 A. I said a week with bulldozing. I would be there drilling at least for a couple of days.

HIS HONOR: Q. When you say “drilling” would you explain the distinction you make, Mr Buckley? Is drilling part of testing? A. Yes, that is the first part and then I put holes down with the bulldozer and strip the area before the shovel went in to dig.

Q. How long would that take? A. That would take a week at least.

Q. The drilling plus stripping? A. I would say it would be a week.

40 Q. Is stripping clearing the over-burden to get down to solid rock or what? A. We put in a couple of holes, down through the rock about 4 ft. or more and then we run in a different place and we have a look. Then we open up a bit of the face and strip the over-burden off to start the shovel to start the pit working.

Q. What do you mine with? Do you mine with a shovel? A. That is right.

Q. That means all the magnesite, the white magnesite rock, is

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broken up and can be removed by the shovel? A. You have to break it with explosives, like; and loosen the dirt.

Q. You have to do that first? A. Yes. Then you put the shovel in to dig it.

Q. You have got the face, a vertical face? A. Yes, you have to get through the face.

Q. And to get it broken up? A. Yes, that is right. Then the shovel goes down on the ground and drags the rock down.

Mr ST. JOHN: Q. I thought you said it was done in a week? A. Yes, approximately a week. 10

Q. A quite extensive operation, was it? A. There was quite a bit of work involved to drill it.

Q. How many men would have been involved in the whole operation, do you say? A. There would be one man on the jack hammer doing drilling.

Q. Do you remember who that was? A. Yes, I think it was chap named Haler.

Q. Where is he now? A. I am not sure where he is now. He has left our employment.

Q. Anyone else employed there? A. Yes. A chap on the 20 bulldozer by the name of Ryan.

Q. Were they present when Vic. came down? A. They probably would be. Vic. was there and they were there when he was around.

Q. They were there, were they? A. Yes.

Q. Would they have been present at any conversations between you and Vic.? A. It would be problematical. There was a lot of noise with the jack hammer and we would be speaking right alongside it.

Q. They saw him? A. Yes, and he saw them, I should imagine.

Q. That was quite a long way from where Vic. himself was working? A. Yes, he was down the other end of the lease. 30

Q. You tell us that he came over there deliberately to see what was going on? A. That is right.

Q. And he was there not on one occasion but on many occasions? A. Yes. I saw him there when drilling. I saw him there when stripping.

Q. You say those other men were present at that time? A. They would be there working.

Q. Is Ryan still in the Company's employment? A. No. No, he is at Young.

Q. You have not seen him at Sydney in the last few days? A. No. 40

Q. But he is available, is he? (Objected to.)

Q. He is still alive, is he not? A. Yes.

Q. And getting about? A. Yes, the last I heard of him he was.

Q. Was anyone else present when Vic. came down, apart from those men and yourself? A. I would not imagine in the stripping as much as in the drilling.

Q. How long after you finished testing this area of which you spoke—how long after testing did you start the actual operation?

A. According to my records I started digging with the shovel . . .

Q. How long after you finished testing did you start operating, opening up, mining? A. I suppose seven or eight days.

Q. It could have been nine or ten? A. It is possible. I don't know definitely whether it would be, on account of the letter.

Q. So it does appear from that, does it not, that you started testing about the end of May? A. I would not think so.

10 Q. Well, if the testing took a week and if it was a week, or perhaps more before you started to mine on the 10th, you would take fourteen away from ten and you get back into May, do you not? A. Yes, as you said yesterday . . .

HIS HONOR: The 10th June. There are two weeks. Seven days testing. The witness estimates a week between testing and mining. That is fourteen days. Take that off June the 10th and it brings you back to May, as I understand the question.

Mr ST. JOHN: Q. That is so, is it not? It does take you back into May? A. I don't think it would.

20 Q. Whether you think it would or not does not matter. Sheer arithmetic takes you back into May? A. I started on the 10th. It gives me ten days to the last of May.

Q. That is right. So that is a week during which you are doing nothing. Another in which you are testing. You still don't make up the week's testing unless you go back into May? A. I think we started a few days after I wrote the letter on the 2nd June.

Q. What you told me was this, that you took a week to test and it was another week after that test before you commenced mining. You would have commenced testing about the end of May, if this
30 evidence is correct? A. I don't think so. I do not think I would be testing in May.

Q. If the evidence is not correct how do you think it might be corrected? A. It would carry on—this is a long while ago—I think it may have been, maybe, a little longer, or a few days one way or the other. I would say from memory about approximately a week testing.

Q. Your memory is obviously faulty as to this, whatever way we look at it? A. It could be.

Q. You may well be mistaken when you say "early June". Did
40 you do the test early, or at the end of May? A. I don't think so.

Q. You had no fixed point by which to refer to the actual date? A. There must have been a test; after I started with the dozer I may have gone straight over with the shovel.

Q. You cannot recall any fixed date by which you can say for certain that it was not until June that you started testing? A. I

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can only say I started in the beginning of May (sic) or at the end of June (sic.).

Q. Can you tell us any other type of reference, by reference to which you can say "early June", rather than the end of May? A. On the 2nd June there was a letter which I have not mentioned anything about.

Q. On the 2nd June there was a letter which you have not told us anything about, written by you to him? A. To Mr Driscoll.

Q. You told us that this letter of the 2nd June, has never been mentioned before. You mean never been mentioned by you? A. I 10 think I mentioned it in my previous evidence.

Q. I think you said that you wanted to refer to a letter which had not been mentioned before, did you not? (No answer.)

Q. Now, you do want to refer to a letter of the 2nd June, do you? A. Yes.

Q. It is by reference to that that you are able to say that the testing did not commence until June. Is that what you tell us? A. That is right.

Q. Is this the letter (shown to witness)? Is that in your handwriting? A. That is my handwriting. 20

Q. Is that the letter you refer to? (No answer.)

Q. First of all, is that the letter you refer to? A. That is the letter. That is one of the letters, the one of the 27th May.

Q. Is that the letter you refer to? A. Yes.

Q. Now, what is there in that letter which tells you quite definitely that you did not commence the test until June? A. I have not mentioned anything about testing in it.

Q. That is my point. I don't think you have. May I take it there is nothing in that letter to help you say that you did not commence until June. You say you did not make any mention of that 30 testing in any event, do you? (No answer.)

(Letter dated 2nd June—m.f.i. 6.)

Q. That tells us nothing, does it, because you did not mention testing in any letter that you wrote, did you? A. I think I mentioned I was testing different places earlier, on other leases.

Q. On other leases? A. Yes, I think you will find . . .

Q. You did not mention in any letter produced to this Court at any rate that you were testing on P.M.L. 1 south of the creek, did you? A. It is a long way back. Unless you produce the letter I would say "No". 40

Q. Take my word, there is nothing about testing on P.M.L. 1 south of the creek in any letter so far produced to the Court. Will you accept that from me? A. Yes, if you say so.

Q. The mere fact that you don't mention it in your letter of the 2nd June does not really help at all, does it? A. It goes to the point in that other . . .

Q. The fact that it was not mentioned in the letter of the 2nd June does not really give us any help at all? A. To me it makes me believe that I did not start until June.

Q. If I showed you a letter of May that made no reference to it it would convince you that you did not start until May. That is about as logical, is it not? (No answer.)

Q. If I showed you a letter of May that did not refer to it that would persuade you that you did not start until May, would it not? (Objected to.) A. Yes.

10 Q. How does it help you to say that you did not start testing when you in fact did not mention testing in any letter at all? A. It is my practice to inform the Company what I am doing. I generally file . . .

Q. In this one respect you have not informed them. You have never told the Company what you are doing, in the letter, about testing south of the creek? A. It is possible I might have mentioned that on the 'phone, though.

Q. From the fact that it is not in the letter does not help us, does it? A. Definitely from my point of view.

20 Q. So we still don't know whether you started in June or May? A. No, you have only got my word for it.

Q. Your word for it is very unsure. It must be, in the circumstances? A. I believe I did not start before June.

Q. You believe? A. Yes.

Q. May we take it testing did go on for about a week? A. Yes.

Q. And do you now want to say that the actual mining and testing lasted for about a week? You now want to say the actual mining started within a few days only of the end of the testing? A. No. I can say quite confidently the actual mining started on the 10th.

30 Q. You now want to tell us the actual mining started within a few days of the end of the testing because that is the only way you can tell that it commenced in the month of June? (Objected to.)

Q. Do you understand the question. You have only got ten days in June, you told us that? A. Yes.

Q. You have sworn that the testing did last a week? A. Yes, at least. At least a week.

Q. You told us originally, you swore from the end of the testing until the commencement of the mining was about a week? A. Yes.

40 Q. Now, if you adhere to your firm statement that testing did not commence until the beginning of June, then you surely have to say until the end of the testing and the beginning of the mining was separated by only a few days instead of a week. You follow me? A. Yes, I think so.

Q. Now, what is your answer? A. It could be possible because I would not necessarily take the shovel in. The shovel goes there

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straight away at the end of the testing, and I know I started to work on the 10th.

Q. Your answer is that it could be a few days from the end of the testing until the commencement of the mining? A. Yes, it could be that way.

Q. Is that fair then, that is how your memory is, as to that sequence of these events, that you commenced, started this work within a week of commencing, and you tell me that it could have been a few days? A. No. The testing is at least a week. I said we put that . . .

Q. I think it is a fair test of your memory that you know the contract was not a week but a couple of days? A. Yes, I may have brought the shovel over. I am not sure of the exact date I did.

Q. In the face of that you can still stubbornly maintain that it did not commence until the beginning of June? (Objected to.)

Q. At any rate you firmly maintain, despite the fact that you are obviously uncertain about various things at that time. You still firmly maintain that it was not until the beginning of June? A. I will say I started stripping in June.

Q. It could be the 1st June? A. It may have been about the 3rd. 20

Q. You cannot tell us when? A. No. I can only think if, when I wrote that report, I had started stripping then I would have mentioned it.

HIS HONOR: Q. Why would you have mentioned it? A. I wrote that letter on the 2nd. If I had been stripping I would have mentioned that I started stripping in a new area.

Q. Did you mention such things in other letters? A. In previous letters I have mentioned that I was doing something else, stripping or testing.

Mr ST. JOHN: Q. You spoke to Frank, you have told us about that at p. 105. Vic. told you that you had to see Frank. Do you remember? A. Yes. 30

Q. In August. You said in answer to Mr Hughes' question, "And do you recall what was said in that conversation? A. Yes. I said 'Vic. told me that I had to come and see you. I suppose you think we should not be over mining where we are. I want to know what the trouble is. Can we fix it up?' . . .". Suppose I ask you now from your recollection what was said on that occasion? A. When I was speaking to Frank?

Q. Yes. A. I said Vic. said I had to come and see him as to why we had no right to be there, to be mining there and I wanted to ask him what was the trouble. Didn't they agree? Did they want to go back to the 10/- a ton royalty. 40

Q. So you obviously thought at that time that they had a right, if they wanted to, to order you off—is that right? (Objected to.)

(Mr Hughes draws particular attention to certain passages on

p. 105 of the transcript beginning: "Frank was not very talkative about it at all . . .". Argument ensued.)

Mr ST. JOHN: Q. There is something else I want to ask you about the same conversation. First of all, is that what you recollect of it or would you like to tell us more? A. I can tell you that we spoke about the Agreement.

Q. You do recollect that? A. Yes.

Q. You have told Mr Hughes. He has just read that passage. A. I will give you the answer to that too.

10 HIS HONOR: Would you start again, please, Mr St. John.

Mr ST. JOHN: Q. Do you remember saying this: "I suppose you think we should not be over mining where we are"? Did you say anything to that effect? A. I think Frank suggested that we should not be over there—did I say that—No, I don't remember saying anything about that.

Q. Can you remember saying that you said that, yesterday? A. No, I don't; not those exact words.

Q. I will read the passage in respect to where you should not be over there. A. I said Vic. said we should not be over mining where
20 we are?

Q. Do you remember saying that you said to Frank: "I suppose you think we should not be over mining where we are"? (Objected to.)

HIS HONOR: Q. "Vic. told me that I had to come and see you. I suppose you think we should not be over mining where we are". Do you recall that yesterday as part of the conversation between you and Frank Hughes? A. I don't recall saying that.

Mr ST. JOHN: Q. You cannot remember saying that, can you? A. No, I don't recall saying those exact words.

Q. Was anything like that said? A. What I have just said a
30 while ago. I said to him, "Vic. said we are not supposed to be over there" or words to that effect.

Q. But nothing resembling what I read out to you? A. No. I asked how would he feel . . .

Q. This is at a different passage in the transcript. This is how it is taken down. You do not recall it being said, do you? A. No.

Q. Either in conversation or by you in the witness box? A. No, I just don't recollect it at this moment, anyhow.

Q. I will read it to you as a whole, now. "Q. And do you recall what was said in that conversation? A. Yes. I said 'Vic. told me that
40 I had to come and see you. I suppose you think we should not be over mining where we are. I want to know what the trouble is. Can we fix it up? Do you want more money? Do you want to go back to ten shillings a ton royalty?'" Now that I have read you the whole of that do you recollect saying all of that? A. I recollect saying words to the effect that Vic. says we have no right to be over there.

HIS HONOR: Q. Mr St. John asks, "Do you recollect saying all of

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that to Frank Hughes?" A. The majority of it. Not word for word.

Mr ST. JOHN: Q. Now that you have heard the whole of it do you recognise that is what was said? "I suppose you think we should not be over mining where we are" or do you think you said something different? A. I just don't remember saying "I suppose you think".

Q. Why would you ask him to say that? Is there any reason why you would suggest that he should think you should not be over there? A. No, because I was under the impression that Frank knew we were over there.

Q. That is what makes that a bit puzzling, does it not? A. Yes. 10

Q. It is hard to reconcile with your other evidence, is it not? (Objected to—question withdrawn.)

Q. I want to get this clear, in fairness to you. Do you remember I put it to you that when you originally made this agreement with Vic. it was made clear to you that you were not to go south of the gully, and you denied that? A. I denied that.

Mr ST. JOHN: Q. I want to read to you what was put and your answer to it and see what your answer really means. On p. 124:

"Did Vic. tell you that it had been agreed that they were not to go into the crop until the area had been exhausted? A. Yes, he 20 said that that was a gentleman's agreement—that they would not cross if they could help it."

"Q. And that was said in November? A. I could not say that.

Q. And I put it to you that you yourself were not to go south of the gully, or in the crop area? A. I would say 'No'."

A. Yes, that is right.

Q. Are you swearing that was not said? A. That was not said to my memory. That is definite.

Q. To the best of your recollection it was not said? A. No, there was never any mention of not crossing that gully at any time. 30

Q. If you say "No" to it, that is one thing; if you say "To the best of my recollection, no" it is a different thing. Do you understand the difference? A. Yes.

Q. Yesterday you said, "I would say no"; today when I asked you you said "to the best of my recollection"? A. I will say no.

Q. Now you will say no? A. As I said yesterday.

Q. You did, however, without any prompting from me, say, "To the best of my recollection, no", first when I asked you today? A. I will retract that and say "No".

Q. The fact is you are not absolutely clear? A. Yes, I am on 40 that point.

Q. And yet your own language does not indicate that? A. I think I have put in words that should not be put in.

Q. You thought you were not entitled to go into the area south of the creek until you had your conversation with Logan about a

month before you actually went in; what do you say to that? A. I would not say that at all.

Q. I want to refer you to what you said at p. 142, the third question:

“Q. Did you not intend to stay once it turned out that the agreement entitled you to be there; you were determined to stay?”

A. I don't believe I said that at all. As far as the agreement was concerned I think I could have been there a month before I was and if I did not—you know—if I had wanted to go out there—I tried on the northern side.”

10

What did you mean when you said “As far as the agreement was concerned I think I could have been there a month before I was?”

A. There was no mention of any boundary of that gully in the agreement.

Q. A month before you went in was when you had your conversation with Logan? A. Yes.

Q. That appears on p. 145. You said there a little more than half-way down: “At any rate it was then that you finally went into the crop? A. It was about a month after that when I went over

20

and tested it.” That is a month after your conversation with Logan. You have sworn at p. 142 as far as the agreement was concerned you think you could have been there a month before you actually went in. I put to you that that month relates to the months delay from the time Logan spoke to you? A. No. I never discussed anything about that boundary with anybody.

Q. Just answer my question. If that month is not the month between the time when Logan first spoke to you and the time you went in, what does it relate to? A. What do you mean?

30

Q. “As far as the agreement was concerned I think I could have been there a month before I was.” What did you mean? A. I meant I was a freelance to go on there any time before I did.

Q. What did the month relate to? A. I cannot see why there was a time limit.

Q. Are you prepared to deny that it related to the conversation with Logan which did occur a month before? A. I do not think that has any connection at all.

Q. You simply cannot explain the month? A. When I said that I could have been a month more, that was a month longer I stopped on the north side looking.

40

Q. That month was during the time when Logan told you that your agreement entitled you to go in? A. Yes, he had mentioned it at that time, too.

Q. That was news to you? A. That we could have gone in there?

Q. Yes? A. The only reason I never went in there was because it was used for cultivation.

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Q. When Logan told you you could go in there under the agreement it was news to you? A. No, it was not actually news. It sort of cleared the air as far as cultivation was concerned.

Q. You have told us during the period from January until June you were in fact prospecting over the whole of that area north of the creek? A. Yes.

Q. You were prospecting I think you said by contract miners in other leases? A. In that same lease.

Q. You were in fact prospecting other leases in the area? A. Not around that time. I concentrated all on P.M.L. 1. I did tests 10 in other leases.

Q. That is what I am putting to you—during that period. A. It could have been, but I think mainly in the period of discussion it was mostly done on P.M.L. 1.

Q. However, it is a fact that you were investigating the possibility of mining on other leases during that period? A. I could not tell you the exact dates I was on other leases, but I did try other leases and other paddocks.

HIS HONOR: Q. Do you keep a diary? A. No, unfortunately.

Mr ST. JOHN: Q. Is not there a letter during this period in which 20 you say you are negotiating with Logan about other leases? A. There was a letter before that. I did actually test on P.M.L. 21. I could not tell you when I did the testing on P.M.L. 21, but I did.

Q. Would you agree with me that many hundreds and perhaps thousands of pounds were perhaps spent on prospecting during the period from January to June—spent on prospecting areas other than the area south of the creek? A. It depends on what period of time.

Q. I am talking about January to June A. I think we did do testing in that period.

Q. Whatever the precise sum was, a lot of money was spent on 30 testing north of the creek? A. Men's wages.

Q. And in other areas? A. At that stage I just cannot remember the areas.

Q. When you went into the old pits, the only part of P.M.L. 1 in respect of which you believed there was any magnesite or had been told there was any magnesite was the area south of the creek? A. When I first went in?

Q. Apart from the old pits the only area in which you had been told there was any magnesite was the area south of the creek? A. I won't have that.

Q. Had you been told of magnesite elsewhere? A. I was told we would probably get magnesite on that portion we went in on.

Q. The old pits? A. In the area, not necessarily the pit.

Q. In the area adjacent to the old pits? A. Yes.

Q. Apart from the old pits and the area adjacent thereto the only part of the lease in respect of which you had been told there was

magnesite was the area south of the creek? A. No one had told me there was magnesite. They had told me they had seen magnesite ploughed up.

Q. South of the creek? A. On the other side of the creek.

Q. Now answer my question. You had been told about the Beasley hole or shaft? A. It was when I had the conversation with Mr Caldwell I was told about that.

Q. Did you not agree with me yesterday that Vic had told you about Beasley's hole? A. I said it could have been. I don't remember. I did not take any notice.

Q. You certainly told us that Vic had told you that magnesite had been turned over by the plough south of the creek? A. I said that yesterday.

Q. My question, which you still have not answered, is apart from the old pits and the area adjacent thereto, the area south of the creek was the only area in respect of which you had been told there was magnesite? A. I was told there was a test hole there, but I did not know how much magnesite was there.

Q. That was the only other part of which you knew or had been told there was magnesite there? A. I tried other places. (Objected to.)

Q. Before you went in in November had you been told or did you know of any magnesite on P.M.L. 1 other than the old pits and the area adjacent thereto and the area south of the creek? A. Other than those?

Q. Yes, other than those. A. Just around where Vic was working. That was where I went in. Around about that area.

Q. He was working west of the line? A. He had been working and had gone west.

Q. I am visualising that part of P.M.L. 1 included in the boundaries referred to in the written agreement. Do you follow me? A. Yes.

Q. You can ignore the area west of that line. The answer is, no, that you did not know nor had you been told of any areas other than those? A. No.

Q. You exhausted the old pits. It was getting more and more difficult to work the old pits and the area adjacent to the old pits? Am I right? A. That is right.

Q. You then proceeded, or the company proceeded, to spend a great deal of money looking over the rest of the area, everywhere except south of the creek? A. Yes, that is right.

Q. Was that only because of this gentleman's agreement to which you were not a party? A. That is right.

Q. That was the only reason? A. It had been mentioned to me and I tried to keep in with the others.

Q. That was the only reason? A. Yes.

Q. Furthermore, the company had decided to leave without even testing the one and only other area in respect of which you had been

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told there was magnesite? A. Yes, the company said it was not paying. I had not completed my testing. I had done all that area.

HIS HONOR: Q. You had not completed your testing? A. No, I was still testing. I had not crossed the creek to test.

Mr ST. JOHN: Q. There was no intention of crossing the creek at that stage, was there? A. It was a last resort. I went over there as a last resort.

Q. Had you told Mr Driscoll that you had that up your sleeve as a last resort? A. I could have by phone. I am not sure of that. I do not even remember discussing it with Mr Driscoll at all. 10

Q. You remember the time when Mr Driscoll was discussing closing down operations at Thaddungra? A. Yes.

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

Q. Would not it have been very natural for you to say "There is an area south of the creek in respect of which I have been told there was magnesite," if you believed yourself entitled to mine it? Would not that be the natural thing? A. Yes, it would be the natural thing. I possibly could have said it to him on the phone. I don't know. It was the last resort. I went over there and practically struck it with the first steel. 20

Q. Do you know the company during that first five months lost thousands of pounds in that area? A. No, the finances I am not aware of.

Q. Did you ever tell Mr Driscoll during that period when you were exploring the whole of the area north of the creek that the only thing that stopped you going south was a gentleman's agreement to which you were not a party? A. I could have mentioned it. I am not sure.

Q. Don't you think of all the things you might or might not have remembered, that is something which you should have remembered if it really did occur? A. Yes, but I don't remember. 30

Q. The fact that you were incurring a great deal of expense to no purpose and not exploring what appeared to be the promising area, all because of a gentleman's agreement of which you had been told? A. No one else had crossed that gully at all until I crossed it, as far as mining went.

Q. What about Beasley? A. I do not know about that. They put the hole down, but they had not gone on with it. I know of another company alongside of me that had put in test holes to the gully and had not crossed it until I crossed it, and they crossed it quite recently. 40

Q. Who is this? A. Non-Metallics, the adjoining lease to P.M.L. 1 on the eastern end of it.

Q. You have told us the only reason you can give for not crossing the creek up to that stage was the gentleman's agreement? A. That is right, it had been used for cultivation.

Q. You had no conversation with Vic? A. You mean with Logan?

Q. No, with Vic? A. What conversation?

Q. The conversation I put to you yesterday in which Vic told you you were not to go beyond the gully? A. I do not remember anything about that. Vic never said anything about the gully to me.

Q. I want that first statement noted: "I do not remember anything about that". A. I withdraw that.

Q. I want to take you to another passage at p. 146.

10 HIS HONOR: Just before that, Mr St. John, I would like to ask a question.

Q. Would you give me as near as you can the words that were used when you were told about the arrangement of not crossing the gully? A. When?

Q. Not the arrangement with you but what you had referred to as the gentleman's agreement. Would you tell me as close as you can what was said when that was first mentioned? A. Actually it was not mentioned to me. I just heard Mr Hughes and others saying that was the reason.

20 Q. Who said anything about it when you first heard about it? A. I think I heard Vic say it was an agreement amongst themselves not to cross the gully. I had heard it a couple of times, I know that. "It has been used for cultivation on the southern side and while ever we can stop on the northern side we will."

Q. Where the words "gentleman's agreement" referred to? A. I have an idea somebody mentioned it was a sort of gentleman's agreement.

30 Q. When you say somebody, who? A. I think it could have been Vic or anybody. I am not sure; it is a long while ago since I heard that. It could have been anybody.

Q. Who else? A. Most probably I think it would have been Vic.

Q. Who else, when you say it could have been anybody? A. It might have been Mr Caldwell. I am not sure. I just cannot tell you who actually said it, to be candid. I have a recollection of it being said.

Mr ST. JOHN: Q. Did you say that you are not sure that Vic told you? Did Vic tell you about it? A. About what?

40 Q. The gentleman's agreement? A. I am not sure, but I think it was Vic.

Q. I think yesterday in answer to my question you said at p. 124 quite clearly that Vic did say? A. I think it would have been Vic that would have said it in the first place, but it would be a long while ago before we crossed it that I heard it.

Q. May I take it at the time when this agreement of January was negotiated you yourself did not attach much importance to the

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question where your southern boundary was provided the old pits were comprehended in the area? A. I took it just as a line running south from the break in the fence.

Q. You did not attach much importance to where your southern boundary was provided you could move into the old pits? A. That was the area, I was told in the beginning was to keep on the eastern side of that line.

Q. I am putting to you you did not attach much importance to just where your southern boundary was? A. When we first went in?

Q. That is right? A. No, I went straight to the pit first thing. 10

Q. Even when it came to a question of fixing a boundary you were still not much concerned about the exact position of your southern boundary? A. No, it was never pegged out. It was just a line.

Q. I want to refer you to a passage at p. 146 that I do not quite understand. You were telling us about this conversation with Logan in which he told you that he had discussed the boundary with Vic and Vic said it did not much matter where the boundary was drawn; do you remember that? A. Yes.

Q. At p. 146 I said: "Q. Did you tell anyone about it before you said it in the witness box? A. I think I recall writing a letter—" 20 This is dealing with the conversation with Logan that I have just referred to. A. I said I think I recall telling Mr Hughes.

Q. "and mentioning it to Mr Hughes." A. That would not be right because I do not think I have written a letter to Mr Hughes in my life.

Q. It does not say "to Mr Hughes"; you think that has been misreported? A. I think it could be.

HIS HONOR: Q. "I think I recall mentioning it to Mr Hughes"? A. When I said that I meant Mr Hughes the barrister.

Mr ST. JOHN: Q. On p. 146, about the fourth question, as now 30 amended—perhaps I had better read the whole of this sequence. Half-way down:

"Q. Had Vic previously told you that he thought there was magnesite south of the creek at all? A. As I said before, there had been talk about it.

Q. Would that not be a reason for Logan's statement 'surprisingly'? A. No, I would not say that.

Q. Vic told you that Logan said that he asked Vic whether you should move south of the creek, and Vic said there was nothing there. Does not that surprise you? A. Well, no." 40

What I want to get clear is were you agreeing that Logan said that you asked Vic whether you should move south of the creek? A. No, I did not say that at all.

Q. You would not say that at all? A. No. When you referred to that yesterday I was referring to the lease in general and not to any specific portion of it.

Q. From what you later said I assume that was the case. You were not agreeing to what I put to you? A. No. That conversation was that Vic said to Logan, "It does not matter much about boundaries because there was nothing much there anyhow".

Q. Tell us what Logan told you he said to Vic and what Vic said to him? A. He said that he, Logan, had said to Vic "Do you think it is all right to give them that amount by the agreement?" and Vic said, "It does not matter much; there is nothing much in it anyhow", or words to that effect.

10 Q. That is your best recollection of it? A. Yes.

Q. I think you told us you could not recollect when it was said? A. No, I could not.

Q. Whether it was before January or before June? A. No. It could have been early or late. I would not have a clue when it was said.

Q. Do you remember when we broke up yesterday I was asking you about a conversation I put to you you had with Vic at the camp at a time when you had been listening to the wireless together? A. I remember you started.

20 Q. I had not quite finished that. I think the last question I was putting to you related to this: "You know Logan always wanted me to go to the crop; he was on my back a number of times." I will take it sentence by sentence. Half-way down p. 145: "Did you say 'Logan always wanted me to go into the crop; he was on my back'?" A. I never said that." Do you remember that? A. Yes.

Q. I would like to carry on from there. I had thought I put this other passage to you. I put to you that you went on to say to Vic on that occasion, "I always knew we could not go in there and could not work it, but when the company told me to go into the crop I was wondering how they came to tell me to go in." Was anything
30 like that said? A. No, never.

Q. "After they told me to go in I went and saw Logan and asked him how you would be about it, and Logan said, 'Vic does not care a dash where you go.'" I think it was after I put that to you you said something similar had occurred and told us about the conversation. A. The last paragraph recalled the conversation. Logan did say something similar to that up at his house.

Q. I go on "I know you don't admit anything like that was said. Vic expressed surprise and said, 'Don't you remember we walked on
40 the creek when we were fixing the boundary?'" This is a conversation between you and Vic as I put to you in January 1959? A. Who said what?

Q. Vic said to you, "Don't you remember we walked on the creek when we were fixing the boundary?" A. No, I don't remember that.

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Q. I put it to you you said, "I just cannot recall that"? A. I still cannot recall it either.

HIS HONOR: Q. Do you recall the conversation? A. No, I don't.

Q. You do not recalled the act of walking along the creek?
A. No.

Q. And you do not recall Vic suggesting that you had walked along the creek? A. No, I don't.

Mr ST. JOHN: Q. Do you follow the serial "Blue Hills" on the radio?
A. I have heard it but I have never followed it.

Q. Do you sometimes listen to it? A. No. If it is on the wireless I would not know it was on. I think that is a midday programme on the A.B.C. 10

Q. Does Vic ever listen to it to your knowledge? A. Not to my knowledge.

Q. I put it to you that actually was the programme that you had been listening to before this conversation took place? A. I never listened to it, so I could hardly imagine.

Q. You have never listened to it? A. I cannot recall ever having listened to it. I might have heard a patch of it occasionally on the wireless, travelling in the utility. 20

Q. I think you have told us you did have conversations from time to time with Vic, and it is not impossible that you could have had some such conversation as this? A. As I said yesterday, we did have a lot of conversations.

Q. What is that? A. As I said yesterday, we did have a few conversations.

Q. You have discussed this matter with him? A. Which matter.

Q. The matter that has given rise to this case, that has come up in conversation? A. Vic has come over. Yes, it has been mentioned a few times, I think. 30

Q. I will put some more of it to you. You cannot recollect any of it, but let us try. I put to you Vic said "You remember you put test cups in the creek with the dozer and later you bored them?"
A. I did bore in the creek.

Q. You still do not remember the conversation? A. No, I do not remember the conversation.

Q. I put it to you that you then replied, "Yes, that is right. When I went into the crop I did not know there was any contract then." Did you say that? A. That I did not know there was any contract? 40

Q. You did not know there was any contract then? A. I knew there was a contract. I could not have said that because I knew.

Q. "But I heard later that Logan had insisted that there be a contract"? A. I admit that Logan wanted the contract drawn up.

Q. Did you hear that later? A. Logan told me that when he

first went in. He said I will get Mr Gordon Guigni to draw a contract up.

Q. I put it to you you said "I know. I went to Guigni's office and Gordon Guigni told me that you had agreed to a 4/- cut in the royalty, and said 'I will get you to sign this paper.'"? A. I recall the first person to mention the figure it was reduced to was Mr Vic Hughes. He said on the mine at one time, "I think your royalty has been reduced to 6/-."

Q. Do you remember telling Mr Vic Hughes how this sequence of events occurred, how you came to sign the paper in Mr Guigni's office? A. No, I do not.

Q. I put it to you you said, "I saw Logan's signature on it and I also signed, and Gordon said to me, 'you can sign for the company.'"? A. Gordon said I was signing for the company, but I was the first to sign that.

HIS HONOR: Q. You are not being asked what happened or when you signed the agreement or what Mr Guigni said to you. You are being asked about what you said to Mr Hughes on some occasion at the mine when it is suggested that you were repeating what had happened. Can you keep that clear in your mind? A. I will try to.

Q. Don't worry about whether it is right or not, but simply whether the conversation took place. A. I did not want to say that to say that I saw Logan's signature on the contract. I know I signed it first.

Mr ST. JOHN: I think the witness is saying "because I know certain things I would not have taken part in the conversation."

Q. Did you say "I never read the document, never even glanced through it"? A. No, I did not. This is what I am supposed to have said to Vic?

Q. Yes? A. I did not say that at all.

Q. It is a fact in relation to the January agreement you did not really comprehend any of that? A. No, I just glanced over it.

Q. I think you told him at one stage you did not remember a word of what was in it? A. No, and I still do not remember a word that was in it except the little bit about the boundaries that interested me.

Q. I put it to you that you said, "I would not want a blooming contract for where we fixed the boundary; it would not be worthwhile; it was all worked ground"; is that correct? A. No.

Q. Do you remember Vic asking you whether you had told Logan where the boundary was to be? A. Would you repeat that?

Q. Did Vic ask you whether you had told Logan where the boundary was to be after you had discussed it with Vic? A. I would not have said that. Logan told me where the boundary was.

Q. You say he told you where the boundary was to be? A. Yes.

Q. I put it to you you said "No, I thought you must have; I did

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not know of any agreements at that stage, and I knew quite well we could not get into the crop, though Logan told me we could. Even after we were in the wheat I did not know we had any right to go there." Was anything like that said? A. No, I don't think so.

Q. You told us yesterday about a concrete floor which you say was put down for a hut on P.M.L. 1? A. Yes. Not on P.M.L. 1.

Q. It was on 15 or 16? A. Vic might tell you the lease. It would be 10 or 14.

Q. It was not on 1? A. No.

Q. I want to ask you about a conversation that I put to you you had with Mr Regan, the conversation you told us about yesterday, but I want to put to you something else was said. I think when Regan first asked you what you meant by being in the crop area you said, "It is all right, I have an arrangement."? A. Yes, we had an agreement. That was part of P.M.L. 1. We had an agreement to work that. 10

Q. Could you have used the word "arrangement"? A. I doubt it. I do not know. In my speech it could mean both.

Q. I put to you when you spoke to Mr Regan you described it as an arrangement? A. I thought I said we had an agreement to mine this part which is included in P.M.L. 1. 20

Q. Was any further detail gone into at that stage with him? A. We did have a bit of a talk. I cannot recall it. I remember talking about how far I would go to the west and about putting the stones down.

Q. The actual nature of the arrangement and the parties to it was not further discussed on that occasion. The agreement was the arrangement. I am not trying to tie you down. The actual nature and the parties to it was not discussed with Mr Regan? A. I do not think it was. I could not remember too much more about it. 30

Q. I put it to you when Vic first reproached you, whenever that may be, and we differ as to when that was—reproached you with going into the crop, you said much the same sort of thing to him in much the same vague sort of way, that there was an agreement or it could have been an arrangement whereby you were entitled to be in? A. I do remember saying "In our agreement there was nothing mentioned about stopping at the gully".

Q. I suppose you could have used the word "arrangement"? A. I think I would have said "Agreement". I thought of it as an agreement. 40

Q. You had realised by this time I suppose that the affairs of the lessees or the people entitled to the lease were conducted in an informal way as between themselves? A. Shortly after that I did because I knew from Mr Regan telling me that they had not held meetings or things like that.

Q. That they had no meetings? A. I think he said he called the first meeting they had ever held. I am not sure of that point.

Q. Were you attempting to sort of play one off against another?
A. Absolutely not.

Q. The only actual agreement that you could have had in mind was an agreement made with Logan; that is so, is not it? A. I meant the agreement with Mr Caldwell. I signed with him.

Q. Did you attempt to lead Regan and Vic to believe it was an agreement that had been made with the others, whoever the others
10 may be? A. I was only an employee, but I thought as I signed on behalf of the company he signed on behalf of the syndicate.

Q. You thought Logan did have authority from the others?
A. Yes, I thought so, from my dealings and taking the statement up to him and him asking me for them.

Q. Did Logan ever tell you he had authority? A. He did do bookwork for them or something like that.

Q. I want to ask you about your conversation with Frank. Do you remember in your conversation with Frank what Frank said to you, "Vic is not running this lease; I am"? A. Would you repeat
20 that?

Q. Did Frank say anything to this effect to you when you sought to rely on what you said had been agreed with Vic: Frank said, "Vic is not running this lease; I am."? (Objected to.)

Q. Do you remember Frank saying something to that effect? I will read to you the whole of what he is alleged to have said. "Vic is not running this lease; I am. I am not interested in what others do". Do you remember him saying something to that effect? A. No, I don't.

Q. Have you seen in the course of your mining on P.M.L. 1 any
30 chromite? A. Yes, I have seen a bit.

Q. Is chromite and magnesite often found mixed together?
A. They would not be far apart. I have seen chromite found very near to magnesite.

Q. They often are? A. I have seen a bit got nearby Vic, which was not far from where he was mining.

Q. At some points the two are mixed up together? A. I have picked a bit up in the stripping with magnesite underneath.

Q. You were only mining for magnesite? A. Yes.

Q. Any right to mine chromite was obviously retained, on any view of the matter, by the lessees? A. We were never interested in it.

Q. Is it the fact that the prices of both magnesite and chromite have fluctuated over the years? A. I don't know. I don't really know about the prices. I did not deal with that part of it at all.

Q. That is something that Mr Driscoll would be better able to explain? A. Yes.

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Q. Would you know that the price of magnesite has been gradually rising over a long period of time? A. I do know they got a 10/- a ton rise since I was up there.

Q. Since the war years there has been a rise, steady or unsteady? A. I could not tell you what they got during the war years.

Q. Do you know that the chromite has been worth a lot at times and then not very much? A. I do not know anything about chromite. I know they sent chromite away while I was there four years ago.

Q. Would you agree with me that at some points chromite 10 and magnesite are so mixed up together that it would be impracticable for one person to be mining magnesite alongside a person mining chromite in the same area? A. I have never seen deposits of chromite like that, not in the area I have been working.

Q. You have seen them side by side? A. I have seen little bits roughly that size in the stripping.

Q. Do you know that there are ample deposits of chromite on P.M.L. 1 or that they have been discovered? A. I have never heard of it. I have heard of it further up in the hill, there was a mine where they got it—not on P.M.L. 1. 20

Q. If you are mining magnesite I suppose very often if it were difficult to mine you might just turn it over and allow it to be buried under the spoil? A. Not deliberately. Anything goes through the drilling bath. There might be a certain proportion of that.

Q. Is some of it very difficult to get out? A. What do you mean by "to get out".

Q. To mine, to extract? A. I would not say so if you have plenty of air and gelignite.

Q. Is some easier than others? A. Some of it is easier to drill than others. Sometimes you can put a hole down in a couple of 30 hours and sometimes you could be a day almost in putting the hole down.

Q. If you wanted to get hold of as much magnesite as you could in a hurry, I suppose there might be a tendency to leave or cover up magnesite that was very difficult to extract; is that so? A. I do not think I have ever done that.

Q. You do not think you ever have? A. No. I have heard of it—

Q. Is it possible for anyone to carry out magnesite mining in a wasteful manner, merely taking the part that is easiest? A. I have 40 heard of that being done up there.

Q. The result of that might be, if it is carried out in that wasteful way, that the whole of the magnesite would not be extracted? A. It depends if you filled it up. I can tell you a story of that in other ways if I was allowed, but it might not be right for me to say it.

Q. I am not actually suggesting you did it. I am asking whether it is possible to carry the mining out in such a wasteful way that a lot is not extracted, but is simply buried again beneath the spoil because it is too difficult? A. That has not happened to me.

Q. I am not putting that. I am asking whether people do not sometimes conduct their mining in that sort of way? A. It could easily be done.

Q. Unless they are obliged in some way to do it otherwise? A. I could be done.

10 Q. And it is done by some people? A. It is not done that much up there that I see.

Q. It is done by some people, is all I asked you. Not by you, but it is done by some people? A. I could not say I have noticed it being done. The work up there has been done pretty well, I think, in my opinion, without waste.

Q. You have known it happening. I do not care whether it is Thaddungra or anywhere else. You have told us of mining being conducted in that wasteful way whereby a man takes out as much as he can as quickly as he can without going to too much trouble,
20 with the result that he leaves mineral behind? A. It is possible.

Q. Are you aware of the nature of mining leases generally under the Mining Act, or were you at the time of the January and June agreements? A. I am aware of the working of a mine. That is what I was interested in.

Q. You know the kind of lease the Mines Department grants and the kinds of conditions attached to it? A. Probably some of them.

Q. Labour conditions—you have heard about them? A. Yes.

Q. Obligations to pay royalties? A. Yes.

30 Q. Obligations to pay shire rates; you know that is cast on the lessees? A. I do not remember that. It could be. I have never heard of it.

Q. Payment of rent to the owner of the land? A. Yes, I think we have had to pay rental for the land ourselves—the company has.

Q. I suppose you have sometimes mined where Australian Blue Metal itself has been the lessee? A. Yes.

Q. So that you would have a general knowledge of the kind of thing that is required of you in a mining lease? A. I would know a little bit, but I probably would not be an authority.

40 Q. It would have been your obligation to comply with the terms of some of these leases? A. Yes.

Q. So that you would at least know something about it. You are familiar with the procedure whereby if a man does not comply with labour conditions his lease may be forfeited, even on the application of a stranger? A. No, I am not familiar with that. This is the first time I have really been in mining ground.

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Q. I may be wrong, but is not there a letter somewhere in which you were asked to see whether someone had not complied? Is not there a letter somewhere in the correspondence referring to labour conditions or someone's failure to comply with labour conditions? Perhaps you were not a party to that letter. I think there is a letter, but I am not sure whether you wrote it or received it.

Was your plant solely adapted for the mining of magnesite?
A. Yes, I would say so.

Q. It was not adapted for mining any other mineral? A. We were not after any other mineral. 10

Q. It was the kind of plant that could be used for other minerals? A. I suppose the excavator could be used for other things such as coal.

Q. We know there was at least one other mineral in that area, chromite. Do you know of any other? A. I have heard of a little bit of ironstone. There are a lot of little flakes of things you get up there.

Q. Anything of any value apart from magnesite and chromite to your knowledge? A. In quantities, I would not know; I don't think so. 20

Q. Your company is a company which carries on mining activities all over Australia? A. Quarrying activities.

Q. Not underground mining? A. No, it is more or less open cuts.

Q. For all kinds of minerals? A. Mostly blue metal. I am not aware of what the company does.

Q. It has various mining interests? A. I would not know. I know they are interested in blue metal and they have quarries in different parts of Australia, but for other minerals I would not know anything about them. 30

Q. And apart from P.M.L. 1 there were quite a number of leases which at various times have been worked—there were many other leases in that area which had been worked for magnesite and chromite? A. I know there were other areas which had been worked for magnesite. Chromite I am not interested in.

Q. Continuously for a long period to your knowledge there had been lots of leases in that area worked for magnesite; is that so?
A. Yes.

Q. You would not suggest that any of the work that was done by you on P.M.L. 1 would have been of any benefit to anyone else—40 to the mining lessees? A. How do you mean?

Q. You did not put up any permanent works or structures that would be of any use to anyone? A. On P.M.L. 1?

Q. Yes? A. No, I put nothing up on P.M.L. 1 at all.

Q. The only work you did was for the purpose of getting magnesite out for your own purposes? A. Yes.

Q. Do not answer this question until Mr Hughes has a chance to object to it. I am not going to ask you about the detail of any alleged settlement in negotiations, but do you know that there were settlement negotiations proceeding during the period August/September 1957? (Objected to.)

(Further hearing adjourned to 10 a.m., Wednesday, 22nd February, 1961.)

Sixth Day: Wednesday, 22nd February, 1961.

HIS HONOR: You were dealing with a question when he adjourned
10 yesterday, Mr St. John.

Mr ST. JOHN: I have got a few authorities together. I do not know whether it would be convenient to debate this matter now or whether Your Honor would prefer to adopt the course Your Honor suggested when you left the bench. (Discussion ensued—Mr St. John addresses on “Ratification by Conduct”.)

(In the course of his address Mr St. John referred to the following:—

Taylor v. Smith—38 C.L.R. p. 48 at pp. 59-60. 8 Chancery Division—286 at 313-4.

20 **Jones v. Foxhall**—15 Bevan—388, Vol. 51 of the reprints at 588.

Williams v. Thomas—2 Drury and Smail, p. 29—62 reprints at 532.

Walker v. Wilsher—23 Q.B. Division at 335.)

Mr ISAACS: It is my interest to support my learned friend Mr Hughes’ objection to the admissibility of the evidence. I want to indicate my objection as well.

(Mr Isaacs addresses on “Ratification” and refers to the following:—

Re **Daintree**—circa 1892.

30 **Phipson**, p. 233 under the heading “Offers Without Prejudice”, from “Moreover it is now said that . . . delay”.)

(Mr Larkins states Exhibit BG will show dates of payments—Mr Isaacs continues to address.)

(Mr Hughes addresses Court on “Ratification”.)

(In the course of his address Mr Hughes refers to p. 190 of the transcript, also Exhibit BG in particular to two payments, one of £277/17/3 credited to the account on 19th August 1957, and the immediately succeeding payment of £446/16/-. Also refers to deposit slips and answers to Interrogatories No. 33, 34 and 36 in Exhibit M.

40 Chapter 1061 in Wigmore—Vol. 4.)

(Mr Isaacs addresses Court on laches.)

(Mr St. John in reply seeks to refer to certain dates commencing 9th August . . .)

MR. HUGHES: We will object to Mr St. John stating any facts

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which he is not going to undertake to prove by evidence; or if he indicates that I will not want that undertaking.

(Mr St. John continues to address. Refers to an event that occurred on the 14th August, also 19th August, and also to events that occurred between 2nd and 11th September, particularly in reference to a deposit on the 19th September.)

HIS HONOR: I think the question as framed is too wide in any event and you should indicate that you will narrow the question to certain dates.

Mr ST. JOHN: That is so. 10

HIS HONOR: They are in reference to events in September.

Mr ST. JOHN: Yes, and those are the dates. When we come to the question of ratification I will be asking Your Honor to consider all the circumstances very broadly, including the fact that there had been an oral agreement . . . (Continues to address).

(Mr Hughes asks for access to Exhibit BX.)

(Mr St. John asks for access to Exhibit BR.)

(Mr Hughes refers to letter dated 15th August, 1957, from the plaintiff to Hughes and Caldwell care of L. H. Caldwell—read. Also refers to letter dated 13th September—read.) 20

(Mr St. John continues to address.)

(Mr Hughes addresses on the facts covered by Mr St. John, in particular in regard to dates mentioned by Mr St. John, during which negotiations are alleged to have subsisted.)

(Short Adjournment)

HIS HONOR: It seems to me I cannot determine this question without determining the whole nature of "Ratification". I tried to have a look at it in a short time but obviously it has features of complexity which will no doubt need considerable elaboration, and it seems to me it does appear admissibility in this connection does take into account the 30 fact that, without being "without prejudice", negotiations or anything like that, it simply turns on whether it is relevant at all to the issue of ratification, and I am not satisfied at this stage that it is so relevant.

So, I do not propose to allow the evidence at this stage on this understanding, Mr Hughes, otherwise I will adjourn to argue the whole question of the doctrine of ratification immediately everybody feels that they are fully ready to do so. But if, on examination of the question of ratification it does appear that a circumstance of this nature is relevant, are you agreeable that it should be noted as to the dates during which these negotiations went on. 40

Mr HUGHES: Yes, Your Honor, subject to this, that I wish to reserve the right to re-consider the position that might result from the admission of that fact, and re-consider whether we should adduce evidence to show what negotiations were made if it left open.

HIS HONOR: What do you say, Mr St. John, that it be agreed that the matter be re-opened further even during the course of addresses. It

means, as Mr Hughes points out, that there may be other evidence and it may be necessary to go into the exact nature of it.

Mr ST. JOHN: I fully agree. I think that Your Honor expressly ruled it may not be inadmissible. I would suggest that none the less, it should be left open.

HIS HONOR: This matter may be re-opened for further evidence on that point if, when the matter of ratification has been argued, I determine that it is relevant to that issue. It is not a course I like very much but I do not want the case going on with cross-examination
 10 as to these factors which might turn out to be wholly irrelevant.

Mr ST. JOHN: There may be no real dispute as on the dates.

HIS HONOR: It depends how far the evidence went.

Mr ST. JOHN: Yes.

HIS HONOR: That is what I propose to do because I do not wish to make a determination on this question of ratification now. I could by no means satisfy myself in a short time that it would be relevant to that.

Mr ST. JOHN: Of course there are other facts too.

HIS HONOR: So I will reject the question at this stage.

20 Mr ISAACS: I take it the same reservations Your Honor gives Mr Hughes are available to me also.

HIS HONOR: Yes.

Mr ST. JOHN: Does Your Honor intend that the motion should be taken now or by way of undertaking at a later stage.

HIS HONOR: I will not ask for anything at this stage. I do not think I can ask for any final agreement or arrangement on that matter. I merely indicate that the particular circumstances may necessitate a rather unsatisfactory course of re-opening the evidence during the course of addresses on that point, but on that point only. I think it is
 30 the best course in the circumstances.

THOMAS ERNEST BUCKLEY:

On former oath:

Mr. ST. JOHN: Q. Mr. Buckley, we have made mention from time to time of Mr Driscoll, the Secretary of the Company. Just for the record he is still secretary of the company is he? A. Yes.

Q. And at present in Sydney? A. I think so.

Q. And one last question. Do you remember I asked you yesterday had you been prospecting on other leases other than P.M.L. 1? A. Yes.

40 Q. Would you agree with me if you had in fact found good magnesite on some other lease prior to your discovery of magnesite or your opening up of magnesite south of the creek in June, you would have moved your plant off to that other location. (Objected to.)

HIS HONOR: You mean leases under the control of Australian Blue Metal.

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Mr ST. JOHN: Yes, or two leases to which they could get access.

HIS HONOR: I do not know that I will allow it as widely as that because it goes beyond the competence of this witness. It does appear in evidence that he was the one who determined where the mining went on.

Mr HUGHES: The basis of the objection is not that it is a hypothetical question. The question of what he would have done in particular circumstances in my submission has no relevance on the issue of an agreement . . . (continues to address.)

HIS HONOR: I think it is relevant as a question that goes to the testing of the witness on the initial conversations in regard to crossing the gully. 10

Mr HUGHES: I do not want to canvass Your Honor's ruling but Your Honor suggested it was admissible on credit and may I respectfully submit that an hypothetical question cannot really go to credit . . . (continues to address—question allowed).

Mr ST. JOHN: Q. Mr. Buckley, you have told us that you were in fact looking around for some better yield of magnesite than you were able to get from P.M.L. 1 during the period prior to June, were you not? A. Yes, I was doing that. 20

Q. If you had found it you would have regarded yourself—it was your intention to move off to it—to leave P.M.L. 1 and to move to that better yield—if you could find it. A. I think myself provided it was found on P.M.L. 1.

Q. The same if it was found off it? A. Yes, the same thing.

Q. It was your intention to leave P.M.L. 1 only if you could find a better yield of magnesite somewhere else. A. If I could find any better than where I was.

Q. Better than where you were? A. Yes.

Mr ISAACS: Q. I only want to clear up a couple of matters with 30 you. In the set up up there at P.M.L. 1 there was the company on one side and a number of people, the Hughes and Caldwell group, I use that as a neutral phrase for the moment, on the other hand. Is that the way in which you saw the situation? A. Yes, that is the way I saw it, yes.

Q. So far as Australian Blue Metal was concerned, were you representing the Blue Metal company there? A. I was their manager there.

Q. So far as the other group of persons was concerned, did you regard any one of that group of persons as representing all the 40 persons . . . (objected to by Mr St. John—question allowed).

Q. Did you regard any one of this other group as representing the entire group? A. I did.

Q. Who was that? A. I regarded Mr Logan Caldwell.

Q. From start to finish? A. Very shortly after I began the first negotiations.

Q. You did say I think in your evidence when you were being asked by Mr Hughes about when you used to visit Mr Logan Caldwell at his home and take the cheques, the royalty cheques up to him there—is that correct? A. That is correct.

Q. And you did say that Vic Hughes was working on the field adjacent to where these operations were going on? A. That is right.

Q. Now, did you speak to Mr Vic Hughes at all from time to time about these cheques you were taking up to Logan? A. Well, let me put it this way—I only took one cheque up there, as far as cheques went. Do you mean money or documents?

Q. Take the cheques first. Did you discuss with Logan at any time, or did he ask you at any time, about what the amount of the cheque was, or anything? A. No.

Q. I said, “Logan” when I meant “Victor”. Have you discussed with Victor Hughes at any time, or did he ask you any questions at any time about any of the royalty cheques that were going to Logan on any other occasion, either when you took that cheque up or not? A. Nothing was discussed with me and Victor Hughes on those 20 grounds.

Q. Did you discuss with Logan the question of weights and quantities, and so forth? A. That is right.

Q. Did you have similar talks with Mr Vic Hughes about those matters? A. I could have mentioned I was asked to do it, but I don’t remember.

Q. I think you said in one of the conversations—I think it was the conversation of the 7th March—no, August—that is the one when Victor Hughes was a bit upset. The question reads: “Do you remember saying that you went to see Frank Hughes at his house”? A. That is right.

Q. And that you said that Frank Hughes said: “Logan says he rang me up. I don’t remember it. Logan is a pretty old dodderer”. A. Words to that effect, “he is a pretty forgetful old dodderer”.

Q. In your dealings and discussions with Logan did you find him an old dodderer? A. No, I have not.

Q. Would it be correct to say that he was an astute business man? A. I think he was very astute. He checked everything I gave him. He even found fault.

Q. He would check and find faults when he thought weights and quantities were not right he told you so. A. Yes.

Q. He kept records did he which he showed you. A. Yes, he kept records. He kept a book of records in fact.

Q. Did you find him always—if I may use a colloquial phase—on the ball? A. As far as our quantities were concerned, he was. As far as I was concerned he was on the ball.

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Q. And far from "dodderly"? A. I would say far from dodderly.

Q. When you visited him at his house was there some special room you used to be shown into? A. Mostly there was.

Q. Was that a room where he had a desk? A. Yes, and a bed in it. There was a desk and a bed in it.

Q. Did you see that he kept books in drawers of the desk. Did you see him put books in, of records? A. Yes, I saw him do that.

Q. Have you ever seen him in your presence refer to these entries and make entries in those books? A. I saw him refer to entry, to correspondence or something like that, that he got from head office once. 10.

Q. (Calls for Exhibits BN to BV.) I show you three books marked BN, BQ and BR. Did you see books of that type? A. I saw books of that type.

Q. Being used by Logan on the occasion when you went to his house? A. I did see him use it once or twice when he checked my records.

Q. And made notes. A. He often showed me discrepancies.

Q. When he showed you discrepancies did he refer to books similar to the ones I have got here, and show you that there were discrepancies? A. They looked similar. 20

Q. Did you discuss with him from time to time any entries that he made in his books in relation to this? A. I would not be sure of that now.

Q. I am not asking you did you see the specific books, but you say that he had books like this. A. Yes. There was a ledger like that one (indicating) and there was an exercise book like that (indicating).

Q. When you say that you had discussions with him about discrepancies, did he refer to books of that kind? A. Yes, he did. 30

Q. He opened them? A. Yes.

Q. And then you had a look at them? A. He would show me the books and discrepancies of weights and trucks.

Q. Those books that he showed to you, would they be written up in handwriting? A. Yes, in his handwriting.

Q. Did you see some other small notebook that he had. Did you see some other small notebook used by Logan? A. I would not be sure of that.

Q. Either at his house or anywhere on the field? A. I do not think I have ever seen it on the field. 40

Q. Will you have a look at this book I show you. It is called "Goldsborough Notebook". Did you see him have or produce a book of that sort? A. I could not swear to that now.

Q. Would you just look at the writing in it. Can you say that the writing is Logan's writing? A. It looks very similar.

Q. It looks very similar to it? A. Yes.

(Book M.F.I. 7.)

Q. In answer to Mr St. John at page 142 of the transcript, Mr St. John asked you this, "Q. You were saying that it turned out all right that the magnesite turned out all right". And your answer was, "A. It turned out all right by the 19th June". Did it continue to be all right after that date? A. This is in the mining operations?

10 Q. Yes. A. Yes. It got better after that.

Mr ST. JOHN Q: (By leave): You told Mr Isaacs that you regarded Mr Logan Caldwell as representing the Hughes and Caldwell group?

A. Yes, I looked on him in that light.

Q. Did you have any reason to regard him in that way apart from what you have already told us in evidence? A. Well, in this way, that he wanted copies of things taken or given to him.

Q. You have told us that already have you not? A. Yes.

Q. I want to know whether you had any reason to regard him as a representative, apart from what you have told us already. Can
20 you ransack your mind and tell us any fact that you have not told us about already which would justify you in regarding him as representing other parties. A. I can remember one, because of the way he came out, and when he asked me in the field how I was going. I had a talk with him. He said, "Well, I will leave you now, and I will go down and have a yarn and see how Vic's going", "how things are going", and went off down to the other end of the field.

Q. You are not suggesting that conversation led you to regard him as representing the other parties? A. Not just what he said, no... (objected to).

30 Q. Did that help you decide, come to the conclusion that he represented other parties—that little conversation? A. Well, I think he came and asked me how I was going and how things were going. He went down to see Vic—"I'll go down and see how Vic's going"—that comment, and he was interested in going down.

Q. Vic did the same sort of thing. Lots of people asked you how you were going. A. Yes, I suppose a lot of them did.

Q. Was there anything else. Anything that will help you regard him as representing other parties, apart from what you have told us in evidence already. A. His manner when he said to me—when he
40 told me, when I was up at the house, as I said before, that he had that book to work on and kept all the records. He had a list of books there that I think were like those just shown me.

Q. I want to know was there anything else that you have not told me. A. I don't think so, apart from my evidence. Not at the moment. I can't think of anything.

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Mr HUGHES: Q. Did Mr Caldwell come down to the field, to P.M.L. 1 from time to time other than on those occasions about which you have told us, on which the conversation occurred with him or a conversation occurred with him? A. Yes, I think he was out there at that time to speak to me.

Q. Did he ever take part in the physical operations on the field? A. How do you mean "physically"?

Q. Mining operations. Did he ever actually participate in mining work on the field? A. No, he would get out of the car, have a look 10 around, have a talk and get in his car and go.

Q. You told my learned friend Mr Isaacs that after 19th June the field, that is the magnesite field, got better. Do you remember saying that? A. That is right.

Q. What was the position at about 7th August when Vic, according to your earlier evidence made a claim to you that you should not be over south of the gully? A. You mean the position of the works in the field?

Q. Yes, the workings. A. He was from time to time in the field. It would keep me going up to 80, 90 or 100 tons a day. 20

Q. What was the quality of the mineral like at that stage when Vic Hughes first voiced his complaint? A. Very good.

Q. How would you describe the quality of the mineral at that stage compared with the quality of it when you first opened up the pit? A. There was not that much difference in quality. It could have been a little better but there was a lot more quantity.

Q. To what extent did the area of your pit widen—down to what depth. Can you recall between the time you first opened it up and the time when Vic Hughes first voiced his complaint. A. I think I was down approximately 12-15 feet. It was wide enough for me to 30 work comfortably with three trucks side by side.

Q. That is when he voiced his complaint. A. Yes.

Q. Was it right down into the pit at that stage? A. Yes. A couple of months. I had a road down . . . (objected to by Mr St. John).

Q. Mr. Buckley, you referred during the course of your cross-examination by Mr St. John to a blue exercise book which I think was a document you brought along to Court in response to a subpoena. It was served upon you on behalf of some of the defendants. A. Yes.

Q. What is the nature of that book? A. The nature of the 40 book was for my own benefit to attempt to estimate how much stone I was getting out and putting on the ground so that I would know how many trucks I should order during the week when it came to railing. There was no actual weight limit. It was only my estimates.

Q. Was that book kept by you as a day by day record during the period it covers? A. Yes, it was.

(Mr St. John objects—discussion—question allowed.)

Q. Now it was put to you in cross-examination by Mr St. John that Mr Vic Hughes voiced a complaint about the position in which you were operating at the same time practically as those operations south of the gully commenced. Do you remember that? A. Just put that again?

Q. Do you remember my learned friend Mr St. John cross-examining you and suggesting to you that Mr Vic Hughes complained about your operations south of the gully practically as soon as you

10 started. A. Yes, I remember that.

Q. You remember that? A. Yes, I denied it.

Q. And you denied it? A. Yes.

Q. Had such a complaint been voiced earlier than when you say it was—that is in August, would you have taken any course of action? A. I think if it had been voiced immediately I would have looked into it before I started it. I would not have started without checking with everybody if it had been voiced straightaway.

Q. Would you have done anything else? (Objected to—question rejected—withdrawn.)

20 Q. If anything happened on the field which you regarded as important from the Company's point of view, did you ever . . . (objected to—question allowed).

Q. If anything happened on the field which you regarded as important from the Company's point of view, did you do anything? A. I generally wrote a letter or if I didn't I waited until I rang up.

Q. When this complaint was voiced by Mr Vic Hughes can you say whether or not you regarded it as being of any consequence? A. I did.

30 Q. And did you do anything about it? A. I wrote a letter about it.

Q. (Calls for documents M.F.I. 4 and 5.) I show you these documents—this document marked No. 5. Have you read that document Mr. Buckley? (Witness appears to read document.) A. Yes.

Q. Can you say whether or not prior to writing that document you in any way reported to the company that Mr Vic Hughes was complaining about the site in which you were operating? A. I phoned.

40 Q. When, in relation to the phone call, was the letter posted? when I posted that letter.

Q. You posted the letter and then you telephoned? A. Yes.

Q. Can you say when, in relation to the date of the letter, it was posted (sic). (No answer.)

Q. When, in relation to the phone call, was the letter posted? Was it the same visit to town? A. I think it would be.

Q. Prior to telephoning and writing that letter, did you report

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to the head office of the company that Mr Vic Hughes was complaining about the position in which you were operating south of the gully . . . (objected to—argument ensued—question rejected).

Mr HUGHES: I tender that document—letter dated 7th August M.F.I. 5—

Mr ST. JOHN: I would object to that document also. (Discussion ensued.)

(Luncheon Adjournment.)

AT 2 P.M.

Mr HUGHES: I now tender the letter on the basis that it is admissible 10 under s. 14 (b) of the Evidence Act.

Mr ST. JOHN: With Your Honor's permission I seek to ask some questions on the voir dire, re s. 14 (b) (iii).

ON THE VOIR DIRE

Cross-
Examination
on the
voir dire.
—

Mr ST. JOHN: Q. Mr. Buckley, I think you have told us already Vic came to see you on the 6th, and on the 7th when he came he was really upset. A. That is correct.

Q. And made a strong protest. A. That is right.

Q. When you recorded that to head office, did you think then that some legal proceedings might result from it? A. Not at that 20 time.

Q. You did not? A. No.

Mr ST. JOHN: I do not press the objection (voir dire concluded).

HIS HONOR: I will admit it.

(Exhibit CA—M.F.I. 5, letter dated 7th August, 1957.)

(Mr Hughes reads Exhibit CA.)

Re-examination.
(Continued)

Mr HUGHES: I now tender the document that has been m.f.i. 4, which is a letter of the 6th August from this witness to Mr. Driscoll.

(Letter read in part.)

(Exhibit CB letter dated 6th August from witness to Mr. Driscoll.) 30

Mr HUGHES: Q. Now, you were asked something by my learned friend Mr St. John, about the time it would take to remove your equipment from the site after the mining operations closed down. Do you remember being asked something about that? A. Yes.

Q. I think you made reference to the necessity of having a Low Loader to remove certain equipment. Do you remember that? A. Yes, if you were to take it away.

Q. If you were going to take it away. A. Yes.

Q. Take August or thereabouts of 1957. Was there a Low Loader readily available to you at that time? A. Not there. 40

Q. What would you have had to do to get one? A. I would have to ring up the company to send one up.

Q. From where? A. From St. Marys.

Q. Would there be any other things apart from loading the equipment and transporting it from the site, which would have to be

attended to if you were ceasing operations, before you could go?
A. You would have to shift away from the area.

Q. And shut down operations on P.M.L. 1 and move out of the area? (No answer.)

Q. Apart from loading and taking away the equipment would you have to do any other things in relation to cessation of operations, if you were going to shut down on P.M.L. 1? A. Well, would I have to fill in my holes or anything like that?

Q. Yes, would that take time? A. Yes, that would take time.
10 I can shift plant as I agreed in 24 hours, but if I had to fill holes in and to make batters as required, it would take longer.

Q. You refer to batters. What do you mean by "batters"? A. You have to heap the walls up roughly three and one in case of accident so nobody can fall over, like a cliff. It is a grading.

Q. Would you explain what a three in one batter is? A. Every three feet drop you go out a foot. That is how I would imagine like an angle on a hill.

Q. Take the position that obtained at the time my learned friend was asking you about when you saw him you would have ceased
20 operations. Take the position that existed on P.M.L. 1 in August.
A. I would have to batter the present pit that I am working in.

Q. The pit you are actually working at that time? A. Yes, and if I had to fill in all the holes bar the last one, I would have to fill up the previous hole.

HIS HONOR: Q. The previous hole or the previous holes? A. There were little ones which I didn't think would matter. There was one big hole which was left.

Mr HUGHES: Q. Having regard to the size of the pit as it was in August, would it be a short job or otherwise, battering the pit you
30 were then working in? A. I had been in two months practically so it would be I suppose with a bulldozer and ripper—it might take a couple of days to batter that one.

Q. So far as filling in the holes was concerned, would there be enough earth on the site? A. There would be some but there would not be enough to fill the one I left. But I left that to extend the mine. I think there was an agreement between the Hughes and I that somebody might work that hole again.

Q. Which one are you referring to? A. The one I went out of across the creek.

Q. You said an agreement between you and Mr. Hughes? A. Yes, Mr. Vic. It was said that one of us might eventually go back in it.

Q. In August 1957 can you recall approximately how many men you had employed there? A. There would be I think—I am not sure—that is a long way to go back—I think there would be at least 7 on wages besides the truck driver on the truck.

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Q. Later in the year, say in the month of October/November, how many men did you have employed? A. After that? (Objected to.)

Q. How many men approximately were employed in the field in October or November? A. In 1957?

Q. Yes. A. It could be around about the same. It may have been one or two more. I just forget now. I could not remember now.

Q. In October or November how did the size of the pit you were working compare with its size as in August? A. It was much larger. 10

Q. Could you give any approximation as to how much longer it would have taken to fill that in at this time in October/November? A. That is the present pit I am working in?

Q. The pit you were working at the time, in October/November, 1957. A. That would be the last pit. I would have to batter it, would not I?

Q. Yes, you would have to batter it? A. It would probably take a bit of extra time. It might take another half day or a day longer to batter.

Q. You may have mentioned before—what equipment would you use to do the battering—you said a bulldozer? A. And the ripper—I would have to loosen the top down to pull it over. 20

Q. Are the bulldozer and the ripper pieces of equipment that would have to be taken away with some form of transport? A. They travel the same as the navvy, on a low loader.

Q. You mentioned in the course of your cross-examination by Mr St. John that at times you had as much as a 1,000 tons of magnesite stock-piled on the ground. A. I think it might be somewhere near it. I would not say there was exactly a 1,000 tons. There was—at times there was a lot of magnesite which could have run into 100's. 30

Q. In the order of what tonnage, according to your estimates? A. It would go up to six, seven, 800—maybe more.

Q. That was the situation at times, was it? A. Yes.

Q. If you had that sort of tonnage on the ground and you wanted to cease operations on that lease, what would you want to do with the magnesite on the ground? A. If I had to shift it, I suppose I would want to rail it.

Q. Can you say anything as to the availability of railway trucks at the time in the latter half of 1957. Were they always available or sometimes not? A. There is a shortage of trucks occasionally. At times you get what you order but there have been times when there is a shortage. You could not always get what you order. 40

Q. When you did rail the magnesite, how far does it have to be taken down to Weedallion Siding? A. Approximately 8 miles.

Q. And it is taken there in these trucks you mentioned earlier in your evidence? A. In hired trucks.

Q. When did you usually do your loading? A. Well, at that period we were riling on weekdays, but prior to being over there we used to rail only on weekends. I built a ramp and we were using that at the time you were talking about now—October, November.

Q. The latter half of 1957 when you were working south of the gully, we are talking about. A. I was riling every day when I could get trucks. I had plant to load the stone myself.

Q. Is that an area up there—is there any wheat country in the district? A. Yes, it is a wheat and wool district.

10 Q. When do they harvest their wheat up there, generally speaking? A. Wheat is generally harvested anywhere in December on.

Q. When you railed the magnesite, given good weather, in good weather conditions, what quantity could be moved from the site of operations—that is on P.M.L. 1—to the siding in a day? (Objected to.)

20 Q. I think I was asking you this; when you were riling—when you railed magnesite from this lease from the stockpile of the order that you mentioned from 7 to 800 tons, how much were you able to get away in a day under good weather conditions? A. That would depend on when we were riling. If I railed during weekdays the other pits were working, I would only have two trucks available over there. We employed our own carriers to rail.

Q. How much could one of the trucks move in a day? (No answer.)

Q. How much could one of the trucks that were available rail in a day? A. From 7 to 8 loads in a day.

Q. How many tons were there in a load, roughly speaking? A. I don't like being involved in this either, Your Honor, but there are different railway trucks.

30 Q. How many loads in the trucks? A. One truck is 15 tons. One will hold 25 and another will hold 40—that is G.K. and T. If I get a K. it would take 3 vehicle loads to a truck, or about 8 tons 7 (cwt.) per load. Something like that in round figures. That would give you 25 tons.

Q. Say the vehicle loaded was in the order of 8 tons? A. Yes, you would average 8 tons for a truck. You would be overloading otherwise. You would have to throw some off, and we have done that.

40 Q. In your experience how many trips to and from the siding from P.M.L. 1 could a vehicle such as was used to carry these loads to rail, make; how many trips a day on ordinary days? A. On ordinary days I think 8 loads would be a good day.

Q. How is the availability of vehicles for moving the loads determined? A. I am presuming two pits are working. I would only have my own hired trucks and if it came to a Saturday or a Sunday that I worked, possibly I could get trucks of other contractors that

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they were not using, which would give me possibly another two or three trucks.

Q. What was the maximum number of trucks that you have had available on railway day for railing for the purpose of carrying loads of magnesite to the siding? A. On a week day or . . . ?

Q. On a week day first of all? A. Two trucks at a time.

Q. Two trucks? A. Yes.

Q. Because the others were used . . . ? A. In the other businesses.

Q. If those other trucks had been available? A. They were always pleased to get a few bob by working for somebody else. 10

Q. Mr Lark? A. Not Mr Lark. He was our own carrier. There was a chap named Hardie.

Q. Then, were there any other factors that had to be looked after, was there any other situation that had to be looked after or attended to, if you were to cease operations and leave the area? A. I suppose we would have to dismantle the toolsheds, the store sheds, pull them down and load them. The magazine and other stuff as I have discussed before.

Q. You said of course in your cross-examination that if you had found magnesite, this was today, outside P.M.L. 1, you might, or 20 would have, left. Do you remember something like that being said? A. I do remember something like that.

Q. Would the decision to leave and mine somewhere else depend on various factors? A. Yes, I suppose that would depend on what I was getting where I was. I would not leave if I was getting sufficient there.

Q. Would it depend on other factors, such as the availability of the land from the point of view of the owners or lessees? A. Yes, that would come into it, if I could have found it.

Q. Was the company lessee as far as you know of any leases 30 other than 15 and 16? A. I think there was another lease. I could not tell you what it was without looking at the map.

Q. What was the position in regard to the other lease? Was it worked out or otherwise? A. I could find nothing in it.

Q. What was the position regarding 15 and 16? A. You could not work them because they were uneconomical to run. They were uneconomical to work. You could see they were practically worked out.

(Witness retired.)

(On Mr Hughes application Mr Buckley was permitted to leave for the rest of today. He was notified by His Honor that he may be 40 required at any time.)

Plaintiff's
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Robert Mitchell
Driscoll.
Examination.

ROBERT MITCHELL DRISCOLL

Sworn, examined, deposed:

Mr LARKINS: Q. What is your full name Mr Driscoll? A. Robert Mitchell Driscoll.

- Q. Where do you live? A. 31 Grove Street, Eastwood.
- Q. You are secretary of Australian Blue Metal Limited? A. That is right.
- Q. The plaintiff in this suit? A. That is right.
- Q. Apart from the time when Mr Buckley was giving his evidence and sometime when you were engaged gathering documents in answer to a subpoena, you have been present in Court? A. That is so.
- Q. When did you enter the service of the plaintiff company? A. In 1946.
- 10 Q. In the capacity of accountant? A. As accountant.
- Q. In 1952 you were appointed to your present position as Secretary? A. That's right.
- Q. The plaintiff company was incorporated as a public company in November, 1951 was it not? A. That is right.
- Q. And the company then acquired the interests of a partnership which had operated under the name Australian Blue Metal Company? A. That is right.
- Q. (Asks for Exhibit P): Would you have a look at that document. Just look at the parties on the front page. Are the six members
20 of the O'Neil family who are recited as partners—were they then members of the Australian Blue Metal Company? A. Yes.
- Q. I think another brother Laurence Charles O'Neil was not a member of the partnership as he was then under age. A. That is right.
- Q. Australian Blue Metal Company carried on business as quarrymasters and motor truck distributors. A. That is right.
- Q. What, in the main, was their business? A. That of quarrying rock. Then it was magnesite, they had workings down at Young. They had been in the motor truck distribution business but that was
30 the main business there. There had also been a coalmine at Wallerawang earlier on.
- Q. Where were their quarries situated? A. The main quarry in New South Wales was St. Marys near Penrith. There was a quarry at Broken Hill and there would be at least one, maybe two quarries, in Western Australia. The main one was at Goswells near Perth.
- Q. I think they had also carried on certain coal mining activities at Wallerawang? A. Yes.
- Q. You were not employed by the partnership at the time of the agreement Exhibit P being entered into? A. That is so.
- 40 Q. But you understand they did carry on mining under that agreement and those operations ceased in about 1944. A. I believe so.
- Q. What was the date you became employed? A. 1946.
- Q. From 1944 until 1955 they did not carry on any operations in that district in Theaddungra. A. Not from the time they ceased operations, about that time, no sir.

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15 Q. Did the company have two mining leases in respect of P.M.L. and P.M.L. 16? A. That is so.

Q. They were lessees from the Crown in respect of those leases?
A. That is right.

Q. In 1955 was certain action taken against the Company by the Young Mining Company for non-performance of labour conditions?
A. Yes.

Q. In respect of those two leases? A. That is so.

Q. And at the hearing early in 1956 did the Company then give undertakings to recommence mining operations? A. It did. 10

Q. On those undertakings being given no action was taken for cancellation of the leases. A. That is right.

Q. So that they did in February 1956—did the Company—negotiate for the supply of magnesite to the B.H.P. Limited? A. Yes, it did.

Q. And in February 1956 did you receive an order from the B.H.P. Company Limited under which you operated from time to time? A. That is right.

(Mr Larkins calls for two files of documents produced from the B.H.P.) 20

Q. Would you have a look at this document? Is that an order that was received by your Company in February, 1956? A. It is.

Q. That has been produced from the document produced by you in answer to a subpoena? A. Yes.

HIS HONOR: Not from the B.H.P. file.

Mr LARKINS: No, Your Honor.

(Exhibit CC—letter dated 30th February, 1956 from the B.H.P. Company Limited to the plaintiff company, enclosing Order No. 0996.)

Mr LARKINS: Q. In April 1956 was that order amended by an additional clause? A. It was. 30

Q. Will you have a look at that (shown).

(Amendment to Order No. 0996, dated April 1956, tendered without objection and marked Exhibit CD.)

Q. When did you commence operations in the Theaddungra District? A. The first sales were made I think on 12th April 1956.

Q. From the commencement of operations did you supply the magnesite won at the Theaddungra exclusively to the Broken Hill Proprietary Company? A. Yes.

Q. In terms of order No. 0996 as amended? A. That is right.

Q. What was the position as to trading for the six months ended 30th June, 1956? A. Actually we did not trade for the full six months ended 30th June, 1956.

Q. For the six months ended 31st December, 1956. A. From the 1st July 1956, to the 31st December 1956 the company showed a loss of £1295 I think the figure was.

Q. I think the balance sheet for that period has been produced on subpoena? A. Yes.

HIS HONOR: Q. That is on trading at Theaddungra? A. Yes.

Q. Is that with depreciation? A. No, there is no depreciation in that at all.

Mr LARKINS: Q. Have a look at that document (shown). Is that a copy of the audited balance sheet for the half year ended 31st December, 1956? A. That is a copy of the account. The actual audited balance sheet is still there.

10 (Copy of Young Trading Account to December 1956 tendered without objection and marked Exhibit CE.)

Q. I think His Honor asked you a question whether there was any provision for depreciation? A. There is no provision for depreciation.

Q. In relation to His Honor's question was there in fact included any charge or cost at all for plant? A. Other than running repairs, no.

Q. Would you tell His Honor how that situation arose?

HIS HONOR: Do not go into this for my benefit. I wanted to know whether it was a trading account or a profit and loss account.

20 Mr LARKINS: I am seeking to show the loss shown is not the true extent of the loss.

Q. You were not present when Mr Buckley described the plant which was used in the operations at Theaddungra? A. No.

Q. But you are familiar with the plant which was being used? A. Yes.

Q. Who were the owners of that plant? A. National Contractors Pty. Limited.

Q. Was that a subsidiary of the plaintiff company? A. That is a fully-owned subsidiary of the plaintiff company.

30 Q. Which I think is incorporated in Western Australia? A. Correct.

Q. I think you have told us that that plant was made available by that subsidiary company throughout these operations? A. That is right.

Q. That is indeed the situation at the present time? A. That is right.

Q. Has any charge been made by that company since the commencement of operations for the hire or use of the plant? A. Not until the year commencing 1st July 1957.

40 Q. I think you did say that certain expenses were incurred for repairs and maintenance? A. Yes.

Q. They were all borne by Australian Blue Metal? A. Correct.

Q. Until October 1956 was the company operating solely on P.M.L. 15 and 16? A. With the addition of a little strip on the end of 15 which was portion of a roadway used. There was a little strip on the end of 15 or 16.

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Q. What was that? A. I cannot tell you if it ever had a P.M.L., but there was a little strip on the end of 15.

Q. Are you referring to P.M.L. 4? A. No.

HIS HONOR: Q. P.M.L. 24? A. It is portion of a roadway right on the bottom of 15.

Mr LARKINS: Q. That had nothing to do with P.M.L. 4? A. Nothing whatsoever.

Q. In February 1956 I think Mr Buckley was transferred from St. Mary's to Theaddungra to take charge of the operations? A. That is right. 10

Q. From the inception he reported to you regularly and you corresponded with him and also spoke to him by telephone? A. That is right.

Q. In October 1956 did the company enter into some arrangement in respect of P.M.L. 4? A. It did.

Q. With whom was that arrangement made? A. With Mr Vic Hughes?

Q. Who made the arrangement with Mr Vic Hughes? A. Mr Tom Buckley.

Q. What was that arrangement? (Objected to. Question with- 20 drawn.)

HIS HONOR: It is M.L. 4. It is on the public road.

Mr LARKINS: Q. Following October 1956 did Buckley in fact mine on P.M.L. 4? A. He did.

Q. Were royalties paid? A. They were.

Q. Would you have a look at that document; is that a copy of a report that you received from Mr Buckley shortly after 21st October 1956? A. It is.

(Copy letter T. E. Buckley to Mr Driscoll 21st October 1956, tendered without objection and marked Exhibit CF.) 30

Q. (Exhibit CF read.) Was that the arrangement with Mr Vic Hughes? A. That was the arrangement.

Q. What was the amount of royalty per ton? A. 10/- per ton.

Q. The arrangement was that you win I suppose 2,000 tons? A. That is right.

Q. When 2000 tons had been won they would like their cheque in a lump sum and they would transfer the lease to you? A. That is so.

Q. Round about October was the company concerned in extending its operations in that area? A. Yes.

Mr ST. JOHN: I do not concede the "they" referred to is used 40 corporately.

Mr LARKINS: Q. So far as M.L. 4 was concerned, who were the lessees from the Crown? A. Vic Hughes and one named Wade.

Q. It was a venture of Mr Vic Hughes and somebody called Wade? A. Yes.

Q. In fact to whom were the company's cheques paid? A. To Mr Vic Hughes.

Q. You understood they were being paid to Hughes and Wade?
A. That is so.

Q. In October 1956 did you give some instructions to Mr Buckley about making an approach in respect of P.M.L. 1? A. I did.

Q. What did you tell him? (Objected to; question withdrawn.)

Q. Did you receive a report from Mr Buckley about 14th November 1956, which was dated 13th November? Would you have a look at that document. Is that the report you received from Mr Buckley?
A. That is the report.

(Report from Mr Buckley dated 13th November 1956 tendered without objection and marked Exhibit CG.)

Q. Have a look at this report dated 14th November 1956. You received that report shortly after 14th November? A. Correct.

(Report T. Buckley to Mr Driscoll dated 14th November 1956 tendered without objection and marked Exhibit CH.)

Q. Did you receive a report dated 27th November 1956? A. Yes.
(Letter T. Buckley to Mr Driscoll of 27th November 1956
20 tendered without objection and marked Exhibit CJ.)

Q. Did you receive a report dated 5th December 1956? A. Yes.
(Letter T. Buckley to Mr Driscoll 5th December 1956, tendered without objection and marked Exhibit CK.)

Q. At that time in December 1956 I think you have told us the balance sheet showed that you had operated at a loss for the half year? A. That is so.

Q. At that stage did you make an approach to B.H.P. for an increase in price, in January? A. Yes, at the end of January we did.

Q. Is that a copy of a letter you wrote on 31st January to B.H.P.
30 requesting an increase of 10/- a ton? A. It is.

(Copy letter 31st January 1957 from plaintiff to B.H.P. tendered without objection and marked Exhibit CL.)

Mr ST. JOHN: If my friend cares to tender the file of correspondence with B.H.P. and the company I would have no objection.

(Short adjournment to enable documents to be collected together.)

Mr LARKINS: Q. Would you have a look at this document. Is that the reply you received to the letter of 31st January to B.H.P.? A. Yes.

(Letter from B.H.P. dated 15th February 1957 to the plaintiff tendered without objection and marked Exhibit CM.)

40 Q. I want you to look at Exhibit AY. Did you receive that letter from Gordon Garling and Guigni? A. We did.

Q. Will you have a look at Exhibit AV. That was the copy enclosed in Gordon Garling and Guigni's letter? A. Yes.

Q. Did you arrange for that to be executed by Mr Thomas O'Neil?
A. Yes.

Q. That is his signature on that document? A. Yes.

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Q. He was a director of the company? A. A director of Australian Blue Metal.

Q. After perusing that agreement did you write this letter of 5th February to Gordon Garling and Guigni, which is part of Exhibit AZ? A. I did.

Q. I think you returned the agreement and you asked for some clarification of the boundary? A. I did.

Q. Did you have some layout plan in your office? A. Yes, a small photostat copy of a plan.

Q. On that plan were you able to see where the fence was hatched? A. It was not clear to me. I could not see it at all. 10

Q. You have since had a look at Exhibit A, at the plan annexed to the lease, and you are able to see it quite clearly? A. It was quite clear on that.

Q. You received a reply from Mr Giugni in that letter? A. Yes.

Q. From then on did the mining continue on P.M.L. 1? A. The mining continued on P.M.L. 1.

Q. Taking the position up to May, what was the trading position? A. From January to May the company showed a loss of £2388.

Q. What were the principal factors so far as the operations were concerned that contributed to that? A. The factors were high costs of production, a bad yield, and high cartage rates and waiting time on account of cartage rates, and of course we were paying a royalty of 10/- a ton also. 20

Q. At the end of May did you have your assistant, Mr Hayter, produce certain figures for you? A. He produced figures.

Q. Would you have a look at that. Was that the document prepared for you at the time by Mr Hayter? A. Yes.

(Report of Mr Hayter, profit and loss account on Young Mining Operations of the plaintiff, tendered without objection and marked Exhibit CN.) 30

Q. I think that shows a trading loss for the five months of **£5000?** A. That is right.

Q. This was prepared purely for your information at the time? A. Yes.

Q. Was that figure correct? A. That figure is not correct.

Q. Have you since from the audited accounts for the year ended 30th June 1957 and a reference to the audited account for the six months period to 31st December 1956 ascertained what the actual loss for that five months period was? A. I have. 40

Q. Have you got that done in documentary form? A. I have.

Q. Having regard to the audited figures for the year ended 30th June 1957 and having regard to the June working expenses, what was the actual loss for the five months ended 31st May? A. £2388/5/11.

Q. You in fact base that on an examination of the audited accounts and also the figures for the June working expenses which

you have there? A. That is right. Both figures had been prepared by the company's auditors.

(Profit and loss account of the plaintiff's mining operations at Young for the 5 months ended 31st May 1957 and trading account on the Young Mining Operations to 30th June 1957, and Reconciliation tendered without objection and marked Exhibit CO.)

Mr ST. JOHN: It may or may not be necessary for us to have the auditors here. If my friend would undertake to call them, if he desires it, or if I indicated it, I have no objection.

10 Mr LARKINS: Q. Is the top document in effect a reconciliation worked out by you and the company's auditor? A. Yes. There is an additional document there.

Q. That is already in evidence and need not be with the tender. In February 1957 did one of the defendants come to your office in Sydney? A. He did.

Q. Who was that? A. Mr Vic Hughes.

Q. Did you have a conversation with him? A. I did.

Q. On 9th May 1957 did you write to Mr Buckley? A. Yes.

(Copy letter from Mr Driscoll to Mr Buckley of 9th May 1957
20 tendered without objection and marked Exhibit CP.)

Q. Did you also on 10th May write a further letter to Mr Buckley?
A. Yes.

(Copy letter 10th May 1957, Mr Driscoll to Mr Buckley, tendered without objection and marked Exhibit CQ.)

Mr LARKINS: We have asserted at the time the reduction was sought the company's trading was uneconomic. It is in relation to that issue that these are tendered.

Mr ST. JOHN: I had thought my friend was anticipating our defence.

Mr LARKINS: Paragraph 24 of the amended statement of claim. I
30 want to establish that fact.

HIS HONOR: What proof is that that it was uneconomic, that Mr Driscoll wrote to Mr Buckley and said it was.

Mr LARKINS: 14B; he was the Secretary of the company.

(Further hearing adjourned to 10 a.m. Thursday, 23rd February, 1961.)

Seventh Day, Thursday, 23rd February, 1961

ROBERT MITCHELL DRISCOLL

On former oath:

HIS HONOR: You are on your former oath. A. Yes.

40 Mr LARKINS: Your Honor I ask for a correction for a mistake of mine. If Your Honor would look at the foot of page 213. Your Honor will remember Exhibit CN went in as a profit and loss report of Mr Hayter, and Mr Driscoll said that was not correct from the letter that was shown and then Exhibit CO went in and it shows at

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the foot of page 213 "profit and loss account of the plaintiff's mining operations at Young for 5 months ended 31st May 1957 and trading account on the Young mining operations to 30th June 1957 and reconciliation with Exhibit CN tendered without objection and marked Exhibit CO". Now, the reconciliation as between the audited trading account from 30th December 1956 and the 30th June 1957 are shown as the other parts of the exhibit. There is really no necessity for it. HIS HONOR: I will cut out the words "with Exhibit CN".

Mr LARKINS: And call it "reconciliation".

HIS HONOR: Do you agree with that Mr St. John? 10

Mr ST. JOHN: I think it was a reconciliation with the incorrect account which had been prepared by Mr Hayter. That incorrect account has been tendered. That was an amended one.

HIS HONOR: That was Exhibit CN, yes. I entered it as "reconciliation". I will cross those words "Exhibit CN" out and leave it just as "reconciliation".

Mr LARKINS: On the 15th April did you request the B.H.P. for a renewal of order 0996? A. Yes.

Q. I show you a copy certified by the Commercial Manager of the B.H.P., a copy of your letter and their reply of the 29th May 20 (shown to witness). A. That is right.

(Exhibit CR—correspondence, 15th April and 29th May, between plaintiff and B.H.P. relative to and including new order.)

Q. Then did you about 17th May receive a letter from Mr Buckley dated 16th May? A. That is right.

(Exhibit CS—letter dated 16th May from Mr Buckley to Mr Driscoll.)

Q. Then I think the next letter you received was dated 20th May was it not? A. That is right.

(Letter dated 20th May 1957 m.f.i. 8.) 30

Q. I think on the 15th May you forwarded the first royalty cheque, did you not? A. That is right.

Q. I show you Exhibit BX. Is that the letter that you sent addressed to Mr L. H. Caldwell, Young, enclosing royalty cheques from December to the 30th April (shown to witness). A. That is the letter.

Q. Covering the period from December 1956 to 30th April 1957? A. Yes.

Q. The address on it was only "L. H. Caldwell, Young". A. That is right.

Q. Will you have a look at the second letter in Exhibit BX. It is a letter dated 16th May from Mr Caldwell and apparently it crossed yours in the post because it is in effect complaining I think that they have not received any? A. That is right.

Q. Then I think that letter of 15th May was acknowledged by

Mr Caldwell's letter of May 23. That is the third letter in Exhibit BX. I think that is the position? A. That is the position.

Q. You received a letter from Mr Buckley dated Tuesday 28th May (1957). A. That is right.

(Exhibit CT—above letter.)

Mr LARKINS: I draw Your Honor's attention to the last paragraph commencing, "Logan Caldwell was here yesterday evening. He says . . ." (Letter read.)

Q. Did you ring Mr Caldwell that week? A. No I did not.

10 Q. And when did you first have an opportunity to ring him? A. I rang him on the 5th June.

Q. Are you able to fix that date by reference to a letter? A. Yes I am.

Q. Would you just have a look at that letter (shown to witness.) Is that the letter that enables you to fix the date as 5th June? A. That is the letter.

(Letter dated 6th June 1957 m.f.i. 9.)

Q. What time did you ring him on the 6th June? A. On the 5th June.

20 Q. On the 5th June? I am sorry A. From my home at approximately half past 7 in the evening.

Q. And did you make contact with him by telephone? A. I did.

Q. Tell us what was said in that conversation? A. I booked a call and made the call and I asked him "Is that Mr Caldwell". He said "Yes". I said "This is Bob Driscoll, A.B.M. here". He said "Yes, I have been expecting you to ring". I said "I am sorry I have not rung you before as I have been flat out here in Sydney and have not been able to ring you. I have not been able to come down. I cannot see my way clear to come down. I just wanted to have a bit
30 of a yarn with you to see whether it was possible for you at all to consider a reduction in the royalty rate". I said "At the present time our yield is poor. Our production is bad and we are operating at a loss, and it looks as though on the 30th June we will have to pull out of Young unless we can decrease our costs and increase our revenue and increase our production".

I said "We have already arranged for Mr Lark's cartage rate to be reduced from 35/- to 30/- per hour, and as you know we have all got an increase of 10/- per ton from the B.H.P. and I would like you to consider a reduction in the royalty rate from 10/- to 6/- per
40 ton". He said "Yes, Tom Buckley told me about that". I said "What do you think about it". He said "I think it will be all right but I will have to confirm it with my partners".

Then I said "Well, if it could be made retrospective to the 1st June it would be very much appreciated up here." He said "I think it will be right but I have to discuss it". I said "Well, thanks very much". He went on to say "I'll let Tom Buckley know when it is

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confirmed". And I said "Thanks very much Mr Caldwell. I will pass on to Tom the details of our conversation and I will get him to contact Mr Giugni to make a fresh agreement".

Q. Then, that was the substance of the conversation? A. Yes.

Q. Did you then, the following day, write the letter to Mr Buckley of the 6th June which is m.f.i. 9? A. I did.

(Exhibit CU—letter dated 6th June 1957 from Mr Driscoll to Mr Buckley—read.)

Q. I show you Exhibit AX. Is that the letter from Giugni in which he informs you that the agreement has been completed and that Mr Buckley had informed you earlier? A. Yes. 10

Q. Then I think on the 26th July you forwarded a cheque, the company's cheque, for £326/0/9, being royalties due for the month of June 1957? A. That would be right, yes.

Q. They were calculated at the reduced rate of 6/- per ton? A. That is right.

Q. That letter appears in Exhibit BX. Then on the 15th August you forwarded a cheque for £278/3/3, royalties due for the month of July 1957? A. That would be right.

Q. They were calculated at the reduced rate? A. Yes. 20

Q. On the 17th August I think you visited Young, did you? A. I did, yes.

Q. Did you see any of the defendants? A. I did.

Q. Which ones did you see? A. I saw Vic. Hughes. I saw Frank Hughes. I saw Clarrie Hughes, and I saw Mr Norman Regan.

Q. Early in September did you receive a letter from Eric Campbell, Omant & Grant? A. I did.

Q. Is that the letter? (Shown to witness.) A. That is the letter. (Letter dated 2nd September 1957 m.f.i. 10.)

Q. And on the 10th September 1957 did you write a letter to Eric Campbell, Omant & Grant? A. I did. 30

Q. Is that a copy of it? (Shown to witness.) A. That is a copy of it.

(Letter dated 10th September 1957 m.f.i. 11.)

Q. On the 12th September did you receive a letter dated 11th September from Eric Campbell, Omant & Grant? A. I did, yes.

Q. Is that the letter? (Shown to witness.) A. That is the letter. (Letter dated 11th September 1957 m.f.i. 12.)

Q. On the 13th September did you forward a cheque to Hughes & Caldwell for £447/5/-, being royalties due on the magnesite mined for the month of August. (Objected to.) 40

Q. I show you a letter of the 13th September 1957 addressed to Hughes and Caldwell and signed by yourself which forms part of Exhibit BX. Did you send that letter? A. I did send that letter.

Q. Did you enclose with it a cheque? A. I enclosed a cheque.

Q. Is that the cheque which you enclosed with the letter? (Shown to witness.) A. That is the cheque.

Q. For £447/5/-? A. Yes, that is the cheque.

(Exhibit CV—cheque dated 12th September for £447/5/-.)

Mr LARKINS: To save a multiplicity of exhibits I will tender as part of that Exhibit cheques of Australian Blue Metal Ltd.:—

Cheque of the 14th May payable to L. H. Caldwell for £794/6/-.
Endorsed receipt signed by L. H. Caldwell.

Cheque dated 25th June payable to L. H. Caldwell—£526/7/-.

10 Receipt signed by L. H. Caldwell.

Cheque dated 22nd July payable to Hughes & Caldwell—
£326/0/9.

Receipt endorsed "Hughes & Caldwell per L. H. Caldwell".

Cheque dated 13th August 1957 payable to Hughes & Caldwell
—£278/3/3.

Receipt endorsed from Hughes and Caldwell "per L. H. Caldwell".

Then there is a cheque which I first tendered dated 12th September 1957 for £447/5/-.

HIS HONOR: They will be all part of Exhibit CV.

20 Mr LARKINS: Q. Then on the 22nd October—I am showing you now Exhibit BX—you wrote that letter to Hughes & Caldwell? A. I did.

Q. Enclosing a cheque? A. Yes.

Q. And on the 11th November you wrote that letter enclosing a cheque? (Shown to witness.) A. I did.

Q. On the 28th November you wrote that letter enclosing a cheque? (Shown to witness.) A. I did.

Q. And on the 16th December there was some payment forwarded unrelated to royalties? A. Yes.

30 Q. On the 31st December you wrote that letter forwarding a cheque? (Shown to witness.) A. I did.

Q. And on the 21st January you wrote that letter forwarding a cheque? (Shown to witness.) A. I did.

Q. And on the 28th March you wrote a letter forwarding a cheque? (Shown to witness.) A. I did.

Q. And I think you continued for some time after that to forward cheques did you not? A. Yes.

Q. And you continued after March to receive letters from Mr Caldwell? A. I did.

40 Q. Relating to the monthly statements? A. That is right.

Q. Now there is just one matter I want to clear up. I think you told me yesterday that the plant used in those operations was owned by a subsidiary of the company incorporated in Western Australia? A. That is right.

Q. I think you said that no charge had been made for the year ended 30th June 1957 by that company? A. Yes.

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Q. Assuming a charge had been made what would the normal rate of charge be? A. £2,000 to £2,500 per annum.
Q. For plant which was there to be used? A. Yes.

CROSS EXAMINATION:

Mr ST. JOHN: There are certain exhibits I should like to refer to during my cross examination. Perhaps I could have them now. They are exhibits CL, CM, and CP to CU inclusive; also m.f.i. 8.

Q. Now Mr Driscoll I take it you were directly in charge of mining operations in Young during the relevant period were you? A. Yes.

Q. Your duties appear to have been something more than the normal duties of a secretary. You were in fact in charge of operations there were you? A. Yes.

Q. And Mr Buckley almost invariably, I take it, reported to you? A. That is so.

Q. And you gave instructions to him? A. That is so.

Q. He seems to have written perhaps more often to you than you wrote to him? A. That could be so.

Q. And when you wanted to talk to him I presume you often put a call through to him. Were you able to ring him at Theaddungra? A. No, there was no telephone at the mine.

Q. So you then relied on your telephone contact with him when he used to ring you? A. That is so.

Q. It would be sometimes from Young, I take it? A. Yes. It would be sometimes from Young. I could leave a message at Young for him to ring me.

Q. Then he had been in the habit of ringing you when he got back after the fortnight for his weekend holiday? A. Yes, that is right.

Q. So that no doubt there was a great deal of phoning between you and Mr Buckley which would not necessarily appear in any letter? A. That is right.

Q. Did you frequently visit Young yourself? A. No.

Q. How often were you down there during the relevant period, would you say? A. Twice.

Q. Can you give those dates again? A. Once was on the 17th August, and earlier, I could not fix the date.

Q. Sometime in the earlier half of the year was it? A. It could even have been the previous six months prior to December 1956. I cannot fix that day though.

Q. Now how often did you speak to Logan Caldwell? Was there only this one conversation? A. Yes.

Q. Over the relevant period? A. Only one conversation, yes.

Q. And you tell us that you saw Vic. personally in 1957? A. Yes.

Q. And you saw certain others when you went up on the 17th August? A. Yes.

Q. Apart from that you had no personal contact with the Hughes & Caldwell group. Is that so? A. Mr Regan also called at the office. It was in the period sometime.

Q. Those are the only personal contacts that you recall, are they? A. That is right.

Q. Now, although you were secretary you had formerly been accountant with the Australian Blue Metal Co.? A. That is right.

Q. Before it was incorporated? A. Yes.

Q. And for a short period after it was incorporated did you
10 continue in that capacity? A. Yes that is correct.

Q. Now, you were keeping a close eye I think as the work proceeded down at Theaddungra? A. A reasonable eye, yes.

Q. The company apparently was more or less forced into the position of going back to these workings at Theaddungra by this application to the mining warden? A. Well, we were honouring our word to the Court.

Q. Naturally you would keep a close eye on whatever happened down there to see whether it was really worth while continuing? A. Yes, we were watching.

20 Q. Mr Buckley on the other hand was more or less in charge of mining operations? A. That is right.

Q. He told us that he was not familiar with accounts? A. Yes, I would say so.

Q. So the accounts were kept at head office? A. Yes.

Q. Under your supervision? A. That is right.

Q. And you were keeping a close watch on them? A. That is right.

Q. The position is that up till 31st May then, those operations were not paying? A. That is right.

30 Q. That was apparent to you I suppose, very early in the piece, was it? A. It was so apparent at 31st December.

Q. It continued to be apparent to you during the period after 31st December. A. That is correct.

Q. So that as from January I suppose you were active in endeavouring to put the situation into better shape? A. That is correct.

Q. You either had to do that or get out? A. That is right.

Q. By the time May arrived you had practically decided to get out? A. That is right.

40 re-organisation? A. That is correct.

Q. And of course you were very successful were you not, as events proved? A. In what way?

Q. In reorganising the situation. In re-arranging things so that you could make money instead of losing it? A. We had to make money, absolutely.

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Q. In fact in June you put on a terrific spurt, did you not?
A. That is right.

Q. Whereas you lost about £3,000 in that period up to 31st May?
A. Yes.

Q. You made almost £6,000 in one month, in June, on your figures?
A. That is right.

Q. Whereas you have been losing at the rate of £500 a month approximately. Would that be so?
A. That is so.

Q. Suddenly you were making money at the rate of £6,000 a month?
A. That is right. 10

HIS HONOR: Q. What was the tonnage for that month? (No answer.)

Mr ST. JOHN: What tonnage was mined in that month?
A. May I refer to my notes I have in my pocket. The tonnage railed in June was 1086/16.

Q. That was won and delivered?
A. That was actually railed.

Q. Under your agreement royalties were payable on magnesite "won and delivered" is it not?
A. That is right "railed".

Q. You were doing that were you not?
A. Yes, on railway weights, Your Honor.

Q. Obviously your profit of £6,000 could not have been derived from that alone?
A. That is right. 20

Q. Because your price per ton was how much?
A. At June it was £4/5/- per ton.

HIS HONOR: But the price went down then?
A. There was a base rate of £4/5/- per ton plus a bonus on the 1,000 tons delivered, plus or minus a penalty for silica and other ingredients, up for magnesium oxide . . .

Q. You got that bonus for quantity by amendment originally to your first order . . .
A. That started from 1st June 1956.

Q. And continued until the end of that year until the new order which you received from B.H.P.?
A. Yes, it cut out some time in 1958 I think. 30

Q. You knew that you were getting a bonus which was not available to other suppliers?
A. I did not know whether it was available to other suppliers or not.

Q. Do you know now that it was not available to other suppliers?
A. I know now that was the fact.

Q. Did you suspect it might not have been available to other people?
A. I did not know.

Mr ISAACS: Which bonus are you referring to, the bonus for quantity. 40

Mr ST. JOHN: Q. There was always a bonus for quality?
A. Yes, there was always a bonus for quality.

Q. You had known there was a bonus for quality had you?
A. Yes.

Q. Did you have any reason to suspect that the bonus for quan-

tity may not have been available to other people? A. I did not know whether it was or it was not.

Q. Did you have any reason to suspect that it may not have been given to other people? A. I could have mentioned to Tom Buckley on the telephone at one time as to whether they had it or not and he may have said "I don't think so," but he did not know.

Q. Was it at the time you wrote the letter of the 5th June when you had a feeling it was perhaps not available to other people? A. That is so. We sought this bonus on our own leases prior to starting
10 work in the leases.

Q. That is 15 and 16? A. Yes.

Q. Now you have given that thought, the conversation you had with Logan Caldwell on the 5th June, have you not? A. I have thought just what I did say to him, yes.

Q. And you worked out some details? A. I have got only the context of the conversation reasonably right. There could be fluctuations of words but the general context of the conversation seems pretty right.

Q. It is only a summary is it not, it is not long? A. It is what
20 I considered I said and what I consider he said.

Q. It could only be a summary, could it not, because it only took you about two minutes to give it whereas the conversation lasted much longer? A. No, I would say the conversation lasted three or four minutes.

Q. Is it what you call a long conversation? A. No, it was not a terribly long conversation.

Q. Your memory is short but did you know that in your letter you described it as a "long telephone conversation"? A. No, I did not.

Q. It is only to the best of your recollection. This was almost 3
30 years ago is it not—well, over 2 years? A. That is right.

Q. It is over 3 years, I am sorry? A. Yes.

Q. May I take it that you noted, made a note in writing, of what you remembered? A. I would not say so.

Q. Have you seen a written note of what you remembered of that conversation? A. A note on what, paper?

Q. Yes? A. No.

Q. Not at the time, but have you seen a note within the last few days of what you say you remember? A. No, I had jotted down on a piece of paper what I considered I said at that time.

Q. You have practically got it off by heart in your note? A. I
40 would not say so by any means.

Q. When did you make that note? A. Just within the last few days, as a matter of fact.

Q. You have looked at it again since? A. I have considered what I said, yes.

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Q. Mr Buckley I suppose kept you fully informed on everything that happened? A. I believe so.

Q. As it happened—pretty well? A. Yes.

Q. From day to day? A. Yes.

Q. And no doubt you learned from him for example that he had commenced to test south of the creek at a certain stage? A. No sir.

Q. You never did? A. The first indication I had of doing anything south of the creek was in a report that Mr Buckley put in in August. Prior to that south of the creek was never mentioned to me.

Q. So that it was August you tell us when you had first been 10 informed that he had moved south of the creek? A. That is right.

Q. You knew the creek was there? A. I did not even know the creek was there.

Q. You don't remember seeing a creek or a gully in that section there? A. I don't recall it, no.

Q. You knew of course that he had opened up a new pit? A. Yes, I knew that he had opened up a new pit.

Q. And did you know where that was? A. No I did not.

Q. No idea? A. No idea.

Q. You knew it was a new pit on P.M.L. 1? A. Yes, I knew 20 it was a new pit on P.M.L. 1.

Q. Did you know anything about any testing before that pit was opened up? A. What, in relation to that pit?

Q. Yes. A. No.

Q. You did not know? A. No.

Q. So he never told you about any test? A. No, he never told me about any test.

Q. Or any sample? A. Let me say at this stage that I knew he was looking for more magnesite but what he was doing in the way of testing it or where he was testing or any details of the testing, I 30 did not know.

Q. Did you know that he had forwarded samples, or railed a sample? A. No, I was not aware that he had railed a sample at that particular time.

Q. Or that he had sent a sample or taken a sample? A. Can I get the question clear, Your Honor?

Q. Did you know anything prior to August about any sample being taken? A. There was a ring from Mr McCandie of the B.H.P. that said something about sample loads had gone up. I think I called for a report from Mr Buckley on these sample loads. 40

Q. When was that? A. I think that came during somewhere about May/June.

Q. Are you suggesting those samples went up to Mr McCandie without your knowing? A. I believe they were railed. Mr McCandie had been down the previous month. They were just rail trucks that went up. Mr McCandie rang. I had to refer to a communication. I

think he rang and gave me details of what loads the trucks contained.

Q. Later he sent you a report? A. Yes, that was the end of June from memory.

Q. How long before he sent you the report would he have rung you up? A. I would have to refer to correspondence. I would say approximately a fortnight.

Q. Am I to understand Mr McCandie rang you and this was the first you knew of any samples? A. I believe so, yes.

Q. If that was so you would think it was good news, would you not? A. No. I did not think it was such.

Q. What did you think the effect of the sample was? A. I thought it was a sample of rail trucks that had gone to the B.H.P. That's all it was, because it was a sample—from memory—I would have to refer to a letter—but I think it advised a certain percentage—may I have a look at the letter Your Honor—I believe it advised certain impurities for certain dirt or something, from memory.

Q. Would not the sample be of new workings of some kind? A. Well, normally, yes. It could quite easily have been out of new workings or in another strata of the workings.

20 Q. And you knew of no such new workings or new strata, did you? A. Well, Mr Buckley I think had advised me at the end—towards the end of May, that he had opened up the floor of the old pit and it could quite easily be samples of lower strata of the new pit—of the old pit rather.

Q. Did you know anything about any new magnesite as at the date Mr McCandie rang? A. Mr Buckley had, I think it was some time about 10th June, advised me that he had opened a new pit.

Q. But of course it could not have been that that Mr McCandie referred to? A. No, it could not have been that.

30 Q. Because it was only three days between that opening and . . . A. Well railing would normally take, well, three, four, seven, sometimes up to ten days, to get up there.

Q. And then the analysis itself would take sometimes, on the testing? A. Sometime, yes.

Q. So it could not have been the opening of the new pit on the 10th June. A. That is right.

Q. Were you not puzzled? A. No.

Q. What did you think? A. I thought it was the old pit which Mr Buckley had advised me that he had opened the floor of the old 40 pit at that time.

Q. You knew nothing about any new magnesite in another area? A. No, not in another area, apart from the fact on the 10th that he had rung and said that he had opened up a new pit.

Q. But opening of the floor in the old pit would not be regarded by you as new magnesite would it? A. I think so.

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Q. What, would you regard that as new magnesite? A. It may be—I understand it was a different quality magnesite.

Q. So you thought it to be new magnesite. Did you not tell us when Mr McCandie rang you up on the telephone about the result of the samples you said you believed that was referable to the opening up of the floor of the old pit? A. I believe so.

Q. That is what you told us? A. That is what I told you.

Q. You recollect that now. That was your train of thought? A. Yes, it would have been my train of thought.

Q. Not what would have been—was it? A. I would say that 10 was my train of thought.

Q. Did you know anything about any further sample that was on its way? A. No.

Q. This is a letter produced on subpoena by the Australian Blue Metal Co. Have a look at that. That is a copy of the letter which you sent to Mr Buckley on the 13th June? A. That is right.

Q. You see that it says “they have apparently just received the first section of the new magnesite”? A. That is right.

Q. You tell us then that that refers to the floor that had been opened up in the old pits? A. Yes. 20

Q. And what did you mean by “first section of the new magnesite”? A. I would say the first truck loads from the floor that he opened up . . .

Q. Do you think there would have been other samples anywhere—Is that what it implies? A. It implies there were more rail trucks going there.

Q. You have a very clear recollection of all this? A. Having read that I have, yes.

Q. Even before you were told what the letter referred to? A. Yes.

Q. When I asked you about the sample you backed and filled a 30 bit, did you not? (Objected to.)

Q. You were very tentative when I first asked you about the sample having been sent down in June? A. Yes.

Q. Is it only just coming back to you. Do you remember what you say in that letter? A. I did then recollect it was sent . . . (Objected to.)

(Exhibit 1—copy letter dated 13th June 1957 from Mr Driscoll to Mr Buckley.)

Q. Are you thinking of this one, on the 2nd July you sent Mr Buckley a copy letter from the B.H.P. dated 28th June which gave 40 the whole result of the sample? A. Yes.

Q. Is that the one you are thinking of? A. No, I have a feeling . . .

Q. That there was some other letter referring to the sample? A. I have got a feeling there is something—there is another letter somewhere, possibly written from Mr Buckley to myself.

Q. Dealing with the sample—referring to a sample? A. Not necessarily a sample, but something about “as soon as I hear from the B.H.P. let me know” or something of like nature. Whether it does that I don’t know, but I feel there is something of that nature.

Q. This is clear, at the time when you received your letter of the—at the time you wrote the letter of the 13th June, do you remember at the time you received this phone call from Mr McCandie at any rate, you told us that you did not know anything about the sample in any event? A. No. I have said Mr McCandie came down earlier
10 in the month I think, earlier in May and I feel possibly he . . .

HIS HONOR: Just answer the question.

Mr ST. JOHN: Mr McCandie was there the month before that new floor area was opened up? A. Yes, the month before.

Q. And you say you knew nothing of any sample but you assume that sample related to the new floor area which Mr Buckley had referred to in an earlier letter. Is that right? A. That is right.

Q. Is this that letter (shown to witness). A. That is it.

Q. Now, the particular passage to which you refer in the letter of 20th May (m.f.i. 8) says “we are still carrying on with our pit in
20 No. 1 although it looks . . . which we can fall back on?” A. That is right.

Q. Now, the reports from Young become more and more depressing from your point of view? A. Yes, they were definitely.

Q. That was not good? A. That is right.

Q. Is it that it still looks as if it was weakening? A. That is right.

Q. But by the 5th June when you spoke to Logan Caldwell you were of course far more optimistic were you not? A. No.

Q. You were not? A. No I was not.

Q. Did you expect big tonnages at that time? A. I was expect-
30 ing all the stock—all the stock piled magnesite that was on the ground, everything that Buckley could lay his hands on to be railed during the month of June. I did think possibly that would alleviate the position that we were finding ourselves in. There was a lot of magnesite around the field, lying around, and Mr Buckley was told to get everything he possibly could on rail during the month of June. I was hoping for a reasonable tonnage, if possible reaching 1,000, during June so we could collect the quantity bonus from the B.H.P.

Q. You say he was told. Was it by letter? A. Yes. He had been told by memo, by letter, yes.

40 Q. What was the date of that, do you recall? A. I would have to go through the correspondence to find it. You will find it amongst the papers at any rate.

Q. Do you think you could find it during the adjournment? A. Yes. It is some letter early in May and we looked at the letters, say for the first fortnight in May.

Q. I show you a letter of the 9th May which you wrote to Mr

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Buckley. Take a glance at that. (Exhibit CP shown to witness.) I draw attention to the second last paragraph. It is only one sentence and it reads "it is absolutely essential . . . during the next few weeks". It does not refer to June, does it? A. That was written on the 9th May. The next few weeks would definitely cover, I should imagine the period to the end of June.

Q. Was it written on the 9th May. The next few weeks would cover the period to the end of June. Is that not stretching it a bit? A. No.

Q. About that time you had your financial statement, on the 10 5th June, had you become any way, more optimistic on the future for mining at Theaddungra on P.M.L. 1? A. No.

Q. You had not? A. I had not.

Q. You had no reason to be more optimistic than in May? A. I had no more reason to be optimistic than in May, no.

Q. May I take it you were still pretty pessimistic? A. I was still pessimistic unless I could do, as I said reduce the costs and increase production.

Q. But you were sure by then you could do all of that, were you not? A. I was endeavouring to do it at that time. 20

Q. You were morally sure of it by then, that you had done all those things? (Objected to.)

Q. You were morally sure at that time of being able to do all those things? A. No, it depended obviously unless I could get production of 1000 tons per month, and I wasn't sure I could get a thousand.

Q. By that time you were optimistic about production were you? A. No, I was not.

Q. Did you not get from Mr Buckley a much more optimistic account by then? A. No, I did not. 30

Q. Did he not tell you a word about the new testing which we now know to have been going on south of the creek? A. No he did not.

Q. What, not a word? A. Not a word.

Q. You first learned about this in August? A. I first learned that we were working south of the creek early in August. That was first mentioned I think if I remember rightly I said I first heard the term, either south of the gully or south of the creek, or the gully or the creek early in August.

Q. Do you know a term that oilmen use, "Bonanza" I think it 40 is? A. I have heard the term, yes.

Q. Did it not appear in June that you would have a "Bonanza"? A. I don't know that it appeared in June that we would have a "Bonanza".

Q. Did you have any suspicion of it? A. Yes, I would say

when the new pit was opened up, well, and a report had come through on the new pit being opened up, well, yes.

Q. Which new pit? A. The new pit mentioned by Mr Buckley.

Q. Had you no idea where it was? A. Except that it was on P.M.L. 1, on the area that the mine was.

Q. You had never bothered to ask him where it was? A. No, it did not concern me.

Q. How he got on to it? A. I did not ask—it did not concern me.

10 Q. Did you not rejoice with him at the good news of your production increase booming? A. Generally the production increased only because of what was lying on the ground.

Q. Did he not tell you about that? A. What?

Q. About the stuff lying on the ground. Work in progress? A. The stuff that was lying on the ground had been railed. Also there was the stuff stock piled. It was a paper increase only. There is stock figures of 2,700 on the ground.

Q. Is it not perfectly clear from the accounts that there had been a dramatic change in the situation in June? A. That is correct, and
20 it was brought about by the stock figure of 2,700 on the ground.

Q. Did Buckley tell you of that dramatic change? A. It was on the ground.

Q. Did Buckley tell you? A. No.

Q. He did not tell you? A. No.

Q. You did not know? A. I know because I had previously, when we have sought, as he possibly did to get a thousand tons during June—there was no dramatic change—it was on account of material lying on the ground that we got a dramatic change.

Q. So he had exhausted the stock left on the ground, that was
30 how he was able to get the dramatic change? A. I do not say that he exhausted it.

Q. On the contrary far from having exhausted it he actually built up this stock during the month of June? A. Yes, he had a stock at the end of June.

Q. Greatly increased over what there was at the beginning of June? A. Yes.

Q. To the extent of a thousand tons? A. There was £2,700 stock-piled at the end of June.

Q. And there was at the beginning of June . . .? A. A matter
40 possibly of £600.

Q. So it clearly seems that the stock scarcely accounts for the dramatic increase in June, does it? A. That accounts for the big increase in June?

HIS HONOR: Q. It is a big figure for June, £6,000? A. Yes, for a stock figure of £2,700.

Q. At what price? A. £4/5/- a ton, I think it was.

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Q. So that no allowance was made for the fact that it is on the ground or anything like that? A. There would have not been an allowance for that.

Mr ST. JOHN: Q. In other words stocks are calculated at the retail price? A. Yes.

Q. And the stocks at the beginning of June were valued at £468? A. According to whatever that was, yes.

Q. About 100 tons? A. That would be right.

Q. Of course that again does not explain why you did so well in June, does it? A. It can explain because at the end of June it is the end of a financial period and there is an accurate recording of stock. 10

Q. 100 tons at the beginning of June cannot explain why you did so well in June, can it? A. I venture to say stock was lying on the ground over at the leases, and was not accounted for at the accounts at the end of May.

Q. It is perfectly clear that if that May figure is correct, it cannot possibly explain the dramatic increase in the June figures can it. It cannot possibly, if that figure is correct? A. If that figure is correct.

Q. Did you not put it before us as correct? A. Naturally, I still say to the best of my knowledge it is correct. 20

Q. It is perfectly obvious from the accounts that there had been a dramatic change in circumstances? A. I agree.

Q. Something had happened. Some important new workings had been opened up that made that difference? A. There was a new pit from the 10th June.

Q. There were very important new workings which must have opened up to account for the difference. That is obvious from the figures? A. That is so.

Q. What I am asking you is did you know that in June? A. Which part of June? 30

Q. Any time in June? A. Well I would say at June, no. Those figures would come through after, at the end of June.

Q. You don't know—you did not know it in June. Did you know it in July? A. I did in July, yes.

Q. You had discovered when it happened and the first you knew of it was in July? A. I would say no.

Q. When did you discover it happened? A. Those figures would have come in through the company accounts. At that time they would have been accepted and included in the accounts in July. 40

Q. You were not relying only on the figures? A. Definitely.

Q. You were having constant phone calls? A. I was getting constant phone calls and a report once a fortnight.

Q. Did he not tell you in June how well he was doing. You say you did not know until you received the figures? A. All I knew in June was that he opened up a new pit. Towards the end of June

I possibly would have known the new pit was opening up. I can tell from my reports on what date we knew that.

Q. He was doing very well at least from the 10th June? A. Not very well from the 10th June, no.

Q. How do you know? A. Because the pit had only opened up at that time.

Q. Do you know what the production figures were? A. Not 10 from memory no.

D. Do you know after moving into the new pit for only a few days he laid off for about a fortnight to repair equipment and then proceeded to go full tilt at the new field? A. I did not know that.

A. But if that is a fact, it makes it even harder to explain why there were such dramatic figures in June? A. That is right.

Q. It might in fact lead one to believe that there had been something cropped up prior to 31st May? A. That could be so. I would have to investigate the figures to act on that one.

Q. In other words if it is a fact that he pulled out for a fortnight 20 to repair equipment, after opening up the new pit, the figures you produced for June are almost incredible, are they not? A. That is right.

Q. Because stock figures go from £468 to £2,714 worth? A. That is right. They went to £2,100 at £4 per ton—would it be £5?

Q. What about works in progress? A. That consists of material to rail, railed, but not brought to account.

Q. Workings in progress between 31st May 1957 and 30th June 1957 increased from £2,951 to £4,513? A. That is right.

Q. And quite apart from that you had gross sales for the month 30 of £5,771? A. That is right.

Q. I put it to you that those figures are, just accepting Mr Buckley's figures for the moment and taking into account that he pulled out for a fortnight within a few days of moving into the new pit, those figures are almost incredible? A. Yes.

Q. As an accountant that raises a suspicion in one's mind that it must be for some other reason incorrect. I am not suggesting any personal dishonesty in preparing the figures, but the figures themselves must be incorrect? A. I would like to look at the stock figures.

Q. That would have been your first impression would it not? 40 A. I say the figures are not incorrect.

Q. How can you explain it? A. For the simple reason we railed 1,086 tons/16 (cwt) during that month which was possibly not brought under account. Part of that could be works in progress. 4,513 tons to follow, working on the progress figure at the end of June, with works in progress.

Q. You were getting a price of £5/10/- a ton? A. The price we got was £4/5/- plus £1, £5/5/- per ton.

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Q. So if you railed 1,000 tons it would be something over £5,000?
A. That is right.

*Q. That is the figure shown for gross sales. You know that. It is, take my word for it? A. Yes, I will take your word for it.

*Q. So that cannot be the explanation can it? A. No, that cannot be the explanation.

*Q. It is undoubtedly the fact that you did show a profit shown by the audited accounts for the year ended 30th June? A. That is right.

*Q. If in fact the profit shown for June is for any reason grossly excessive because of some mistake, it can only be that instead of the losses that you show for the period ended 31st May, you have a very much lesser loss or even a profit. That is plain arithmetic? A. That is arithmetic, yes.

HIS HONOR: Did you ask in those questions the reason why that was so?

Mr ST. JOHN. Yes, Your Honor.

(Above questions marked "*" read to witness.)

Q. That is so? A. Yes.

Q. I take it as an accountant the mere statement of the figures raises a doubt in one's mind as to whether the figures for June can be correct, does it not? A. No, I say the figures for June have been audited and I take them to be correct.

Q. Yet here is an extraordinary thing, they showed such a complete reversal of your company's fortunes at Theaddungra that you would expect Mr Buckley to report that to you immediately? A. No, Mr Buckley was not aware of the financial position in any shape or form. These bills, they come up, they have been consolidated for the year ended 30th June and brought to account and the position . . .

Q. Buckley is not entirely a fool is he? (Objected to.) 30

Q. He is not a fool is he? (Objected to.) A. No.

Q. If he managed to rail away £5,701 worth, if he managed to increase stock on hand from £468 to £2,714, if he managed still in the same month to increase the value of works in progress from £2,951 to £4,513, Buckley would have known very well would he not. Not the actual figures, but he would have known very well? A. He should have known that he had had a very good month.

Q. The first thing that he would have done is tell you about it? A. Not necessarily tell me. He would have told me that he was railing this and railing that and we would have drawn that conclusion, 40 yes.

Q. For example at your weekend conversations you would have been jubilant together about it? A. No. Our conversations were used to make brief reports and that was it.

Q. Ordinarily would he not have told you as soon as this situation, this dramatic reversal of the situation, presented itself to

him, would not his first instinct have been to tell you, the "Father Confessor", Mr Driscoll in Sydney"? (Objected to.) Author?? quotes?

Q. The first person he would have told it to was yourself? A. Yes, he would have referred to me, probably, yes.

HIS HONOR: Did I understand you to say in an answer to a question a little while ago that there was some different basis of stocktaking at the end of May and about the end of June? A. Actually there was no stocktaking at the end of May really at all. There was no stocktaking at all at the end of the May as you would normally do
10 for stock. Normally at the end of each financial year when you take stock. There was an assessment.

Q. Where would the figure £400 odd come from? A. That was an estimate possibly by someone.

Q. By whom? A. It would have been by someone in the office.

Q. It had no relation to actually what was on the ground? A. That could have been so but I would say if I can refer to a memo I may be able to get a lead on that.

Q. What about the end of June? A. At the end of June I would like to see the actual figures that have been compiled from the
20 audited figures in the balance sheet.

Q. Is stock physically taken at the end of June? A. Partly it is and partly estimated.

Q. Or do you work on production figures? A. To the best of my knowledge if we were aware there was stock there we would endeavour to estimate the quantity accordingly.

Q. Is it stock physically taken in the field or is it from a report called for in the field on stock that is there, or on work in production?

A. There was not a report from the field called for and there has not been in recent years.

30 Q. So you worked from production? A. Yes.

(Short adjournment.)

WITNESS: Your Honor, the answer to the last question should be on estimation rather than on production. It could be done by a phone call or by an estimation from the office. Normally Tom Buckley could be asked what the score was on the telephone.

HIS HONOR: Q. So it is an estimation from the field rather than from the production figures? A. I would say that would be right.

Mr ST. JOHN: Q. An estimation from the field? A. Yes.

Q. Have you any reason to assume that his estimate was ever
40 very badly wrong? A. No. To be honest with you I cannot even recall the estimate coming forward in this instance.

Q. Naturally you would not after this lapse of time. A. That is right.

Q. You did get the estimates as a regular practice? A. I would assume so. The office would have got it and rotated it through.

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Q. Have a look at this letter. You see your letter of 9th May (Exhibit CP). You see here in that letter of 9th May you say "Many thanks for your communication of 2nd May bringing me up to date with the railings and your stock figure at that date." That is 1st May
A. There should be one early in May on that.

Q. I do not know whether anyone has seen that letter of 2nd May advising the stock figure. I have not seen it. That is what the witness wanted to see, and I cannot see it in my file. "Many thanks for your communication of 2nd May bringing me up to date with the railings and your stock figure at that date. I note you have ordered 10
400 tons for railing week ending 2nd May, and I would assume at the end of April you would have had approximately 350 tons on hand. I need this figure really for some calculations at this office." In May you are asking for the figure as at the end of April or the beginning of May? A. That is right.

Q. Is not it very probable that that was your normal procedure?
A. That was the procedure at that time. I think I subsequently wrote to Mr Buckley.

Q. You would not have just plucked a figure out of the air?
A. Not on that. 20

Q. In making up your figures as at 31st May? A. That is 9th May.

Q. In making up your figures as at 31st May? A. Probably it came through.

Q. From Mr Buckley? A. It probably came through from Mr Buckley.

Q. Of course it would have to be a gross error to explain the difference between stock on hand, 31st May, £468, and stock on hand, 30th June 1957, £2,714. You would have had to have some gross error before the increase could be explained by a mistake? A. 30
No. 500 tons of material, because we had already received a 10/- a ton increase from 1st June from B.H.P.

Q. Be that as it may, if the only reason for that increase was a mistake, it was a gross error—gross—one quarter of what it should have been, or one-fifth. If your stocks on hand at the end are £2,714 and at the beginning were only £468, that is one-fifth. I am suggesting to you it cannot be explained by an error in stocktaking unless it was a very gross error? A. Apparently the word came through at the end of June, as you have suggested at the end of May, that was the stock on hand. 40

Q. That increase cannot be explained by a mistake unless it was a very gross mistake? A. I think that figure is correct.

Q. As at 31st May, and as at 30th June? A. Correct.

Q. It is quite obvious therefore that he must have vastly increased his stocks, multiplied them by five or something of that order during the month of June? A. That is right.

Q. And in addition to that he had increased his work in progress by half as much again? A. That is right.

Q. So that it is obvious that some dramatic change in the situation had occurred, and he never told you about it? A. I do not recall him ever telling me about it. He never told me about it.

Q. Did you approach him? A. I do not remember, No.

Q. Did not you say "Tom, you are a wily bird. You did not tell me you had struck the jackpot"? A. I certainly did not.

Q. Did it surprise you that he had held that good news from
10 you? A. No. As a matter of fact it would have been, I would say, the end of September or October before these figures were finally produced as at the end of June.

Q. You did want to suggest before that that figure as at the 31st May might be an error. You do not want to suggest it now? A. No. I think the figure at 31st May would be right.

Q. Why did you want to suggest before that it was wrong? A. I think you must have asked me if so-and-so and so-and-so was so-and-so.

Q. Why did you suggest it might be wrong? A. If what you put before me at that time, I agreed with—what you said and what I
20 said I have not before me. You possibly said if so-and-so and so-and-so, and I answered Yes and agreed with you.

Mr LARKINS: The question my friend put is if the profit shown for June is for any reason grossly excessive because of some mistake it can only be instead of a loss for the 31st May, a much lesser loss or a profit.

HIS HONOR: The witness thought about that and realised the conditional and answered it "Yes".

Mr ST. JOHN: Quite apart from that the evidence to which I refer is evidence in which this witness suggested, without any sugges-
30 tion from me, that the stock figure at 31st May might be incorrect.

Q. You did suggest that the stock on hand figure as at 31st May might be incorrect? A. Only on the position that you put forward to me at that time.

Q. Did you have any reason to believe it might be incorrect? A. If so-and-so, and so-and-so, as you suggested to me at that time was so, I answered "Yes".

Q. Did you not expatiate and say "It is a big lease, and they look around and they are sometimes completely out", or words to that effect? Did not you say something along those lines? A. No.

40 Q. I do not suppose you ever deliberately understated your stocks, did you? A. No.

Q. If the figure were wrong it would only tend to confirm that instead of a loss during that period there may even be a profit? A. If the figure were wrong, yes.

Q. Has that occurred to you during the adjournment? A. No.

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Q. Have you any reason to change your mind as to whether the figure might be right or wrong? A. No.

Q. You really cannot suggest any reason why you would not have known even in the month of June of this sudden change in your fortunes? Buckley did not tell you; is that the only explanation?

A. The only explanation is that I instructed that everything that could be found round about everywhere be railed; whatever could be found be railed within the next few weeks. That was early in May. The thought was that we would try and offset any loss that had been made up to the end of May by railing everything that we could 10 possibly lay our hands on that was on the ground lying anywhere, and I would suggest that might have been taken into account in stock at the end of May. That could be the one error that may be in May. That might be what you were referring to in discussions earlier.

Q. You thought there was only 350 tons at that time; is not that the fact? A. When?

Q. As at 9th May? A. Was that stock or railing?

Q. "I would assume at the end of April you would have had approximately 350 tons on hand", your letter says. A. That would be at the end of April. 20

Q. Would you agree with me that up to the end of May you were very pessimistic about the future of your company at Young?

A. Correct.

Q. By 5th June the note had changed to optimism? A. No it had not.

Q. Had you received advice of big tonnages probably being procured from that lease by that time? A. No. I had not received advice of big tonnages being procured from that lease at that time.

Q. Are you quite sure of that? A. I am quite sure of that.

Q. Let me refresh your recollection of that (approaches). Is 30 that your memorandum of 4th June? A. Yes.

Q. You see what it says? A. Yes.

Q. Amongst other things, "Glad to receive your advice this morning of the big tonnages you are getting at the present time".

A. Where is this?

Q. The last paragraph. It is there. A. That is right.

Q. Do you still tell us that you had not heard on the 5th June that there were big tonnages in the offing? A. That quite definitely said "Big tonnages".

Q. So your evidence is incorrect? A. It is according to that. 40

Q. And according to the fact, is not it? A. Consistent with what I told him to do.

Q. It is wrong according to the fact? A. According to the fact, yes.

Q. So that by the time you rang Logan Caldwell on 5th June you knew that there were big tonnages being obtained at the present

time on P.M.L. 1? A. That is right. That is the 4th June, is not it?

Q. Yes. Let us look at the situation on 5th June. You had managed to get your price increased? A. Yes.

Q. With a quantity bonus which you suspected may not be available to other people? A. Correct.

Q. You got Lark to reduce his cartage figures? A. Correct.

Q. You expected big tonnages? A. I expected big tonnages for that month.

Q. In the light of all those circumstances you were optimistic. For the first time probably in six months you were optimistic? A. For that month.

Q. Optimistic for that month? A. According to that memo, yes.

Q. I asked you whether the note had changed to optimism, and you denied it. Is it now limited optimism for the month? A. When I rang Logan Caldwell I had no ground for optimism in any shape or form.

Q. You were optimistic about that month? A. I would not say optimistic, but I will admit big tonnages were going forward according to that memo.

20 Q. The economic situation on this occasion had changed dramatically for the better so far as you were concerned; it looked very hopeful? A. It looked hopeful.

Q. You did not let on to Logan Caldwell that it looked hopeful, did you? A. Not for that one month.

Q. Answer my question. You did not let on to Logan that it looked hopeful at all? A. I told Logan Caldwell if we succeeded in increasing production and if we succeeded in increasing revenue, and if we succeeded in reducing costs, then we would definitely be able to stay on at Young.

30 Q. The one thing that would make all the difference was getting that royalty payment lowered; is that right? A. That with the others, yes.

Q. Did you tell him about the others? A. I definitely told him about the others.

Q. You did not tell him about the quantity bonus? A. I do not recall mentioning the quantity bonus.

Q. Are you quite sure you told him about Lark? A. I am sure I told him about Lark.

40 Q. Why would you tell him about Lark? A. Because that was one thing that had been a subject of discussion and memos, and it was quite common knowledge around the field, I believe.

Q. Not to Logan Caldwell. Why would you tell Logan Caldwell about Lark? A. Our cartage was up. That was one thing we had to knock back. Our cartage, waiting time, and general cost of production had to be decreased.

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Q. What makes you so sure now you told Logan Caldwell about it? A. I recall it.

Q. You know he is not here to contradict you? A. I am aware of that.

Q. You do recall it? A. I recall telling Logan Caldwell about it.

Q. Is that the best reason you can give for telling him, that you think he would have known? A. I think it agrees with what we were doing to decrease costs.

Q. Did you have anything to hide from Logan Caldwell or any of the Hughes and Caldwell people? A. The only thing possible to hide was whether or not they were getting the quantity bonus, Mr Buckley may have told me, but I was not sure whether they were or were not. 10

Q. You did want to hide that? A. I did not make it apparent. If he had asked me I would have said Yes.

Q. You did want to hide it? A. I did not make it apparent.

Q. You hoped he would not ask you? A. I did not hope he would not ask me. If he had asked me I would have said Yes.

Q. Did you take active steps to hide it from him? A. No.

Q. In that conversation or otherwise? A. No, I did not take 20 active steps to hide it from him; not at all.

Q. Were you trying to hide anything from anyone about the beginning of June? A. No.

Q. Are you sure of that? A. No more than at any other time.

Q. Has your company often got something to hide? A. You are saying from anybody. That would include the employees of our company and everybody else. Right?

Q. That is right. You had something to hide from them, did you? A. Let me say not hide but not leave things around to make it apparent to everybody what was going on. 30

Q. Did you make a practice of telling Mr Buckley to tear up the things you sent to him? A. I have from time to time told him definitely to tear up things.

Q. In letters? A. In letters.

Q. Are any of them produced except the letters in June? A. Yes.

Q. There are letters other than letters of June in which you told him to tear up things? A. Yes.

Q. I have not seen them. Do you know where they are? A. From memory if I remember rightly the order of Broken Hill Proprietary that we got in March or April; a similar thing would have been said. Could we check that from the subpoena? 40

HIS HONOR: Q. Leave those matters to counsel. You just answer the questions. A. I would say it happened before.

Mr ST. JOHN: Q. You say that your object in doing that was simply to hide it from employees? A. Not hide it, but not leave things

lying around so that every Tom, Dick and Harry could know the inner workings of the company.

Q. You had no idea of keeping information from Hughes and Caldwell? A. Not specifically.

Q. Was that part of your object? A. You never let people in opposition know too much of your own internal affairs, do you?

Q. On this particular occasion there was very good reason to keep it to yourself because you had not been entirely frank with Logan, had you? A. I had not told him about the quantity bonus,
10 nor had he asked.

Q. What is your opinion on that; had you been entirely frank with him? A. I do not think I have been anything else but frank.

Q. Had you not really misled him? A. No, I had not misled him in any shape or form.

Q. Pulling a long face about the economic situation, the un-economic working there? A. That was a fact.

Q. A fact that had just been entirely transformed as a result of your negotiations and the opening up of new works? A. It had not been transformed for the future. It had been transformed for one
20 month.

Q. And perhaps for longer? A. It could be longer, but as far as I knew at that time, for one month. At that time our company's view was that we were pulling out at 30th June.

Q. If you had had that conversation with him in May it would have been a completely accurate conversation? If you had it in May last, you were still pessimistic? A. Conversations did start in May.

Q. Answer my question. If you had that conversation it probably would have been pretty correct? A. I would say it would be the same as on 5th June.

30 Q. Despite all you have told us? A. Despite all I have told you.

Q. And despite all that had been accomplished in the interim? A. Despite all that had been accomplished in the interim.

Q. The increase in price, quantity bonus—(objected to).

Q. An increase in price, a quantity bonus which admittedly you had had before, but which no-one else had? A. Yes.

Q. A new cartage rate from Lark? A. That was small. Yes, a new cartage rate from Lark.

Q. And an expectation of big tonnages? A. For the one month.

40 Q. Why limit it to one month? A. That is all I knew of at that particular stage.

Q. At present a month or more? A. A month.

Q. But more, perhaps? A. At that stage we were thinking of pulling out at 30th June, so it would be only for one month.

Q. Do you still seriously tell the Court that there had been no change between May and June? A. That is right.

Q. No change. There had been at least three important changes,

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had not there? A. If I had spoken to Mr Logan Caldwell on the 31st May, as was originally suggested, there would have been no change between 31st May and 5th June when I in fact spoke to him.

Q. Make it the 1st May and 1st June? A. We did not know we were getting the increase from B.H.P. at that time.

Q. Between the 1st May and 5th June there had been at least three important changes—increased price, reduced cartage rate, and an expectation of big tonnages when previously you had been told, right up to the end of May, that the pit was weakening, the life was short and it looked as if you were running out. There had been those 10 three important changes, had there not? A. That is right.

Q. Do you still tell us there was no change between May and June? A. Let us say from 1st May to 5th June, there would be the knowledge that we would get sufficient off the ground to rail to make June a reasonably successful month.

Q. Right up to the middle of June you were still thinking of pulling out? A. Right up to the middle of June we were still thinking of pulling out.

Q. By the time 5th June had arrived you had determined at least for the time being to stay? 20

HIS HONOR: Did you get your dates wrong?

Mr ST. JOHN: Q. Up to the middle of May you were still thinking of pulling out? A. Yes.

Q. By 5th June you had decided at least for the time being to stay? A. We decided to stay if we could decrease those costs; and if we in fact could get those costs decreased we would stay.

Q. On 5th June your tentative decision was to stay at least for the time being, prior to your phone call? A. That is right.

Q. You led Logan to believe in the phone call that you were going to move unless you could reduce his royalty, did not you? A. 30 I led Logan to believe unless we could decrease costs—

Q. Just answer my question. Do you answer “No” to my question? A. What was your question?

Q. I put it to you that you led Logan to believe unless he agreed to reduce the royalty—forget about other things—you were thinking of pulling out? A. I would say Yes.

Q. And that was the fact? A. It was the fact.

Q. The reduction in royalty only meant another £200 on 1,000 tons a month basis? A. That is right.

Q. The royalty would only make £200 difference? A. That 40 is right.

Q. That was a comparatively insignificant figure compared with the other figures that you had prepared showing an increased margin of profit of £1,860 per month? A. At that time we had to make up quite a bit of leeway.

Q. Just answer my question. £200 was a fairly insignificant figure?

A. It was quite a substantial figure on the profits. Let me put it this way, the whole profit for the year ended 30th June was £2,300, and 12 times £200 is £2,400, so in those circumstances on that economic situation of working it would be quite a big figure.

Q. You were only working on a month. You were only working out your figures for a month? A. I am relating it to a whole year's working. You are saying it is an insignificant figure. I am trying to say to you it is a significant figure when you work on a year's profit.

Q. It would not have made all the difference between your decision to go or not? A. I would say it would have made all the difference between going on and not going on.

Q. Are you quite serious about that? A. I am serious about that.

Q. If you had worked out your increased margin of profit was only £1,660 instead of £1,860 for the month, you would not have stayed? A. Not on the conditions ruling at that time.

Q. On what basis do you say that? Had you worked out the percentage return on capital? A. No. The figures indicated that the whole working was quite uneconomic so far as we were concerned. We had to do quite a few things to make it a payable proposition to stop there.

Q. You have told His Honor that the difference between £1,860 and £1,660 would have made all the difference between your decision to proceed. A. What is the £1,860?

Q. This is your letter of 6th June. A. May I have that?

Q. Yes (Exhibit CU). You see that you had worked out what you call a further margin of profit of £1,860? A. Yes.

Q. If you had not got your reduction in royalty it would only have been £1,660? A. Yes.

Q. Do you solemnly tell the Court that £200, the difference between £1,860 and £1,660, would have made all the difference between your decision to go away or remain on that lease? A. In that £1,860 you will see there is £1,000-odd, and at £1 per ton, which has been quoted for a production of 1,000 tons achieved by the company. We had in fact had that quantity bonus throughout and we had not achieved that quantity bonus, so that £1,000 would not in fact be a thousand pounds as shown in that memo because we had not in fact achieved the pound at that time, but we would have received a pro-rata proportion of the pound.

Q. You expected to get it for the month you were working on? A. Yes.

Q. Come back to my question. Do you solemnly tell the Court that the presence or absence of that extra £200, the difference between £1,860 further margin of profit per month and £1,660 further margin of profit per month would have made all the difference to your company's decision? A. I would think so.

Q. It would have made all the difference? A. Yes.

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Q. Are you sure of that? A. Yes.

Q. If your arithmetic had worked out at £1,660, you would have pulled out? A. It was not all £1,660.

Q. What do you mean? A. That figure you have there of £1,860 is not, as you say, additional profit.

Q. That is what you call it; is not that right? A. No it is not right.

Q. You used the term and not I, "Further margin of profit".
A. I used that term to Tom Buckley.

Q. Was not that right? A. It was a very bad choice of words. 10

Q. What did you really mean? A. What I really meant to say was not a further margin of profit, but if I went into detail it would be to help offset what had gone before and perhaps make a margin of profit.

Q. You knew if those figures were maintained you would be making a profit of at least that amount? A. No, not profit.

Q. Your own figures show you made a profit of £6,000? A. During June.

Q. We are talking about June? A. That is right, we are talking about June. 20

Q. Do you tell us now you did not expect to make at least £1,860, the figure you have worked out? A. At the end of May there was a distinct loss that was shown of £2,000. If you took that over a period of five months, that is £400 a month. In turn that £400 a month would have to be offset to that £1,860 before it would become a profit of £1,860 or £1,660.

Q. You knew the reason for those losses was a number of factors which you had in fact put right, adjusted? A. Tried to put right.

Q. You knew, those adjustments having been made, you would make a profit? A. I was hoping we would make a profit. 30

Q. Of at least £1,860 a month? A. I could not say that. I would not know whether it would be £1,860 or £1,000 a month.

Q. Aren't you an accountant? A. I am an accountant.

Q. Did you give any thought to it? A. Yes.

Q. Those figures on the 6th June had not been worked out merely for the month of June, but they are what you expected to do from then on at least? A. At that time we were expecting to possibly pull out at 30th June.

Q. (Approaches) I am showing you the terms of your letter, and I am going to put to you that the terms of the letter show you were 40 working out what you would get not only for the month of June but from then on at least, provided of course your tonnages were kept up; that is what that is referring to, is not it? A. Yes, but that would not be £1,860.

Q. "It will be seen therefore that provided you can maintain sales at 1,000 tons per month minimum, the proposition of magnesite

mining does become a reasonable proposition?" A. That is right.

Q. You were not only talking about the month of June, were you? A. Not at that time.

Q. The £1,860 per month was contemplated by you as a clear profit? A. No it was not.

Q. If it was not contemplated as a clear profit—you understand on a monthly basis; I am not worrying about the last 11 months. You contemplated that there would be a profit for your company of at least £1,860 per month if those tonnages were maintained? A. No, 10 because we were running at a loss of even £400 per month up to the end of May. We had to offset that loss of £400 before we started making any profit. In fact any loss that we had made prior to May has to come off that figure. Also that is calculated at the rate of 1,000 tons per month achieved for a quantity bonus clause at £1, when in fact that quantity bonus is on a sliding scale and we had in fact received some quantity bonus on a lesser figure up to the end of May, so that has also to be taken off that £1,000 mentioned there before you can get to a figure of £1,860, or whatever you may wish. In fact those deductions have got to be made, and the figure of £1,860 20 that you mentioned earlier is not what we thought would be clear profit.

Q. That is not what your letter says? A. I agree that my words to Mr Buckley were very badly chosen.

Q. Although you are an accountant? A. Although I am an accountant.

Q. I am sure you would be the first to agree that the situation is not nearly so simple as you have described it. With an increased quantity the whole situation would change, would not it? You cannot simply say that because we were making £400 or £500 per month loss the extra £1,860 will only make the difference. A. Would you 30 say that again.

Q. You said you had been making £400 a month loss on your figures up to May? A. Yes.

Q. You have worked out a further margin of £1,860? A. Yes.

Q. In order to estimate what your profit would be it is not simply a matter of taking £400 from £1,860, is it? It is not quite as simple as that, with increased quantity and all these different factors coming into the situation? A. That is only assuming we could get 1,000 tons a month, which we had never achieved up to that particular point.

Q. You did get a thousand tons a month in June? A. We did.

40 Q. You did make a profit in that month of £6,000? A. We did.

Q. And yet you still solemnly tell His Honor that you did not think when you drew up those figures that you would make a profit of £1,860? A. I did not think I would make a profit of £1,860.

Q. Tell us how you explain the difference between £1,860 and £6,000 which you in fact made? A. Railing tonnages between that period and the end of June far in excess of what I anticipated.

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Q. And work in progress increased? A. Yes.

Q. And stocks on hand increased? A. Yes.

Q. The nett result was that you trebled that amount? A. Yes.

Q. You still tell us when you drew that up you thought it was not all profit? A. When I drew that up I said "additional profit" but I say to you now that that £1,860—you asked me a question whether I considered on these figures a profit of £1,860 would be clear profit, I think from memory, and I said "No", and I tried to explain to you in that figure of £1,860 there is first of all portion of a quantity bonus that had been achieved up to the end of May which would not relate to that £1,000; there was also something else—what was it? 10

HIS HONOR: Q. The possibility of not keeping the production at a thousand tons. A. That is right.

Mr ST. JOHN: Q. Do you attempt to obtain a certain percentage return on the company's capital employed in the Young business? A. I would say that the normal percentage of capital return would have to be somewhere in the region as a minimum of 25 to 30 per cent on capital.

Q. That is nett profit? A. That is the nett profit return, not gross profit. 20

Q. That is what you aim to get? A. The company's records show our percentage on actual capital is 24.7. That is the publicised accounts.

Q. Did you work out the figures in relation to that? A. No.

Q. You never did? A. I never did.

Q. Not at that time? A. Not specifically.

Q. Or at any time? A. Not specifically.

Q. Did you work it out in your head? A. Not in figures.

Q. You regarded £1,860 per month as a reasonable proposition? A. If those things occurred I would say it would be an economical proposition. 30

Q. You are quite sure about that? A. I think I said "assuming" in that letter.

Q. Yes, assuming all these things that would have been a reasonable proposition? A. Yes.

Q. We subtract one thing from it, £200. You have not worked out the percentage return on capital. Are you now prepared to swear positively that you would not have gone on with the venture if you had not got that concession? A. At that time, yes.

Q. Why? A. Over the period January to June our total rail- 40
ings would have been in the vicinity of 3,900 for six months, which averages out at 600 tons per month. If you work that out, and if that is what we would average in the future, it would not be an economic proposition without that reduction in royalty. As far as we were concerned at the time it would not have been.

Q. You did not work it out as an economic proposition, you have told us? A. Not as far as the capital employed.

Q. That is the only way in which you as an accountant could see whether it was a reasonable proposition, was not it? A. We know what profit approximately—

Q. Just answer my question. That is the only way?

Mr LARKINS: I ask that the witness be allowed to finish his answer.

Mr ST. JOHN: Q. Is not that the only way in which you as an accountant could see whether it was a reasonable proposition or not?

10 A. A reasonable return.

Q. That is the only thing that matters? A. Yes.

Q. To your company, like any other company? A. It has got to be a good return, actually.

Q. You never worked it out? A. We know when we are getting a good return and when we are not getting a good return. Up to that time we had not been getting a good return.

Q. On the basis of £1,860, what return was it? Did you work it out? A. Not actually, no, I did not.

20 Q. Roughly? A. If all those things had happened I would say quite definitely it would have been an economical proposition to the company.

Q. Have you any idea the percentage return on capital? A. I have not worked it out.

Q. Why would you be able to tell us the £200 made all the difference? A. Because that was the feeling at that particular time.

Q. Just your feeling? A. It was the feeling of the company.

30 Q. That £200 would make all the difference? A. That the royalty was in fact one big thing that had to come down on the tonnages that had gone before. I am sure if it had become a good proposition as it turned out to be, the company would have said "Royalty to go back to 10/- a ton".

Q. Is not the position that in May for the period preceding, the company decided it would have to increase its revenue and decrease its costs? A. Yes.

Q. Perfectly obvious, as you put to Logan Caldwell? A. Yes.

Q. If put in hand various measures to achieve that? A. Yes.

Q. Those measures were successful? A. Yes.

40 Q. As at 5th June you had practically got there? A. We had practically got there.

Q. Actually you still put the situation to Logan Caldwell as if you had not even begun, did not you? A. No, I did not.

Q. You told him that costs would have to be reduced? A. Yes.

Q. And that they had already been reduced as far as you could reduce them, apart from the royalty? A. Mr Lark's costs had been reduced.

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Q. You had taken steps to increase your revenue, and they had succeeded? A. We had taken steps to increase revenue.

Q. And yet you still put the situation to Logan Caldwell in the same terms that you would have used back in May? A. Definitely. At the end of May we had no inkling that we were going to get a thousand tons a month.

Q. No inkling? A. We may have for June, but we had no inkling in any shape or form it was going to continue after June.

Q. Buckley had; do you know that now? A. I do not know that now. 10

Q. Buckley had been testing; do you know that now? A. I do not know that now.

Q. He has never talked to you about that testing at all? A. No. What period are you talking about?

Q. I am putting to you at the beginning of June. Prior to your telephone conversation of 5th June Buckley was testing in a new area? A. Buckley was testing, but not in a new area. Buckley was testing but not in any new area. That came in on memo in April or May that he was in fact testing.

Q. You knew as at 5th June Buckley was testing? A. He had 20 been testing for the last 18 or 12 months.

Q. You knew at the 5th June he had been testing recently? A. He was all the time testing.

Q. When you test you take samples? A. You do not necessarily take samples.

Q. At any rate if they are successful? A. Even then you would not necessarily take samples straight off.

Q. So that you knew as at 5th June he had recently been testing? Did not you know he had had good results from his testing? A. It could have been on the Friday before. When did I have a conversation with Logan Caldwell? I think it was one night in the middle of the week. That I cannot answer. Possibly on a Friday. He used to ring me up on a Friday. It could have been a Friday. I would not be sure of that. 30

Q. At any rate you knew that production was definitely going to increase at least for that month? A. Yes, at least for that month; I did know that.

Q. So that you knew that when you rang Logan? A. That is right.

Q. And yet you still painted the whole picture for Logan in the same way as you would have painted it back in May? A. That is right. 40

Q. You do not say that you intended to get out unless Logan agreed? You do not really say that, do you? A. I would say that on the circumstances existing at the 5th June and provided things did not change from those circumstances, if royalty had not been decreased

I would say the company would have decided to get out on 30th June.

Q. And that was your state of mind at that time? A. That was the state of mind at that time.

Q. You feel you frankly told Logan all the facts so that he could make up his mind what he should do about it? A. I feel I told Logan the facts that I mentioned to you here, yes. I did not mention the quantity bonus.

Q. And you did not mention the increased quantity you were expecting to get out? A. No sir.

10 Q. So you told him just as much of the situation as you thought might be good for him; is not that right? A. I told him what we would have to do to make this an economic proposition.

Q. You told him just as much of the facts as you thought calculated to get you your royalty reduction and nothing more? A. With the exception of the quantity bonus, I told him the facts as I understood them at that time.

Q. You told him as much of the facts as you thought was calculated to get you your royalty reduction and nothing more? A. I told him the facts as they were, with one exception, I did not tell him
20 the quantity bonus.

Q. Nor your expectation of bigger quantity? A. The expectation of bigger quantity at that time was only an instruction by me in May for the month of June. I was not expecting a bigger quantity after June.

Q. You had had advice of big tonnages two days before? A. For the month of June.

Q. Not limited to the month of June? A. That was as I understood.

Q. You meant to pull out at the end of June in any event? A.
30 We meant to pull out at the end of June.

Q. In any event, even if you got your royalty reduction? A. No, if we got the royalty reduction we would continue possibly after the end of June.

Q. You really had never applied your mind to what you would do if you did not get the royalty reduction? A. Not really.

Q. You intended Logan to believe that you would pull out unless you got it? A. It was decided to pull out at the end of June.

Q. Would you answer my question. Although you had not made up your mind about it you led Logan to believe that you would pull
40 out unless you got that reduction? A. It had not been put Yes or No.

Q. You led Logan to believe unless you got that reduction you would pull out? A. The idea was that we would pull out.

HIS HONOR: Q. You are only asked to say whether or not you led Logan Caldwell to believe that unless you got the royalty reduction you would pull out. Not the reasons or any justification but simply did you lead him to believe that? A. I really feel that I would have

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conveyed to him, yes, that unless we got the royalty reduction we would consider pulling out.

Mr ST. JOHN: Q. And yet you tell us that you had not made up your mind on that? A. As I said, we would consider. There had been no decision reached.

HIS HONOR: Q. Could you repeat what you said to Mr Logan Caldwell in regard to the present position? A. I feel that I told him that at the present moment we were running at a loss, and I feel too, that I did say that it was not an economic proposition to the company at the present time. I feel that is what I said at that time to Logan 10 Caldwell in the telephone conversation.

Q. "At the present time yield is down; production is poor"?
A. That is right.

Q. You said that? A. Yes.

Mr ST. JOHN: My note goes on, "on the 30th June we will have to pull out unless we can increase revenue and decrease costs".

HIS HONOR: Q. You said to him "As you know, we have all got an increase from B.H.P. of 10/-?" A. Yes.

Mr ST. JOHN: Q. That was only part of the story when you told him "We have all got an increase of 10/-?" A. That was a fact. 20

Q. You thought you had done better than that or were doing better, did not you? A. No.

Q. With your quantity bonus? A. Only for the month of June.

Q. You thought you were going to do better than that with a quantity bonus and an expectation of big tonnages? A. I thought we were doing no better than we did in the past.

Q. But better than he was? A. Better than who was?

Q. Logan? A. No, sir, they were getting royalties. Their royalty payments were as great if not greater than we were making for all our effort. 30

Q. When you said "We are all getting the increase from B.H.P.," to whom did you refer? A. Everybody in the field.

Q. Vic and so on? A. Yes.

Q. It was only part of the truth, was not it? A. It was a fact.

Q. You were doing better than that with a quantity bonus, were not you? A. We were getting a quantity bonus.

Q. You did not see fit to mention that? A. We had been getting it since 1956.

Q. On the 4th June and again on 6th June, the day before you rang Logan and the day after you rang Logan, on those two occasions 40 you were very careful to ask Buckley in your correspondence with him to destroy that correspondence? A. That is right. That was quite normal.

Q. Quite normal, was it? A. Yes, as I said earlier.

Q. I put it to you that was definitely connected in some way with your conversation with Logan? A. No, it was definitely not con-

nected in any shape or form with my conversation with Logan Caldwell.

Q. It was dictated at least in part by a desire to see that Hughes and Caldwell did not become aware of the detailed figures you were sending down to Buckley? A. It was because those things would be lying round the camp with caravans and sheds and no lock up facilities.

Q. Did not you have a guilty conscience about the way you were telling the story to Logan? A. No guilty conscience at all.

Q. Is that the way you normally do business? A. That is the proper way to do business, not to leave correspondence and company matters lying around a field where there is no security and just caravans where any Tom, Dick or Harry can walk into a caravan and find this, that or the other thing.

Q. Is that what you thought I meant? A. Yes.

Q. Is it your normal way of business to represent a situation to Logan Caldwell in the same way as you would have represented it in May when in fact it had changed in many important respects in the few days preceding your conversation? A. It had not changed.

Q. We won't go over that again. That would be your normal way of transacting business? A. That is right.

Q. Did you take any steps to ascertain the circumstances of what was called the head lease, who were the lessees, how long it had to run? A. The head lease?

Q. The lease to the members of the Hughes and Caldwell syndicate. A. It did come to my notice that it was going to expire in September some time in July or August.

Q. When did that come to your notice? A. I think in July or August.

Q. Before these agreements of January and June were drawn up and signed with Logan— A. In fact I would say it was August. I will tell you how I can fix that date. Mr Logan Caldwell wrote to me I think sometime at the end of July and said that at a meeting of the partnership there had been discussed the possibility of the company paying one and one-eighth per cent. I think I inquired—

Q. All right. All I want is this— A. I am just trying to fix the date in my mind.

Q. This much is clear at any rate, in January and June your company was unaware how long this lease had to run? A. That is right.

Q. It was unaware who the lessees were? A. It was unaware who the lessees were? Yes.

Q. You now know it was only two out of the six members of the Hughes and Caldwell syndicate? A. The beneficiaries under the will.

Q. For all your company knew at that time the lease might have

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come to an end and you might have had to leave it any day? A. I am thinking back on my previous question.

HIS HONOR: Q. You may correct that afterwards.

WITNESS: What was your question?

Mr ST. JOHN: Q. For all your company knew at the time the January and June agreements were negotiated the lease from the Mines Department, which I will call the Head Lease, might run out, and as a consequence your company might have to leave at any day? A. That did not cross our minds.

Q. It was the fact? For all you knew it could have been the 10 fact? A. It could have been the fact.

Q. When Buckley moved into the old pits on P.M.L. 1 I suppose you were told about that? A. I was told when he moved into P.M.L. 1.

Q. You know that he went in there on the understanding in the first instance that he would merely work the old pits, that Vic was abandoning; that is so, is not it? A. I do not think that is so.

Q. Did you personally attend to the sending off of an application for registration of the agreement of June? A. I did send off an application. 20

Q. Did you personally post it? A. I did not personally post it.

Q. Did you instruct it to be posted? A. As far as I know it would have gone out in the normal course of business.

Q. That is as much as you can say? A. That is as much as I can say.

Q. In the normal course of business are your company's letters posted? A. Some are posted; some are delivered.

Q. Can you say of your own personal knowledge whether this letter was posted or delivered? If you cannot say so, tell me. A. I cannot say so. 30

Q. May I take it that the normal thing is to post? A. The normal thing is to post.

HIS HONOR: Did you mention a date in that question?

Mr ST. JOHN: Q. Do you remember when this was? A. No, I cannot remember exactly.

Mr ST. JOHN: The letter is or will be in evidence. It is 10th September.

Q. You know the reference to the old pits. You have heard of the old pits so called? A. I have heard of old pits.

Q. Did you know that Vic was working some old pits on P.M.L. 1? A. On our side or on his side? 40

Q. On his side of P.M.L. 1? A. I did not know whether they were old or new.

Q. When Buckley told you he was moving into P.M.L. 1 did he tell you he was going to work some old pits which one of the Hughes had been working and was abandoning? A. I don't remember.

Q. Normally he would have reported that sort of thing to you?
A. It would be in the correspondence.

Q. Do you remember anything leading up to the agreement of January or was the first you knew of it when you saw it in writing?

A. It was reported. The agreement of January came to pass when P.M.L. 4 was being worked, which was with Mr Vic Hughes and Mr Wade. I understand that was not giving anywhere near the production required and definitely was not an economic proposition. We were looking and testing at all times. I think in a telephone conversation
10 to Tom Buckley I asked whether there was any chance of him seeing Mr Vic Hughes to work P.M.L. 1 on the same basis as working P.M.L. 4. I think Mr Vic Hughes then suggested to Mr Buckley that he go and see Mr Caldwell in Young. He did give him, I think, permission to use a bulldozer to test on P.M.L. 1 before he located Mr Caldwell. He subsequently—

Q. Would you mind. Mr Larkins can get the rest of this if he wants it. Was any mention made at that stage of gully or creek?

A. Not to my knowledge.

Q. Are you prepared to swear it was not mentioned? A. I am
20 prepared to swear it was not mentioned.

Q. When did you first hear any mention of a gully or creek?
A. Early in August in Mr Buckley's memorandum.

Q. Would it be correct to say that Buckley moved into the new pit in or about June on your directions? A. No, not on my directions at all.

Q. Would he not normally seek your direction for that kind of thing? A. No.

Q. Important new works being opened up? A. It was just another pit.

30 Q. He had a complete discretion as to what he should do? A. Definitely. He was the Manager on the spot.

Q. Did you have a copy of the agreement of June in your office?
A. When?

Q. I am sorry, I meant January. Did you have a copy of the agreement of January? A. There was a copy sent up by Mr Giugni to the office.

Q. You looked at it when it came to you? A. Yes.

Q. When did you next look at it? A. I do not know.

Q. Did you look at it at the end of May or the beginning of June?

40 A. I could not answer that. I do not know.

Q. You have looked at it since? A. I have seen it since.

Q. When do you last remember looking at it? A. I think when we were going through. There was a copy in my files when I was going through the subpoena documents. I think we had a copy.

Q. Was that the first time you had seen it since January 1957?

A. No.

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Q. You had in fact looked at it on a number of occasions? A. I would have looked at it from time to time.

Q. Is it right that Buckley asked you to look at it? A. I do not remember him asking me to look at it.

Q. But you would not be sure that he did not? A. I would not be sure that he did not.

Q. Could he have asked you to look at it in May or June 1957? A. I do not remember it.

Q. Did he ask you at any time to check the boundaries on it? A. No. I had asked Mr Giugni to check the boundaries. 10

Q. That is early in January? A. That is right.

Q. Did not Buckley get in touch with you and ask you to check the boundaries? A. I do not remember that.

Q. You are not prepared to swear it did not happen? A. I will say it did not happen.

Q. Have you ever heard of a gentlemen's agreement about P.M.L. 1? A. No I have not heard of a gentlemen's agreement in connection with P.M.L. 1.

Q. Did Buckley ever mention to you that he was deliberately refraining from moving into an area of crop land because of any 20 agreement, gentlemen's or otherwise? A. There could have been something mentioned about a wheat paddock or some such thing at one particular time.

Q. Can you place that? A. It would probably be in written memos.

Q. Prior to June 1957, may I take it? A. I do not know. It could have even been later on in later discussions. I do not know. I do know I have heard some mention of wheat land either then or subsequently. I am afraid I cannot fix the date.

Q. Did Buckley tell you he had been prospecting over the whole 30 of P.M.L. 1 except south of a certain creek? A. No, he never mentioned that.

Q. And that for the first time in June he moved over the creek? A. No, he never mentioned that in any shape or form.

Q. Do you know now prior to my telling you? A. Tracing back in the correspondence it would appear that the pit that opened on 10th June could be a pit which he subsequently worked and which I understand is south of what is termed a gully or creek.

Q. My question is do you now know that he worked over the whole lease except south of the creek until a certain point when he 40 crossed the creek? A. Whether he worked south of the creek earlier I would not know.

Q. He never told you a word about any of this? A. Never a word.

Q. So that as far as the actual mining was concerned you seem to have been kept pretty much in the dark? A. As far as the

Manager on the spot is concerned, where he went and what pit he opened—he was the Manager on the spot. He did not have to communicate anything like that to us, but I must admit his reports were very frank and very good.

Q. After June you became aware that things were looking up? Things had been very good in August? A. Yes.

Q. Did not it occur to you to inquire then and say “What is the reason for the difference, Tom?” A. The reason for the difference became apparent.

10 Q. Did you ask him? A. He told us.

Q. He told you that he had opened up a new pit? A. No. He said that he had opened up a new pit.

Q. That is what I put to you and you said no. A. Just a moment. In August. He told us the pit he had opened up earlier was beginning to show very good results.

Q. Beginning to show in August? A. The reports will show exactly what he did say.

Q. Did he tell you it was south of the creek which he had never previously seen fit to cross? A. The first intimation he mentioned
20 of south of the creek I think was in a communication early in August.

Q. So he told you in August he had moved south of the creek? A. He mentioned south of the creek at that time and said that Vic Hughes had approached him at that time and had told him he was not supposed to be south of the creek or gully or something there, I just cannot remember. I am talking from memory now.

(Luncheon adjournment.)

Mr ST. JOHN: Q. You told my learned friend that you went to Young on 17th August 1957, and you there saw among others Vic Hughes and Norman Regan? A. That is right.

30 Q. I put it to you that you subsequently made a memorandum which said among other things, after saying that you went with Jack O’Neil on Saturday 17th August, you spoke to Vic and Norman Regan: “Each partner indicated that at the meeting it was discussed that Mr Caldwell had no power to sign the agreement.” (Objected to.)

Q. That is the fact, that each partner indicated, that is to say Vic and Norman Regan, whom you described as each partner—each partner indicated that at the meeting it was discussed that Mr Caldwell had no power to sign the agreement? A. That is so.

40 Q. I will take you back for a moment to the question as to whether you had a precise figure for your stock-on-hand as at 31st May. I am going to put to you, when you see these letters, you were given a precise figure. I direct your attention to a letter of 9th May. We have already referred to it. I failed to notice the last paragraph: “It would be appreciated if you would advise your stock-on-hand as at 31st May as we will be taking our profit figures as at that date, and it is essential to know what stock you have (estimated only) for this

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purpose". On 16th May you may take my word for it that Mr Buckley replied. A. On 16th May he could not give me the stock at the end of May.

Q. I know that, but there is a reference to it just the same. "At the end of the month will tell you what we have on hand." That is clearly replying to your letter of the 9th? A. That is right.

Q. On 20th May: "We have approximately 100 tons on ground." Finally on 28th May he says "We have approximately 150 tons on hand." A. That is what we have in the accounts?

Q. It does not show tonnage. It shows a figure of £468. Presu- 10
mably it had dropped a bit before the end of the month? A. That could be so. That possibly would have been calculated at the old £3/5/-, or whatever it was, before the 10/- rise. That could be quite right.

Q. The point is that it does seem that stock figure is pretty right and it does seem that a fairly definite estimated figure would have been supplied at the end of the month? A. That is right.

Q. When you first produced these figures there was an accountant's report attached. You do not mind if I see that. I call for the account- 20
ant's report. They were your auditors? A. Yes.

Mr LARKINS: Produced, Your Honor.

Mr ST. JOHN: Q. That seems merely to summarise the schedule detailing losses incurred; is that your reading of it? Have a look at it? A. That is right. That shows a nett loss of £2,300 for the five months to 31st May; nett profit from the annual accounts amounted to £2,309.

Q. It is consistent? A. Yes.

(Document dated 20th February 1962, above referred to, m.f.i. 13.)

Q. I want to ask you about a conversation that Vic Hughes had with you, which I put to you occurred in August, probably as you 30
say on 17th August, in Young, when you spoke to him in company with Mr Jack O'Neil. Do you recollect the occasion? A. Yes.

Q. You met him in the street? A. Yes.

Q. There was only the one occasion I presume when you went down there in August? A. That was the only time.

Q. The three of you met in the street; is that right? A. Yes.

Q. There has been some mention of the fact that Logan had a slight deafness? A. Yes.

Q. You knew of that? A. I did not personally know. I heard 40
it in Court the other day.

Q. Is that the first you knew of it? A. That is the first I knew of it.

Q. Are you quite sure of that? A. I am quite sure.

Q. I put it to you that you said "What is the trouble going on up here", or words to that effect? Would that have been so? A. I wanted to get to the basis of the dispute.

Q. You had come up for that purpose? A. To find out what it was all about.

Q. He said "You are mining over your boundary", or words to that effect; that is Vic Hughes said that? A. No, I do not recall that.

Q. Anything similar to that? A. As a matter of fact we had two interviews with Vic Hughes on that day. The first one was in the street I would say at approximately 11 o'clock in the morning, and we had arrived down there two hours late. Vic Hughes indicated to us—

10 Q. Would you mind—just answer my question. Was the second conversation in the street? A. No.

Q. I am asking you about the conversation in the street. I am going to put specific things to you, and I only want you to tell me whether that was said or anything like it? A. Something like that could have been said.

Q. Did you say "No we are not, we have permission to mine over there," or words to that effect? A. That could be so. I could have said, "As far as I know there is no limitation on that side where we can mine." Something like that could have been said. I do not
20 recall it, but it could have been said.

Q. I put it to you that Vic said the agreement was wrong, it was a mistake, and Logan had no right to sign any such agreement. Was anything like that said? A. No.

Q. Did he say that Logan had no right to sign it? A. He indicated that Logan had no right to sign the agreement.

Q. You deny that he said it was a mistake or that it was wrong? A. I deny that he said the agreement was wrong.

Q. Did not he tell you that he himself had agreed for an entirely different boundary? A. No.

30 Q. He did not. Very well. I put it to you when he said that Logan had no right to sign any agreement, you said "Anyway, we have got the agreement. We got hold of Logan's deaf ear. We have got his signature." Was that said? A. No, definitely not.

Q. Was anything like that said? A. Nothing like that was said in any shape or form.

Q. Did O'Neil say "We are big people. If you do not play ball we will drag you through the Courts and break you?" A. No, definitely not.

40 Q. Was nothing like that said? A. The idea was entirely to go down there—

HIS HONOR: Q. You will have every opportunity to elaborate in re-examination.

Mr ST. JOHN: Q. Did either of you say "Sooner or later you will be sitting on the bank, watching us mine your lease." A. No.

Q. Nothing like that? A. Nothing like that was said at all.

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Q. Did the conversation ever become heated? A. The first conversation did not become heated in any shape or form.

Q. Did the second? A. The second one was definitely.

Q. Could anything like what I have put to you occurred have occurred in that second conversation? A. No, I would say it could not have occurred except from the other side. As a matter of fact there was not too much said in the second conversation.

Q. Do you deny that anything like that was said? A. I deny that anything like that was said from our side.

Q. The only person who lost his temper was Mr Vic Hughes? 10
A. I do not know whether he actually lost his temper or whether there were circumstances existing at the time—it is hard to put. I really felt that we did not pursue the matter of the second conversation because we felt that he had been drinking.

Q. The fact is that there were some hot words exchanged at that time? A. From the other side.

Q. Both sides were pretty hot under the collar, in the vernacular expression, at that time? A. No, far from it.

Q. You were on a very good thing in the mining at Thuddungra, or thought you were? A. It had been opened up at that time. 20

Q. You wanted to make some money to make up for the losses? A. We were anxious to proceed with the mining.

Q. Here was this coming along perhaps to upset your applegart completely? A. We felt that we had an agreement and it was there.

Q. Were you upset about it? A. At the time we were trying to get to the root of the trouble. There was no upset about it.

Q. You say you had an agreement. Of course as at that stage, during August and September, you were rather uncertain where that agreement left you, were not you? A. We felt we had an agreement and we were sure that the agreement—I have thought right through 30 that the agreement was quite valid.

Q. And could not be terminated? A. Could not be terminated.

Q. You never had any doubt at all on that score? A. I have not had any doubt at all.

Q. You may not have had any doubt, but the company had some doubt? A. The company investigated the matter and more or less got an opinion on it.

Q. So that it must have been in some doubt about the matter? A. We wanted to confirm our thoughts.

Q. You had been told to leave the lease. A. On what date. 40

Q. I think on 19th August, was not it? A. I think we were actually told to leave the lease—

Q. By letter dated 19th August? A. This was 17th August I was in Young. I think the letter was perhaps dated 19th August.

Q. You had been told verbally before that, but you were told on 19th August by letter? A. We were told on 19th August by letter.

Q. You say the company sought advice? A. Later on. I would say it would be some weeks. The dates are in evidence. We did seek advice.

Q. You did not vacate the lease? A. We did not vacate the lease.

Q. You continued to work it? A. We continued to work it.

Q. You obviously owed money for the mineral you had taken on one count or another, did not you? A. Owed money to whom?

Q. To Hughes and Caldwell? A. I cannot see that.

10 Q. You do not? A. No.

Q. You cannot take mineral from someone's lease without paying for it in one form or another? A. There was an agreement in existence which we felt was quite valid, and advice given to the company was that it was indeterminable.

Q. Whether or not it was valid, you obviously owed money for the mineral you took, did not you? A. We owed the royalty for what we took.

Q. If you did not owe royalty you owed some damages—(objected to).

20 Q. I put it to you that in August and September after Logan's authority to sign had been challenged—right? A. Yes.

Q. After you had been told to vacate? A. Yes (objected to).

Q. The August cheque was sent off on 13th August. A. That could be. Whatever the date of the letter is, if that is the letter.

Q. Prior to that I think you have told us you received a report from Mr Buckley indicating that Hughes had told him to get off the lease. A. No.

Mr LARKINS: My note is that it was sent on 15th August, and it is contained in Exhibit BX.

30 Mr ST. JOHN: Q. I thought Mr Buckley had two reports of the 6th and 7th August? A. If I remember rightly he did not say he had been told to get off at that time.

Q. You knew he had been told that he had no right to be there.

Mr LARKINS: The letter of 7th August is Exhibit CA.

Mr ST. JOHN: Q. The first one was merely "worried about the amount you were getting away"; do you remember? A. Yes.

Q. "Stormclouds now gathering"; do you remember that? A. Yes.

Q. "It looks as if we are running into trouble". A. Yes.

40 Q. "Vic has been looking down-in-the-mouth".

Mr LARKINS: If my friend is reading, he should not read elliptically.

Mr ST. JOHN: Q. (approaches). Read it to yourself. At any rate even though he does not say in so many words that you have been told to go, your right to be south of the creek was obviously being disputed? A. Tom Buckley had been told apparently that we had no right to be there, but he was told to see somebody else at that time

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to either verify or otherwise. He was by no means sure at that particular date.

Q. In the meantime on 13th August you sent off a cheque in respect of mineral which had been mined in June and July, was it?

A. I think it was either June or July.

Mr. LARKINS: It was 15th August for a start.

Mr ST. JOHN: It was perfectly clear to you at that time that the company obviously owed at least 6/- per ton in respect of that mineral won and delivered? A. Yes.

Q. Whether the agreement was valid or not? A. That is right. 10

Q. Subsequently you sent off another cheque dated 13th September? A. Yes.

Q. That was in respect of mining in August, was it—July and August. A. Whatever the letter says.

HIS HONOR: August.

Mr ST. JOHN: Q. Once again it was still perfectly clear to you on one count or another the company obviously owed at least 6/- a ton for that? A. Yes (objected to; allowed.)

Q. You were not making these payments to lay any kind of trap for Hughes and Caldwell? A. We were making them under the 20 agreement.

Q. You say "under the agreement", but you knew the money would be owing to them in one shape or another? A. We knew if the agreement was valid and we considered it to be valid we owed 6/- per ton in royalties.

Q. Even if it was not valid you would still obviously owe him money. That was your state of mind, that the company would certainly owe at least that amount of money in any event? (objected to).

HIS HONOR: The question is did you consider at the time if the agreement was invalid you would owe them money anyway. 30

Mr ST. JOHN: Q. Let us go back to August. A. Whereabouts in August?

Q. At the time you sent your cheque? A. That is 15th August.

Q. That is right. We are concerned with your state of mind when you sent off the cheque on 15th August and 13th September. We will take them one by one. The 15th August, you have told us already that the mineral having been taken, you regarded the company as owing at least 6/- per ton, either if the agreement was valid or if it was invalid. A. I would say we owed 6/- per ton under the agreement. 40

Q. I know that is what you tell us. That was your belief. You also told me, as the record shows, that you believe 6/- per ton would be payable in any event.

Mr. LARKINS: He did not say it was his then state of mind.

HIS HONOR: I do not think it is so clear that it is his then state of mind.

Mr ST. JOHN: Q. Did you regard it as a possibility on 15th August that there might be some dispute as to your right to remain? A. I would say the office generally computed the royalty payments, and this was through a normal routine, and the cheque went out.

HIS HONOR: That is not the question you were asked.

Mr ST. JOHN: Q. Did you sign the letters? A. I signed the letters.

Q. It was your hand that actually signed the cheque? A. Yes.

Q. And sent off the letter? A. Yes.

Q. As at 15th August you realised at least there might be some
10 dispute as to whether you were entitled under your agreement to remain on the lease? A. No, the dispute was that Buckley had reported that he had to see Frank Hughes, but I think at that time there was no issue involved in the dispute to my knowledge at all.

Q. Buckley had told you the reason why Vic complained was that you had come over beyond the boundary he agreed to? A. I do not think there was any thought of the agreement not being valid or anything of a like nature at that time.

Q. There was a dispute so far as you know at least as to whether you had come over your boundary? A. Buckley had reported that
20 he had been told and he was investigating the matter further.

Q. So that you knew at least that there was a dispute? A. I could say Yes.

Q. When you sent off the royalty cheque you must have thought to yourself, I put it to you, whether there is a dispute or not, we obviously owe at least 6/- a ton. A. No. We considered we had an agreement and the royalty cheque went off in accordance with the agreement. That would not have entered my mind at that particular point at all.

Q. It could not have entered your mind. A. I would say it did
30 not enter my mind at that time.

Q. Would you agree with me if you had paused to think it would have been perfectly obvious that you did owe at least 6/- a ton on some count or another? (Objected to; allowed.)

Q. If you had applied your mind to it at that time it would have been perfectly obvious to you that the company would have to pay at least 6/- a ton whether under the agreement or otherwise? (Objected to; allowed.) A. I would say we would have to pay a 6/- a ton royalty, yes.

Q. That is not my question. You know that. I am putting to
40 you that as at that time if you had applied your mind to the question it would have been perfectly obvious that the company would have to pay at least 6/- a ton whether it was royalty or damage for trespass or what have you? (Objected to; allowed.) A. I would say that that thought never entered my mind at any time.

Q. I am asking you if you had applied your mind it would have been perfectly obvious to you.

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HIS HONOR: Q. In the light of your present state of knowledge?
A. In the light of my present state of knowledge, I would say probably yes.

Mr ST. JOHN: Q. Really that is what you have told us already, as read back by the shorthand writer. A. If I had applied my mind.

Q. The same thing in September of course. If you had applied your mind to it at that time it would have been perfectly obvious, would it not? (Objected to; allowed.)

Q. Is the answer "Yes" in relation to September? A. Yes.

Q. Of course by the time you sent off your cheque in September 10 it was perfectly obvious that the validity of the agreement was being disputed? A. That is right.

Q. From what you have told us the company at least must have had some degree of doubt as to what its legal position was? A. We considered—(objected to; rejected.)

Q. You have told us at about that time some advice was taken. A. We went to Sir Garfield Barwick.

Q. May I take it from that that there was at least some degree of doubt in someone's mind as to what the true legal position was? (Objected to; question withdrawn.) 20

Q. Did you at that point of time, 13th September, consider whether you should send off the cheque as usual? A. No. I think possibly the next one; not particularly that one.

Q. Was it just more or less a matter of routine? A. It was more or less a matter of routine.

Q. You had taken the mineral? A. Yes.

Q. Rightly or wrongly? A. Yes.

Q. And you sent off your 6/-? A. Yes.

Q. Taking the view, I put it to you, that obviously you must owe at least that? (Objected to.) 30

HIS HONOR: That is covered by my earlier ruling.

WITNESS: For royalty under the agreement.

Mr ST. JOHN: Q. Have a look at this letter. That is addressed to you. Would you agree with me, having read that, that you must have had it in mind on 13th September that even if the company did not owe the money by way of royalty it might very well have to face an action for damages? (Objected to.)

Q. Was that a copy of a letter addressed to you by Messrs. Eric Campbell O'Mant & Grant? A. Yes.

Q. Dated 11th September? A. Yes. 40

Q. I put it to you that as at 13th September you knew even if you did not have to pay money by way of royalty you certainly might be called upon to pay damages? When I say "you" I mean the company. A. It would depend when that letter was actually received in the office.

Q. Do you not remember? A. I do not remember on that one. Perhaps not that one, but the following one.

Q. At any rate you sent off the cheques more or less as a matter of routine. A. That is right.

Q. You thought it the most natural thing in the world that the cheques should be sent? A. I would say they should be sent.

Q. And the most natural thing in the world that they should be received? A. That is right.

Q. And retained? A. And retained.

10 Q. It did not induce in you any particular state of mind? A. No. Later on I must admit—

Q. It did not cause you any surprise when the payments were received and retained by Hughes and Caldwell? A. When I found out that they were being detained I realised why they were being detained. The state of mind when I found that out was that if in fact we didn't send the cheques under the agreement which we considered to be valid, vice versa, the agreement could be terminated because we were not sending the cheques.

Q. So you thought that you should keep on sending the cheques?
20 A. I think we were entitled to send the cheques because we had a valid agreement to send them and to continue to do so under the agreement.

Q. You were not at all surprised when the moneys were retained?
A. When I found out that the moneys were retained I stopped to think why, and then the thought did come to my mind that perhaps it may prejudice your own case or something of a like nature.

Mr ST. JOHN: I think we are at cross purposes? A. Are you talking about the cheques that were not paid at all?

Q. The cheques that Logan Caldwell got and had been put into
30 his bank? A. That is correct.

Q. I am talking about the cheques that were paid into the bank. You follow me? A. Yes, I am with you now. You are talking about my state of mind at the time when those cheques were paid in?

Q. That is right. You said you thought it was normal routine to send them off? A. Yes, under the agreement.

Q. Under the agreement, or as it may be? (Objected to.)

Q. At any rate you told us you thought it was a perfectly natural thing to send the cheques off? A. That is right.

Q. And a perfectly natural thing for Hughes and Caldwell to
40 retain, not "detain"? A. You mean deposit them, yes.

Q. That is right. It did not cause you any surprise? A. No surprise at all.

Q. It did not seem in any way inconsistent? A. Not at all.

Q. Inconsistent with the dispute that had arisen? A. Not at all.

Q. Because obviously if one pauses to think they were owing one way or another? (Objected to.)

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Q. At any rate one reason for regarding it as a perfectly natural thing, if you pause to think, is, that obviously the moneys were owing in one shape or another. (Objected to; allowed.)

Q. That is so, is it not? A. If I had paused to think.

Q. And you knew of the trouble that was brewing on the 7th August when you got reports from Mr Buckley, or perhaps the 8th August? A. I know that there was a report of suspected trouble.

Q. Then you definitely knew of the trouble when the letter from Tester Porter came along on the 17th August, when you went to Young? A. Yes. 10

Q. You got a letter from Tester Porter dated 19th August? A. That would be right.

Q. And the letter of 11th September which I have just shown you? A. Yes.

Q. And finally when you noticed in October . . . (objected to).

Q. The letter—do you remember the letter? A. Dates of letters—I would like to get what you are referring to.

Q. At any rate it was perfectly clear to you at least from, say, the 17th August when you went down to Young, that there was a continuing dispute as to whether or not you were entitled to remain there under the agreement of June? A. Whether there was agreement or not? 20

Q. Yes. It was quite obvious to you throughout the whole of that period that there was a continuous dispute as to whether or not you were entitled to remain there on P.M.L. 1? A. On portion, yes.

Q. On the portion south of the creek? A. In terms of the agreement, that proportion as defined by the agreement.

Q. It went wider than that. You were actually told by letter of the 19th August to vacate the whole of the lease. (Objected to.)

Q. Do you not know that the letter of 19th August . . . (objected 30 to).

Q. (Calls for Exhibit C.) My friend is quite right. The word used is "request". You knew that a request—I now ask you the same question—at or about the 19th August had your company been requested to immediately vacate P.M.L. 1. (Objected to; objection withdrawn.)

HIS HONOR: Q. Were you, on or about the 19th August requested, was your company requested, to vacate immediately P.M.L. 1? A. In terms of what the letter says, yes.

Mr ST. JOHN: Q. You have seen already a copy of a letter of 11th 40 September making the same sort of demand? A. Yes.

Q. And you may or may not recall a longish letter in October making that demand that you get out in 16 days. Do you remember that? (Objected to.)

Mr LARKINS: I withdraw the objection in reference to September.

HIS HONOR: It goes to the contents of the written document and not to the paraphrase, Mr Larkins.

Mr LARKINS: No, Your Honor. I have withdrawn that objection. I have withdrawn in relation to September but not October.

Mr ST. JOHN: Q. Do you know anything about a letter of October? (No answer.)

HIS HONOR: Q. In September you got a letter? A. Yes, that is the one from Eric Campbell Omant & Grant, yes.

Mr. ST. JOHN: Q. Do you know anything of a letter in October?

10 A. Was that from some agent of the company, some Sydney solicitor—Lionel Dare and Reid. There was a letter dated October I think, yes.

Q. That also was addressed to you? A. Yes.

Q. Would you have a look at this (document shown to witness:) (Copy letter dated 11th September m.f.i. 14.)

Q. You received that letter, did you not of the 16th October, the one I have just shown you? A. Yes.

Mr ST. JOHN: I will tender that.

Mr LARKINS: I object to that tender as having been sent by two of the defendants only.

20 HIS HONOR: Is there a replication to that amendment which is set out in the amended pleadings?

Mr LARKINS: Yes, the amendment to the pleadings is I suppose to indicate those amendments and also I suppose to include the amendments we have, as I understand it they came to hand this afternoon for the first time. I have not even seen them. I have seen the documents but for the first time this afternoon, so that we have not even considered the replication, Your Honor. That is why I have thought it desirable to complete the pleadings, but we are not in a position to.

HIS HONOR: What is the position now. The statement of defence
30 has been resworn, has it not?

Mr LARKINS: That is news to me.

Mr ST. JOHN: Except by Mr Regan (discussion—argument ensued.) (Exhibit 2—letter from Lionel Dare & Reid & Martin to secretary of the plaintiff company dated 16th October 1957.)

Mr ST. JOHN: Q. And Mr Driscoll, of course you know proceedings were actually taken by Hughes & Caldwell against your company in November of the same year, 1957. (Objected to.)

Mr ST. JOHN: I am sorry, Your Honor. Proceedings were commenced by Mineral Lessees, that is to say Clarence Vivian Hughes
40 and Robert Frank Hughes? A. That would be right.

Q. Seeking an injunction to restrain your company from carrying on with the lease? A. That would be right.

Q. And asking that they be ordered off, in effect. Ordered off the lease. You know that do you not? A. That would be right, yes. (Objected to.)

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Q. I don't suppose you recall the date, 19th November? A. No.

Q. We will go back to August. Did you in fact . . . A. Where
in August?

Q. I will take you to that. Did you in fact have a conversation
with Logan Caldwell on the 4th August. I will give you some more
detail. I cannot tell you where but I am putting it to you on the 4th
August 1957 you discussed with Logan a different basis for royalty
payments. 500 tons per month—6/-; 600 tons per month—7/-; and
so it goes on, and 700 tons per month—8/-. A. No. (Objected to.)
(Question allowed.)

10

Q. Does that bring anything back to you at all? A. It brings
back a conversation I had with Norman Regan but not in connection
with this matter at all. Those figures certainly bring back a discussion
I had with Norman Regan concerning the Caldwell Pastoral Co. but
definitely nothing at all with Mr Logan Caldwell.

Q. I don't suppose you know the handwriting of Logan Caldwell
do you? A. That would appear to be it (indicating document).

Q. Do you see this notebook that has been noted "line of
approach to A.B.M. P.M.L. 1". A. That was a discussion with
Norman Regan.

20

Q. It does say "see different working as suggested by Driscoll
on August 4th 1957". A. On August 4th?

Q. He does not say "suggested to him"? A. I had a discussion
with Norman Regan concerning the working of P.M.L. 7, and that
was the basis of working P.M.L. 7, so I am afraid that I could not
say. In fact I know I did not have that discussion with Logan Caldwell
at that time with those facts.

Q. Perhaps it was suggested in making a note that it was sug-
gested by you to Regan? A. That could be so.

Q. And he has looked at that and has possibly meant approach 30
to him. A. That is on August 4th?

Q. August 4. A. Yes, I would have to have opportunity to
delve at something of Norman Regan and the Caldwell Pastoral Co.
I cannot answer on dates at the moment.

Q. However, be that as it may, it is perfectly obvious to you
that at least from the time when you received Tester Porter's letter at
least on the 17th August when you went down to Young, right up to
November when the suit was instituted, you had a sort of running
dispute between the parties? A. That would be right.

Q. You were never in any doubt that a dispute existed through- 40
out that whole period? A. I would say it would have existed at that
time.

Q. Nothing ever happened to cause you any doubt that that

Q. You of course would not rely upon Logan as having any
dispute would still continue? A. No.

authority to bind all the other members of the Hughes & Caldwell syndicate did you? A. Well, I would say yes.

Q. But you knew that he had to get confirmation from other people before he agreed to anything, did you not? A. My knowledge of partnership law—as I understand the law it may be that one partner could more or less . . .

Q. I am not asking you about partnership law. I want the facts. Did Logan Caldwell at any rate make it perfectly clear to you that he took the view that he wanted, or needed, confirmation from other
10 people before he agreed to any serious change in arrangements? A. That was right.

Q. I think you accepted that situation? A. I accepted that situation.

Q. In fact you have referred to it over and over again? A. That is so.

Q. In letters and in reports to the directors and so on? A. Yes.

Q. I suppose you thought when he signed the agreement of June that he had that confirmation, did you? A. Yes.

Q. He did not tell you so did he? A. Well, the arrangement
20 was that he would want—that he had confirmation—he had confirmed it with Mr Buckley and that the appropriate agreement would be . . .

Q. Did he tell you that he had that confirmation? A. He did not tell me that he had that confirmation.

Q. But you assumed that he had? A. Yes, I assumed that he had.

Q. Could I take you back for a moment to this question of the reduction of royalty. You do recall of course that the B.H.P. Co. Ltd. had sent a letter on the 15th February 1957? A. That is right.

Q. In reply to your application for an increase? A. Yes.

*Q. And I put it to you that the real basis of your attempt to get
30 the royalty reduced was the suggestion from the B.H.P. that it was in fact, as they chose to call it, unduly high? A. That is quite right.

Q. Whereas you on the other hand were saying “Well, it is not because of the royalties that we want it increased”. A. No, one point. Your previous question. I wish to correct my answer. (Question marked * read.) The real reason why we chose to have the royalty reduced was the uneconomic operation of the company at that particular time, but the 6/- could have been prompted by the application by the B.H.P.

Q. That is a sheer inadvertent error on your part when you
40 agreed in the first place to my question? A. I am afraid I did not think on your question.

Q. However when the B.H.P. Co. Ltd. suggested that the royalty itself was unduly high that was the reason why they did not grant an increase in price, you wrote back to say the increase was being sought not because of the royalty but because of other factors, be it uneconomical or—would that be a fair statement? A. That is right.

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Q. So that at the time you had sought your increase in price it was not because you thought the royalty was too high but for other reasons? A. That is right.

Q. You apparently took the view that the royalty was out of proportion in some way to the price of the mineral? A. Well, I think from memory a guide had been given to other people by Mr McCandie of the B.H.P. I don't know where but I think the B.H.P. did indicate in this field that a royalty rate of 6/- was applicable and I think that is possibly where I got that 6/-, but I am not sure of the . . .

10

Q. So it is not really because of the demand to come down to 4/- in order to make the whole thing an economic proposition was it? A. It was considered fair and reasonable and that particular situation is . . .

Q. I am putting to you that the application was not really because of the economic situation as such but it was pressure from the B.H.P. on an entirely different basis? A. Not pressure from the B.H.P. at all. That had all been finalised.

Q. Suggested from the B.H.P. As at January if you had got your increase in price it would have been an economic proposition to carry 20 on? A. We were hopeful of that.

Q. That is what your letter said? A. That is right.

HIS HONOR: Was that January? A. Yes, the application was made in January but it did not become operative until the 1st June.

Mr ST. JOHN: In similar terms to what were used on the 6th January.

Q. You took the view did you not that the royalty payments were substantial when compared to the profits of the mining? A. That would be another factor, yes.

Q. That was an important factor in your mind was it not? A. That was an important factor in my mind.

30

Q. For the simple reason possibly because of the B.H.P. suggestion you thought it was out of proportion? A. Yes.

Q. That is what was uppermost in your mind? A. I would not say uppermost in my mind but that was a factor in my mind.

Q. It was not merely a question of working it out in pounds shillings and pence, what would be uneconomic and what would be economical, was it? A. Could I have the question again.

Q. When you made the approach to Mr Logan Caldwell it was not a matter of working it out on what was economic or what was uneconomic, was it. Rather that your company had a state of mind 40 on this 10/- being unduly too high compared with the profits. The idea had been instilled in your mind perhaps by the B.H.P. (Objected to.)

Q. It was not merely a matter of working out the economics when you approached Logan Caldwell? A. It was a matter of working out the economics, yes.

Q. Your whole approach was coloured by this B.H.P. suggestion

was it not? A. Let me say I did know what the B.H.P. suggestion was, yes.

Q. When you made your report to the Board of Directors on the 3rd February 1961 the way you chose to do it was . . . (Objected to; argument ensued.)

Q. However I did want to ask you one other thing about the memorandum of the 4th June to which I have already referred you. This sentence here "please note that we have a certain quantity. . . ." It is quite clear in the light of that, I know it is a long time ago, that
10 you knew of that, that you alone had the benefit of the quantity bonus at the time when you rang Logan? A. I mentioned this morning Tom Buckley could have mentioned that.

Q. It is quite clear that may have been in your mind at the time when you rang Logan and when you asked that these letters be destroyed on the 4th/6th June? A. I would say yes.

Q. Did you, during the adjournment have a look at any of the documents you mentioned? A. You recall I came and asked you could I have them and you said "if you want anything would you ask from the witness box please".

20 Q. Quite right. I thought that you were going to find something for me that I did not have and not something that I did have.

Now of course all your work activity was working with the production of magnesite and chromite and so on? A. I am familiar with the prices we get for magnesite but I am not familiar with chromite.

Q. Do you know that the lessee was entitled, under the head lease to mine for magnesite and chromite? A. No I do not.

Q. You certainly did not know it then at that time that these agreements were negotiated? A. That is right.

Q. Did you at any time search for the head lease with the Mines
30 Department? A. I did not search the lease, no.

Q. Nor, so far as you know, did anyone do it on behalf of the company? A. I think the legal men might.

Q. Prior to any litigation? A. No.

Q. Certainly not prior to the agreement? A. No.

Q. How long had you been acquainted with the price of magnesite? A. Since we more or less came into this particular field.

Q. The B.H.P. are practically the only buyer, is that so? A. There should be other buyers. I believe there was one lease when we were trying to get further buyers unsuccessfully. There should be
40 other buyers.

Q. Would you agree with me although the price has varied it has always been an upward trend ever since you have been associated with it? A. The price has varied except when a big quantity cut out in July 1958. That would be definitely a downward trend.

Q. Prior to the agreements of January and June there had always

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been an upward trend had there? A. January and June, it was a price increase on the 1st June was it not?

Q. Going back over the years preceding January and June would you agree with me it never went down, from time to time? A. From the time we started it was £3/15/- per ton plus tonnage bonus and there was no increase until 1st June 1957 when it was 10/- per ton.

Q. That was the first price increase was it during the time that you were acquainted with it? A. That is right.

Q. I suppose you would agree in mining economic conditions are continually changing in any event, costs go up and down, prices go up and down although it is usually an increase in costs is it not? (Objected to.) 10

Q. Except for certain things there is a steady upward trend over the years? A. I would say there has been, yes.

Q. Generally speaking prices have shown an upward trend also since the war? A. You are referring to magnesite mining?

Q. Minerals generally? A. I will say magnesite. We got an increase of 10/- a ton.

Q. How far does your knowledge of magnesite go back, would you say? A. I would say 195—possibly the end of 1955, or the beginning of 1956. 20

Q. I suppose you have seen statistics issued by the Mines Dept. from time to time? A. I understand that they do issue statistics, yes.

Q. Have you seen them? A. I did see some statistics at one stage, yes, of quantities mined.

Q. Does that seem to indicate to you . . . (Objected to.)

Q. Now, you see the pattern indicated by these figures. (Document shown to witness.) This is the year—would you look at these figures. I draw your attention to the headings “year, quantity, value, and average per ton?” A. What is “3D”. 30

Q. 3rd December I think? A. It is three decimal places. (Objected to.)

HIS HONOR: I do not think the headings come within the category of contents of the document. However the witness cannot be asked the contents of the document.

Mr ST. JOHN: Q. All I ask you to do for the moment is look at it? A. I have looked at it and the headings on the top.

Q. Do you agree with me, forget about the document, do you agree with me that over a period at least since 1957, there has been a steady increase in the price of magnesite. (Objected to.) 40

Q. Have you tabulated tonnages taken out of P.L.M. 1 during any particular period? A. I believe the terms have been sent to the Mines Dept. by the office, yes.

Q. If I purport to quote what those returns show perhaps you could agree with me they are pretty well. From the 1st January 1956 to the 26th March 1956—nil return. . . . A. By the way those

are all from various—I think we have to nominate various leases. These returns, aren't they there—don't they relate the particular leases?

Q. This particular one of 11th September 58 at any rate. I don't think there will be any difficulty about that one because it refers to P.L.L.-460 specifically—P.M.L. 1. That is the same thing is it not. P.L.L.-460 and P.M.L. 1. (Objected to.)

Q. Is this your document? A. Yes that is my document.

Q. It is clear from that is it not that you took nothing out from the 1st January 1956 until the 22nd March 1956? A. Yes.

10 Q. But from the 22nd March 1956 to the 31st December 1956 you took out 345 tons? A. That is right.

Q. Valued at £1,295/18/- A. That's right.

Q. Have I made that quite clear? A. Yes.

Q. You send in returns from time to time. Here is a more efficient looking document, still your document is it not, Mr Driscoll, for the period 31st March 57 and referring to P.M.L. 1? A. Yes.

Q. The quantity taken out is 1,750 tons? A. Yes.

Q. And the value of that is shown at £6,426? A. Yes.

20 Q. There is one for the period ended 30th June 57 which shows 2,350 tons? A. Yes.

Q. Valued at £9,274? A. That's correct.

Q. Still dealing only with P.M.L. 1? A. That's right.

Q. Then there is the last one, a royalty return once again did you send that? A. Yes.

Q. This is the period ending 31st December 57 and a total tonnage for that year is 6,340 tons. This is not confined to P.M.L. 1? A. No.

Q. P.L.L. 460. It seems to be confined to that does it not. That shows a total tonnage of 6,340 tons? A. That is 31st December 57.

30 Q. Valued at £25,490? A. That is correct.

Q. I see it says "less cartage costs—£9,678"? A. That would be cartage after you have won it from the mine.

Q. That is to the rail head, or including railing? A. I would reckon.

HIS HONOR: You are only asked to speak on matters within your own knowledge. A. That is to the rail head, yes.

Mr ST. JOHN: Could I tender those documents. They will have to be separated out.

HIS HONOR: Is that the Mines Dept. file?

40 Mr ST. JOHN: Yes, some do come from various Mines Dept. files.

HIS HONOR: I don't think I will break the file.

Mr ST. JOHN: It says "Mines Dept. file relating specifically to P.L.L. 460. It is a document dated 12th February 58.

(Exhibit 3 document dated 12th February 1958 from Mines Dept. file relating to P.L.L. 460.)

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(Exhibit 4 letter dated 11th September 1958 addressed to the Under Secretary of Mines from the plaintiff company.)

Mr ST. JOHN: There are three returns. The return for the quarter ending 31st December 1956; return for period ended 31st March 1957; return for period ended 30th June 1957.)

(Mr Larkins objects to proposed tender—objection withdrawn—above returns tendered and marked Exhibit 5.)

(Further hearing adjourned to 10 a.m., Monday, 27th Feb. 1961.)

Eighth Day: Monday, 27th February, 1961

Mr LARKINS: There are some amendments to Thursday's transcript, 10 if Your Honor pleases.

At p. 221, fifth question from the top should read "How often were you down there . . ."

P. 222, about half-way down should read, "It continued to be apparent to you during the period after 31st December".

P. 223, about five questions down the answer should read, ". . . The tonnage railed in was 1,086/16".

P. 223, answer to fifth question from bottom should be, "There was a base rate of £4/5/- per ton . . ."

P. 223, next question should read "You got that bonus for 20 quantity by amendment originally to your first order . . ."

P. 224, answer to sixth question should read, "I could have mentioned to Tom Buckley on the telephone at one time as to whether they had it or not . . ."

P. 224, fifth question should read, "Did you have any reason to suspect that the bonus for quantity would not have been available . . ."

P. 224, seventh question. Answer should read, ". . . we sought this bonus on our own leases . . ."

P. 224, fourth question from the bottom. Answer should read ". . . but the general context of the conversation seemed pretty rough". 30

P. 224, third question from the bottom should read, "It is only a summary, is it not . . ."

P. 224, last question should read, "Your memory is short but do you know in your letter you describe it . . ."

P. 225, about a third of the way down, seventh question should read, "You have practically got it off by heart."

P. 227, seventh question, answer should read, ". . . I think it was some time about 10th June, . . ."

P. 228, fourth question from bottom—answer should read, "I would say the first truck loads . . ." 40

P. 230, first question should read, "Now, the reports from Young became more and more depressing . . ."

P. 230, seventh question should read, "You say he was told . . ." answer should read, "Yes, he had been told . . ."

- P. 230, fourth last question, should read, "(Exhibit CP shown to witness) . . ."
- P. 231, third question should read, "May I take it you were still pretty pessimistic".
- P. 231, 11th question. Answer should read, "I first learned that we were working south of the creek."
- P. 231, third last question should read, "Did it not appear in June that you . . ."
- 10 P. 231, third last question, answer should read, "I don't know that it appeared in June that we . . ."
- P. 231, second question should read, "You had no reason to be more optimistic than in May? A. I had no reason to be more optimistic than in May, no."
- P. 232, eighth question. Answer should read, "It was on the ground."
- P. 232, second last question should read, "There was £2,700 stockpiled . . ."
- P. 232, sixth question. Answer should read, "Also there was the stuff stockpiled."
- 20 P. 232, fifth question from the bottom, should read, "So you had exhausted the stock left on the ground . . ."
- P. 234, seventh question. Answer should read, "I can tell from my reports of the date we knew that".
- P. 234, third last question should read, "But if that is the fact it makes it even harder to explain . . ."
- P. 234, last question should read, "In other words if it is a fact that he pulled out for a fortnight . . ."
- P. 233, ninth question. Answer should read, ". . . and was not accounted for at the accounts at the end of May."
- 30 P. 233, tenth question should read, "It is perfectly clear that if the May figure is correct . . ."
- P. 235, fourth question should read, "And quite apart from that you had gross sales for the month of £5,771".
- P. 235, sixth question should read, "You were getting a price of £5/10/- a ton? A. The price we got was . . ."
- P. 236, top of page, should read, ". . . a very much lesser loss or even a profit."
- P. 236, statement by His Honor should read ". . . the reason for that, why that was so?"
- 40 P. 236, fifth question should read, "I take it as an accountant the mere statement of the figures . . ."
- P. 236, fifth question from bottom should read, "If he managed to rail away £5,701 worth, if he managed to increase stock on hand from £468 to £2,714, if he managed still in the same month . . ."
- P. 248, fourth question from bottom, answer should read, "We

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had in fact had that quantity bonus right throughout and we had not achieved that quantity bonus, . . .”

P. 248, second-last question should read, “Do you solemnly tell the Court that the presence or absence of that extra £200 . . .”

P. 250, second question should be in quotation marks.

P. 255, 7th question should read—answer should read, “. . . was only an instruction by me in May for the Month of June . . .”

P. 254, second line from top, delete “A” where appearing before words “no inkling” as this is part of the question.

P. 259, first question should read, “. . . for registration of the 10 agreement of June . . .”

P. 271, fourth question, answer should read, “on proportion, yes.”

P. 271, sixth question should read, “. . . to vacate the whole of the lease.”

P. 269, fifth question should read, “. . . when you sent off the cheques on 15th August . . .”

P. 272, statement by Mr Larkins should read, “I object to the tender as having been sent by two of the defendants only.”

P. 272, second-last question should read “. . . proceedings were actually taken by Hughes and Caldwell . . .” 20

P. 272, third question should read, “That also was addressed to you”?

P. 273, sixth question. Answer should read, “. . . concerning the Caldwell Pastoral Company . . .”

P. 277, second-last question should read, “Will you agree with me . . . A . . . That would be definitely a downward trend.”

P. 276, last question should read, “. . . that you had the benefit of the quantity bonus . . .”

Mr LARKINS: I seek leave to file the plaintiff’s replication to the 30 re-amended statement of defence.

HIS HONOR: I will give leave to file this in Court.

ROBERT MITCHELL DRISCOLL

Further cross-examined:

HIS HONOR: You are on your former oath.

Mr ST. JOHN: Q. You have told us about the fund which I think was invested in a subsidiary company of yours? A. Yes.

Q. And, can you tell me in round terms what it was worth around about, say, June 1957? A. I would say twenty to twenty-five thousand pounds. 40

Q. Surely that is an exaggeration, is it not? A. When you say “worth”, what do you mean—“worth the cost of replacement”?

Q. All I wanted to get was an idea of your capital investment at Young. A. If you wanted to put down very similar to what was existing there at that particular time I would say it could be nearer in the vicinity of twenty-five thousand pounds, anyway.

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- Q. New, you mean? A. Yes.
- Q. But of course, this plant was very old? A. Not very old.
It was old, yes.
- Q. There was an old bulldozer? A. Not an old bulldozer.
- Q. Are you sure of that. Very old, I put it to you? A. Very old?
- Q. As bulldozers go? A. No, sir, I would not say it was very old at all. This is 1957.
- Q. Yes, 1957. Do you know how old it was? A. I would suppose two years, maximum.
- 10 Q. And the shovel. A very old shovel, I put it to you? A. I can't think. But I don't think so.
- Q. But it was old, was it? A. It had been used, yes.
- Q. These things depreciate quickly, do they not? A. It would depend on how they were maintained.
- Q. Do you know what the rate of depreciation is that you are allowed for taxation purposes? A. Up to 20%.
- Q. Comparatively speaking their life is short, would you agree?
A. No.
- Q. But you cannot say just how old they were? A. No, I
20 can't say just how old they were.
- Q. £25,000 would be the value of it new? A. I would say so, yes.
- Q. And it was certainly worth considerably less than £25,000 as at June 1957, was it not? A. It would have been worth less than £25,000?
- Q. Under £10,000 I would say. Well under £10,000? A. No.
- Q. Have you any idea what value was shown for taxation on those items specifically? A. I would have no idea at that time.
- Q. What other capital investment did you have at Young apart
30 from the plant? A. There would have been sheds, stock on hand for the repair of shovels, there would have been general explosives; there would have been petrol and oil. There would be jackhammers, compressors and parts for the repair thereof.
- Q. Have you any real, actual idea, of the total value, an accurate idea of the total value of your capital investment, what it would have been as at June 1957? A. Only what I have said.
- Q. Do you have any idea, then? A. Not really.
- Q. How could you really estimate whether it was or whether it was not an economical proposition unless you knew that? A. To be able to do anything of a like nature there would have to be
40 profits . . .
- Q. When it came to the question of whether an extra £200 a month would or would not make a difference between an economic or uneconomic situation you would have to consider the value of capital investment, would you not? A. You know you have got operating expenses. You know what the expenses are and you know what you will receive by way of sales and you have an indication of

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what you are getting by way of sales less expenses, after taking into consideration stocks, of course; that is operating at a profit or loss, as the case may be.

Q. When you came to consider the position as at June you worked out in detail a figure in that letter, do you remember? A. As at 5th June?

Q. Yes? A. Yes.

Q. When you came to work that out in detail and to make an estimate, in detail, as to whether £200 was enough for royalties or as to whether it would not make any difference between "economic" 10 and "uneconomic", you surely would have to pay some account to capital investment, would you not? A. I suppose that could be so. I don't recall it coming to my mind.

Q. Nonetheless, you put it to Logan Caldwell, did you not, that the yield of magnesite at that time was such that the royalty made it uneconomical for you to continue? A. I told him production was poor.

Q. Will you just answer my question. I am putting to you that you told him the yield of magnesite at that time was such that the royalty made it uneconomical for you to continue? A. I told him not only of the yield but other factors as well. I explained to him, 20 I think, about increasing production, increasing values and decreasing costs.

Q. I am putting the question to you, would it be a fair summary of the effect of what you put to Logan that the yield at that time was such that the royalty made it uneconomical for you to continue operations there? A. I would say the operating of the company, or the economics of the situation were such, that well, the royalty just had to be reduced.

Q. Well, could you please answer my question. Would it be a fair summary that the effect you created in Logan Caldwell's mind, 30 or the representation that you made to him, was that the yield was such that the royalty made it uneconomical for you to continue? A. No, that is not what I put to him.

Q. Do you know in your client's (sic) pleadings it is put in almost those words, that what you represented to Logan Caldwell was the fact that the yield was such that the royalties prescribed by the agreement made operations uneconomical. Is that or is that not correct? A. I did say "uneconomical working of the company that brought about the fact that the royalty had to be reduced."

Q. So you would not agree that is a fair statement of what you 40 put to him? A. I can say production or yield at that particular time was poor and sales, which I have already said, put the company in an uneconomic position.

Q. In the light of what you have said would you not say this was a fair statement of what you told him? A. Could I have that again?

Q. Para. 24 of your amended statement of claim, I am putting

to you. I will read it to you slowly. "Shortly before 14th June 1957 the plaintiff represented to the said Logan Hunter Caldwell as was the fact that the yield of magnesite from said mining operations was such that the royalty prescribed by the said agreement made such operations uneconomical for the plaintiff? A. That would be right, too. For that yield.

Q. That would be right, would it? A. The yield of magnesite I would say, the production and sales of magnesite less expenses, giving an uneconomical situation.

10 Q. A short while ago when I put it to you almost in the very same words you told me that you had not made that particular representation to him? A. I thought I explained . . .

Q. Your answer was "No". You now say that is not a correct statement. (Objected to.)

Q. Do you tell us that is a correct statement of what you represented to him or not? A. I say the yield of magnesite . . .

Q. Take your time and tell us whether that is a fair summary of what you represented to Logan Caldwell. (Document shown to witness.) A. That is right.

20 Q. That is right, is it? A. Yes, that is right.

Q. But it was not the fact, was it, that the royalty made it uneconomical? A. Yes, it was.

Q. I thought from what you told us before that there were a great number of factors to which you had been addressing your mind, most of them you managed to fix up? A. I explained to Logan Caldwell the position.

30 Q. Could you address your mind to my question. From what you told us in the witness box is it not clear there was a great number of factors and circumstances—you had to apply your mind and your activities to by the 5th June—and you had managed to find a satisfactory answer to most of them? A. To make operations economical, yes.

Q. And it was no longer true to say the royalties were making it uneconomical—singling them out—was it? A. Actually the answer at that stage would be "Yes".

Q. Would it. It was only the royalties then that were making it uneconomical by the 5th June? A. They were making it uneconomical, yes.

40 Q. Had you taken stock of the position as set out in your letter of the 6th June? A. Yes.

Q. And you got to the stage where you worked out there was an extra £1,860. I know you add certain qualifications to that figure? A. Yes.

Q. You were telling us that would not be profits. You would first have to cover your operating losses? A. Yes.

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Q. You told us this was so even when he told you you would get away 1,000 tons per month? A. Yes.

Q. If we take the month of June as a test case. You got 1,000 away that month? A. Yes, we got 1,000 away that month.

Q. I put it to you even without allowing anything for the increase in stocks, or for the increased works in progress, you made a profit of more than £1,860? A. That would be so.

Q. Could you look at Exhibit CO. You have got that schedule. Would you have a look at that schedule? A. Yes.

Q. Now, the increase in works in progress was £1,562. Did you 10 pick that up? A. Yes.

Q. Have you a pencil or pen? A. (Witness handed piece of paper.) Your works in progress increase was £1,562. Do you see that? A. Yes.

Q. Would you make a note of that; and your stocks increase was £2,246? A. Yes.

Q. If you add those I think you will agree, leaving the shillings and pence, it comes to £3,808? A. That is correct.

Q. Your net return at June, or net profit as shown by the schedule, was £5,993? A. Yes. 20

Q. If you subtract £3,808 from that is it £2,185? A. That is correct.

Q. That was profit for the month of June? A. That is gross profit for the month of June.

Q. Is it not net? A. No. It is trading profit.

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

Q. Now, surely after deduction of working expenses, is it not? A. Yes, that is after deduction of working expenses.

Q. So, it is not net? A. No. There is no charge for depreciation or plant hire, you appreciate that. 30

Q. Subject to that? A. I am not sure whether there is a charge for administrative expenses in that, overheads of the company.

Q. I think there are? A. If I remember rightly I think the trading account was transferred. I am not sure of that.

Q. Would you look at the trading account for the year ended 30th June, 1957. Do you see the proportion—"N.S.W. share of administrative overhead £250"? A. That is right.

Q. So that, subject to plant hire and depreciation, the figure of £2,185 represents your net profit even if you disregard the increase in stock in hand and the increase in works in progress? A. That is 40 right.

Q. That is correct? A. Yes.

Q. Just look at the figures if you are in any doubt. Those are the figures? A. Yes.

Q. You have already told us that—I think you did tell us that

plant hire represents . . . A. I think I did say at one stage £2,000 or £2,500 per annum.

Q. And of course this amount taken up by way of hire, there is no claim of moneys for depreciation? A. That is right.

Q. Because the assets are held by your subsidiary? A. Yes.

Q. So we can assume it would be something of the order of £200 per month plant hire, would that be correct? A. Yes.

Q. So if we take that from £2,185 would you agree with me your profit for the month of June would have been nearer £2,000?
10 A. Yes.

Q. That is exceeding £1,860, an increase on the margin you worked out? A. Yes.

Q. So it is clear £1,860 in that test case we have taken for the month of June, was clear profit? A. On those figures, yes.

Q. It looks, taking that test case, that the £1,860 was clear profit and during the same month of June your stock in hand and works in progress were increased as we know by £3,808? A. Yes.

Q. Would you agree with me it would be probable that a considerable part of your working expenses was attributable to building
20 up stock and building up works in progress? A. Yes.

Q. Therefore the actual profit at June, disregarding these factors, would obviously have been considerably more than £2,000? A. Yes.

Q. If you could make over £2,000 a month, that is over £24,000 per year? A. That is right.

Q. Which is vastly more than 30% on your capital employed?
A. Yes.

Q. Even if you did not make the extra £200 per month on your reduced royalty you would still have a very good economic proposition, would you not?
30 A. Only if we were getting 1,000 tons away per month.

Q. If you got 1,000 tons per month? A. Yes.

Q. Your thinking was on the assumption you would be able to get it—in your letter of the 6th June? A. No. My thinking on the 6th June was that we may get it for one month but on looking into it I see on the 4th June, I see on the 6th June . . .

Q. On the 6th June you were working out your more optimistic figures on the assumption that you would, with luck, be able to get 1,000 tons a month from them? A. I worked out these figures on the assumption that if we got 1,000 per month that would be the result.

40 Q. You were assuming things were such that you would probably be getting it from then on? A. No, we would only be getting it for one month.

Q. Do you say that from a reading of your letter you were only anxious about that one month? A. Yes.

Q. I am putting it to you that Buckley in this re-assessment . . .
A. Let us get the letters straight. We have two letters classed together.

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Q. The letter of the 6th June is the one in which you tabulated your costs? A. Yes. I am assuming we would have it then, this month.

Q. "A thousand per month," not for June, "a thousand per month?" A. Yes.

Q. Let us get this clear. In fact you got away one thousand tons for the month of May? A. That is right.

Q. On the 4th June you were still getting news through as to big tonnages "at present being obtained"? A. May I have the memo of 4th June?

Q. Yes. (Shown to witness.) Were the actual words that you used there? A. That is a letter from the B.H.P. together with an order for magnesite. (Witness reads letter aloud.) ". . . received your advice this morning of big tonnages you are getting at the present time . . ."

Q. Is that the one of the 6th June? A. Might I have the advice that I received that morning. It was a memo from Tom Buckley, early in June. (M.f.i. 6 shown to witness.) May I read it?

Q. Yes, do. A. "Unfortunately, Bob, I could not get any extra away during May, but I have every hope of getting a thousand away this month . . . we have a few repairs to do to-day . . . during the 20 weekend."

Q. You say that is all you were referring to in your memo of the 4th June? A. Yes. (Witness reads from document.)

Q. Do you recall that it related to that? A. I don't actually recall but I would say from my memorandum that was relating to that.

Q. It is clear that you got a thousand during May? A. Yes, I think we got considerably less in April . . .

Q. 1,052 tons in May? A. That is right.

Q. I will concede that you had been getting less than that before. But I am putting it to you things were looking up, in your opinion? 30
A. No.

Q. You had in fact got 1,052 in May? A. Yes.

Q. You had received word from Buckley on the 3rd June that he expected to get a thousand away that month? A. Yes, he hoped to.

Q. Now, in your letter of the 6th June you said "Assuming we have production of thousand tons per month"? A. Yes.

Q. You "assume". You would never have dreamt of getting that a few months before, I put it to you? A. Yes.

Q. Would you. You would not have dreamt of making that assumption a few months before? A. No. We had been trying for 40 a thousand per month for a long time.

Q. A few months before you would never have dreamt of making that assumption? A. Yes.

Q. Would you? A. Yes.

Q. Despite all the trouble and the lack of production? A. We had been planning to get a thousand every month.

Q. That is not my question. You would not have dreamt of making that assumption, obviously? A. I think in December we had got a thousand away—in December.

Q. This assumes here a working out of some increase that you are going to get it? A. This assumes if we have production of a thousand per month we will get it?

Q. Yes? A. That is right.

Q. In business you try to make realistic assumptions, do you not? A. Yes.

10 Q. By that time it did look a realistic assumption even though still in the realms of hope it was a realistic assumption at the time? A. Yes, it was a realistic assumption at the time.

Q. When you speak of a thousand tons per month it is obvious you were not only looking to the month of June? A. Provided all these things could be done.

Q. You were not only looking to the month of June? A. I was looking into the future. If we got this thousand a month those things could be achieved.

Q. You were not only referring to the month of June? A. No.

20 Q. Then when you set out your figures, one, two, three, four, do you see the fourth one “quantity bonuses not available to us earlier”? A. Perhaps that is badly worded . . .

Q. You are not intending to suggest that the B.H.P. did not give it to you earlier? A. No, we had achieved—obviously not available quantity bonuses—not achieved by us earlier, and after taking into account what we have in fact achieved.

Q. The fact that you say “not available to us earlier”, suggests that it was available to you now? A. No. What I felt there was if we got the thousand tons away we would achieve the maximum 30 quantity bonus.

Q. But “not available to us earlier” suggests that it would have been available to you at some other stage? A. No. Even when he points out that we had in fact got away—you will find we did not have the full amount of one thousand tons per month available.

Q. I put it to you the fact that you say, “not available to us earlier” underlines the fact you were optimistic at that stage that it would be available to you in the future? A. That pound?

Q. That pound? A. That is right.

40 Q. The next sentence is “It will be seen . . . per month”. Once again it is perfectly obvious that you are thinking of the future and not confining it to “achieved in the month of June”. A. That is right.

Q. In the context of that thinking, and in light of the figures that you have now agreed to, it is quite absurd, is it not, to suggest that £200 per month less or more would have made all the more difference, whether it was economic or uneconomic? A. On our past performance with production it indicated quite definitely that we had

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not achieved 1,000 tons per month. There was no reality that he was achieving 1,000 tons every month.

Q. If you go to your letter early in May you may find where you are talking about the return for the year ended 30th June. Do you put it that you were in your own mind talking about past performance? A. You are not talking about what was in my thinking at 6th June if we achieved all these things? Assuming we could get production of 1,000 tons per month and maintain that production of 1,000 tons per month, and provided we could achieve those four things?

Q. Then, £200 per month would have been neither here nor there? A. No, I would not say it was neither here nor there. 10

Q. It certainly would not have made all the difference between "economic" or "uneconomic"? A. Yes, it would have at that time.

Q. Even on those figures? A. Yes.

Q. Not on all those assumptions? A. And on those assumptions, yes.

Q. On those assumptions you would make not 30%, you would make 100% on your capital employed, even on your figure of £25,000 as capital employed your return clearly would not be 30% but 100%?

A. That would be right, assuming we could get 1,000 per month. 20

Q. On those assumptions? A. Yes.

Q. Now, on those assumptions, the difference of £200 per month still would leave you with a return on your capital far in excess of 30%? A. That is correct.

HIS HONOR: Q. That is on a yearly production and does not arise "per month"? A. Yes.

Mr ST. JOHN: Q. In other words, making all the assumptions made in your letter of the 6th June? A. That is right.

Q. Do you still say you were perfectly frank with Logan when you put it to him that the situation at that time was such that it was 30 uneconomical to carry on with the 10/- royalty? A. Yes, I do.

(Exhibit 6—document m.f.i. 8, letter dated 20th May 1957 from Buckley to Driscoll.)

(Exhibit 7—letter dated 22nd January 1957 from Buckley to Driscoll.)

(Exhibit 8—letter dated 12th February from Buckley to Driscoll.)

(Exhibit 9—copy letter from plaintiff to B.H.P. dated 18th February 1957.)

(Exhibit 10—letter dated 4th March 1957, Buckley to Driscoll.)

(Exhibit 11—copy letter dated 6th March 1957, B.H.P. to 40 plaintiff.)

(Exhibit 12—letter dated 15th May, Buckley to Driscoll.)

(Memorandum dated 4th June, Driscoll to Buckley with annexures—sought to be tendered: tender withdrawn.)

(Exhibit 13—letter dated 2nd June, m.f.i. 6 from Buckley to Driscoll.)

(Exhibit 14—memorandum dated 4th June with annexures Driscoll to Buckley.)

(Exhibit 15—letter dated 19th June 1957, Buckley to Driscoll.)

Mr JEFFREY: There are three items of correspondence, not all of which have been the subject of cross-examination, but which I tender as part of the historical record, as it were.

(Exhibit 16—letter from the solicitors for the plaintiff to Messrs. Tester Porter & Co. in reply to a letter of the last-named of 19th August, dated 21st August.)

10 Mr JEFFREY: I call upon the plaintiff for the original of a letter from the solicitors for the defendants to the plaintiff of 11th September 1957—a copy of this letter is m.f.i. 14.)

Mr LARKINS: This letter has been produced on subpoena.

Mr JEFFREY: I tender only the second paragraph of the letter of the 11th September.

Mr LARKINS: I object to the tender of one paragraph only.

Mr JEFFREY: I tender the letter.

Mr LARKINS: Then I do not object.

20 (Exhibit 17—letter dated 11th September from solicitors for the defendants to the plaintiff, and reply thereto, dated 13th September 1957 from the solicitors for the plaintiff.)

Mr ISAACS: Q. You recall on Thursday last Mr St. John was asking you some questions about your state of mind when you made the royalty payments from August onwards? A. Yes.

Q. I think you told Mr St. John that your state of mind when you were making those payments was that you believed the royalty payments from August onwards were made by you under the Agreement of the 14th June 1957? A. That is right.

30 Q. You told him that you became aware that the cheques were being retained by the defendants? A. In other words not being banked or banked?

Q. It does not matter. Banked or held? A. Yes.

Q. Some cheques you understood were banked and some you understood were retained? A. That is so.

Q. What was your state of mind at that time when these cheques were either being banked or retained by the defendants as to the footing on which they were either banking them or retaining them?

40 Mr ST. JOHN: When they were retained they were retained by Logan Caldwell. There is no evidence that they were retained by the defendants.

Mr ISAACS: Q. You told us that you sent out these royalty cheques from August onwards? A. That is so.

Q. You told us what your frame of mind was, what your belief was, as to the footing on which you were making the payments? A. Yes.

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Q. That is it was under the agreement of the 14th June 1957?

A. That is so.

Q. You told us some of these cheques were banked and some of them were retained? A. That is right.

Q. Independently of who retained them and who banked them, did you believe at that time that they were being banked and retained under the terms of the same agreement? A. Definitely.

Q. On no other footing? A. On no other footing.

Q. Did you believe that they were being retained or banked, as the case may be, on behalf of all the defendants under that agreement? 10
A. Correct.

Q. It follows from what you have said to me that your state of mind at the time these payments were made and were being banked and retained is that they were being accepted under the terms of the agreement? A. Definitely.

Q. By whoever was accepting them in the first place? A. Yes.

Q. And secondly, your belief was that it was on behalf of all of the defendants? A. Yes, in accordance with the agreement.

Re-examination.
—

RE-EXAMINATION

Mr LARKINS: Q. At p. 221 you were asked some question about the 20 number of occasions on which you had visited Young. Do you remember that? A. Yes.

Q. You were asked did you frequently visit Young, and you said No. You were asked how often were you down there during the relevant period, and you said "Twice". Would you tell us what you understood the relevant period referred to? A. I would say from the time we commenced magnesite mining in Young.

Q. I want to take you to a question you were asked at p. 223:—
"Q. You made almost £6,000 in one month, in June, on your figures? A. That is right. 30

Q. Whereas you have been losing at the rate of £500 a month approximately. Would that be so? A. That is so.

Q. Suddenly you were told you were making money at the rate of £6,000 a month? A. That is right."

Did you hear the words "You were told" in that question? A. I was not told.

Q. What you were assenting to was that suddenly you were making money at that rate? A. That is right.

Mr ST. JOHN: I do not think I said "you were told". I probably would have said "you learned". 40

HIS HONOR: I will correct that by crossing out "you were told".

Mr LARKINS: Q. At p. 225 you were being asked about Mr Buckley's operation south of the creek:—

"Q. And no doubt you learned from him for example that he had commenced to test south of the creek at a certain stage? A. No.

Q. You never did. A. The first indication I had of doing anything south of the creek was in a report that Mr Buckley put in in August. Prior to that south of the creek was never mentioned to me.

Q. So that it was August you tell us when you had first been informed that he had moved south of the creek? A. That is right.

Q. You knew the creek was there? A. I did not even know the creek was there.

10 Q. You don't remember seeing a creek or a gully in that section there? A. I don't recall it, no."

I think this is the position, you told my learned friend that you knew in June he had moved to a new pit? A. We knew in June he had moved to a new pit.

Q. Did you have any knowledge of where that pit was in relation to any physical features of that section of P.M.L. 1 which was east of the line running south from the turn in the fence? A. I only assumed that that too was on the portion in terms of the agreement, but it was definitely on the portion as defined in the agreement.

20 HIS HONOR: I do not follow that answer. (Question and answer read.)

Mr LARKINS: Q. You told us you checked the boundary when you received the agreement in January against a map which you had in your office? A. That is so.

Q. When you checked that was there any gully of the type marked in Exhibit BY shown on that map in your office? (approaches). This is a sketch plan tendered in evidence as Exhibit BY. There is a mark going through P.M.L. 19 and P.M.L. 1 and through to P.M.L. 9. It is marked "approximate line of watercourse". (Objected to.)

30 Q. Do you still have the map you used at that time? A. I believe so.

Q. Have a look at Exhibit 1, which is a copy of your letter of the 13th June. You were asked some questions as to the words "very good sample" in that letter. You were asked a number of questions about the railing of samples. Did you have some confusion in your mind when you answered those questions? A. I did.

Q. You were asked some questions about the new workings referred to in that letter. At p. 227:—

"Q. Would not the sample be of new workings of some kind?

40 A. Well, normally, yes. It could quite easily have been out of new workings or in another strata of workings."

Do you wish to correct that answer that normal samples would only be of new workings? A. Yes. Bulk samples were taken of every load taken to B.H.P., and from those bulk samples that went to B.H.P. the bonus or the penalty in relation to their order was calculated, but every truck and every series of trucks that went to

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B.H.P. were in fact sampled by B.H.P. to work out that bonus or that penalty.

Q. That is the bonus or penalty based on quality? A. Yes, based on quality and not quantity.

Q. Were the results of those analyses on receipt from B.H.P. recorded in a book kept by the Company? A. They were.

Q. When it was first started was the record actually kept by you, yourself? A. The first entry was made by me.

Q. (Approaches.) This book has a title "Graphic Analysis Book", which is the printed title under which the book is sold, and then it has "Magnesite Mine Thuddungra'. Is that the book to which you refer? A. Yes.

Q. When was that record commenced? A. 8th April 1956.

Q. Were those entries then made by you? A. The first entry was made by me.

Q. Will you explain to His Honor and to my learned friend what these entries are and what they relate to?

(Graphic Analysis Book tendered.)

Mr ST. JOHN: Would my friend say on what basis this is tendered?

Mr LARKINS: We wish to show from the balance of the record that the letter of the 13th June could have referred only to consignments railed prior to a particular day.

HIS HONOR: Q. Were there any other kinds of samples? A. These were the bulk samples referred to throughout. There were not other kinds of samples at all. Every load was in fact sampled.

Mr ST. JOHN: In the circumstances I am afraid I must object to the tender because the maker of the record has not been called.

HIS HONOR: I reject the tender. The book will be m.f.i. 15.

Mr LARKINS: I will be tendering those portions of the book that the witness has kept, himself.

Q. Would you have a look at m.f.i. 15? I think you have told us that the entries commencing in April 1956, that is the commencement of the book, were made by yourself personally? A. By myself personally.

Q. Would you tell us how many folios were kept by yourself? You are looking at Folio 1. A. The first entry only.

Q. Would you explain the abbreviations and the method employed in the graph and where the information is obtained from, in relation to the one entry you made yourself.

(First entry in graphic analysis book, m.f.i. 15 tendered without objection, and marked Exhibit CW.)

Q. The first column is a reference to the invoice date? A. Correct.

Q. I should say the first two columns. A. That is right.

Q. Then you record the debtor, which is Broken Hill Pty. Limited? A. That is so.

Q. The next series of entries—there is the number of the consignment note shown? A. That is right.

Q. And then the date railed from Thuddungra or from Weedallion it would be? A. From Weedallion, yes.

Q. That is when? A. That is so.

Q. What is the next entry? A. Rail truck number; tonnage.

Q. Destination? A. Destination.

Q. The order number? A. That is the order number from B.H.P.

Q. That is 0996, the one which is already in evidence? A.

10 Correct.

Q. The next series of entries relate to B.H.P. information. What is that? A. That is invoice date.

Q. Where is that information taken from—from the B.H.P.? A. That is from the check advice that comes through from B.H.P.

Q. What is the first entry? A. H. 362; that is the reference number. They numerically number.

Q. They are checks? A. The advice.

Q. That is the reference to the advice? A. Yes.

Q. The next entry is the date of the advice? A. Yes; the tonnage.

20 Q. And then? A. And then the invoice date.

Q. Moving over to the right-hand side of the folio, what are the next two entries? A. The date the cheque is received and the amount of the cheque.

Q. The next one is the receipt? A. The receipt number that is issued.

Q. Then there are six categories shown of the analyses made by B.H.P. of that consignment? A. Of that consignment.

Q. The first one relates to the content of— A. Silicon oxide.

30 Q. The second one? A. Ferric oxide or Ferrous oxide; aluminium oxide; Si O_2 $\text{Fe}_2 \text{O}_3$.

Q. You say that is ferrous or ferric oxide? A. Yes. $\text{Al}_2 \text{O}_3$, aluminium oxide; Mn O , manganese oxide; Ca O , calcium oxide; and Mg O magnesium oxide.

Q. The next column shows the base rate? A. Yes.

Q. That is the base rate under order 996? A. That is right.

Q. The next column shows the bonus payable? A. That is right. In that case it was .55 additional magnesium oxide at 4/- per ton, which worked out at 2/2d.

40 Q. The next column makes provision for any penalty incurred? A. That is right. There is Nil in that instance.

Q. That penalty arises out of the analyses? A. Yes.

Q. And under the order? A. Correct.

Q. The next column shows? A. The per ton rate.

Q. That is the final rate ascertained after either a bonus has been allowed or a penalty deducted? A. That is so.

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Q. The figure in the extreme right-hand column? A. Is the amount of the cheque.

Q. Showing how it is made up? A. That is right.

Q. Was that record kept continuously thereafter? A. That record has been kept continuously thereafter.

Q. I want you to have a look at this letter from B.H.P. of the 28th June 1957. Did you receive that letter? A. Yes.

(Letter of 28th June 1957 from B.H.P. to Mr Driscoll tendered—objected to—later marked Exhibit CX.)

Mr LARKINS: I undertake to make it relevant on the basis that when 10 the contents of the analyses are proved and related to the journal m.f.i. 15, it will have appreciable significance in relation to the cross-examination on the letter of the 13th June. Your Honor will see that the second paragraph of the letter of the 28th June deals with the bulk sample for the week ended 14th June, and contains a reference to the truck number.

HIS HONOR: Which could well be the sample the subject of this letter.

Mr ST. JOHN: I do not object to the form.

HIS HONOR: I think the information is relevant or can be made so on the undertaking, and I will admit it. 20

Mr LARKINS: May I reserve leave further to re-examine Mr Driscoll on this book and those letters when I have complied with my undertaking to prove the keeping of them.

HIS HONOR: If you pursue as far as you can at this stage, an extra question or two I will allow, but not extended re-examination.

Mr LARKINS: Q. Would you have a look at Exhibit CX? Are the details of the truck numbers referred to in that letter recorded in the magnesite journal which is m.f.i. 15? (Objected to; rejected.)

Q. We can have a look at Exhibit 6, the third-last paragraph. I think that is the reference there to "We have opened up a fair area 30 of floor"; that is what my learned friend referred to as the new floor area which Mr Buckley had referred to in an earlier letter. A. Yes.

Q. Exhibit 6 is his letter of the 20th May. You were asked a number of questions in relation to your memorandum to him on the 4th June, which is Exhibit 14. (Exhibits 13 and 14 shown.) Have a look at Exhibit 13, which I think is dated 2nd June 1957? A. Yes.

Q. That was a Sunday, was it not? A. It was a Sunday. I think I checked that the other day.

Q. Would you turn to the last paragraph of Exhibit 13 and to the second-last sentence, "We have started off well with 225 tons on 40 Saturday"? A. Yes.

Q. Did you take that to relate to production or to railings? A. To railings.

Q. I think Mr Buckley concludes by saying "I will write or phone you during next weekend"? A. Correct.

Q. Would you look at the memo' of the 4th June, which is Exhibit 14? The first part of the last sentence, "Glad to receive your advice this morning"—to what were you referring when you said that?

A. To his letter of the 2nd of June.

Q. When you go on in that last paragraph to say, "Glad to receive your advice this morning of the big tonnages you are getting at the present time," to what are you referring when you say "Big tonnages you are getting"? A. I would say big tonnages you are getting away.

10 Q. To that extent it is elliptical. You say it refers to the advice you had received in his report of the 2nd June of the big tonnage he had railed on Saturday? A. That is so.

Q. What is your recollection as to what you were referring to? A. On reading these two memo's I say my memo' of the 4th June and the advice I got that morning related specifically to Tom Buckley's memo' to me dated 2nd June 1957.

Q. You were asked some questions at p. 261:

20 "Q. Did Buckley ever mention to you that he was deliberately refraining from moving into an area of the Crop land because of any agreement, gentlemen's or otherwise? A. There could have been something mentioned about a wheat paddock or some such thing at one particular time.

Q. Can you place that? A. It would probably be in written memos.

Q. Prior to June 1957, may I take it? A. I do not know. It could have even been later on in later discussions. I do not know. I do know I have heard some mention of wheat land either then or subsequently. I am afraid I cannot fix the date."

30 Are you now able to fix the date? A. I am able to fix the date reasonably.

Q. Would you have a look at m.f.i. 10. Is that the document you had in mind? A. That is right.

Q. Looking at that document, are you able to say now when you first heard any reference to wheat paddock or some such thing? A. Yes.

Q. Having refreshed your memory from that are you able to say when was the first reference you heard to wheat paddock or cultivated land? A. Yes.

Q. Did you receive that letter? A. Yes.

40 Q. Which is m.f.i. 10. When did you receive it? A. Some time within a day or so after the 2nd September 1957. It is dated 2nd September. It would have arrived on the 3rd or 4th September 1957.

Q. Was that the first occasion you had heard any mention of wheat paddock or some such thing? Would you look at the first paragraph of the letter? A. The first mention I heard of a wheat paddock would have been not before the 17th August.

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Q. At p. 262 you were asked about the opening of the new pit:

“Q. He told you that he had opened up a new pit? A. No. He said that he had opened up a new pit.

Q. That is what I put to you and you said no. A. Just a moment. In August. He told us the pit he had opened up earlier was beginning to show very good results.

Q. Beginning to show in August? A. The reports will show exactly what he did say.”

Would you have a look at that report of the 10th June 1957?

(Mr Buckley's report of 10th June 1957 to Mr Driscoll tendered 10 without objection and marked Exhibit CY.)

Q. Would you have a look at Exhibit 15? Would you also have a look at Mr Buckley's reports of the 25th July and the 1st August 1957?

(Report of 25th July 1957 from Mr Buckley to Mr Driscoll tendered without objection and marked Exhibit CZ.)

(Report of 1st August 1957 from Mr Buckley to Mr Driscoll tendered without objection and marked Exhibit DA.)

Q. Are those four reports, the report of the 10th June which is Exhibit CY, and the three subsequent reports, the report of the 19th June which is Exhibit 15, the report of the 25th July which is Exhibit 20 CZ, and of the 1st August which is Exhibit DA, the only reports you received from the time the pit was opened until you received the letter dated 6th August? A. They are.

Mr ST. JOHN: Q. The only written reports? A. The only written reports.

Mr LARKINS: Q. You were asked about a visit to Young on the 17th August. A. Yes.

Q. Then you were asked a number of questions, some of them by my learned friend, Mr Isaacs, in his cross-examination. You were asked about your state of mind at the time you sent a letter on the 15th August enclosing a cheque. Do you remember that? A. Yes.

Q. Having regard to what was said in regard to Logan Hunter Caldwell having no authority by various of the defendants in Young, what was your reaction to those statements? (Objected to; question withdrawn.)

Q. You were asked questions about your state of mind when you sent the cheque in September 1957. What was your reaction to the statements which had been made by the defendants in Young suggesting that Logan Caldwell had no authority to sign the agreement?—

HIS HONOR: I do not see how you can get it in that wide form. If 40 the witness wishes to add anything to the state of his mind at the time—

Mr LARKINS: Q. Insofar as there was a dispute, to what did you think the dispute related? A. Logan Caldwell having no power to sign the agreement. This is on the 17th August we are referring to?

Q. After August? A. Logan Caldwell having no power to sign

the agreement or boundaries. Later, immediately after the 17th August, whether the agreement could be terminated.

Q. You were asked whether you had sought advice? A. That is right.

Q. I think you said you had sought advice from Sir Garfield Barwick? A. That is right.

Q. Was any question of Logan Hunter Caldwell's authority to sign ever referred to your advisers? (Objected to; later rejected.)

Q. What was your reaction to the claim by some of the defendants on the 17th August that Logan Caldwell had no authority to sign the agreement? (Objected to; later allowed.)

(Luncheon adjournment.)

(Mr Isaacs requested that this case not go on on Monday and Tuesday next because of a criminal trial in which he represented the accused having been fixed by the Crown for hearing on Monday and Tuesday next. The application was not opposed by Mr St. John who also has a fixture on Tuesday next. Mr Larkins does not oppose Mr Isaacs' request provided the Court does not sit on Friday of this week.)

HIS HONOR: Very well, I won't sit on Monday and Tuesday. I will see if any of the fixtures are ready to go on earlier. I won't sit on Friday if all counsel feel five days this week will be a burden.

Mr ST. JOHN: My friend and Mr Isaacs will be very happy if you do not sit on Friday; it will give us a chance to draw breath.

HIS HONOR: My present intention is to sit on the following Friday, unless any of the matters I have at present set down have some urgency that I am not yet aware of.

Mr ST. JOHN: If my friend relies on some kind of ratification by way of estoppel, the question is not what Mr Driscoll's state of mind was but rather what were they reasonably entitled to assume having regard to the facts.

HIS HONOR: I was thinking of it more in the light of re-examination on some of your cross-examination. What was the issue the cross-examination went to?

Mr ST. JOHN: It went to ratification.

HIS HONOR: And to his then state of mind?

Mr ST. JOHN: His belief as to the existence of a continuing dispute. If it is strictly confined to something that might cut down or qualify what was said to me. I cannot object to it.

HIS HONOR: I feel, whether it helps or does not help in the long run, you are entitled in re-examination to ask his state of mind when this claim was made on the 17th August. I cannot see that the advice sought from Sir Garfield Barwick is admissible because, although it is on the same field, there is no way of establishing whether it was such an easy problem as not to put before him. You cannot prove it was not in the consciousness of the Company from the advice which solicitors sought from senior counsel.

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Mr LARKINS: I would submit what is referred would be admissible.

HIS HONOR: I do not think an inference can be drawn because a matter was not referred.

(Last question, put before the luncheon adjournment, on p. 305 read.)

Although I am not satisfied of the ultimate relevance of such a question, I consider that the witness' state of mind has been opened in cross-examination and that I should allow re-examination on the question without deciding the ultimate relevance.

Mr LARKINS: Q. What was your reaction to the claim made by some 10 of the defendants that Logan Hunter Caldwell had no authority to sign the agreement? A. I considered it was bluff.

Q. Why did you consider that? A. We had had an agreement dating back to January which had been signed by Mr Caldwell; royalties had been paid under that agreement and had been accepted normally. Mr Caldwell also had written in June to me and had stated that the Syndicate or the partnership—

Q. I show you a letter of the 30th June 1957, Exhibit BX; is that the letter to which you are referring? A. That is the one.

Q. What portion of that letter do you particularly refer to? 20 A. "on the matter of the reduction of royalty paid by you from 10/- to 6/- per ton coming under discussion by Messrs. Hughes and Caldwell syndicate, it was felt with high prices being received from magnesite, these higher prices reduce their income due to the fact that the amount to be paid to the Department of Mines at 1/1-8th% increases as the value of magnesite mined increases. Messrs. Hughes and Caldwell have asked me to write to you on this matter and to ask you would you pay the Government royalty of 1/1-8% as from the 1st June 1957. In arriving at the value of magnesite mined Messrs. Hughes and Caldwell would not have the figures available for making 30 up the return."

Q. You had received that prior to forwarding the August cheque? A. We had received that prior to forwarding the August cheque.

Q. I think at the end of August you received the letter which is Exhibit C from Tester, Porter & Company? A. We did receive a letter from Driscoll, Porter & Company.

Q. Would you have a look at that? (Objected to—leading.)

Q. That was the position prior to the August payment. So far as September was concerned, when you came to send the cheque in September had any other matters occurred which affected your view 40 of this claim that Logan Hunter Caldwell had no authority? A. No.

Q. Did you receive some correspondence early in September? A. Yes.

Q. Did that have some effect on your view? (Objected to.)

Q. Did you write anything, yourself, in September which indicated —(objected to).

HIS HONOR: Q. Do you wish to reconsider your answer that nothing affected your view between August and September? A. My view was further confirmed early in September, Your Honor.

Mr LARKINS: Q. By what? A. By a letter that was received from Tester Porter headed up "Hughes and Caldwell partnership" or "Hughes and Caldwell syndicate" or something of like nature.

Q. Is that the document, which is Exhibit C? (Shown.) A. That is the document. That also indicated conclusively to my mind that there was a partnership.

10 Q. Was there anything else early in September? A. Early in September there was some communication with Eric Campbell Omant and Grant, Solicitors.

HIS HONOR: Q. What did you regard as the business of the partnership? A. The business of the partnership was the holding of the lease and being able to give us power to mine. I considered that they had full power to grant to us the right to mine on P.M.L. 1.

Q. You regarded the business as holding the lease? A. I hold that the partnership was in fact a business which was taking royalties within itself and disbursing them amongst the others, and somewhere
20 along the line they had power to give us permission to mine.

Mr LARKINS: Q. Would you have a look at the document which is m.f.i. 10. Is that a letter you received early in September? A. Yes.

Q. Is that the document to which you referred? A. That is the document.

Q. As another document which confirmed your view? A. It is another document which confirmed my view.

Mr ST. JOHN: This letter is part of without prejudice correspondence and if it goes in it may be one party or the other may wish to tender the remainder of that correspondence. We would like an opportunity
30 to consider it.

Mr LARKINS: My learned friend has already put the end of the sequence in as Exhibit 17.

Mr ST. JOHN: For the moment I do object to it, but when we have had a chance to consider it we may agree to it going in.

HIS HONOR: Are you tendering it in order to show that were negotiations going on?

Mr LARKINS: No. We are tendering it on the issue of the negotiations to show that the payments were not made in any sense conditional. It also contains express admissions independently of the matter
40 which could be said to be without prejudice.

Mr ISAACS: I do not object to it at this stage.

HIS HONOR: I won't allow it at this stage on this ground, that this letter was not written as intended to contain admissions. The only authority of the solicitors from the letter at any rate was to write in these terms and not to give the incidental admission it does contain.

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I think that is bound up with the attitude of mind. (Further discussion on admissibility continued.)

Mr LARKINS: I will tender m.f.i. 11.

(Objected to by Mr St. John; argument ensued.)

Mr ISAACS: I would like to support my learned friend Mr Larkins . . . (continues to address Court).

HIS HONOR: I do not find it necessary to determine how far the contents of the letters in question may be relevant on the issue of ratification. I have already declined at this stage to make a final determination on what precisely is relevant to the issue of ratification. 10

I think the objection to the present letters goes further, namely that they are written in order to put forward a negotiation for settlement. I cannot see that they contain the incidental admission which is referred to in some of the cases and I doubt whether solicitors have authority in a "without prejudice" letter to make such an incidental admission.

It seems to me that the various matters dealt with go to the offer which has been made and no further.

In regard to the question whether letters influenced the mind of the witness, assuming that that is relevant, and taking it to be admissible because of the cross-examination on the subject, I still do not consider that it is proper to admit the "without prejudice" correspondence, so I reject it.

Mr LARKINS: They are both marked for identification.

Q. Now, Mr Driscoll, do not answer these questions until there has been opportunity to object to them. There are one or consequential questions I would like to put, Your Honor.

Q. Prior to the September payment did you write a letter to the solicitors for the defendants? A. Yes.

Q. And is the document m.f.i. 11 a copy of that letter? (Shown 30 to witness.) A. Yes.

Mr LARKINS: I tender it, Your Honor. May it also be noted that the letter m.f.i. 10 is the letter referred to in Exhibit 17.

(Mr Larkins makes submissions re tender of second paragraph of letter of the 11th September.)

HIS HONOR: I will not accept that the letter of the 2nd September is referred to in Exhibit 17. I will not accept it as ground for the admission of the letter of 2nd September because of the circumstances leading up to the admission of the whole of the letter which is Exhibit 17, but I am prepared if it has led to a difficulty, to review the tender 40 on the whole of the circumstances, bearing in mind the fact that originally only the last paragraph of it was tendered.

Mr LARKINS: I make no application.

HIS HONOR: Do you have any application, Mr St. John?

Mr ST. JOHN: No, Your Honor.

(Witness retired.)

BRIAN HOOKER

Sworn, examined, deposed:

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Mr LARKINS: Q. What is your full name, Mr Hooker? A. Brian Hooker.

Q. Where do you live? A. Sutherland Road, Jannali.

Q. In 1957 you were employed by the plaintiff company Australian Blue Metal Ltd.? A. Yes.

Q. As a clerk? A. Yes.

Q. Would you have a look at the document m.f.i. 15. (Shown to witness.) Did you make some entries in that document? A. I did.

Q. Would you be good enough to indicate, which starts here at fol. 1, when you commenced to make the entries in that document? A. On the second line down on the 30th April 1956.

Q. This is fol. 1, starting on 30th April 1956? A. Yes.

Q. Would you turn over the various folios. A. This section here (indicating) is not mine.

Q. The section at the foot of fol. 2, entered on . . . A. May 31 1956.

Q. That was not made by you? A. Nor this. This is not here . . . (indicating).

Q. What about fol. 3? A. That is all mine. Fol. 4 also; fol. 5; fol. 6; 7, 8, 9, 10, 11, 12, 13, 14. There is a break from fol. 17.

Q. Well, up to and including fol. 16. Is that so? A. Yes.

Mr LARKINS: I tender folios 11 and 12. (Objected to by Mr St. John.)

Q. Let us confine ourselves to these folios 11 and 12 at the moment. You say all these entries are made by you? A. Yes, all in that particular folio, I think.

Q. And are they made in the ordinary course of your duty with the company? A. Yes.

Q. Where did you obtain the information from which they are recorded? A. Well, the whole lot as I recall came from three or four sources. In the first instance only this section to here was obtained from—say the first four columns.

Q. Where was the invoice date shown in the first column, taken from? A. From a delivery docket, or consignment docket, really, showing that this particular material had been put on railway trucks involved and the tonnage concerned, the truck number and the destination.

Q. That was all taken from documents? A. Yes, the consignment docket.

Q. What about the group headed "B.H.P. Installation"? A. That group came from a remittance advice from the B.H.P. stating what they had paid us for.

Q. So far as the details of the analyses are concerned, where were they taken from? A. From the same document.

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Q. And the information as to date, cheque received? A. That is also. The date it arrived in the office.

Q. And the amount came from the cheque itself, I suppose? A. Yes.

Q. And did the entries under "base rate", "bonus", "penalty" and "rate per ton" also come from the same document as the figures of the analyses were taken? A. They did.

Q. I think you told us that prior to those two folios you were referring to of pp. 11 and 12 with the exceptions you have mentioned, you kept that record in the ordinary course of your duty? A. Yes. 10

Q. And it was kept as a continuous record? A. It was, yes.

Q. And I think you have referred to various documents from which you made up that, that is before you? A. Yes.

Q. They were documents of the company which have been obtained in the ordinary course of your duties? A. Yes, I did.

(Argument ensued as to the admissibility of records. Mr Isaacs refers to Cox v. Miller, 61 C.L.R.. Queen v. Seiffert referred to. Mr St. John refers to Collier Moat Case, 1960 State Reports 238. Also Phipson, p. 281.)

HIS HONOR: I will consider that rather than admit it. I will consider 20 the case that you referred to, Mr St. John, and deal with it in the morning.

Mr LARKINS Would Your Honor have a look at Ex. CX?

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Mr ST. JOHN: Q. Have you got any personal recollection of any of this, in particular what happened in June 1957 in relation to the railing of the magnesite? A. No, just as a normal routine work. That would be all. I do not know anything about that end of it.

Q. You did not have any executive function in relation to it; it was only a matter of keeping record? A. That is all. 30

Q. Would you know anything about any new magnesite that was opened up round about May/June 1957? A. I cannot be certain. Well, I could not be certain.

Q. You do not recollect anything about any particular sample being tested in relation to new magnesite about that time? A. No.

Q. You do not? A. No.

Q. You just don't remember one way or the other, do you? A. No, I could not be sure.

HIS HONOR: Q. What do you mean you "could not be sure". Have you any sort of recollection? A. The line I was thinking along was 40 they started to work a new lease, I think, but I could not understand just when they were or anything like that. It could have been any time.

(Witness retired.)

ROBERT MITCHELL DRISCOLL

Recalled on former oath:

HIS HONOR: You are on your former oath.

Mr LARKINS: Q. Do you remember my asking you a question as to your comparing the agreement of January 1957 when you received it with a map which you then had in your office? A. That is right.

Q. Is that the map which you then held? (Shown to witness.)

A. That is the map.

(Exhibit DC map, plan of P.M.L. 1.)

10 (Witness retired.)

HIS HONOR: (After application by Mr Larkins.) Mr Driscoll, you may be excused provided you return on call.

(Further hearing adjourned to Tuesday, 28th February, 1961,
at 10 a.m.)**Ninth Day: Tuesday, 28th February, 1961**

Mr ISAACS: Might I have one correction in the transcript which has been agreed to. At p. 296, the fourth question from the bottom, the wording "some agreement" should read "the same agreement".

Mr ST. JOHN: We have had opportunity over night to consider those
20 letters and we do not now object to their tender.

HIS HONOR: The objection has been withdrawn, I will admit the letters.

(Exhibit "D.D." two letters. One from Eric Campbell Omant and Grant to the Secretary, Plaintiff Company dated 2nd September 1957, and the other a reply dated 10th September 1957.)

(Exhibit "D.B." folios eleven and twelve formerly m.f.i. "15" tender of which was deferred yesterday.)

Mr LARKINS: I understand my learned friend will admit that Louise Jane Hughes, the life tenant mentioned in Exhibit "Z", died on the
30 1st August, 1959.

Mr. ST. JOHN: Yes.

FREDERICK MAXWELL RYAN

Sworn, examined, deposed:

Mr HUGHES: Q. What is your full name? A. Frederick Maxwell
Ryan.

Q. Where do you live? A. Melville Street, Young.

Q. Are you by occupation an earth moving equipment operator?

A. I am.

Q. You are presently employed by the Soil Conservation Service
40 down at Young? A. Yes.

Q. How long have you been employed by that organisation?

A. Approximately twelve months.

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Q. Immediately prior to taking up employment with the Soil Conservation Service were you employed by the plaintiff company, Australian Blue Metal Limited? A. I was.

Q. And in what capacity were you employed by that company? A. As a bulldozer operator.

Q. Until what month in 1960 were you employed by Australian Blue Metal? A. February.

Q. Can you tell His Honor how long in all you were employed as a bulldozer operator by Australian Blue Metal Limited? A. Approximately three years. 10

Q. And were you employed in that capacity at the magnesite field near Thuddungra? A. That is right.

Q. And do you recall that in the year 1957 you were carrying out your duties as bulldozer operator for Australian Blue Metal Limited on P.M.L. 1? A. That is correct.

Q. At Thuddungra? A. Yes.

Q. Prior to working the bulldozer on P.M.L. 1 did you work it for the company anywhere else around that area? A. Yes, I did, on P.M.L. 15 and 16.

Q. Can you recall when it was that you transferred your activities 20 and commenced work on P.M.L. 1? A. I don't remember the date when I started work on P.M.L. 1.

Q. But can you remember the approximate time anyway? A. It would be about the middle of the year or thereabouts.

Q. When you commenced to operate your bulldozer on P.M.L. 1, in what portion of the area were you working, operating it; can you describe it? A. From the north eastern corner.

Q. Was that in some old pits? A. That was on the old pit.

Q. Did you work the bulldozer in and around that north east corner? A. Yes, I did. 30

Q. For some time? A. Yes, for some time.

Q. Can you say, any approximation, how long? A. I would not know how long.

Q. Did there come a time when you were instructed to do some work with your bulldozer on the southern side of a watercourse or gully? A. That is correct.

Q. Have you any idea when in 1957 that was? A. It would be in June some time.

Q. I want you to tell His Honor if you would what was the first thing that was done by you with your bulldozer on the southern side 40 of this watercourse or gully? A. I was sent across there by Tom Buckley to strip an area approximately twenty yards long by 11 ft. 6 wide to see if I could find any magnesite there.

Q. You mentioned an area 20 yards by 11 ft. 6 wide. Does the 11 ft. 6 have any relation to the width of the bulldozer blade? A. That is the width of the bulldozer blade, approximately.

Q. Did you carry out that instruction, namely to strip an area 20 yards long by 11 ft. 6 wide? A. That is correct.

Q. Was that the first thing that was done south of the gully so far as you are aware? A. Yes.

Q. When you say "strip an area" would you explain to His Honor what you mean by "strip"? A. Taking the overburden, stripping the overburden from the magnesite, if there was magnesite there.

Q. Did you in fact strip the overburden off and see some magnesite? A. I did, yes.

10 Q. Can you tell His Honor what was the next thing that was done after the initial small area which has been described, was stripped? A. A compressor was moved to the site and testing commenced within a radius of about 40 yards around that hole, or where the compressor was standing.

Q. Before I show you this document can you tell His Honor this: whereabouts south of the gully was this first bit stripped by you with your bulldozer? A. On the south east corner.

Q. Did that ultimately—did that area ultimately become the site of further operations? A. It did.

20 Q. I show you this sketch plan of P.M.L. No. 1. Do you recognise the boundaries of the area? A. I do.

Q. Would you mark with a cross in this lead pencil approximately where the place was where you stripped in the first place? A. Here is the watercourse (indicating). Approximately here (area marked with "X").

Q. You have told His Honor that after that test area had been stripped by the bulldozer a compressor was brought down I think, did you not? A. Yes.

30 Q. Did you bring the compressor down? A. I pulled the compressor to the site with the bulldozer.

Q. Having towed it over did you then take any part in the actual drilling operations? A. I did not use the jack hammer. I was in charge of the compressor itself.

Q. You operated the compressor? A. I operated the compressor.

Q. Do you know Mr Vic Hughes? A. I did.

Q. Do you know Mr Frank Hughes? A. Yes.

Q. Do you know Mr Clarrie Hughes? A. I do.

40 Q. While stripping with the bulldozer the first area south of the gully, or testing with the drills was going on, did you see Mr Vic. Hughes at the scene of the operations at any time? A. I did not see him while we were testing with the compressor.

Q. Did you see him at any other time? A. Yes, I did.

Q. What was that time? A. After stripping had commenced on the bigger area.

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Q. Of the bigger area? A. Yes. That was after—the compressor was used—I had seen Mr Hughes at the site when the small hole was opened up also.

Q. When you say “the small hole”? A. That is the hole, the first hole with the bulldozer.

Q. That is the area 20 yards long by 11 ft. 6 wide? A. Yes.

Q. When you saw Mr Vic. Hughes at that point of time, that is when testing the area 20 yards long and 11 ft. 6 wide was being opened up, did you have any conversation with him? A. Yes, I got off the bulldozer. I was talking to Vic. Hughes and Tom Buckley. 10

Q. And Tom Buckley together; is that correct? A. That is correct.

Q. Do you recall any of the conversation. Anything that Vic. Hughes said? A. The only thing I remember of that conversation was Vic. saying to Tom “Well, that’s what you are looking for”.

Q. How was Vic Hughes’ demeanour on that occasion? A. Very friendly.

Q. Did he voice any sort of complaint? A. Vic. was—all the Hughes were very friendly to anybody that was working with them.

Q. You have told His Honor of this conversation that took place 20 when the area 20 yards long by 11 ft. 6 wide was being opened up, then I think you said also, did you not, that you saw Vic. Hughes when bigger area was being opened up after the compressor test had been done? A. Yes.

Q. Did you have any conversation with Vic. Hughes on that occasion? A. No.

Q. Did he speak to you at all? A. He bid me the time of day.

Q. Did he voice any complaint on that occasion? A. No.

Q. What was his demeanour like on that occasion? A. Still the same attitude towards me and anybody else that was there. 30

Q. And did you ever see Frank Hughes or Clarrie Hughes at the site of operations about this time? A. I did not see them about that time. I seen them later on.

Q. Later on? A. Yes.

Q. How much later on? A. Well, when the bigger area was being worked.

Q. Was that after the face had been opened up? A. That is correct.

Q. And mining was going on? A. Yes.

Q. Did you talk to either Frank or Clarrie on that occasion? 40
A. No. I just bid them good day.

Q. Did they say anything to you? A. No.

Q. Can you tell His Honor what was done after, first of all the compressor tests had been carried out when this wider area was stripped. What was the next step in the operation? A. The next step

was to try to get a face on the magnesite that was showing in that area that was stripped.

Q. Did you work the bulldozer to make a face? A. I did.

Q. Was that opening up and working a pit? A. That is correct.

Q. Can you say what day of the week it was that the actual mining operations, that is taking the magnesite out with the navy, commenced about. Do you recollect? A. I remember Tom Buckley told me we would have everything set and ready to start in it on the Monday morning.

10 Q. And did you start on the Monday morning? A. We did.

Q. How long prior to starting on the Monday morning did the first testing south of the gully with your using your bulldozer for the purpose, commence? A. I would say about one week would elapse.

Q. That is your recollection is it? A. That is—approximately.

Q. After the face had been opened up did you continue to operate the bulldozer? A. I did.

Q. There was a man called Ricketts on the job was there not. He was driving the navy? A. That is correct.

Q. Do you recall an occasion when he received injury at work?
20 A. I do.

Q. And had to go off to hospital? A. Yes.

Q. Did you continue to drive the bulldozer, operate the bulldozer after the date of Ricketts' injury, or did you do something else? A. I drove the navy in Ricketts' place.

Q. Can you recall when it was that you took over driving the navy in Ricketts place? A. No I cannot.

Q. Did you at some stage come to hear that there was some sort of claim being made concerning the area in which A.B.M. was operating? A. Yes.

30 Q. Can you recall at all how long after commencement of operations south of the creek you first heard any such claim being bruited abroad? A. I would not know how much time elapsed but it was a long while after I heard of the claim. I did not hear it from the Hughes themselves. I heard it from the men that worked on the field.

Q. You say it was a long time after operations commenced?
A. Yes.

Q. From the time when testing operations first commenced south of the gully was Vic. Hughes present at the scene of operations on more occasions than the occasions you have already described when
40 you had conversation with him? A. Yes, he was there quite often.

Q. Quite often? A. Yes.

Q. Whereabouts did he stand when he came over. Whereabouts did he stand? A. On the edge of the strip.

Q. On the edge of the strip? A. Yes.

Q. Were operations quite visible where he was? A. Yes, he was standing right over the top of them.

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Q. And on any of those occasions did you hear him make any complaint whatsoever about the area of the operations? A. Not to me.

Q. Did you hear him make a complaint to anyone else? A. No.

Q. When you had finished opening up the work south of the gully, that is when you stripped the first small area and then took part in testing with the compressor and then opened up the wide area which was ultimately made into pits; after that had been done was the navy brought over and into the pit straight away, or was there any delay. Do you recall? A. The navy to my knowledge was brought over on the Monday morning to start operations. 10

Q. Prior to that where had the navy been operating? A. In the hole on the north eastern corner.

CROSS-EXAMINATION:

Mr ST. JOHN: Q. Mr Ryan, if someone spoke of opening up a new pit on P.M.L. 1 in June, what would you regard that as referring to. Which particular point of time? (Objected to.)

Q. When was the new pit opened up, in your view of the matter. At what stage? A. It was big enough to mine . . .

Q. Just answer my question if you don't mind. At what point of time would you say the new pit was opened up? A. Ready to 20 start operations, you mean?

Q. You have told us of various things. You have told us of clearing a strip with a bulldozer? A. Yes.

Q. And the compressor being brought along for drilling purposes? A. Yes.

Q. Then the face? A. That is correct.

Q. And then the opening up of a wider area. Is that right? A. Yes.

Q. Would you tell us what steps had been taken in turn. First of all am I right—you went down there with a bulldozer and opened 30 a small strip? A. Yes.

Q. That was the very first thing that was done? A. Yes.

Q. There was no testing prior to that of any kind, so far as you know? A. Not to my knowledge.

Q. The next thing is the compressor was brought down? A. Yes.

Q. You started drilling? A. Yes.

Q. On the piece that you had opened up? A. Around the area that I had opened up.

Q. So including the areas that you had opened up beyond it, is that so? A. Yes. 40

Q. Then the bulldozer. You would prepare a test? A. Yes.

Q. What happens after that? A. The navy starts.

Q. And then? A. Rock is mined.

Q. And that is the end of it. Away you go? A. Yes.

Q. When the navy commences to operate do you say the new

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pit was opened up? A. What I consider a new pit would be when it started to work on the Monday morning.

Q. When the navy started? A. Yes.

Q. Prior to that you would call it "testing" would you? A. Yes.

Q. No actual mineral was taken out, was it, prior to the navy starting operations, or was it? A. I don't recall whether it was.

Q. It could have been, could it? A. It could have been.

Q. In any quantity? A. It would not be any big quantity because the area was small.

10 Q. It would not be a big quantity? A. There could be a few rocks lifted up out of the hole I tested.

Q. Was any mineral taken out in the course of drilling? A. No, only white powder that would come up with the air.

Q. So the first time when rock would be taken out in any quantity was when the navy started to operate? A. Yes.

Q. You cannot tell us the actual date of any of this, can you? A. No.

Q. Would it be true to say Vic Hughes came down on various occasions when he did not speak to you personally? A. Yes, he was down there quite a bit.

20 Q. Did he speak to Buckley? A. I seen him talking to Tom, yes.

Q. And quite often when you were within hearing? A. No.

Q. I suppose mainly you were going about your work? A. Yes.

Q. It is pretty noisy work is it not? A. Yes.

Q. Normally speaking you would not have heard what was said? A. Only when I got off the machine.

Q. That was only on that occasion, was it? A. Yes.

30 Q. When was that, do you say? A. I don't recollect the date or the day when that was.

Q. Are you sure that you know when it was in the course of operations. Are you sure of that even? A. I don't recall any dates or months. All I remember was the navy going in to start mining on the Monday morning.

Q. Then you cannot say when it was that you actually spoke to him? A. It would be approximately one week before that.

Q. But are you sure of that? A. Yes.

Q. You are sure of that? A. I was stripping that small area. I was talking to Vic.

40 Q. Are you quite sure you were stripping prior to when the conversation occurred? A. Yes.

Q. Could it not have been when you were drilling? A. No.

Q. Could it have been when the navy was operating? A. No.

Q. How can you be sure after this lapse of time? A. I can remember when I was stripping the small hole 20 yards long by 11 ft. 6 wide, Vic. standing on the edge of the hole.

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Q. Did you hear the whole of the conversation that day between him and Buckley? A. No.

Q. When you heard Vic. say these words that you deposed to you say Buckley was present do you not? A. Yes.

Q. But you only came in part of that conversation? A. Yes.

Q. While you were there was anything said by Vic about mining south of the creek in particular? A. No.

Q. And whilst you were there was anything said by Buckley about having made some arrangements about mining south of the creek? A. No. 10

Q. Was anything said by Buckley whilst you were there about losses that he had suffered on the old pits? A. No.

Q. Did you know that Buckley had been complaining about difficulties of mining the old pits? A. I knew it was hard.

Q. I suppose you knew it was unprofitable? A. I know nothing about profits.

Q. Now, was the first testing done at the weekend? (No answer.)

HIS HONOR: The first testing south of the creek?

Mr ST. JOHN: Q. Was the first testing south of the creek done at the weekend? A. It wasn't the weekend I done it. 20

Q. Are you sure of that? A. Yes.

Q. Did you never work weekends? A. Yes.

Q. How are you quite sure that it was not on the weekends?
A. Usually stripping was not done on the weekends. It was done during the week.

Q. But it could have been done during the weekend could it not?
A. I don't remember if it was.

Q. That is as far as you can carry it. You cannot remember if it was. That is as far as your memory goes at the moment, is it?

A. Yes. 30

Q. Did you ever talk about a sample of magnesite in the course of mining. Did you ever talk about a sample? A. Yes.

Q. What would you understand by "sample"? A. If it is magnesite, approximately that size (demonstrating).

Q. You send it off for testing or something like that do you?
A. Yes, I have never sent one myself. I have seen them.

Q. You have seen sampling being done? (No answer.)

Q. Do you remember seeing a sample being taken at any time?
A. Yes.

Q. It is the sort of thing that happens that a sample is sometimes 40 taken when you open up a new pit? A. Yes.

Q. You would not deny such a sample may have been taken at this time? A. It could have been, I don't know.

Q. In the course of your stripping rocks suitable for use as samples you were not concerned I presume? A. Yes.

Q. You would not be concerned with that aspect of it would you? A. No.

Q. It would be no part of your duties? A. No.

Q. Did Mr Buckley ever tell you that the sample had turned out well in the new pit? A. He did not say whether it was a good or bad sample.

Q. Do you remember pulling out for a while to repair your equipment? A. Yes.

10 Q. Could you say when that was in relation to various other things you have described. Was it after the navy went in or before? A. Before John Ricketts went off and I pulled the navy out.

Q. How long would it be after the navy started off? A. I would not know.

Q. Days or weeks? A. Weeks.

Q. How long were you off? A. I don't remember that either.

Q. Weeks or only days? A. I would say approximately about a week we would be off.

Q. That would be some weeks after the pit was opened? A. Yes.

Q. When the navy started to operate? A. Yes.

20 Q. You cannot be sure, I presume, just how long it was? A. No.

Q. Have you taken any steps to find out whether Ricketts was off—you personally? A. Have I?

Q. Yes. A. I just don't remember how long he was off.

Q. Have you personally tried to find out when Ricketts was off with his injury to place the date of it, I mean? A. No.

Q. Now, we are told by Mr Buckley that after some testing had been carried out the testing stopped and then about a week after the pit was actually opened? A. Yes.

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

30 Q. So the testing itself took about a week, is that right? A. (No answer.)

Q. Then there was about a week after that before the navy started to operate? A. The testing itself would not take a week—I don't think so.

Q. Less than a week? A. Yes.

Q. Then there was about a week before you started to operate with the navy? A. Yes.

Q. Is that right? A. Yes.

40 Q. How long do you think the testing took—only a matter of days? A. It would have taken less than a week because there was only the area around the compressor that was being tested. A day at the most.

Q. Where was Vic. working at the time you tested? A. He would be on the bottom corner of the lease working, or thereabouts.

Q. Then it appears that testing could simply have been completed

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at the weekend for all you now remember. Is that so? A. The testing with the compressor? Or with the bulldozer?

Q. With the bulldozer? A. It could have happened at the weekend but I very much doubt it.

Q. If it had happened over the weekend it would have been completed—you were there at the weekend? A. I just don't know how much time elapsed between the small area that was stripped with a bulldozer and when I brought the compressor over.

Q. I am sorry. We have been at cross purposes. I thought you had done the stripping and then you brought the compressor and had 10 gone ahead with drilling. Am I to understand first of all you took a strip out and after a lapse of some time the compressor was brought over and the drilling carried out? A. Yes.

Q. Then after the lapse of another week the navy commenced to operate? A. Yes.

Q. So stripping took one day and there would have been a lapse of some time just before the drilling was done with the compressor? A. Yes. By this time the navy would have been working on the first hole they went in to.

Q. At the old pits? A. Yes. 20

Q. The so called old pit? A. Yes.

Q. So that from the time when you first cut that strip with the bulldozer until the time the navy commenced to operate would have been something in the vicinity of a fortnight, say? A. About a week.

Q. Only about a week? A. Yes I'd say.

Q. Did you not say it was about a week from the time when you finished testing. You agreed with Buckley's evidence as to that? (Objected to.) A. I just don't remember any times or any dates.

Q. You don't? A. No. 30

Q. Then why did you pretend that you do? (Objected to.)

Q. Why do you say that you do? A. I say it was about—the dates that I remember was about the middle of the year, and about going into the pit on the Monday morning.

Q. Apart from that are you at all clear on how many days elapsed between the various phases of this work? A. I am not sure how many days elapsed.

Q. Do you remember I put a question to you previously that there had been about a week from the time the testing finished to the time when the navy commenced and you agreed with that. Do you 40 remember that question? A. Yes.

Q. Do you want to withdraw that? A. What I mean is about a week would elapse from the time that I stripped that small area to the time the navy would move in.

Q. That is not what you said? A. That is what I mean. (Objected to.)

Q. The testing did not finish until you finished the drilling with the compressor, did it. Is that what you call testing. Cutting a strip and drilling with the compressor? A. Yes.

Q. The question I put to you was, from the time testing finished to the time drilling finished was still about a week? A. It would be a week elapsed from the time I first put the hole down until the time the navy went in. The compressor was moved in sometime in that period.

Q. I am putting to you that you told me something entirely different to that only a few minutes ago. Do you remember that?

Mr HUGHES: Remember what?

Mr ST. JOHN: Q. Do you remember that you told us something entirely different a few minutes ago. Did you not tell us previously that first of all you drilled. You cut a strip with the bulldozer? A. Yes.

Q. And after a lapse of some days there was drilling with a compressor? A. Yes.

Q. Then I put it that after the testing was finished and after the drilling it was another week before you commenced with the navy. That is what you told us previously? A. That is what I mean.

Q. That is what you mean? A. That it would be a week between the time I opened the hole and the time the navy moved in.

Q. Then all of a sudden you are not really clear about it, are you? A. I am not sure of the amount of time, no.

MR ISAACS: No questions.

RE-EXAMINATION

Re-examination.

Mr HUGHES: Q. Mr Ryan, you did leave the company's employment in February 1960? A. Yes.

Q. Up to that point of time was there only one pit being operated on P.M.L. 1 on the southern side of the water-course? A. Yes.

Q. That was the pit originally opened up in 1957, was it? A. That is the big pit now, yes.

Q. There has been no other pit operated by A.B.M. on the southern side of the water-course? A. Not to my knowledge.

(Witness retired.)

(Discussion ensued.)

FREDERICK MAXWELL RYAN

Recalled on former oath:

Mr HUGHES: Q. You were asked by Mr St. John about whether you saw Mr Buckley and Mr Vic. Hughes apparently engaged in conversation although you were not able to hear. Do you remember that? A. Yes.

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Q. On those occasions what appeared to be the demeanour of Mr Hughes as you recall it? Do you recall anything? How did he appear on those occasions? A. Quite as usual. Just the same to me.

(Witness retired.)

HIS HONOR: You may return to Young, Mr Ryan.

JOHN CHARLES RICKETTS

Sworn, examined, deposed:

Mr HUGHES: Q. What is your full name? A. John Charles Ricketts.

Q. Do you live at Thuddungra? A. Yes.

Q. And are you by occupation an earth moving equipment operator? A. Yes.

Q. By whom are you employed at the present time? A. Australian Blue Metal.

Q. Are you employed by Australian Blue Metal at P.M.L. 1 at Thuddungra? A. Yes.

Q. How long have you been employed by the company in that area on P.M.L. 1? A. Since 1957.

Q. During that time have your duties consisted of operating the navy machine on the mining operations? A. Yes.

Q. Do you recall that some time in 1957 operations were started 20 on P.M.L. 1 south of a water-course or gully? A. Yes.

Q. Can you tell His Honor did you take any part in testing operations before a face was opened up? A. No.

Q. South of the gully? A. No.

Q. Some time in 1957 did you receive an injury at work? A. Yes.

Q. As a result of which you had to go to hospital and were off work for some time? A. Yes.

Q. Do you recall, have you a clear recollection, of the date of the injury? A. Yes, 17th July.

Q. 17th July, 1957? A. Yes.

Q. For how many weeks prior to the 17th July 1957 had you been operating the navy in the pit south of the gully? A. Four to six weeks.

Q. Have you any recollection as to the date, or when you first operated the navy, or is that the best you can do? A. Yes.

Q. Now, when the first face in the pit was being worked with the navy did you see Vic. Hughes around the pit at all? A. Yes.

Q. Did you ever speak to him or he speak to you? A. Oh, yes.

Q. Do you recall anything that he said to you? A. No.

Q. Did he ever voice any complaint to you? A. No.

Q. At the time when you received your injury on the 17th July 1957, or the time when you received injury on the 17th July 1957, had you seen Vic. Hughes at the pit south of the gully? A. Yes.

Q. Once, or more than once? A. I saw him several times there.

Q. Several times? A. Yes.

- Q. Whilst operations were in progress? A. Yes.
- Q. How was his attitude, how did his attitude appear to be?
A. All right.
- Q. Was it quite friendly? A. Yes.
- Q. Did you ever see him talking to Tom Buckley on those occasions? A. No.
- Q. On those occasions did he ever suggest to you that operations should not be going on where they were? A. No.
- Q. Whereabouts did Vic. Hughes stand, or what part of the
10 ground did he occupy on those occasions, do you recall, in relation to any physical features where he used to be? A. Generally up on the bank.
- Q. On the bank of the pit? A. Yes.
- Q. The bank is the spoil or over-burden, is it? A. Yes.
- Q. When did you first hear of any suggestion that A.B.M. should not be operating south of the gully? A. After I came back off compensation.
- Q. When did you come back off compensation? A. It would be about six weeks.
- 20 Q. About six weeks after 17th July? A. Yes.
- Q. Did you receive a complaint from any member of the Hughes family? A. No.
- Q. As well as knowing Vic., you knew the other members of the family, or you knew at this time the other members of the family, did you not? A. Yes.
- Q. Did you know Frank? A. Yes.
- Q. Did you know Clarrie? A. Yes.
- Q. By the way, did you ever see Frank or Clarrie out in the field on P.M.L. 1? A. No.

30 CROSS-EXAMINATION:

- Mr ST. JOHN: Q. Mr Ricketts, no doubt there was no conversation that you heard going on between Vic. and Buckley? A. Yes.
- Q. Or saw going on? A. No.
- Q. After all, you were just driving the navvy? A. Yes.
- Q. A pretty noisy job is it? A. Yes.
- Q. You cannot always hear what is said? A. No.
- Q. Or even say all that is said? A. No.
- Q. Or even say all that you saw, is that right? A. That is right.
- Q. How long would it take a bulldozer to cut a strip 20 yards
40 wide by 11 feet six? Just an hour or so? A. Yes.
- Q. That is the width of the blade, and 20 yards long. Would it be an hour's work for the bulldozer? A. Yes.
- Q. Did you know that such a strip had been cut south of the creek before you went down there with the navvy? A. Yes.
- Q. You did? A. Yes.

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Q. How long before you went down with the navvy do you say it was? A. I don't know.

Q. Do you know some testing went on down there as well, with the drills? A. Yes.

Q. How long did that take, do you know? A. I don't know.

Q. It would not be a very long operation would it? A. No.

Q. Do you remember a sample being taken out from the workings south of the creek when it first opened up? (Objected to.)

Q. Do you recall a sample being taken out? A. No.

Q. You do not know anything about such a sample? A. No. 10

Q. Have you ever heard of samples being taken out of new workings at Thuddungra? A. I have heard of it.

Q. Was it company practice as far as you know to take out a sample when opening up a new area? A. Yes.

Q. What did they do, send it off to Sydney? (Objected to.)

Q. Do you know what was done, of your own personal knowledge, with any such sample? A. No.

Mr HUGHES: No re-examination.

HIS HONOR: Q. What was the size of the sample that you saw on any occasion? A. I did not see any. 20

Q. You have never seen any? A. No.

HIS HONOR: You may return to your duties.

(Witness retired.)

(Short adjournment.)

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Mr LARKINS: I tender a series of admissions which have been reduced to writing. They fall into three categories I think, Your Honor.

Mr ST. JOHN: This is not objected to, Your Honor. This is agreed upon.

Mr ISAACS: I have no objection.

Mr LARKINS: It is divided into three categories and it relates directly 30 to figures appearing in Exhibit "BG" which are the bank accounts . . . (continues to address).

(Exhibit "DE"—admissions by defendants other than Steele Hunter Caldwell.)

Mr LARKINS: Then I tender the record of Hughes & Wade, produced by V. R. Hughes which relates to magnesite won from P.M.L. 1 and the details of operating costs.

(Exhibit "DF"—record in book called "ledger" of V. R. Hughes, Wade and others showing magnesite won from P.M.L. 1 and the details of operating costs.) 40

I tender a document produced by my learned friend Mr Isaacs on subpoena in the writing of Logan Hunter Caldwell, which is a schedule of A.B.M. cheques held and contains details of the 17 cheques from October 1957 to December 1958.

(Exhibit "DG"—schedule of A.B.M. cheques held October 1957 to December 1958 in the writing of Logan Hunter Caldwell.)

I tender together a schedule of railings with reference to truck numbers from 19th February 1957 to 6th August 1957 in the writing of Logan Hunter Caldwell. It is endorsed in the writing of Logan Hunter Caldwell "Copied out of trucking book, 7.8.57".

I tender with it four pages of writing of Mr Buckley with details of trucks and weights and contents, produced by my learned friend Mr Isaacs.

10 (Exhibit "DH"—schedule of railings, 19th February 1957 to 6th August 1957 in the writing of L. H. Caldwell one page, together with four pages in the writing of Mr Buckley, together with details of trucks and contents.)

I tender certain documents from the Mines Department. My learned friend called for a report by Mr Molesworth, m.f.i. "13", and I invite him to tender it.

Mr ST. JOHN: I do not propose to tender it, Your Honor. I do not think it goes any further than documents that are before the court. (Discussion ensued.) I do not propose to tender it unless Your Honor
20 directs me.

(Argument ensued as to obligation to tender document by the party calling for same.)

HIS HONOR: I think that is right, Mr St. John. I think you will have to tender it.

Mr ST. JOHN: Pursuant to my friend's call and in the light of Your Honor's direction I now tender the document.

(Exhibit "18"—report, m.f.i. "13", dated 20th February 1961 from England Roberts & Molesworth.)

Mr HUGHES: These documents relate to the application by Logan
30 Caldwell for a lease on P.M.L. 19. They are contained in a file and it might be best if I tender physically the whole file, referring beforehand to the particular documents I intend to be included in the tender, rather than detach them. (Discussion ensued.)

I will indicate now what documents I want to tender. I tender the authority to enter issued in favour of Logan Hunter Caldwell on P.M.L. 19 dated 9th April 1956.

I next tender Logan Hunter Caldwell's application for a mining lease, dated 4th February 1957.

I tender a copy of a Mines Department letter to Mr Caldwell
40 dated 9th August 1957.

I tender Mr Caldwell's reply dated 17th August 1957.

I next tender a copy letter from the file in the Mines Department to Logan Hunter Caldwell dated 13th September 1957.

I tender letter dated 21st September 1957 from Logan Caldwell to the Under-Secretary Department of Mines.

I tender with that letter the annexure which is a yellow paper.

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I tender letter from Logan Hunter Caldwell to the Under-Secretary, dated 16th January 1958.

I tender the file dealing with the renewal of P.M.L. 1.

Mr LARKINS: I desire to apply to Your Honor to withdraw the tender of Exhibit "D" which was a global tender of the original pleadings, and substitute for it a tender only of certain paragraphs in the original statement of claim and the answers relating to them.

Mr ST. JOHN: I cannot understand on what basis my learned friend seeks to do that, Your Honor. I do object to it.

HIS HONOR: Why should I do it, Mr Larkins?

10

Mr LARKINS: I simply put it on the basis that there are certain denials by the deceased, Logan Hunter Caldwell, which I would not wish to adopt, and I put it on the ground that on inadvertence on my part I tendered the whole document containing a denial of those matters. Your Honor will recall at the time of the tender for convenience we did indicate paragraphs on which we relied. I simply want to put a limited tender in place of the global tender.

Mr ST. JOHN: There is no question of any misunderstanding between us. It is only put merely on the ground of inadvertence, but the fact is this pleading would be admissible in any event; it is a statement by Logan Caldwell.

HIS HONOR: But not ante litem motam, is it; although it might be admissible in so far as any of Logan Caldwell's statements have gone in under s. 14 B (. . . discussion ensued—Mr St. John addressed Court.)

HIS HONOR: I do not think I will alter the exhibit. It is possible that those passages that you fear could be admissible as a declaration against interest. I have some doubts about it, but if they were it would be my view that they had very little weight, being made after the duplication commenced. That goes to weight rather than to the admissibility of the declaration. In those circumstances I think I should allow the tender to remain.

Mr LARKINS: I tender an agreement of the 5th November 1957.

Mr ST. JOHN: I object to those on the ground of irrelevance.

HIS HONOR: Once it is not privileged, and I have already held that, rightly or wrongly, is it not possibly an admission of lack of confidence in the cause?

Mr ST. JOHN: Your Honor has ruled and I could not disagree it is the sort of thing that might be used in cross-examination; but as evidence in chief before anyone has sworn to anything, I submit it is not admissible.

40

HIS HONOR: It might be able to be construed as an admission by the Regan group. I will allow it. That will be Exhibit "DJ".

Mr LARKINS: Might it be noted in relation to that document that it is not included in the defendants' affidavit of discovery?

HIS HONOR: I would not say that.

Mr LARKINS: We would submit that that is relevant matter.

HIS HONOR: No, I will not have it noted.

Mr LARKINS: We submit that this document was deliberately and designedly withheld on discovery.

HIS HONOR: It could only go to credit, it does not go to an issue in this case. I cannot think of any ground that would make it relevant.

Mr LARKINS: Might I inspect the defendants' affidavit of discovery?

HIS HONOR: At this stage?

10 Mr LARKINS: Could I reserve leave to establish the fact in another way.

HIS HONOR: I will not make a final determination. Even if I did rule you would still have the right to put the record straight.

Mr LARKINS: The only outstanding matter would be a few more files from the Mines Department bundle, and, subject to that, that is the plaintiff's case.

HIS HONOR: You may have the opportunity, however, of inspecting the affidavit of discovery and making a formal tender of it if you wish to get a ruling on it.

20 Mr HUGHES: I can indicate two more files, but there is one set which eludes me. I tender the document missing from one of the files I produced and tendered earlier, that is Logan Hunter Caldwell's application for authority to enter P.M.L. 19, dated 6th March 1956. I will not detach it from the file.

Mr LARKINS: That might be included with the seven documents tendered in relation to P.M.L. 19. It would logically be the first document.

HIS HONOR: Have you inspected the document?

Mr ST. JOHN: Perhaps we could have some indulgence.

30 HIS HONOR: I will write it down and then it can be added.

Mr HUGHES: This tender may be able to be obviated if an appropriate admission is made. I tender the depositions of proceedings in the Warden's Court relating to applications for suspension of labour conditions on P.M.L. 13. Thirteen was owned or leased by Guiliano. Your Honor will remember in Exhibit "BV", part of the documents produced from the custody of Logan Hunter Caldwell's executor, there was a memorandum of fees rendered by Campbell Omant and Grant, which memorandum was paid out of Hughes and Caldwell's account, and there was some little discussion about it at the time. The purpose
40 of this tender is to show that Mr Grant appeared for Mr R. F. Hughes and objected to the application on his behalf.

HIS HONOR: Mr St. John can consider the position and see whether the admission is necessary.

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Mr HUGHES: I have found the last file I want to go through, but rather than tender it now—

HIS HONOR: Will you let Mr St. John have it once you have gone through it, before one o'clock, and he can consider that too and we can get these matters cleared up.

Mr LARKINS: Subject to those matters, that is the plaintiff's case.

Mr ISAACS: My case would be very short, only a matter of minutes, and I was wondering whether we might deal with it now.

First of all I adopt the evidence led by my learned friend, Mr Larkins, on the issues relating to partnership or co-ownership, authority, 10 ratification and estoppel.

HIS HONOR: It is evidence in the suit and there has been argument put forward. I will not have any note made that you adopt it as evidence for this defendant. It is evidence in the suit, that is what I would feel.

Mr ISAACS: The only other matter is that I want to call for a document which was referred to in Mr Omant's evidence at p. 9 in the transcript. Mr Omant said he was a bit embarrassed by the question but there is a letter from Logan Caldwell addressed to his firm. It was not in reply to any letter that Mr Omant himself had written. 20

HIS HONOR: The embarrassment was because of possible privilege?

Mr ISAACS: He claimed privilege in respect of it. Your Honor upheld the claim of privilege. So far as I am concerned, my learned friend Mr St. John has shown me the document and I know what it is, and if it is in the nature of instructions by Logan to Mr Omant's firm to do something on behalf of himself and the other defendants then—

HIS HONOR: Then you cannot waive privilege.

Mr ISAACS: I do waive privilege.

HIS HONOR: But you cannot effectively do anything about it unless— 30

Mr ISAACS: No, with respect, the positions are reversed. The claim for privilege in these circumstances is not a valid claim against me. I think that is what the passage in Phipson indicates, and I think my learned friend Mr St. John agrees with that, that whereas a third person may be met with a claim for privilege, if one of several persons instructs a solicitor, the instruction given by one to a solicitor on behalf of all can be proved and are not privileged.

Mr ST. JOHN: I think I can shorten this. I do not object to this document except on the score of relevance. If Your Honor decides it is relevant, I do not object. 40

HIS HONOR: Mr St. John waives privilege and it will be noted that the defendants for whom he appears waive privilege in regard to the letter dated 28th September 1957.

Mr ST. JOHN: But I object on the score of relevance. Perhaps I

should say I object on the score of relevance and also on the ground that this is no evidence against us.

HIS HONOR: Have you any right to object? It is an issue between the plaintiff and the defendants. Do you say Mr St. John has the right to object to the letter, Mr Isaacs?

Mr ISAACS: Not as against me. As between himself and me, the privilege is mine.

HIS HONOR: Privilege has been waived, but on the question of relevance has he any right to object to a tender by you?

10 Mr ISAACS: I would have thought so. I would have thought my learned friend would be entitled to object in regard to relevance or any other matter on evidence I tender.

HIS HONOR: Is it agreed between all counsel that the defendants have the right to object inter se. Do you accept that position?

Mr LARKINS: I have not seen the document.

HIS HONOR: Just as a general principle, now that we are going into the defendant's case. It is commonly done at common law, one defendant objects against another defendant's evidence.

Mr LARKINS: I would think probably they would have the right. I
20 would like to consider it.

HIS HONOR: It would be best to clear it up and to have concurrence on it, if it is possible—if everyone takes the same view. It could not harm you, and if Mr St. John and Mr Isaacs take the view then it works both ways.

MR LARKINS: My prima facie view is that they would have the right.

HIS HONOR: I will consider the objection.

Mr ST. JOHN: I simply suggest the document emanated from the deceased whom he now represents and cannot in any way be evidence against us or against the plaintiff.

30 HIS HONOR: Do you object to it?

Mr LARKINS: No.

HIS HONOR: I do not think it is admissible. It is a statement by Logan Hunter Caldwell, of whose estate Steele Hunter Caldwell is the representative in this case, and it is in the same position as a statement by a defendant which he seeks to put forward as evidence in his own case. The statement does not come within the Evidence Act, being made in anticipation of litigation. I do not consider it a statement against interest because it acknowledges the existence of a syndicate in relation to a mining lease of which the deceased was not
40 a lessee, and therefore is like any other document which a party makes and unless it is an admission against him it cannot be used as a statement in his favour. I reject the document.

Mr LARKINS: Would Your Honor hear me shortly.

HIS HONOR: I have ruled on it.

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Mr LARKINS: Perhaps Your Honor will grant me leave and allow me to tender it.

HIS HONOR: You may be able to at some subsequent stage.

(Letter dated 28th September 1957 m.f.i. "16".)

Mr ISAACS: I have no other evidence.

Mr ST. JOHN: I have the proposed amendment of the statement of defence which has been reduced to type script this morning.

HIS HONOR: I will not hear any argument at this stage. I will consider these amendments after I have heard Mr Larkins at two o'clock. 10
I do not propose to ask him to indicate his view before two o'clock.

(Luncheon adjournment.)

AT 2.15 P.M.

HIS HONOR: Mr. Larkins, you said you wished to tender the letter of 28th September 1957, m.f.i. "16".

Mr LARKINS: Yes.

HIS HONOR: Perhaps I had better deal with that now before going into the defendant's case. Why should you be allowed to re-open to tender it?

Mr LARKINS: I am not entirely closed, there are other documents 20
to go in. They are ready now.

HIS HONOR: On what basis do you tender this letter?

Mr LARKINS: I tender it as an unequivocal admission of a managerial act done by Logan Caldwell. He gives instructions on behalf of the partners to the solicitors for the drawing up of the documents now Exhibit "DJ". There is another ground; so far as he himself is concerned it is a declaration against interest. There is perhaps one other matter; when it is viewed in the light of the claim of privilege that was made on the basis that Mr Omant was acting for Mr Caldwell in conjunction with the others. That has now been weighed, but that 30
could also be looked at, in our submission.

HIS HONOR: I cannot see that it is in the same category as the others. I do not think I will allow it.

Mr LARKINS: Perhaps I could renew the tender at some stage.

HIS HONOR: I do not think the document is admissible when tendered by the plaintiff any more than it is admissible when tendered by the defendant Steele Hunter Caldwell. It does not represent an act in the ordinary course of conduct of such a business so that to show a course of conduct in which the particular partner has acted as the agent of the other partners. It was a special act of instruc- 40
tions given to solicitors pursuant to an agreement given outside the ordinary business of the partnership. So I will not allow it; I reject the tender.

Mr HUGHES: As I understand my learned friend Mr Holland, there is no objection to the tender of the file relating to Guilano's application for suspension of labour conditions, the application related to P.M.L. 13.

(File re P.M.L. 13 tendered and marked Exhibit "DK".)

I tender the file which has been seen by my learned friend and which contains Mr Logan Caldwell's application for authority to enter land comprised in P.M.L. 19. The application is in the file and is dated 6th March 1956.

HIS HONOR: You tender the whole file. I thought you were going to add that to an earlier tender.

Mr HOLLAND: There are two files. There is one that deals solely with the application for authority to enter by Logan Caldwell of 12th 10 October 1955; there is no objection to that one. I think my friend is now talking about another file.

Mr HUGHES: I was talking about this little one which contains application for authority to enter P.M.L. 19.

Mr HOLLAND: There is no objection to that.

HIS HONOR: The sixth document?

Mr HUGHES: That is in the file dealing with the subject of private land lease 999. That is the file containing the six documents to which I referred before the luncheon adjournment.

Mr HOLLAND: There were seven documents. There is no objection 20 to these documents, the application for authority to enter by Logan Hunter Caldwell.

HIS HONOR: That is the one we have just dealt with.

Mr HOLLAND: No, that is a document in this file we have just dealt with, as I understand it.

Mr HUGHES: I show my learned friend a document. I understand there is no objection to the authority to enter. That is the document of 9th April, 1956.

The next document is Mr L. H. Caldwell's application for a mining lease dated 4th February, 1957. My friend does not object 30 to that. Then there is a copy letter from the Mines Dept. to L. H. Caldwell dated 9th August and a reply of 17th August. There is a letter from the Dept. to L. H. Caldwell of 13th September.

Mr. HOLLAND: There is no objection.

Mr HUGHES: A letter from L. H. Caldwell to the Under Secretary of 21st September, and annexure.

Mr HOLLAND: No objection.

Mr HUGHES: A letter from L. H. Caldwell to the Dept. of 16th January 1958.

Mr HOLLAND: That is objected to unless the letter from the Dept. 40 of 5th December 1957, to which it is a reply, is included.

Mr HUGHES: I will add that, a letter from the Dept. to L. H. Caldwell of 5th December 1957, and reply of 16th January 1958.

HIS HONOR: There are in all eight documents. With that tender do you also tender application by Logan Hunter Caldwell for authority to enter dated 6th March 1956?

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Mr HUGHES: Yes.

Mr HOLLAND: It is dated 12th October 1955.

Mr HUGHES: I produce the file from which the bulk of the documents come, and here is the application for the authority to enter dated 12th October 1955.

Mr HOLLAND: There is no objection to that tender.

HIS HONOR: I will add that and this will be Exhibit "DL", including the application for authority to enter dated 12th October 1955, which will be part of Exhibit "DL" even though it is in a separate file.

Mr HUGHES: The next file out of which I want to tender selected 10 documents is a file of the Mines Department, what I might describe as a "royalties" file.

HIS HONOR: What about the file on the renewal?

Mr HUGHES: I want to tender the application for renewal of P.M.L. 1 made by Messrs. Campbell Omant & Grant on behalf of the defendants R. F. & C. V. Hughes dated 17th July 1957.

HIS HONOR: That is just the application?

Mr HUGHES: Yes.

HIS HONOR: What about that, Mr Holland.

Mr HOLLAND: No objection. 20

Mr ISAACS: No objection.

(Exhibit "DM" application for renewal of P.M.L. 1 as above.)

Mr HUGHES: I tender (out of royalties file) letter dated 14th November 1946 in the handwriting of Logan Hunter Caldwell, except for the signature, which is in the handwriting of the defendant Robert Frank Hughes.

Mr HOLLAND: No objection.

Mr HUGHES: The next is a copy letter dated 30th October 1950 from the Royalty Officer, Department of Mines, to L. H. Caldwell.

Mr HOLLAND: No objection. 30

Mr HUGHES: I tender next Mr Caldwell's reply to the Royalty Officer's letter, which reply is dated 10th November 1950.

(Exhibit "DN"—letter dated 14th November 1946 in handwriting of Logan Hunter Caldwell as above.)

Copy letter dated 30th October 1950 from Royalty Officer, Department of Mines, to L. H. Caldwell.

Letter dated 10th November 1950, Mr Caldwell to Royalty Officer.)

I want to tender from records produced by R. F. and C. V. Hughes Pty. Ltd. a number of credit notes in favor of Hughes and 40 Caldwell from that company, that is Hughes Bros. Pty. Ltd. and later R. F. and C. V. Hughes Pty. Ltd., in respect of royalties. The first one is dated 25th June 1953. That is a statement of account from the company to the Hughes and Caldwell group.

The next document is a credit note dated 30th June 1953.

Next is a credit note dated 30th September 1953.

Next is a statement of account to Hughes and Caldwell which covers the period from 1st July 1953 to 30th June 1954.

Next is a royalty statement relating to the period 25th July 1957 to 5th September 1957.

Mr ST. JOHN: No objection.

(Exhibit "DO" above documents.)

Mr ST. JOHN: There is this question of my proposed amendments.

10 HIS HONOR: What do you say, Mr Larkins?

Mr LARKINS: I don't object, Your Honor, but the question of costs should be reserved. I will make some consequential amendments in the statement of claim.

HIS HONOR: In the statement of claim or the replication?

Mr LARKINS: In the statement of claim.

Mr ST. JOHN: I thought I should make this perfectly clear also, that I propose to seek to amend by a further paragraph. I will read what I propose. (Document read.)

Mr LARKINS: I have no objection.

20 HIS HONOR: I will allow the amendments to the amended statement of defence as set out in the document initialled by me and placed with the papers.

Now, Mr Larkins, do you want these extra matters sworn—the defences sworn to them?

Mr LARKINS: I do not ask for them to be sworn.

HIS HONOR: I will dispense with swearing of the further statement of defence but reserve the question of costs.

Mr ST. JOHN: There are certain documents I want to tender. First of all I will ask Mr Holland to tender certain documents out of the
30 same Department of Mines file.

Mr HOLLAND: First, there is a certain file in relation to P.M.L. 19 which contains Exhibits "DL".

I tender first the letter dated 13th November 1957 from Messrs. Gordon, Garling & Giugni to the Under-Secretary of Mines.

The next one is a letter from the Under-Secretary, Mines Department, to Gordon, Garling and Giugni dated 5th December 1957.

Next is a letter from Gordon, Garling & Giugni to the Under-Secretary, Mines Department, dated 4th February 1958.

I tender a letter in reply from the Under-Secretary, Department
40 of Mines, dated 19th February 1958.

Letter from Gordon, Garling & Giugni to the Under-Secretary, Department of Mines, dated 20th February 1958.

Letter from Department of Mines to Logan Hunter Caldwell and Gordon, Garling & Giugni dated 12th March 1958.

The next document in that file refers to an inquiry held under

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s. 127 of the Mining Act which can be identified as "Case No. 36 of 1958".

Then there is a letter dated 26th September 1958 from Gordon Garling & Giugni to the Under-Secretary, Department of Mines.

Letter dated 17th February 1959 from Gordon Garling & Giugni to the Under-Secretary, Department of Mines.

Letter dated 18th February 1959 from the Warden's Clerk to Gordon, Garling & Giugni.

Letter dated 17th June 1959 from the Warden's Clerk to the Under-Secretary, Department of Mines.

My learned friend has also tendered as part of Exhibit "DL" part of the correspondence contained in that same file concerning correspondence passing between Logan Hunter Caldwell and the Department of Mines concerning applications for leases on P.M.L. 19. As I understand it is tendered to support a case that Logan Hunter Caldwell was observing some functions on behalf of Hughes and Caldwell . . . (continues to address).

Mr ST. JOHN: There are certain interrogatories and answers which my learned friend Mr Jeffrey will deal with now.

Mr JEFFREY: I tender certain answers to interrogatories administered by the defendants to the plaintiffs. I tender the question and answer in each case—No. 12. In para. 23 of the amended statement of claim it is alleged in support of the January agreement that after it was entered into or executed, the defendants accepted benefits under it and otherwise ratified the agreement . . . (continues to address)—(reads from interrogatories and answers).

I therefore tender the answers 12, 12(a), 12(b), 12(c), 12(d).

I tender question 13 and answers 13, 13(a), 13(b), 13(c), 13(g).

I tender question and answer 14(b), which needs to be read in the light of 14(a) to derive any meaning (read).

I also tender question and answer 14(d) (read). Question and answer 17(a) and 17(b-) (read).

(Exhibit "19"—interrogatories and answers mentioned above.)

(Exhibit "20"—statement of claim, citation, and appearance in Suit No. 1414 of 1957.)

Mr ST. JOHN: For the record may I say the citation was dated 19th November 1957. The statement of defence refers specifically to regulations made under the Mining Act.

(Exhibit "21"—Regulations made under the Mining Act.)

Mr LARKINS: I have no objection but without any admission of 40 relevance.

Mr ST. JOHN: Subject to the clarification of these further documents that have just been discussed, that is the case for my clients.

HIS HONOR: Have you any evidence in reply, Mr Larkins?

Mr LARKINS: With Your Honor's permission, as it is close to the

adjournment I would like to consider that. I do not even know what the extent of the tender is.

(Further hearing adjourned to 10.00 a.m. Wednesday 1st March 1961.)

Tenth Day: Wednesday, 1st March, 1961

Mr JEFFREY: Your Honor will recall yesterday afternoon I was unable to find a letter I was intending to tender. I have since found it. I do not think Your Honor has marked it as an exhibit yet. It is a letter dated 10th September 1957 from the plaintiff to the Under-Secretary of Mines.

Mr HUGHES: I do not object to the tender provided it is only tendered for what was written by the plaintiff company. There are various notations upon it, and certain stamps, too. We object to those going in as evidence.

Mr JEFFREY: It is tendered on that basis.

HIS HONOR: Excluding notations and stamps that will be Exhibit "22".

Now, is that all that is outstanding?

Mr HOLLAND: There was a number of documents out of the file dealing with P.M.L. 19. I gave a list of those yesterday and I indicated to my learned friend the basis upon which they were tendered.

Mr HUGHES: I have considered what my learned friend said yesterday and upon the basis upon which they are tendered I do not object. I indicate however I may be calling certain evidence in reply.

HIS HONOR: These are letters from Gordon, Garling & Giugni to the Under-Secretary.

Mr HUGHES: Correspondence between Gordon, Garling & Guigni and the Under-Secretary, Your Honor.

HIS HONOR: What is the basis, you say?

Mr HOLLAND: I have tendered them. The basis upon which I tender them is they rebut any suggestion that Gordon, Garling & Guigni were acting in respect of P.M.L. 19 under instructions from Logan Caldwell on behalf of the syndicate . . . (continues to address).

(Exhibit "23"—letter 5th December 1957 Under-Secretary of Mines to Gordon, Garling & Giugni.

Letter 4th February 1958 Gordon, Garling & Giugni to Under-Secretary of Mines.

Letter 19th February 1958 Under-Secretary to Gordon, Garling & Giugni.

Letter 20th February 1958 Gordon, Garling & Giugni to Under-Secretary.

Letter 12th March 1958 Department of Mines to Logan Hunter Caldwell and Gordon, Garling & Giugni.

Record of enquiry under s. 127, Case No. 36 of 1958.

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Letter 26th September 1958 Gordon, Garling & Giugni to Under-Secretary.

Letter 17th February 1959 Gordon, Garling & Giugni to Under-Secretary.

Letter 18th February 1959 Warden's Clerk to Gordon, Garling & Giugni.

Letter 17th June 1959 Warden's Clerk to Under-Secretary of Mines.)

Mr HOLLAND: Then my learned friend tendered some documents out of the Mines Department file which is called the "royalty file" 10 relating to P.M.L. 1. It may be a convenient course if I simply hand Your Honor a list of the other documents in that file which I wish to tender.

Mr HUGHES: This tender is objected to. The whole of the documents on the first page we object to.

There is one I would like an opportunity of seeing before I define my attitude to it. It is on the second page. It is a letter dated 14th October 1948 from the Royalty Officer to Logan Caldwell, and the document immediately below that of the 31st December 1948, signed by Logan Caldwell, and the letter of 7th November 1949 I probably 20 would not object to, subject to seeing it; and the letter of 9th October 1950 is another one I am not objecting to Your Honor, but the others are objected to.

HIS HONOR: The ones that are not objected to are those of 7th November 1959 (sic), 9th October 1950 . . .

Mr HUGHES: And the 14th October 1948; subject to have a look at them.

Mr HOLLAND: Your Honor will recall documents which my learned friend has already tendered, which are Exhibit "BN" from this file; in the first place a letter in the handwriting of Logan Hunter Caldwell 30 in 1946 giving particulars of mining. That is signed by R. F. Hughes. Now, in 1950 there are two documents. A letter from the Royalty Officer to Logan Caldwell and a reply by him concerning records of royalties mined from P.M.L. 1 . . . (discussion, argument ensued.)

HIS HONOR: Do you limit it to the first time Logan Caldwell appears other than as a landholder?

Mr HOLLAND: I tender the whole in the first place, Your Honor. My learned leader reminds me that there is a very considerable body of evidence tendered by the plaintiff to show Logan Caldwell's activities way back before the period relevant to these proceedings. (Dis- 40 cussion ensued.)

Mr HUGHES: As to the whole of the documents on the first page, objection is taken on this ground, that they relate to a period of time in respect of which it is admitted on the pleadings that a partnership existed, and the documents that were tendered from the file

relate to a period or periods of time in respect of which there is a dispute on the pleadings as to the existence of a partnership . . . (continues to address). We would object to the admission of the document which is listed at the foot of the first page.

HIS HONOR: I propose to allow in Exhibit "24" the portion of the royalty file on P.M.L. 1 as listed from and including the item "Return of royalty year ended 31st December 1947", to "Account for royalty 7th February 1957" inclusive.

Now, is there anything else?

10 Mr ST. JOHN: Yes, Your Honor, there are some transcript corrections, I think.

Mr HUGHES: All the amendments were agreed.

Mr ST. JOHN: There are some in relation to Mr Driscoll's cross-examination.

Mr HUGHES: I would prefer to consider them if we could be given a list in the way that was done before. I propose in reply to call Mr Gordon Giugni.

GORDON FRANCIS GIUGNI

On former oath:

20 Mr HUGHES: Q. Mr Giugni, do you recall that yesterday some documents were admitted into evidence consisting of communications between your firm and the Department of Mines regarding P.M.L. 19?
A. Yes.

Q. I want to ask you this, early in the year 1956 did you receive any instructions from Mr Logan Caldwell in relation to the area which is now comprised in P.M.L. 19? A. I did.

Q. Have you any independent recollection of the date when you received the instructions? A. I have no clear recollection except as aided by the diary I have looked at.

30 Q. Have you got the diary entries with you? A. Yes.

Mr HUGHES: May the witness refer to that, Your Honor?

HIS HONOR: Yes.

Mr HUGHES: Q. By reference to the diary entries for the purpose of refreshing your recollection, can you say when you received the instructions from Logan Caldwell regarding the area of land now known as P.M.L. 19? A. On the 18th January 1956.

Q. And what instructions did you receive from Logan Caldwell?
A. I received instructions to appear on an application for authority to enter. I received them from Mr Logan Caldwell.

40 Q. Pursuant to those instructions did you appear on the application in the Warden's Court? A. Yes, I appeared at the Warden's Court.

Q. What was the date of your appearance in the Warden's Court?
A. The appearance was on the 9th April 1956, on an agreement by the owner being lodged and the application was granted on that day.

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Q. That was the agreement by Mr George Caldwell? A. Yes.

Q. He being the owner of the freehold of P.M.L. 19? A. Yes.

Q. Having so appeared were your instructions completed? A.
I regarded that part as being completed.

Q. For the work, the services, you rendered, pursuant to the
instructions, did you or your firm render an account to Mr Logan
Caldwell? A. Yes, later.

Q. (Calls for Exhibit "AT".) Do you recall the amount of your
account? A. It was £5 and some shillings. I recall that from a copy
of the account—£5.6.6. 10

Mr ST. JOHN: There is no dispute that it was paid out of the Hughes
and Caldwell account.

Mr HUGHES: It might be noted that a cheque for that amount was
paid out of Hughes and Caldwell's account and is the first document
in Exhibit "AT".

Q. At a later stage, that is after April 1956, did you receive
certain instructions from another party in relation to the application
for a lease made by Logan Caldwell on P.M.L. 19? A. That is so.
I did.

Q. And from whom did you receive those instructions? A. I 20
received those instructions from Mr Norman Regan.

Q. When were those instructions received, the ones that you
have just mentioned? A. I think about November 1957. I have
the diary entries in relation to those which I have read recently. I
have not got a diary entry relating to the instructions in November
1957, but from correspondence or copy of correspondence which I
have, I say November 1957, and I have diary entries commencing 1958.

Q. Do not answer this question until my learned friend has
opportunity to object. What instructions did you receive from Mr
Norman Regan? A. On behalf of his wife and three other ladies, 30
then owners of the freehold, I wrote to the Mines Department and
placed Mr Caldwell's application for a mining lease on this land.

Q. That was from November 1957 onwards? A. Yes.

Q. Pursuant to those instructions did you enter into correspon-
dence with the Mines Department that was tendered in evidence?
A. Yes.

Q. And marked Exhibit "23"? A. That is so.

Q. And in relation to the application for a lease was there a
Warden's enquiry under s. 127? A. Subsequently the objection by
the owners of the freehold was withdrawn and I appeared at the 40
inquiry and consented to the application.

Q. On behalf of the freehold owners? A. Yes, on behalf of
the freehold owners.

Q. The lease then issued thereafter in due course? A. The
lease issued, the document issued after Logan Caldwell's death.

Q. At the enquiry held under s. 127 into the granting of the

lease was Mr Logan Caldwell represented by a member of Mr Omant's firm? A. Yes.

Mr HOLLAND: May I have Exhibit "DM"?

HIS HONOR: Q. Subsequently you acted in the appearance(?)?

A. We were advised by the Lands (sic) Department that the document was available. Logan Caldwell was then deceased. I was acting for the executors and on the executors' behalf I applied to the Department, or the Mining Clerk, for a lease.

Q. Did you prepare any costs in relation to that? A. I have not finalised the estate as yet.

Q. You have not made up any costs? A. No.

Q. Have you rendered any bill in relation to it? A. No, Your Honor.

Mr HOLLAND: There is another file dealing with the application for authority to enter.

Mr HUGHES: It is in the file.

Mr HOLLAND: And the document in it is part of Exhibit "DL".

CROSS-EXAMINATION:

Mr HOLLAND: Q. Mr Giugni, do you recall notice of the hearing of the application for authority to enter by Logan Hunter Caldwell on P.M.L. 19 being given to the owners of the freehold? A. No.

HIS HONOR: Q. Do you recall it or was it— A. I don't recall it; I took the question to be, "Do you recall it?"

Mr HOLLAND: Q. You are familiar with the proceedings taken before the Warden's Court? A. Reasonably familiar.

Q. When land is cultivated land the owners of the freehold receive notice of the hearing of the application? A. I don't think that is correct—that is correct, but not because it is cultivated land; the owners of the freehold receive notice in any case.

Q. At all events, you took instructions to prepare an agreement between the owners on the one hand and Logan Hunter Caldwell on the other in pursuing this application for authority? A. Whether I prepared the agreement or not I don't know; I did lodge the agreement to court.

Q. (Approaching witness, showing document.) You see this? A. I didn't prepare that, that coincides with my entry; the main writing is Logan Caldwell's handwriting; the figures number 1344 and the date, 9th April, is in my writing and my diary entry of 3rd April says: "Attending—receiving agreement with owner, attending at court, lodging."

Q. This agreement I show you is signed by G. W. Caldwell as well as Logan? A. G.W., George Wigham, he was then the landholder.

HIS HONOR: Q. What date is this? A. March 1956.

Mr HOLLAND: Q. Did he attend you to sign this agreement? A. I am not the attesting witness, so I doubt it.

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Q. Do you see this document I show you? (Shown.) A. Yes.

Q. That is the record of the hearing of the application? A.

That is so.

Q. Did you not appear for both parties at that application?

A. That would be so.

Q. So that you appeared on the application for the applicant, Logan Hunter Caldwell, and at the same time you appeared for the freeholder, George Wigham Caldwell? A. No, George Wigham Caldwell was the freeholder; Logan Hunter Caldwell was not interested as co-owner; I appeared for both parties. 10

Q. You appeared on the hearing on the 9th April 1956? A. Yes.

Q. Logan Hunter Caldwell's application was on behalf of Logan Hunter Caldwell and also on behalf of the freeholder? A. That is so.

HIS HONOR: Q. Has the dispute been cleaned up? A. At that stage there was no dispute; the dispute arose after the application for authority to enter was granted; George Wigham Caldwell died.

Mr HOLLAND: Q. I just want to ask you one question concerning the matter His Honor put to you. After the owners ceased to object to the grant of a lease you wrote to the Under-Secretary on behalf of 20 the executive of Logan Hunter Caldwell? A. I think Logan Caldwell was still alive.

Q. 17th February 1959? A. Yes, he was dead then.

Q. You wrote on behalf of the executor seeking to obtain the grant of that lease in the name of the executor; is that not so? A. Yes, that would follow on the notification I referred to earlier from the Wardens' Clerk at Young that the lease was granted; that would come to the executive.

Q. Did you receive instructions from Steele Hunter Caldwell as the executor of Logan Caldwell to take up the lease on behalf of the 30 estate? A. I may have anticipated instructions, but I did do that.

Q. And the lease issued, did it not, in the name of the executor? A. I think it issued, yes.

Q. Do you hold that lease—

Mr HUGHES: It is in evidence.

Mr HOLLAND: Q. Did you hold that lease on behalf of the estate of Logan Hunter Caldwell? A. I held it, yes, on behalf of the executor.

Mr HUGHES: No re-examination.

HIS HONOR: Is there any application for that lease? 40

Mr HUGHES: Yes.

HIS HONOR: Q. You are not acting on that? A. I didn't act on the application for the lease.

Q. Not the application for the authority to enter, the application for the mine—

Mr HOLLAND: It is part of Exhibit D, it is dated 4th February 1957. (Witness retired.)

(Case in reply closed.)

HIS HONOR: Are there any other matters outstanding before this matter is adjourned for addresses?

Mr. ST. JOHN: I do not think so.

(Suit adjourned until Wednesday, 8th March 1961, for addresses.)

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No. 10**Notes of His Honor Mr Justice Jacobs****Tuesday, 14th February, 1961**

No. 10.
Notes of
His Honour
Mr. Justice
Jacobs.
14th Feb., 1961
to
20th Feb., 1961.

LARKINS, Q.C. and HUGHES for plaintiff.

ST. JOHN, Q.C., HOLLAND and JEFFREY for all defendants
other than the last named defendant.ISAACS, Q.C., O'Brien and J. G. SMYTHE for the last named
defendant.

St. John, Q.C. applies to amend Statement of Defence.

By consent I allow amendments to Statement of Defence of 10
defendants in manner set forth in typescript of proposed amendments
initialled by me and placed with the papers.**Case for plaintiff.**

Pleadings read.

Reginald Brian Omant on subpoena duces tecum.

Documents produced—privilege claimed.

Reginald Brian Omant sworn to answer.

I uphold claim of privilege.

Wednesday, 15th February, 1961

Same appearances. 20

Gordon Francis Giugni, sworn, examined, cross-examined and
re-examined.

Frank Ellersley Roberts, sworn, examined.

Thursday, 16th February, 1961

Same appearances.

Examination of Frank Ellersley Roberts continued.

Frank Ellersley Roberts cross-examined by St. John, Q.C.

Frank Ellersley Roberts cross-examined by Isaacs, Q.C.

Frank Ellersley Roberts re-examined.

Matthew George Porter, sworn, examined. 30

Matthew George Porter, cross-examined by Isaacs, Q.C.

Matthew George Porter, re-examined.

Thursday, 16th February, 1961Grant to plaintiff leave further to amend the Statement of Claim
by adding paragraphs 6A, 7C and 7D as set out in the document
handed to me.**Monday, 20th February, 1961**

Same appearances.

Thomas Ernest Buckley, sworn, examined.

Thomas Ernest Buckley, cross-examined by Isaacs, Q.C. 40

Thomas Ernest Buckley, cross-examined by St. John, Q.C.

Tuesday, 21st February, 1961

Same appearances.

Application by Larkins, Q.C. to set aside subpoena duces tecum served on the Secretary of the plaintiff company.

Discussion and decision on subpoena duces tecum.

Costs of the application to set aside this subpoena duces tecum as on a motion to set aside the subpoena, shall be plaintiff's costs in the suit.

I give leave to the plaintiff and to the defendants to file amended
10 Statements of Claim and Defence respectively, incorporating the amendments by insertion in the pages of the Statements of Claim and Defence respectively without re-engrossing them.

Thomas Ernest Buckley; further cross-examined.

Wednesday, 22nd February, 1961

Same appearances.

St. John, Q.C. addresses on Ratification and existence of negotiations.

Isaacs, Q.C. addresses.

Hughes addresses.

20 Isaacs, Q. C. addresses on laches.

St. John, Q.C. in reply.

Ruling on admissibility of evidence given.

Thomas Ernest Buckley further cross-examined by St. John, Q.C.

Thomas Ernest Buckley cross-examined by Isaacs, Q.C.

Thomas Ernest Buckley re-examined by Hughes.

Robert Mitchell Driscoll, sworn, examined.

Thursday, 23rd February, 1961

Same appearances.

Thomas Ernest Buckley further examined.

30 Robert Mitchell Driscoll cross-examined by St. John, Q.C.

Monday, 27th February, 1961

Same appearances.

Robert Mitchell Driscoll cross-examination by St. John, Q.C.
continued.

Robert Mitchell Driscoll cross-examined by Isaacs, Q.C.

Robert Mitchell Driscoll re-examined by Larkins, Q.C.

Brian Hooker, sworn, examined.

Brian Hooker, cross-examined by St. John, Q.C.

Robert Mitchell Driscoll, recalled, examined.

40

Tuesday, 28th February, 1961

Same appearances.

Frederick Maxwell Ryan, sworn, examined.

Frederick Maxwell Ryan, cross-examined by St. John, Q.C.

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Frederick Maxwell Ryan, re-examined.
John Charles Ricketts, sworn, examined and cross-examined by
St. John, Q.C.
End of plaintiff's case.

Case for defendant Steele Hunter Caldwell.

Case for defendant Steele Hunter Caldwell.

Case for remaining defendants.

Allow the amendments to the amended Statement of Defence as
set out in the document initialled by me and placed with the papers.

Dispense with further swearing of Statement of Defence. 10
Reserve the costs.

Wednesday, 1st March, 1961

Same appearances.

Case in reply.

Gordon Francis Giugni recalled examined by Hughes.

Gordon Francis Giugni cross-examined by Holland.

Case in reply closed.

Stand over to 8/3/61.

Wednesday, 8th March, 1961

Same appearances. 20

I allow amended paragraphs 25A and 26 to Statement of Claim.

I refuse the other amendments.

Larkins, Q.C. addresses.

Thursday, 9th March, 1961

Same appearances.

Larkins, Q.C. continues his address.

Monday, 13th March, 1961

Same appearances.

Larkins, Q.C. continues his address.

St John, Q.C. addresses. 30

Tuesday, 14th March, 1961

Same appearances.

St. John, Q.C. continues his address.

Wednesday, 15th March, 1961

Same appearances.

St. John, Q.C. continues his address.

Thursday, 16th March, 1961

Same appearances.

St. John, Q.C. continues his address.

Isaacs, Q.C. addresses. 40

Larkins, Q.C. in reply.
C.A.V.

Monday, 11th December, 1961

Same appearances.
Suit dismissed with costs.

Plaintiff's exhibits.

"A" to "Z" inclusive.
"AA" to "AZ" inclusive.
"BA" to "BZ" inclusive.

"CA" to "CZ" inclusive.
"DA" to "DO" inclusive.

10 Exhibits of defendants other than Steele Hunter Caldwell.
"1" to "24" inclusive.

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P. F. Trevorah,
Associate.

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Reasons for Judgment (Jacobs, J.)

HIS HONOR: In 1936 Joseph Peter Hughes, Robert Frank Hughes, Frederick Charles Hughes and Victor Raymond Hughes, together with George Wigham Caldwell and Logan Hunter Caldwell, entered into partnership whereby they agreed to become and remain partners in the business of mine proprietors.

Joseph Peter Hughes had applied for a mining lease, Private Lands Lease 460, of land subsequently described in the issued lease as P.M.L. 1, being an area of 55 acres 2 roods 33 perches, in the Parish of Bribaree, County of Monteagle, for the purpose of mining for chromite and magnesite. Shortly afterwards the lease was granted and the term of the lease was twenty years from the date thereof, 2nd September 1937.

The original partnership agreement was an informal document but in 1943 a formal partnership agreement was made. This agreement stated that the partnership should be for the term of the said mining lease and the name of the firm should be "Hughes & Caldwell". The capital of the firm was stated to include at that time the said mining lease and ore therein. The agreement envisaged the working of the mine by the partners; it provided in clause 6 that each partner should at all times during the partnership be at liberty to inspect the workings of the mine and accounts kept in connection therewith.

Clause 10 provided that proper books of account should be kept on behalf of the partnership by Logan Hunter Caldwell and that they, together with letters, papers and documents belonging to the partnership should be kept at the office of Logan Hunter Caldwell.

Clause 15 of the agreement provided that all excavations made upon the land embraced in the said lease in carrying on mining operations should be filled in by the partnership as far as possible by refilling with earth and other material, and insofar as such material should prove insufficient completely to fill in such excavations, the same should have their sides "ramped off" to a batter of one in five or thereabouts.

Prior to the execution of the said agreement the partners had on 6th October 1942 entered into an agreement with the firm known as The Australian Blue Metal Company, of which the present plaintiff appears to be the successor, whereby it was agreed that the partners who were described in the agreement as "the grantor syndicate" should grant to the Australian Blue Metal Company during a period of five years from 6th October 1942 full licence and authority to enter on Private Lands Lease No. 460 for purposes of digging, winning, working, and carrying away magnesite, and marketing the same.

It was provided that not more than 26,000 tons of magnesite should be removed under the agreement in any one year and that at

least 5,200 tons of magnesite should be won and sold in each year. Minimum prices were fixed and rates of royalty set out. The Australian Blue Metal Company agreed to observe and perform all the terms and conditions of the said mining lease. It was declared that the licence should not be transferred or under-let without leave. The licence, with certain exceptions stated in the agreement, was to be exclusive. The agreement was executed on behalf of the partnership by Joseph Peter Hughes and Logan Hunter Caldwell. There was an option of renewal for a further period of five years. Joseph Peter
 10 Hughes, as the registered holder of the mining lease, joined in the agreement in that capacity and confirmed the agreement.

A supplementary agreement was made between the parties on 11th October 1943 varying the original agreement in certain respects as to quantities and royalties.

The Australian Blue Metal Company mined under this agreement and paid royalties accordingly, and there have been tendered in evidence records of payments into a joint account of the partnership in the names of Joseph Peter Hughes and Logan Hunter Caldwell and later of Robert Frank Hughes and the said Logan Hunter Caldwell.

20 It seems that prior to the making of this agreement the mine was actually being worked by Robert Frank Hughes and Victor Raymond Hughes who were being paid fixed rates per ton for winning and carting magnesite; that the magnesite was sold mainly in the name of Joseph Peter Hughes; that the proceeds of the sale were paid into the partnership bank account; that Logan Hunter Caldwell drew and signed cheques in payment of the outgoings and in distribution of the profits. Robert Frank Hughes and Victor Raymond Hughes were still working a pit when the agreement with the Australian Blue Metal Company was executed.

30 At or about this time a second bank account was opened by the partnership into which payments from the Australian Blue Metal Company were deposited. Some months later the two bank accounts were combined.

The Australian Blue Metal Company ceased operations in 1944 and thereafter for some time, it would seem from the limited distributions made to the partners, little activity was carried on in relation to the winning of minerals from the lease. Joseph Peter Hughes died on 17th January 1946 and probate of his will was, on 12th June 1946, granted to the executors named in the will, Robert Frank
 40 Hughes and Clarence Vivian Hughes.

It does not appear that the surviving partners elected to purchase the share of Joseph Peter Hughes in accordance with Clause 12 of the partnership deed and it seems that the partnership business was carried on by the surviving partners and either by the estate of Joseph Peter Hughes or with the addition of Clarence Vivian Hughes as a partner in his own right. It is admitted that distributions of profits

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made after the death of Joseph Peter Hughes were made to Clarence Vivian Hughes who received the same into his own account and used the same for his own purposes. Whatever the situation may have been between Clarence Vivian Hughes (who was one of the executors of the estate of Joseph Peter Hughes) and the estate of Joseph Peter Hughes, I am satisfied that Clarence Vivian Hughes was treated as a partner from a time shortly after the death of Joseph Peter Hughes.

There does not appear to have been any substantial change in the manner of conducting the business of the partnership after the death of Joseph Peter Hughes. Mining continued with the actual work of mining being carried out by certain only of the partners, and it would seem that those partners were entitled to the proceeds of the sale of the mineral after deduction of the royalties in favour of the partners generally.

At various times over the years up to the death of George Wigham Caldwell on the 21st July 1956 the partners would seem not only to have carried on some business of mining themselves, but also to have granted licences to various persons and companies, including some of the partners themselves, to mine in return for payment of royalties. All income, whether from mining or from royalties was paid into the partnership account in the name of Logan Hunter Caldwell and Robert Frank Hughes, and distributions were made to the partners from the same account. I am satisfied that the business of the partnership was continued over this period whether by actual mining or by granting of licences to mine in return for payments of royalties. The licences were granted to various persons and companies, mainly firms or companies in some way connected with one or another of the partners. The partnership paid the shire rates and the royalties due by the mining lessees. It appears to have taken steps to obtain on behalf of the partnership other areas, particularly P.M.L. 19.

There is evidence that Logan Hunter Caldwell carried on practically the whole of the administration of the partnership business. His writing appears on the cheque butts and he wrote the great majority of the letters to the Department of Mines. He applied for an authority to enter in respect of P.M.L. 19 and, indeed, it may be generally said that he was administering the affairs of the partnership at least to the extent envisaged in the 1943 partnership agreement.

George Wigham Caldwell, by his will, appointed Margaret Ferguson Caldwell, Lindsay George Regan and Norman Vivian Regan executrix and executors. Probate of the will was granted to them. By Clause 9 of his will they were empowered to enter into any partnership or trading agreement with any person or persons whatsoever. The surviving partners did not exercise any right to purchase the share of George Wigham Caldwell pursuant to Clause 12 of the partnership agreement. There is little or no evidence of any actual carrying on the partnership affairs after the death of George Wigham Caldwell

apart from the making of the agreements with the plaintiff company to which I shall shortly refer. It was only a short period of a few months between the death of George Wigham Caldwell on 21st July 1956 and the making of the first of these agreements in November of that year. However, it does appear that during that period Victor Raymond Hughes was mining on the lease for magnesite.

Although it has eventually been conceded by the defendants that there was a partnership actually in existence up to the death of George Wigham Caldwell, it is denied by the defendants other than Steele
10 Hunter Caldwell that any partnership arose after the death of George Wigham Caldwell and it is claimed that any activity of the surviving partners was only in the course of winding up the partnership.

It seems to me that there is some evidence that the surviving partners agreed to continue the business of the partnership, and they have not seen fit to deny any such intention in the witness box. On the other hand, there is little direct evidence that the executors of the estate of George Wigham Caldwell agreed to become partners in the business. There is evidence that one of the executors, Norman Vivian Regan, visited the area of the lease frequently after early 1957. There
20 is also evidence of distributions to the estate of George Wigham Caldwell in respect of income received after his death. These distributions related to income not only from royalties paid by the plaintiff after November 1956, but also to income from royalties paid by Victor Raymond Hughes. During 1957 a number of payments were received by the estate of George Wigham Caldwell and in various documents to which the executors of that estate are partners there is a reference to "partnership".

Thus, in the agreement in relation to costs of this litigation made between the various defendants in November 1957 there is reference
30 to the partnership. However, it appears to me that I am entitled to take regard of the general course of conduct from 1956 to the present time, the failure to take any step to wind up the business on the ground that it was dissolved in July 1956, and the continued treatment of the executors of George Wigham Caldwell as entitled to some say in the affairs of the partnership, and I have reached the conclusion particularly in the absence of any evidence by any of the surviving partners or of the executors of the deceased partner, George Wigham Caldwell, that it was intended to carry the business on as it had previously been carried on without any intention of early winding up
40 thereafter. I shall subsequently return to this aspect and express my conclusions thereon.

Logan Hunter Caldwell continued before and after the death of George Wigham Caldwell to perform most of the secretarial and like duties in relation to the business. He kept records, checked quantities of magnesite won, received moneys, paid out moneys, saw to the preparation of the partnership returns and corresponded with the

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Mines Department in relation to royalties and other matters. When the plaintiff through its local operations manager, Thomas Ernest Buckley, had first approached Victor Raymond Hughes at the site of the lease in April 1956 seeking permission to enter on the area of P.M.L. 1 for purposes of disposing of soil, Victor Raymond Hughes said "I think it will be all right. You had better see Logan Caldwell about it." Victor Raymond Hughes added, "I will have to see the others". A few days later Victor Raymond Hughes said to Mr Buckley, "I have seen Logan Caldwell. It will be quite all right to tip dirt there". Shortly afterwards Logan Hunter Caldwell visited the site and confirmed to Buckley that it would be quite all right to tip dirt on to P.M.L. 1. It seems to me that these conversations show at least that Victor Raymond Hughes regarded Logan Hunter Caldwell as the person who, although the others would have to be consulted, would in fact give the permission sought. 10

In November 1956 an agreement was made between the surviving partners of the Hughes and Caldwell partnership and the plaintiff whereby the plaintiff was to have the right to mine on a part of P.M.L. 1 in return for a royalty of 10s. per ton of magnesite mined. It is necessary to consider the circumstances in which this agreement, the making of which is not disputed, was made. Mr Buckley first approached Victor Raymond Hughes who was carrying on mining operations in certain pits on P.M.L. 1. He asked Victor Raymond Hughes if the plaintiff company could work where he was giving up for 10s. per ton royalty. Victor Raymond Hughes replied "I think it will be all right but you will have to see Logan Caldwell." Victor Raymond Hughes added, "I will have to see the others. I think it will be all right, but I will have to see the others". This conversation shows that in regard to the making of such an agreement between "Hughes & Caldwell" and the plaintiff company the other members of that firm would have to be consulted but that the person to see in regard to the making of the arrangements was Logan Hunter Caldwell. 30

A few days later Buckley and Victor Raymond Hughes had another conversation in which Victor said, "It will be all right to work in the old pits". Victor indicated the area in which the work could be carried on.

As the case has proceeded it has ceased to be of great importance to determine what was the actual area agreed upon. There was a dispute indicated in the examination and cross-examination of the plaintiff's witnesses on the question whether initially the right to mine was limited to the area of certain old pits and was certainly not to extend over the gully. It is unnecessary for me further to consider this indicated conflict and in any case on the failure of any of the defendants to give evidence the conflict could only be resolved in favor of the plaintiff company. 40

At the conversation to which I have last referred Victor Raymond

Hughes, after stating that it would be all right to work in the old pits, stated, "See Logan Caldwell regarding it". After these conversations the plaintiff went on to the area of the mining lease and commenced to mine at the site of the old pits. Logan Caldwell saw Buckley and arranged with him to be given a copy of the weights and numbers of railway trucks and requested that cheques be made out to Hughes and Caldwell for the royalties, and sent to him. Logan Hunter Caldwell said "I will get an agreement drawn up by Gordon Giugni".

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10 Mr Giugni received instructions to prepare the agreement of 31st January 1957 on 9th January 1957. On 31st January 1957 a written agreement was executed purporting to be made between the plaintiff and Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Logan Hunter Caldwell and the executors of the estate of George Wigham Caldwell, who in that agreement were thereafter referred to as "Hughes & Caldwell". That agreement was signed for and on behalf of Hughes and Caldwell by Logan Hunter Caldwell, and for and on behalf of the Australian Blue Metal Limited by Mr T. M. O'Neill. It was in the following terms:

- 20 "1. The Company shall have the right to mine for magnesite on P.M.L. 1 east of a line running south from a turn in the fence on the northern boundary of such P.M.L. 1.
2. The Company will pay to Hughes and Caldwell royalty of ten shillings (10/-) per ton in respect of all magnesite won and delivered from such area.
3. The weights for the purposes of ascertaining the amount of royalties payable hereunder shall be ascertained and calculated by weighbridge weights at the siding where the metal is taken.
4. The Company will pay such royalties and render statements
30 monthly to the aforesaid Logan Hunter Caldwell.
5. In the event of there (sic) arising any difficulties as to weights or quantities Hughes and Caldwell or their nominee may have access to the Company's books or records for the purposes of ascertaining the quantity of metal delivered hereunder AND the Company will make such books and records available to Hughes and Caldwell or their nominee if so required.
6. The Company will use its best endeavours to ensure that all gates to the said P.M.L. 1 are kept closed and no dogs are taken thereon.
- 40 7. The Company will fill in all excavations made by it or its employees except the last excavation which is to be left with three in one batter."

Although it is clear that Victor Raymond Hughes, Robert Frank Hughes and Logan Hunter Caldwell, and probably Clarence Vivian Hughes, knew of the mining being carried on by the plaintiff company from 31st January 1957, and in the case of some of them from

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November 1956, there is no direct evidence that any of them other than Logan Hunter Caldwell knew that a written agreement had been prepared or executed.

The plaintiff continued mining operations at P.M.L. 1, and it is clear that a number of the parties observed those operations from time to time. The plaintiff company had difficulties with production and costs. It applied on 31st January 1957 to its main customer, the Broken Hill Pty. Company Limited, for an increase in the price of magnesite paid to it by that company. At that stage the price of magnesite was payable in accordance with an order placed with the plaintiff company by the Broken Hill Pty. Company Limited dated 13th February 1956 as amended by letter dated 23rd April 1956. The letter of 31st January 1957 sought an increase in the price of magnesite of ten shillings per ton. The Broken Hill Pty. Company Limited replied by letter of 15th February suggesting that one of the principal difficulties in economical operation had been a necessity to pay a ten shillings per ton royalty to the lease owner and added "We do feel that in granting any increase we would be condoning and perpetuating a royalty basis which we consider to be unduly high".

The accounts which have been placed before me show that the operations of the plaintiff company on P.M.L. 1 between January and May 1957 were conducted at a loss. I do not propose at this stage to go into the detail of the financial aspects of the plaintiff's operations or the subsequent re-arrangement of its price to the Broken Hill Pty. Company Limited, and a reduction obtained by it in its cartage charges. It is sufficient to say that on 29th May 1957 it succeeded in obtaining from the Broken Hill Pty. Company Limited the requested increase in price of ten shillings per ton and it retained the special bonus at various rates for quantity which it had previously had.

In May 1957 the plaintiff company through Mr Buckley determined to test for magnesite beyond the gully in an area which was suggested to it by Logan Hunter Caldwell, and at about the same time Buckley raised with Logan Hunter Caldwell the possibility of reducing the rates of royalty to six shillings per ton. Logan Hunter Caldwell said, "I will discuss it with the others". In a further conversation on 28th May Logan Hunter Caldwell said to Buckley, "We will talk about the royalties but not until Thursday as Frank will be finished shearing by then". In that situation tests south of the gully were commenced early in June. It appears that independently of those tests and of any mining south of the gully the position in May was somewhat better than it had been in preceding months. Moreover, as I have said, the increase in price from the Broken Hill Pty. Company Limited was operative from 1st June 1957 and word of it was received on 29th May.

On 5th June 1957 Mr Driscoll, secretary of the plaintiff com-

pany, rang Logan Hunter Caldwell from Sydney. He stated to Mr Caldwell that the yield was poor, production was bad, that the company was operating at a loss, and he informed him that the company would have to pull out on 30th June unless it could decrease its costs, increase revenue and increase production. He informed Mr Caldwell that the company had arranged for a reduction in cartage rates and said, "As you know we have all got an increase of ten shillings a ton from the B.H.P." He further stated to Mr Caldwell, "I would like you to consider a decrease in the royalty rate from ten shillings to six shillings per ton".

Within a few days after that conversation Mr Giugni prepared a fresh agreement which was signed by Mr Buckley on behalf of the plaintiff company on 10th June and which was signed at about the same time by Logan Hunter Caldwell, "for and on behalf of Hughes and Caldwell". This document was in the same terms as the document of 31st January 1957 except that the royalty in the recital and in Clause 2 of the document was expressed to be six shillings per ton instead of ten shillings per ton.

Certainly by shortly after the middle of June it became apparent to Mr Buckley that mining operations south of the gully would be quite successful, and in fact they were successful. Production increased so that by August a very considerable production of magnesite was obtained. On 7th August Victor Raymond Hughes had a conversation with Mr Buckley in which he stated that the plaintiff company had no right to be operating where they were, namely south of the gully. Mr Buckley replied that there was no mention of stopping at the gully in the agreement. That day Mr Omant, solicitor for the Hughes brothers, obtained from Mr Giugni a copy of the agreement of 14th June 1957 and on that same evening Buckley visited Robert Frank Hughes at the latter's home in Young. Buckley asked what the trouble was and whether it was desired to go back to the 10/- per ton royalty. The conversation continued and in the course of it Robert Frank Hughes said, "We wrote to Australian Blue Metal and asked them to pay the Government Royalty and they haven't even bothered to answer us".

This reference by Robert Frank Hughes was to a letter which had been written by Logan Hunter Caldwell to the plaintiff company on 30th June 1957 in the following terms:

"Your letter of the 27th June, 1957 enclosing cheque and statement for magnesite mined from P.M.L. 1 during May 1957 is to hand. Your total of tonnage balances with figures handed to me by Mr Buckley. Your statement did not show truck No. U.22393 of 24 tons 9 cwt railed during 3.4.5. May 1957 but the 24 tons 9 cwt is included in your total amount of 1,052 tons 14 cwt.

On the matter of the reduction of royalty paid by you from 10/- to 6/- per ton coming under discussion by Messrs Hughes &

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Caldwell Syndicate, it was felt that with the higher prices being received for magnesite, that these higher prices reduce their income due to the fact that the amount to be paid to the Department of Mines at $1\frac{1}{2}\%$ (sic) increases as the value of magnesite mined increases.

Messrs Hughes & Caldwell have asked me to write you on this matter and to ask you would you pay the Government Royalty of $1\frac{1}{2}\%$ (sic) as from the 1st June 1957.

In arriving at the value of magnesite at the mine, Messrs. Hughes & Caldwell would not have the figures available for making out 10 the return”.

By 9th August 1957 at the latest, all the original defendants in this action had undoubtedly become aware that Logan Hunter Caldwell had purported to arrange with the plaintiff company for a reduction in the rate of royalty and, further, had become aware that he had purported to act on their behalf in making that arrangement. On 14th August 1957 there was a meeting at the office of Tester Porter & Company, accountants. It was attended by Robert Frank Hughes, Clarence Vivian Hughes, Victor Raymond Hughes, Logan Hunter Caldwell and Norman Vivian Regan. It was decided to approach the 20 plaintiff company for termination of the licences. The agreement of 14th June 1957 was read out by Mr Porter who took the chair at the meeting. On 19th August 1957 the following letter was written by Tester Porter & Company on behalf of the original defendants in this action:

“We desire to convey to you a resolution passed by the partners of Hughes and Caldwell at a meeting of their syndicate at a meeting held on 14th August 1957.

‘That the Australian Blue Metal Company be requested to immediately vacate P.M.L. 1, and therefore cease to work its lease 30 for magnesite’.

We will therefore be pleased if you will kindly cease operations immediately on P.M.L. 1.”

Meanwhile on 15th August 1957 the plaintiff company had written a letter to Hughes and Caldwell forwarding a royalty cheque for the month of July together with a statement of the weights and truck numbers of the various loads despatched during the latter month. On 19th August this cheque was deposited to the credit of the Hughes and Caldwell bank account. On 17th August 1957 Mr Driscoll and 40 Mr J. O’Neill on behalf of the plaintiff company visited Young and saw Victor Raymond Hughes, Robert Frank Hughes, Clarence Vivian Hughes and Norman Regan. The claim was then made by Victor Raymond Hughes that Logan Hunter Caldwell had no right to sign the agreement.

Messrs Hughes & Garvin replied on 21st August 1957 to Messrs Tester Porter & Company’s letter of 19th August stating

they had advised the plaintiff company that it was not within the power of the Hughes and Caldwell partnership to terminate the agreement under which the company was operating the mining lease and stating that the plaintiff company proposed to continue with the mining operations.

Early in September 1957 there was some correspondence between the plaintiff company and Messrs Eric Campbell, Omant & Grant on behalf of the original defendants. Generally speaking this correspondence concerned a proposal for a new licence agreement, a proposal
10 which came to nothing, so that on 11th September Messrs Eric Campbell, Omant & Grant wrote to the plaintiff company that the continued mining of the lease was an open defiance and an unwarranted removal of minerals in respect of which a claim for damages would be made.

On 13th September 1957 the plaintiff company forwarded to Hughes and Caldwell a letter containing a cheque for £447/5/- in payment of royalties for the month of August. This cheque was paid to the credit of the Hughes and Caldwell account on 19th September. There had been no distribution of royalties from the Hughes and Caldwell account after the royalty payments of August to which I
20 have referred and with the payment in of that July royalty and the payment in September of the August royalty the account was in credit to the extent of £743/10/3d. On 21st September six cheques, each for £100/-/- were drawn on the account in favour of each of the original defendants. Five of these were deposited against the account on the same day but the sixth, in favour of Clarence Vivian Hughes, was not deposited against the account until 15th November 1957. The state of the account was such that these payments amounting to £600/-/- were made to a very large extent out of the July and August royalties paid by the plaintiff company, and as to the balance out
30 of the June royalties which had been paid by the plaintiff company by a cheque for £251/11/- which was deposited in the account on 7th August.

In the following months the plaintiff company continued to mine magnesite on P.M.L. 1 and continued to forward cheques but no further cheques were banked to the credit of Hughes and Caldwell.

On 16th October 1957 Robert Frank Hughes and Clarence Vivian Hughes as executors of the will of Joseph Peter Hughes, deceased, and as the lessees by transmission, wrote through Messrs Eric Campbell, Omant & Grant in the following terms:

40 "We are instructed that your company has entered upon the lands of the estate of the deceased without authority and has removed large quantities of magnesite therefrom. You are hereby given notice that our clients did not consent to your entry upon the magnesite or any material therefrom. Your action in entering lands which are the subject of the lease and to your removal of

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upon the lands is a trespass and we are instructed to give you 16 days from the date hereof to vacate such lands”.

The plaintiff company did not vacate the lands and a suit was thereafter commenced by Robert Frank Hughes and Clarence Vivian Hughes seeking an injunction to restrain the alleged trespass by the plaintiff company.

On 13th May 1958 the present suit was commenced by the plaintiff company against Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Logan Hunter Caldwell, Margaret Ferguson Caldwell, Lindsay George Regan 10 and Norman Vivian Regan, in which the plaintiff company claims a declaration that the agreement of 14th June 1957 is a valid and subsisting agreement and that the defendants are not entitled to rescind the same or to prevent the plaintiff from having access to the lands for the purpose of mining for and winning magnesite and removing any magnesite so won. An injunction was sought restraining the defendants during the continuance of the agreement from preventing or hindering access by the plaintiff company to the lands for the purpose of mining for magnesite and from ejecting the plaintiff company, its servants and agents, from the land so long as the plaintiff performed 20 and was willing to perform the agreement on its part. Specific performance was also sought of an agreement to execute and deliver to the plaintiff a form of document registerable under the provisions of the Mining Act 1906.

The defendant Logan Hunter Caldwell died on 2nd January 1959 and probate was, on 28th April 1959, granted to the executor named in his will, namely Steele Hunter Caldwell, who has been added as a defendant.

Frederick Charles Hughes recently died and the suit was revived and his legal representatives, Violet Jean Freeman and Ivy Alma 30 Richards, were joined as defendants.

Although in the first instance the original defendants to the suit swore a joint statement of defence in which all of them, including Logan Hunter Caldwell, denied that the agreement dated 14th June 1957 was executed by Logan Hunter Caldwell on behalf of them all, subsequently the joint representation of all the defendants ceased and Steele Hunter Caldwell by his amended statement of defence admitted the authority of Logan Hunter Caldwell to make the agreement. However, the other defendants all joined in denying the authority of Logan Hunter Caldwell. 40

I have set out the facts in outline and I shall deal with them with more particularity upon the various points which have been raised in the course of the case so far as it may be necessary so to do.

There is a considerable number of issues which have been raised between the parties on the pleadings as finally amended and which have been pursued in the course of the lengthy hearing. I think that it is desirable that I should now set out broadly my conclusions upon

these issues and then deal in more detail with my reasons for reaching those conclusions. My conclusions are as follows:

(1) The agreement of 14th June 1957 is an agreement operating as a licence to the plaintiff company to mine coupled with a grant of minerals actually mined, and was properly terminated because upon its true construction the right to mine thereby given was terminable at will by the licensors provided that the plaintiff company thereupon had a period of grace in which to remove any mined mineral and to vacate the land.

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10 (2) Even if the agreement upon its true construction is the grant, or an agreement for the grant of a right to mine in the nature of a profit à prendre for a period greater than "at will", that grant terminated upon the expiration of the mining lease on 2nd September 1957 and did not enure into the period of renewal thereafter.

(3) The agreement being terminable at will cannot be enforced in this Court.

(4) The agreement dated 14th June 1957 was binding on all the defendants because

20 (a) Logan Hunter Caldwell had actual authority to make the agreement.

(b) The agreement was made by Logan Hunter Caldwell as an act for carrying on in the usual way business of the kind carried on by the firm of Hughes and Caldwell at the time of the making of the agreement, and, if I am incorrect in my conclusion that Logan Hunter Caldwell had actual authority in the particular matter, the plaintiff company did not know that he had no authority.

30 (c) Even if there was no actual authority and if the making of the agreement was not an act for carrying on in the usual way business of the kind carried on by the firm of Hughes and Caldwell, the agreement was ratified by the acceptance and retention of the royalty payments received by the original defendants in August and September 1957 in respect of royalties paid under the agreement of 14th June 1957.

(5) Although it is unnecessary to my decision, I express the conclusion that there was no unfair concealment which made the agreement voidable or any unfair concealment or oppressiveness which would debar the plaintiff from equitable relief.

40 (6) Although it is not necessary to my decision, I express my conclusion that although there is no mutuality, in that there was nothing to be enforced against the plaintiff company, nevertheless this want of mutuality would be no defence in this suit which is primarily for an injunction in respect of the executed agreement and the right thereby created. In so far as the suit is for specific performance of a further instrument, I do not consider that specific performance of

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any further instrument was intended or could be granted, because of want of consideration and lack of mutuality.

I wish now to give my reasons for these conclusions.

- (1) The agreement of 14th June 1957 is an agreement operating as a licence to the plaintiff company to mine coupled with a grant of minerals actually mined, and was properly terminated because upon its true construction the right to mine thereby given was terminable at will by the licensors provided that the plaintiff company thereupon had a period of grace in which to remove any mined mineral and to vacate the land. 10

It seems to me that the initial question to be determined is the nature of the rights which the plaintiff company was purported to be given under the agreement of 14th June 1957 because it is only when this question has been determined that it is possible to determine the nature of the express or implied authority, if any, of Logan Hunter Caldwell to execute that agreement. It has been argued on behalf of the plaintiff company that it had a licence coupled with a right to win magnesite and that this licence was coupled with an interest and was irrevocable. It submitted that the interest with which the licence was coupled was not a mere interest at will but was on the true construction of the agreement in the light of the circumstances intended to continue until such time as the last of the magnesite had been won or until the title of the grantors should determine, whichever event should first happen. Reliance has been placed on the last clause of the agreement, namely that the company would fill in all excavations made by it or its employees except the last excavation which is to be left with three-in-one batter and it has been submitted that it was for the plaintiff company to determine which was the last excavation and which was to be left with three-in-one batter. 20

In support of this argument the plaintiff company has relied upon the fact that by section 129 of the Mining Act, 1906, every right, title or interest acquired under the Act shall be deemed and taken in law to be personal property and shall not be of the nature of real estate and may be disposed of during the lifetime of the holder as personal property. It is submitted that the effect of this provision is to convert what would ordinarily be a profit à prendre in realty into an analogous interest in personalty which was capable of being created in the same way as any other interest in personalty. Reliance is placed on cases in New South Wales where it has been held that a mining interest is not a chose in action and must, therefore, be considered a chose in possession, that is to say, goods within the meaning of the Sale of Goods Act, 1923: *Re Keith* (18 N.S.W.L.R. (B. & P.) 19); cf. *Lucas v. Meagher* (13 W.N. 67). Therefore, it is argued, the interest in the minerals is to be regarded as goods and the licence, being a licence to enter and take those goods, is coupled with the interest in those goods and, therefore, irrevocable. 30 40

It seems to me that even if this argument is accepted the question still remains as to the extent of the interest which exists in the "goods". I must say I have difficulty in accepting the concept that because the mining lease is personalty by virtue of section 129 a right given by the lessee to enter and take minerals is a chose in possession in the true sense. However, I do not find it necessary to express any concluded view on this question of classification because whether or not the right can be described as a chose in possession, it cannot therefore be assumed that the property passes absolutely and permanently. It
 10 must be regarded as a chose in possession of a very special kind in respect of which the question must still be determined of how long the right to take minerals is to endure. This question can, in my view, only be determined by applying the analogy of a profit à prendre. Therefore, even though the interest is an interest in personalty it seems to me that the question still remains whether it is terminable at the will of either party or intended to endure for a period and, if so, what period.

In this connection it is important to distinguish between the right to get the minerals and the licence to go on the land and remove them.
 20 So long as the right exists the licence is irrevocable, but if the right is terminable the licence upon termination is revoked. In other words, it is necessary to distinguish between revocability and terminability. I therefore propose to examine the agreement in the light of the surrounding circumstances and by analogy to the grant of a profit à prendre in order to see whether the rights were intended to be terminable at will or to be terminable on reasonable notice or to be terminable only at the end of some term which is to be implied.

It is necessary to bear in mind when considering this agreement the various ways in which minerals may be dealt with by an owner
 30 in fee simple, because I consider that the only way in which this agreement can be construed is by analogy to the interests which can be created by such an owner. A mining right may be granted by a sale of the minerals. This passes all the minerals whether they are taken or not and the price is payable whether or not the minerals are extracted: **Jowett v. Spencer** ((1847) 1 Exch. 647; 154 E.R. 275). Minerals always lay in grant and they may be excepted on a conveyance of the land: **Shepherd's Touchstone** (Ed. Preston 100). I see nothing within the present agreement which is analogous to the sale of the minerals in this manner.

40 A mining right may also be granted by a lease or a licence coupled with a grant or by a mere licence. A mining lease has been described as a sale of portion of the land at a price payable by instalments, by way of rent or royalty, over a number of years and that it is "really in its essence rather a sale at a price payable by instalments than a demise properly called": re **Aldan's Settled Estate** ((1902) 2 Ch. 46 at 56). It seems to follow that there is little substantial difference

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between a lease and a licence coupled with a grant. A mineral licence coupled with a grant is a profit à prendre which may be limited either for a freehold or a chattel interest: **Haigh v. Jaggard** ((1847) 16 M. & W. 525). There may thus be cases where profits à prendre in respect of mines are created for a freehold interest because no term is stated and as a matter of construction the rights appear to have been intended to be conferred in perpetuity. There is then a perpetual right to search for minerals and carry them away even though no estate is created in the land itself or in the minerals ungot: See **Watson v. Spratley** ((1854) 10 Exch. 222), **Sutherland v. Heathcote** ((1892) 1 Ch. 475). 10

It would seem that there is no substantial difference in effect between a mining lease and the grant of a profit à prendre where the term is one of years. However, a perpetual grant should, it would seem, be characterised as a profit à prendre rather than as a lease.

The question, therefore, is whether the present agreement should be construed by analogy to a sub-lease or to a profit à prendre or to a mere licence, and in each case it remains to be determined what duration was intended. I think that the agreement amounted to more than a bare licence because it was clearly intended that the plaintiff company should have property in the minerals farmed: See re **Haven** 20 **Gold Mining Company** ((1882) 20 Ch.D. 151 at 160). Is it then analogous to a lease? I do not think that it can be because no term is stated. If it is analogous to a profit à prendre it cannot be a profit à prendre for years because if so it would be void for want of a certainty of years: See **Haigh v. Jaggard** (Supra). It may therefore be analogous either to a profit à prendre at will or to a profit à prendre in freehold: cf. **Moffat v. Sheppard** (9 C.L.R. 265 at 271) where, however, the licence was for a fixed term. See per Griffith C.J. at p. 274. The fact that it is granted by the holders of a limited interest in the land would of itself be no objection to it being regarded as a perpetual profit à 30 prendre because the owner of the limited interest could bind the land for as long as the interest continued: cf. **Key v. Neath** (R.D.C. 93 L.T. 507; affirmed 95 L.T. 771).

In my opinion the interest intended to be given to the plaintiff company was analogous to a profit à prendre at will and to no greater interest. I reach this conclusion not because the document is not under seal in the manner in which an interest in the land at law would need to be created, but because of the nature of the rights and obligations which appear in the writing, and particularly because of the absence of expression of rights and obligations. This agreement has virtually 40 none of the usual provisions which might be expected in the grant of a mining interest in the nature of a profit à prendre. A mining licence which amounts to a profit à prendre is usually made in a form similar to a mining lease and contains similar covenants and provisions: See Halsbury 3rd Ed. vol. 26 p. 445 where some of the usual provisions are referred to and where it is also pointed out that words denoting

a mere liberty to work minerals, if unexplained by the other parts of the deed, only amount to the grant of a licence. In the present agreement there is no covenant to perform and observe the conditions of the head lease, nor is any right of re-entry reserved.

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More importantly, there is no obligation to mine or to make any return to the grantors even though it is alleged that the grant is one of indefinite duration lasting so long as the minerals are there and may be mined. It has been said that the labour covenants in a gold-mining lease are the real consideration for the lease: **Barwick v. Duchess of Edinburgh Co.** ((1882) 8 V.L.R. (Eq.) 70). The alternative to labour covenants and the positive obligation to mine is a sleeping rent or a minimum royalty. There is nothing of this kind in the present agreement.

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20 “It is said, that because the lessee covenants that he will do the work in a workmanlike manner, he has covenanted to be always working. But there are various approved modes of effecting such a purpose. One is to take so heavy a dead rent as to make the lessee find it to his own benefit to work, because the rent must be paid whether he works the mine or not. Another mode is to have an express covenant that he shall continuously work. Another mode is to say that so much coal shall be raised per annum . . .”
(**Jegon v. Vivian**, L.R. 6 Ch.A. 742 at 757).

In the present case there is no positive obligation to work; there is no sanction for not working the minerals; there was no lump sum prepayment which could be regarded as the purchase price of a perpetual right to work; and yet it is submitted that in these circumstances the right to work is a perpetual one, in the sense that it is to continue so long as the title of the grantors continues and the supply of minerals lasts. I find it quite impossible so to construe this agreement. It
30 seems to me that it was analogous to a profit à prendre at will. Alternatively, it may be described as a licence to enter and to mine with a grant of minerals actually mined. This is, I think, only another way of expressing the nature of a profit à prendre, but I do not think it matters for the result is the same, namely that the right to mine given by the agreement was terminable at will. The decision of the Irish Court of Appeal in **Atkinson v. King** ((1878) 2 I.R. 320) was strongly relied on by the plaintiff company. In that case there was a licence “to sink a pit or coal in Brackaville at 1/6d. per ton” and
40 it was held that the licence was irrevocable. However, it seems to me that that is quite a different case. The sinking of a pit for coal is an undertaking of great expense and it was that factor which led to the licence being held irrevocable in equity upon the same principle as was applied in **Plummer v. Wellington Corp.** (9 A.C. 669). This is made clear in the passage from the judgment of the Lord Chancellor at pp. 334-335 which I quote:

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“The Court of Queens Bench, according to able judgment delivered by the Chief Justice for the Court, regard the instrument as a mining licence; and, although by a mere writing, they held it to have been irrevocable, both because it is in its nature a licence coupled with an interest, and also because it was acted upon by O’Neill, and expense incurred by him in his mining operations.

To this it is objected, that, although a parol licence coupled with an interest may be admitted to be irrevocable (as if I sell a cock of hay, licence to cross my field in order to take it away accompanying the bargain cannot be countermanded until the hay has 10
been removed), yet this proposition assumes that the interest to which the licence has been attached was legally created; whereas here the interest was an interest in an incorporeal heraditament—to dig for coal alieno solo—and could not be effectually granted except by deed. But without controverting these general principles, and viewing this document as a licence, still the opinion of the Court of Queens Bench—that, under the circumstances of this case, the rights derived from it by O’Neill could not have been withdrawn by the defendant—appears to me well founded, both on principle and authority. The licence was one by its terms 20
contemplating expensive works being carried on by the licensee, such as sinking a pit, and excavating under the surface; it was, at the time when the houses were approached, already a licence executed, the pit had been sunk and excavations made; coal had been found and the royalty for it regularly paid. Would it be consistent with justice to allow a party who had himself induced all this expense to nullify his own act, and reap, it might be, himself the fruit of another’s outlay? A case of licence unattended with expense or loss, as, for instance, to fish in a river, is altogether different; for there, if it be revoked, the licensee is merely left 30
in the same position as if it never had been granted. In support of these views, I refer to the cases of **Winter v. Brockwell** (8 East, 308) and **Liggins v. Inge** (7 Bing. 682), in which it was held that parol licences for a sky-light, and a weir on the bank of a river, could not, after their construction had been permitted, be recalled. The authority of these cases, I concur with the late Mr Justice Williams (**Davies v. Marshall**, 10 C.B. (N.S.) 711) in thinking was not affected by the judgment of Baron Alderson in **Wood v. Leadbitter** (13 M. & W. 838). Indeed, the judgment itself expressly declares the grounds on which those cases were 40
decided to be inapplicable to, and not to bear upon, what was then before the Court”.

I see no reason to imply a term that the agreement was terminable only upon reasonable notice, because the plaintiff company would in any event on the termination have the right to enter and remove minerals actually mined and would have a period of grace so to do

and to remove its equipment. I do not think that the scale of operations was such that the parties must be taken to have intended to allow a period of notice during which mining could continue. To some extent this finding is bound up with my finding that the agreement created rights analogous to a profit à prendre at will. The latter interest in realty is truly an interest at will similar in respect of termination to a tenancy at will. If it is intended that the profit à prendre be terminable only on reasonable notice or on certain notice then it would be necessary so to state in the instrument. For this reason I do not think that the cases on bare licences are really in point, and I do not think that it is necessary for me further to consider the differences in approach which are revealed in many of the cases to the question whether a licence is terminable instanter, the licensee being allowed a period of grace within which to remove himself and his belongings, or whether a licensee has or is intended to have the right of a reasonable notice of the date of termination of the licence. **Minister of Health v. Bellotti** ((1944) 1 K.B. 298); **Winter Garden Theatres v. Millennium Productions** ((1948) A.C. 173); cf. **Canadian Pacific Railway v. The King** ((1931) A.C. 414); **Martin Baker Aircraft v. Canadian Flight Equipment** ((1955) 2 Q.B. 536); **Fowler v. Begg** (53 S.R. 451). Nor do I think that it is necessary to consider the cases such as **Llanelly Railway and Dock Co. v. L. & N.W. Railway Co.** (L.R. 7 H.L. 550), where as a matter of construction a licence has been held irrevocable in equity. It depends on the nature of the licence given.

Upon the view which I take of the nature of the rights granted or agreed to be granted under the document of 14th June 1957 and under the earlier document of January, it really becomes unnecessary for me to deal with the considerable argument which has been addressed to me on the question whether there was any consideration to support the variation of royalty rate introduced by the June agreement. If the agreement only created rights terminable at will, then there was nothing to prevent the parties by mutual consent terminating that agreement and substituting a fresh agreement, or varying the terms of the earlier agreement.

On the other hand, if the agreement created a right to mine which on its true construction was not determinable at will but was intended to endure for the currency of the mining lease or any renewal thereof, then very definitely problems would arise; first, whether there was any consideration to support the initial agreement and, secondly, whether there was any consideration to support the variation by way of reduction of royalty rate. I have been asked that as far as possible I express my conclusions on each of the matters raised before me and for that reason I set out briefly my views on this aspect. The argument for the plaintiff company on the first of these two aspects of consideration is that the agreement constituted a grant in the manner to which I have earlier referred. It is then submitted that, if

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the grant is complete, there is no need to look for any consideration beyond the payment of royalty as provided in the agreement. Likewise, it is submitted that if the document amounts to an agreement to make a grant there is still a sufficient consideration in the royalty reserved. On the other hand, the defendants submit that the lack of any obligation on the part of the plaintiff company to mine prevents any consideration being imported into the document whether it is regarded as a grant or as an agreement to make a grant.

In my view, if the document can be regarded as an actual grant, then no consideration is necessary beyond the royalty obligation. It must be looked at as a granted profit à prendre, a presently existing right of property which can be protected in this Court. I think that the document could amount to a grant when the terms of s. 129 of the Mining Act are considered. The interest is to be regarded as personalty. The right granted is the licence to enter and to remove minerals mined. I do not think that a deed is necessary when the interest is so regarded. It seems to me that the necessity for a deed in the case of a true profit à prendre arises from the fact that the latter is real property.

On the other hand, if the document amounts only to a purported agreement, then I do not think that there is any consideration sufficient to create rights enforceable in equity. There was created no reciprocal obligation on the part of the plaintiff company which would necessarily give a benefit to the defendants. Whether or not the plaintiff company extracted mineral was entirely a matter for that company. I do not think that equity would compel specific performance of such an arrangement, that is to say, a unilateral grant. See **Moffat v. Sheppard** (supra) per Isaacs J. at p. 286. Such an arrangement could be compared to an agreement for a lease for a term with a provision that the lessee should only be liable for the rent during such period or periods as he actually occupied the demised premises and that at other times the lessor would be entitled to possession. I do not think that such an agreement could be specifically enforced by requiring execution of a lease in those terms. Mutuality would be lacking because the Court would not compel the lessee to execute a lease in a form which he could by his own act render nugatory. Cf. **Hills v. Croll** ((1845) 2 Ph. 60). So in this case the Court would not enforce the agreement at the suit of the present defendants because they could render it wholly nugatory by failing to mine at all. Cf. **Lindfield Linen Pty. Ltd. v. Nejoin** (51 S.R. 280).

The second aspect of consideration which has been argued proceeds on the assumption that there has been a grant for a term. It is then submitted for the defendants that there cannot be a reduction of royalty because there was no consideration therefor. It is in order to meet this argument that evidence has been called of the intention of the plaintiff to withdraw from mining operations on the 30th June

1957 unless a reduction in royalty was agreed on. However, it does not appear to me that this evidence can assist whatever view is taken. If there was a grant then there was nothing to prevent the parties making a fresh grant in different terms. There would then by operation of law be a surrender of the old grant. If there was only an agreement for a grant, then the threat to withdraw from mining operations and the subsequent agreement to continue could only amount to consideration on the basis that the plaintiff company was under no obligation to mine; but in my view the lack of any such obligation would make the agreement, original or varied, unenforceable in this Court.

(2) Even if the agreement upon its true construction is the grant, or an agreement for the grant of a right to mine in the nature of a profit à prendre, that grant terminated upon the expiration of the mining lease on 2nd September 1957 and did not enure into the period of renewal thereafter.

I here assume that I am wrong in my determination that the interest intended to be created was an interest at will only. It would then seem to me that the only period which could be implied would be the period of the existing lease. I cannot see how the period could be that contended for by the plaintiff company, namely until the last of the magnesite had been won or until the title of the grantors might determine, whichever event should first happen. Such a period would as I have already indicated be void for uncertainty. The only implications which would not be uncertain would be either a perpetual grant—and that has not been suggested—or a grant for the term of the grantor's own interest. Now, if it be the latter, it could in my view only be for the term of the actual interest and could not be for the additional term of any renewal. The interest does not go beyond the term of the grantor's rights unless there is an estoppel. **Booth v. Alcock** ((1873) 8 Ch. App. 663). The reserved interest would be a new interest and could not be included in any implication. There would be an estoppel only if the intention was to make a perpetual grant and I can see no reason to imply any such intention.

(3) The agreement being terminable at will cannot be enforced in this Court.

I do not think that it is necessary to elaborate upon this conclusion. To restrain the breach or to grant specific performance of an immediately terminable agreement, even assuming that the agreement has not already been terminated, would be a vain and useless action of a kind which a Court of Equity will not perform. **Wheeler v. Trotter** ((1737) 3 Swan 174); **Jones v. Jones** ((1803) 12 Ves. 186).

(4) The agreement dated 14th June 1957 was binding on all the defendants because—

(a) Logan Hunter Caldwell had actual authority to make the agreement.

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My conclusion in this regard depends to a large extent upon my first finding, namely that the agreement was terminable. In those circumstances I do not have to reach a final conclusion upon the question whether Logan Hunter Caldwell ever had authority, express or implied, to make an agreement which was not terminable so long as mineral remained to be taken and the right of the Hughes and Caldwell syndicate endured. Such an agreement would be the disposition of the main undertaking of the partnership and I think that the evidence falls short of showing any such authority in Logan Hunter Caldwell. 10

Evidence of actual authority is not great in volume, but the position, as I see it, is that there is evidence that Buckley, on behalf of the plaintiff company, sought a reduction of royalty from 10/- per ton to 6/- per ton and Logan Hunter Caldwell said he would discuss it with the others. Some days afterwards Logan Hunter Caldwell said to Buckley, "We will talk about royalties but not until Thursday as Frank will be finished shearing by then". In this connection it is made clear by the answers of Robert Frank Hughes and Victor Raymond Hughes to Interrogatory Number 27 that before the date of the agreement they respectively told Logan Hunter Caldwell or expected one 20 of the others to instruct Logan Hunter Caldwell to inform the plaintiff that there was no objection to the reduction in royalty.

Now, there is no evidence so far as I can see that these two other members of the syndicate (I use what I intend in this context to be a neutral term) knew the precise terms of the written agreement which had been executed in January 1957 and therefore cannot be taken to have instructed Logan Hunter Caldwell in June to make an agreement in the exact terms in which it was made. However, in view of the construction which I place on the agreement as one at will, I do not think that this matters. It seems to me that the dispute concern- 30 ing the exact area which was envisaged by certain members of the syndicate cannot in the circumstances be regarded as a decisive matter. The uncontradicted evidence must result in a finding that at no relevant time was any limitation of area (other than that stated in the agreement) intended between the plaintiff and any members of the syndicate who were party to the discussions preceding either the January or the June agreements. That being so, the other simple terms of the agreement are either machinery provisions as in paragraphs 3 and 4 or rights conferred on the syndicate. The vital matter was the rate of royalty and of this there is direct evidence that it was agreed 40 to by three members of the syndicate.

Whether this assent of three members was sufficient in the circumstances would be a matter of considerable doubt. It would depend upon the precise relationship between the various persons interested in the mining lease at the time, that is to say, the time after the death in July 1956 of George Wigham Caldwell. That prior to his death

Clarence Vivian Hughes had become a partner I have little doubt. Therefore, there were at least two members who, on the evidence so far as I have stated it, did not positively assent; nor is there any evidence so far as I have stated it that the executors of George Wigham Caldwell assented. However, this is not the end of the matter. I am satisfied that at least up until the death of George Wigham Caldwell there was a partnership between Robert Frank Hughes, Clarence Vivian Hughes, Frederick Charles Hughes, Victor Raymond Hughes, Logan Hunter Caldwell and George Wigham Caldwell. If no new

10 partnership was created after the death of the latter, then the surviving partners were entitled to carry on the partnership for the purpose of winding it up: Partnership Act, 1892, s. 39. The executors of George Wigham Caldwell would be entitled either to interest or a share of profits (*idem*: s. 42), but they would not be entitled to any say in the affairs of the business. Upon this approach, assuming that the making of this agreement was in the course of winding up the business of the partnership, the five continuing partners would alone be entitled to make the decision in respect therefore, and any difference between them could be settled by simple majority. *Idem* s. 24 (8).

20 However, there are two difficulties upon this approach. First, I do not think that there is any evidence that the agreements in question could be regarded as matters arising in the course of winding up the partnership business. The only power of the surviving partners in this regard would be to complete pending transactions. **Beak v. Beak** ((1675) 3 Swan. 627); **Crawshay v. Manle** ((1818) 1 Swan. 495, 507).

Secondly, there is no evidence that there was any dispute between the surviving partners which was settled by a majority vote. There is no evidence so far as I have stated it that Clarence Vivian Hughes or Frederick Charles Hughes were ever consulted, and, that being so, a

30 majority vote would not suffice. **Const. v. Harris** ((1824) Turn. & R. 496).

However, I do not think that this approach to the matter need be further pursued because in my view there is evidence from which it can be inferred that the estate of George Wigham Caldwell did become a partner and, further, that all the members of the partnership in June 1957 assented to the reduction in royalty. I shall deal with each of these aspects in turn. By the will of George Wigham Caldwell his executors had power to enter into any partnership or trading agreement with any person or persons whatsoever. It is clear that one of

40 these executors, Norman Vivian Regan, displayed a considerable interest in the affairs of the mine in the first half of 1957. He visited the area of the mine almost weekly and saw the plaintiff company carrying on mining operations on the land. He had approached Mr Porter in early 1957 to ask him about looking after the affairs of the mine. Certain distributions of income were made—in December 1956 and again in May 1957. Of events subsequent to the June agreement,

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Mr Regan attended the meeting of the syndicate on 14th August 1957 and took part in the discussions and voted on the resolutions. Subsequently letters were written and documents were executed from which an inference may be drawn that the executors joined as members of a partnership. None of these facts are conclusive and all can be explained on a basis other than one of partnership. But in my view they provide some evidence of partnership and then one is faced with the fact that no witness who might have been expected to be able to state that no new partnership was created after the death of George Wigham Caldwell has been called to give evidence. I here refer not only to Mr Regan as one of the executors, but to all the members of the syndicate alive at the date of hearing—Frank Robert Hughes, Victor Raymond Hughes and Clarence Vivian Hughes. It is important here to make clear my view that this failure to give evidence enables me the more easily to draw the inference that a new partnership was created in which the estate of George Wigham Caldwell was entitled to a one-sixth share and, moreover, to draw that inference against all the defendants. It is not limited to an inference against each defendant, who might have been expected to give evidence on the matter, in respect of his own acts or his own relationship to the other defendants. It is an inference against all the defendants because each of them could have called as a witness any one or more of the others, and the approach to this situation which has been allowed in the cases (**Jones v. Great Western Railway**, 144 L.T. 194 at 198; **McLean v. Rowe** 25 S.R. at 347; **Jones v. Dunkel** 101 C.L.R. 298 at 312, 319-21) is not limited to inferences in respect of a defendant's conduct arising from his own failure to give evidence, but extends to inferences arising from a defendant's failure to call any witness who might be expected to be called by him to give direct evidence on facts which the other party seeks to establish by inference. I therefore conclude that the new partnership was brought into existence.

The approach which I have lastly indicated assists me in the determination of the question whether the proposal for reduction in royalty was agreed to by all the partners. Logan Hunter Caldwell states in his letter to the plaintiff company of 30th June 1957 that the reduction of royalty had come under discussion by the Hughes & Caldwell syndicate and I think that there is an implication in the letter that it had been agreed to. That letter, signed by Logan Hunter Caldwell, is admissible under s. 14B of the Evidence Act as evidence of the facts stated therein, since the calling of the maker of the statement is excused because of his death. It is not strong evidence and no doubt would be of little weight in the face of evidence to the contrary given in the witness box. But there is no such evidence called by any defendant. No defendant, whether as representative of a deceased estate or not, has called any other person who was a member of the syndicate at the relevant date to refute this statement and I consider

that in those circumstances I ought to accept it. I therefore find that the reduction in royalty was agreed to by all the partners. I think it follows from the nature of the document with the construction which I place upon it that the partners agreed to a mining agreement substantially in the terms of the document. Indeed, the recital in the document itself may be regarded as a statement in writing signed by the now deceased Logan Caldwell of the fact of agreement and that statement remains uncontradicted in evidence.

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10 (4) The agreement dated 14th June 1957 was binding on all the defendants because—

(b) The agreement was made by Logan Hunter Caldwell as an act for carrying on in the usual way business of the kind carried on by the firm of Hughes and Caldwell at the time of the making of the agreement, and, if I am incorrect in my conclusion that Logan Hunter Caldwell had actual authority in the particular matter, the plaintiff company did not know that he had no authority.

I have also reached the conclusion that Logan Hunter Caldwell would have had implied authority to conclude both the January and
20 June agreements, provided I have correctly construed them as agreements at will only. It seems to me that over a long preceding period, “the business of mine proprietors” which pursuant to the partnership agreement of 14th August 1943 had been conducted had included not only actual mining operations conducted by the partners but also the granting of licences to others to mine in consideration of royalties paid. In many cases the licensees were certain of the partners or were companies in which certain of the partners were interested. From 1951 to 1956 the evidence shows receipt of payments from a variety of companies and firms, in the nature of royalty payments. On the
30 other hand, there is an absence of evidence of mining operations carried out by the partners as the business of the partnership.

During this period and prior thereto practically the whole of the administration of the affairs of the partnership was carried out by Logan Hunter Caldwell in the manner to which I have already shortly referred. I do not think that he was in the full sense the managing partner, but he was the person who signed returns and other documents on behalf of the partnership. It was in the usual course of the business for him to conduct negotiations with third parties and to convey the decisions of the partners to them. In my view the plaintiff company
40 could not be expected to have regarded the position as unusual when Logan Hunter Caldwell conducted the negotiations and conveyed decisions of the partners and subsequently executed the agreements. Since, then, the making of licence agreements of this kind was part of the usual business of the partnership, and since Logan Hunter Caldwell was acting in a usual manner in his executive capacity, there was an implied authority in him to execute the agreement and the plaintiff

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company could not be expected to know or suspect that he had no actual authority.

(4) The agreement dated 14th June 1957 was binding on all the defendants because—

(c) Even if there was no actual authority and if the making of the agreement was not an act for carrying on in the usual way business of the kind carried on by the firm of Hughes and Caldwell, the agreement was ratified by the acceptance and retention of the royalty payments received by the original defendants in August and September 1957 in respect 10
of royalties paid under the agreement of 14th June 1957.

In view of my conclusions lastly expressed I propose to deal but shortly with the argument on ratification which has been submitted to me. It has been submitted on behalf of the plaintiff company that the defendants ratified the agreement of 14th June 1957 and the act of Logan Hunter Caldwell in making that agreement because after they knew of it they accepted moneys paid pursuant to the agreement. I have already set out briefly the facts in this connection. The defendants in their answers to Interrogatory 28 admit that they became aware that Logan Hunter Caldwell had in fact arranged with the plaintiff 20
company for a reduction in the royalty rate. By the answer to Interrogatory 29, four of them, Robert Frank Hughes, Clarence Vivian Hughes, Victor Raymond Hughes and Norman Vivian Regan, admit that they became aware of the reduction in royalty on or about 9th August 1957. Frederick Charles Hughes said that he became aware of this fact after the latter date but that he did not know precisely when. The meeting in the office of Tester Porter & Company took place on 14th August and at that meeting all the partners except Frederick were present or represented. It is rightly pointed out on behalf of the plaintiff company that Logan Hunter Caldwell was not 30
instructed at that meeting to refuse or reject further royalty payments and that his authority to deal with moneys on behalf of the partnership was continued. Thereafter there followed the payments of royalties into the Hughes and Caldwell account and the payments out to the defendants in August and September, to which I have already referred in my summary of the facts.

It follows that one factor in evidence of ratification is present, namely a receipt of benefits by the persons on whose behalf the unauthorised agent purported to act. It is true, as Mr St. John has submitted, that a mere receipt of benefits is not sufficient. The ques- 40
tion whether thereby the defendants must be taken to have ratified the agreement is one which must be determined from a consideration of the whole of the circumstances: *Taylor v. Smith* (38 C.L.R. 48 especially at pp. 54, 59 and 60). It has been submitted on behalf of the defendants that there is nothing to show that the defendants knew that the moneys received by them in distributions in August and

September were referable to payments made under the agreement of 14th June 1957. It is submitted that the defendants may well have thought that the payments were in respect of royalties paid by other persons mining on the land or, more particularly, by the plaintiff company under the oral licence of November 1956. It would seem to me that there would be force in these arguments if the defendants had given evidence that they did not know that any of the moneys paid out to them in August and September were distributions of royalties in respect of mining after the making of the June agreement

10 of which they had become aware. In the absence of any such evidence I am of the opinion that it is a proper inference to draw that they knew the source of the distributed moneys. No inference can be drawn in respect of any failure of Frederick Charles Hughes to give evidence because he was dead at the date of the hearing. However, it was open to his representatives at the hearing to call evidence from the other defendants in respect of their knowledge of the source of the distributed moneys, but those representatives did not see fit to call such evidence. Mr St. John has submitted that since no inference can be drawn in respect of Frederick and that therefore no inference or ratification of

20 the agreement as a whole can be drawn; that is to say that there must be ratification by all or ratification by none. Generally speaking, I think that this is correct, but in view of the consistent distribution over the years of royalties as they were from time to time received, I think that I can draw the inference that all the defendants who received the distributions would more probably than not know that they were being distributed in respect of recently received royalties.

It is true that the receipt of the money even with knowledge of its source is not conclusive evidence of ratification, but that it must be viewed in the light of the surrounding circumstances. It is also true

30 that at the time of the receipt of these moneys there was a dispute as to the validity of the June agreement. I do not think that in the circumstances of this case that dispute alters the effect of the defendants' acts. The principle of ratification, as I see it, is that a purported principal cannot both approbate and reprobate the actions of his purported agent. Therefore, if the principal accepts benefits which flow from the allegedly unauthorised act of the agent and knows that the benefit so flows he must, except in very special circumstances, be taken to have ratified the agent's act.

Ratification must be distinguished from estoppel. In the latter

40 case it must be shown that the other party has acted to his detriment. This is not necessary in the case of ratification. Although a receipt of money without prejudice may prevent an estoppel, it does not necessarily prevent a ratification. So, also, if moneys are received under a disputed agreement in the course of the dispute concerning the authority of an agent to conclude the agreement, there may in my view be a ratification, although there could hardly be an estoppel.

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The vital question is whether the moneys are received with full knowledge of the material circumstances. In seeking an answer to that question on the facts of the present case, I find that there is evidence that all the partners knew and accepted that the plaintiff company was mining under an agreement for royalty of 10/- per ton. As I have indicated earlier, knowledge of the precise terms of the January written agreement does not seem to me of vital importance in view of my conclusion that the agreement was terminable at will. It would be quite different if the licence was a perpetual one. Then the partners are told of the agreement for reduction of royalty to 6/- 10 per ton as from June. Then in August and September distributions of royalties are received, the partners knowing all the time that the plaintiff company is continuing the mining operations. These facts, coupled with the fact that in the past royalties had been distributed fairly promptly, lead me to the inference that the partners knew that the moneys which they received in August and September distributions were moneys proffered by the plaintiff company on a royalty basis of 6/- per ton, and that thereby the reduction in royalty was ratified. I stress, however, that I do not think that the evidence establishes any ratification of a grant for the period contended for by the plaintiff 20 company. There is nothing before me to indicate that any of the partners ever regarded the rights conferred on the plaintiff company as extending so far or ever had it in mind that the rights could be so extensive. Lack of appreciation of this vital matter would, in my view, prevent their acts being regarded as a ratification.

(5) Although it is unnecessary to my decision I express the conclusion that there was no unfair concealment which made the agreement voidable or any unfair concealment or oppressiveness which would debar the plaintiff from equitable relief.

The defendants allege that the plaintiff company should, once 30 negotiations had commenced for reduction of royalty on the basis of uneconomic working, have informed them that during the period of negotiations prospects had improved. Further, it is alleged that it should have been revealed to the defendants that the plaintiff company was entitled to a quantity bonus from the Broken Hill Proprietary Co. Ltd. and that it was likely to be able to produce sufficient mineral in order to obtain the highest or at least a very considerable rate of bonus for quantity. Again it is submitted that the plaintiff company's statement through Mr Driscoll that it would have to cease operations at the end of June unless something was done about the rate of royalty 40 was misleading.

I do not propose to set out the evidence in detail whereby it is sought to show that the plaintiff company either deceived or wrongly concealed matters from the defendants and particularly from the negotiator Logan Hunter Caldwell. It largely turns on the state of mind and the actions of Buckley and Driscoll over a period of a few days

in the latter half of May and early June 1957. It is clear to me that up to May the plaintiff company was most unhappy about the returns from the mining, and it was seeking in a number of ways to improve its position. It was seeking a higher price from B.H.P.; it was seeking a reduction in cartage rates, and it was seeking a reduction in royalty rates from the defendants. All these efforts were proceeding simultaneously. By approximately 20th May the company had arranged a reduction in its cartage rates. By 29th May it had arranged an increase in price to B.H.P. of 10/- per ton.

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10 At that stage the negotiations with the defendants through Logan Hunter Caldwell had not been concluded. Moreover, it does appear that by that stage production had improved. Whether this was because of actual or expected production from the magnesite finds across the creek I am not prepared to say. Now, on 5th June 1957, Driscoll had the long telephone conversation with Logan Hunter Caldwell. He said that the yield was poor and production was low and that the company was operating at a loss. However, he did disclose that cartage rates had been reduced and the price increase had been obtained.

20 It seems to me that what is alleged against the plaintiff company is that having been experiencing losses and having determined the course which it needed to take in order to improve its position it should, once it had proceeded some distance along the course, have halted in order to make a fresh forecast of its financial position, and, if that position were likely to improve, should have either desisted in the effort to obtain a reduction in royalty or at least should have disclosed something which it had not itself worked out, namely its chance of more favourable operations in the future. I cannot see how there was any such obligation of the plaintiff company. It must be borne in mind that all the steps it was taking were intended to be simultaneous
30 in their effects of improving the profitability of the mining operation. Although things looked somewhat better at the beginning of June, I cannot see how the plaintiff company could have properly forecast how much better. It is true that the royalty rate did not of itself make the difference between profitable and unprofitable working as at 5th June 1957 because of the concessions which the company had already achieved, but there was no reason for it, in my view, to alter the plan of economy which it had formulated in May. Driscoll at 5th June 1957 was informing Logan Hunter Caldwell in detail of the considerations which had led Buckley some weeks earlier to raise the question
40 of lower royalties. He fairly told Caldwell of the concessions so far obtained, but it would be unreal to expect him to have attempted to formulate the precise degree to which those concessions had improved the position of the company and to convey that formulation to the defendants. I do not think that there was any unfair concealment nor do I think that the plaintiff's conduct would bar it from relief by way of specific performance or injunction.

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(6) Although it is not necessary to my decision I express my conclusion that although there is no mutuality in that there was nothing to be enforced against the plaintiff company, nevertheless this want of mutuality would be no defence in this suit which is primarily for an injunction in respect of the executed agreement and the right thereby created. In so far as the suit is for specific performance of a further instrument, I do not consider that specific performance of any further instrument was intended or could be granted because of want of consideration and lack of mutuality.

10

I set out this conclusion because of the considerable argument which was addressed to me on the point and because I was asked to deal with each aspect of the case, even if not necessary to my decision. I do not think it is necessary to elaborate upon it except to say that, once the document is regarded as one creating a right analogous to a profit à prendre, the lack of any obligation on the part of the grantee to mine would not affect the proprietary right and the right to an injunction to protect that proprietary right. No question of mutuality would arise. **Jones v. Earl of Tankerville** ((1909) 2 Ch. 440). In so far as specific performance is sought, I have already expressed my view that, as an agreement, the document could not be the subject of a suit for specific performance because of the lack of any obligation on the part of the plaintiff company to commence or continue mining operations.

20

The suit should therefore in my view be dismissed. I think that the plaintiff company should pay the defendants' costs. In this connection I bear in mind the fact that the defendants succeed on a limited, albeit vital, issue, and that much time was taken on issues which would not have been determined in their favour. However, I also bear in mind that it was offered on behalf of the defendants to have the question of construction dealt with by way of preliminary argument early in the hearing, but that offer was not acceptable to the plaintiff company. I think the proper order is to dismiss the suit with costs.

30

No. 12

Decree of His Honor Mr Justice Jacobs

Monday the Eleventh day of December One thousand nine hundred and sixty one.

THIS SUIT coming on to be heard on the Fourteenth Fifteenth Sixteenth Twentieth Twenty-first Twenty-second Twenty-third Twenty-seventh and Twenty-eighth days of February last and on the First Eighth Ninth Thirteenth Fourteenth Fifteenth and Sixteenth days of March last before The Honourable Kenneth Sydney Jacobs a Judge
 10 of the Supreme Court sitting in Equity WHEREUPON AND UPON HEARING what was alleged by Mr Larkins of Queen's Counsel with whom was Mr Hughes of Counsel for the Plaintiff by Mr St. John of Queen's Counsel with whom were Mr Holland and Mr Jeffrey of Counsel for the Defendants other than the Defendant Steele Hunter Caldwell and by Mr Isaacs of Queen's Counsel with whom were Mr O'Brien and Mr J. G. Smyth of Counsel for the Defendant Steele Hunter Caldwell THIS COURT DID GRANT LEAVE (1) to the Plaintiff on the Sixteenth day of February last the Twenty-first day of February last and the Eighth day of March last to amend re-amend
 20 and further amend respectively the Statement of Claim (as previously amended pursuant to Order of Revivor made herein the Third day of July One thousand nine hundred and fifty nine) in the form now filed herein and marked "Further Amended Statement of Claim" (2) to the Defendants other than the Defendant Steele Hunter Caldwell on the Fourteenth day of February last the Twenty-first day of February last and the Twenty-eighth day of February last to amend re-amend and further amend respectively their Statement of Defence in the form now filed herein and marked "Statement of Defence as Further Amended" (3) to the Defendant Steele Hunter Caldwell on
 30 the Twenty-first day of February last to amend his Statement of Defence in the form now filed herein and marked "Statement of Defence as Amended" And this Court on the said Twenty-first day of February last on an application on behalf of the Plaintiff by its said Counsel to set aside a certain Subpoena duces tecum served on the Secretary of the Plaintiff DID ORDER that the costs of the said Application as on a motion to set aside the said Subpoena be costs of the Plaintiff in the suit And this Court did on the said Twenty-eighth day of February last reserve the costs of the re-amendment of the Statement of Defence of the Defendants other than the Defendant
 40 ant Steele Hunter Caldwell leave for which re-amendment was granted on the said last mentioned date be paid by such last mentioned Defendants in any event And the said amendments re-amendments and further amendments having been made accordingly WHEREUPON AND UPON HEARING READ THE PLEADINGS FILED HEREIN AS SO AMENDED RE-AMENDED AND FURTHER

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AMENDED AND UPON HEARING the oral evidence of Gordon Francis Giugni Frank Ellersley Roberts Matthew George Porter Thomas Ernest Buckley Robert Mitchell Driscoll Brian Hooker Frederick Maxwell Ryan and John Charles Ricketts called on behalf of the Plaintiff AND UPON READING AND EXAMINING the exhibits put in evidence on behalf of the Plaintiff and marked with the letters "A" to "Z" inclusive "AA" to "AZ" inclusive "BA" to "BZ" inclusive "CA" to "CZ" inclusive and "DA" to "DO" inclusive AND the exhibits put in evidence on behalf of the Defendants other than the Defendant Steele Hunter Caldwell and marked with the figures "1" 10 to "24" inclusive AND UPON HEARING what was alleged by the said Counsel for the said parties respectively this Court DID ORDER on the said Sixteenth day of March last that this suit stand for judgment AND the same standing in the paper this day for judgment THIS COURT DOTH ORDER that this suit be and the same is hereby dismissed out of this Court AND THIS COURT DOTH FURTHER ORDER that it be referred to the Deputy Registrar or Chief Clerk in Equity to tax and certify the costs of the Defendants of this suit other than the costs of the issue of unfair concealment AND that such costs when so taxed and certified be paid by the 20 Plaintiff to the Defendants or their Solicitors within fourteen days after service upon the Plaintiff or its Solicitors of an office copy of the certificate of such taxation AND all parties are to be at liberty to apply as they may be advised.

Passed this twentieth day of February 1962.

Entered same day. A.M.

(L.S.).

(L.S.).

C. D. Irwin,
Deputy Registrar in Equity.

No. 13**Order of His Honour Mr. Justice Jacobs granting final leave to Appeal to Her Majesty in Council**

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Friday the Sixteenth day of March One thousand nine hundred and sixty-two.

—
No. 13.
Order of
His Honour
Mr. Justice
Jacobs
granting final
leave to Appeal
to Her Majesty
in Council.

UPON MOTION made this day on behalf of the Appellant Australian Blue Metal Limited before the Honourable Kenneth Sydney Jacobs a Judge of the Supreme Court sitting in Equity pursuant to the Notice of Motion filed herein on the fourteenth day of March One
10 thousand nine hundred and sixty-two WHEREUPON AND UPON
READING the said Notice of Motion, the certificate of the Deputy Registrar in Equity of Compliance dated the fourteenth day of March last and the Affidavit of Keith Charles Fleming Harris sworn the Fourteenth day of March last and both filed herein AND
UPON HEARING what was alleged by Mr T. E. F. Hughes of Counsel for the Appellant and Mr P. J. Jeffrey of Counsel for the Respondents (other than the Defendant Steele Hunter Caldwell) and by Mr. J. O'Brien of Counsel for the Defendant Steele Hunter
20 Caldwell this Court DOTH ORDER that final leave to appeal to
Her Majesty in Her Majesty's Privy Council from the whole of the Judgment and Decree of the Honourable Kenneth Sydney Jacobs a Judge of the Supreme Court sitting in Equity as pronounced herein on the Eleventh day of December One thousand nine hundred and sixty-one be and the same is hereby granted to the Appellant AND
THIS COURT DOTH ORDER that upon payment by the Appellant of the costs of preparation of the Transcript Record and despatch thereof to England the sum of Twenty five pounds (£25.0.0) deposited in Court by the Appellant as security for and towards the costs thereof be paid out of Court to the Appellant.

—
16th Mar., 1962.

30 Passed this Twentieth day of March, 1962.

Entered same day.

(sgd.) C. D. IRWIN
Deputy Registrar in Equity

No. 14

*In the
Supreme Court
of New South
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**Certificate of Master in Equity of The Supreme Court of New South
Wales Verifying the Transcript Record**

No. 14.
Certificate of
Master in Equity
Verifying
Transcript.

— Mar., 1962.

I, EDWARD NAASSON DAWES of the City of Sydney in the State of New South Wales Commonwealth of Australia Master in Equity of the Supreme Court of the said State do hereby certify that the numbered sheets hereunto annexed and contained in pages numbered one to five hundred and fifty-one inclusive contain a true copy of all the documents relevant to the Appeal by the Appellant Australian Blue Metal Limited to Her Majesty in Her Majesty's Privy Council 10 from the Decree made in suite instituted by Statement of Claim No. 593 of 1958 by the said Supreme Court in its Equitable Jurisdiction on the Eleventh day of December One thousand nine hundred and sixty-one so far as the same have relation to the matters of the said Appeal together with the reasons for the said Decree given by The Honourable Kenneth Sydney Jacobs a Judge of the said Supreme Court sitting in Equity and that the sheets hereunto annexed and contained in pages (i) to (x) contain an Index of all the papers documents and exhibits in the said suit included in the annexed Transcript Record and of all the papers documents and exhibits 20 in the said suit not reproduced in the annexed Transcript Record which true copy and Index are remitted to the Privy Council pursuant to the Order of His Late Majesty King Edward the Seventh in His Late Majesty's Privy Council of the Second day of April in the year of Our Lord One thousand nine hundred and nine.

IN FAITH AND TESTIMONY whereof I have hereunto set my hand and caused the seal of the said Supreme Court in its Equitable Jurisdiction to be affixed this day of 30 March in the year of Our Lord One thousand nine hundred and sixty-two.

Master in Equity of the Supreme Court
of New South Wales

No. 15

Certificate of Acting Chief Justice

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

—
No. 15.
Certificate of
Acting
Chief Justice.
—

I the Honourable Leslie James Herron Acting Chief Justice of the Supreme Court of New South Wales do HEREBY CERTIFY that Edward Naasson Dawes who has signed the Certificate above written is the Master in Equity of the said Supreme Court and that he has the custody of the records of the said Supreme Court in its Equitable Jurisdiction.

10

IN FAITH AND TESTIMONY whereof I have hereunto set my hand and caused the seal of the said Supreme Court to be affixed this day of March in the year of Our Lord One thousand nine hundred and sixty-two.

Acting Chief Justice of the Supreme
Court of New South Wales

Exhibit AU.
 —
 Extract of
 Crown Grant.
 —
 3rd Oct., 1907.

EXHIBIT AU

Extract of Crown Grant
Land Grant Volume 1823 Folio 48

- 3/10/1907 Portion 27 included in Grant under the provisions of the Crown Lands Act 1884 (as amended) of 1340 acres 1 rood in the Parishes of Balabla and Bribaree, County of Monteagle, to Henry Oliver Scott.
- 30/ 8 /1919 Transfer Henry Oliver Scott to Vivian John Chambers.
- 24/ 3 /1922 Transfer Vivian John Chambers to Frederick James Harrigan. 10
- 1/ 3 /1923 Transfer Frederick James Harrigan to George Wigham Caldwell and Logan Hunter Caldwell as tenants in common.
- 1/ 4 /1955 Transfer Logan Hunter Caldwell and George Wigham Caldwell to George Wigham Caldwell.
- 23/ 3 /1956 Transfer George Wigham Caldwell to Nancy Whigham Regan, Mary Peggy Regan, Lorna Whigham Regan and Heather Jean Caldwell as tenants in common.

MINERAL RESERVATIONS

And we do hereby reserve unto us our Heirs and Successors all 20 minerals which the said land contains with full power and authority for Us Our Heirs and Successors and such person or persons as shall from time to time be authorised by Us Our Heirs and Successors or by the Governor for the time of Our said State to enter upon the said Land and to search for mine dig and remove the said Minerals with full right of ingress egress and regress for the purposes aforesaid Provided also And we do hereby further Except and Reserve unto Us Our Heirs and Successors all such parts and so much of the said Land as may hereafter be required for a Public Way or Public Ways Canals or Railroads in over and through the same to be set out by 30 our Governor for the time being of Our said State or some person by him authorised in that respect And also all sand clay stone gravel and indigenous timber and all other materials the material produce of the said Land which may be required at any time or times hereafter by the Government of Our said State for the construction and repair of any Public Ways Bridges or Canals or for Naval purposes or Railroads or any Fences Embankments Dams Sewers or Drains necessary for the same together with the right of taking and removing all such Materials And the right of full and free ingress egress and regress into out and upon the said Land for the several purposes aforesaid or any 40 of them Provided further and these presents are upon this express

condition that any person specially authorised under any Act in force for the time being for the regulation of Mining within Our Said State shall be at liberty to dig and search for Gold within the Land hereinbefore described and should the said Land be found to be auriferous the Governor may cancel wholly or in part the sale or grant of the same and upon the notification of such cancellation in the Gazette the Owner of the said land at the time of such publication of such notification in the Gazette as aforesaid shall be entitled to compensation for the value of the said Land or so much thereof as may be included in the said notification as if it were not auriferous and of the improvements thereon as appraised by the Local Land Board and the said Land or so much thereof as shall be included in the said notification as aforesaid shall thereupon revert to Us Our Heirs and Successors and this Our Grant shall to the extent aforesaid cease to operate or to have effect.

Exhibit AU.
(Continued)

—
Extract of
Crown Grant.

—
3rd Oct., 1907.

Exhibit A.
 Mining Lease of
 Private Lands
 No. 460
 (P.M.L. 1).
 2nd Sept., 1937.

EXHIBIT A

Private Lands Lease No. 460, Mining Amendment Act, 1924

Dated 2nd September, 1937

His Majesty the King to Joseph Peter Hughes

Mining Lease of Private Lands

(C1 General) Under the Mining Act, 1906-1935

Department of Mines, Sydney

Lease and Owner's Copy to Warden's Clerk, Young, 29/10/37

P.L. Appn. 77 Young

Stamp Duty £1/5/-, 21/10/1937

10

C1. General. (Private Minerals)

Mining Act, 1906-1935

Mining Lease of Private Lands

GEORGE THE SIXTH by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

TO ALL TO WHOM THESE PRESENTS SHALL COME,
 GREETINGS:

WHEREAS in conformity with the "Mining Act, 1906-1935" and the Acts amending the same application was duly made by JOSEPH 20 PETER HUGHES of Thuddungra in the State of New South Wales for a lease of the lands hereinafter described for the purpose of mining for chromite and magnesite AND WHEREAS all conditions and things required to be done and performed before granting a lease thereunder have been done and performed NOW KNOW YE that in consideration of the rent percentage of the gross value of minerals won and royalty hereinafter reserved and of the covenants and provisos hereinafter contained WE do hereby grant and demise unto JOSEPH PETER HUGHES (who with his executors administrators and assigns is hereinafter referred to as the lessee) ALL THAT the piece or parcel of land 30 containing by admeasurement fifty-five acres two roods thirty-three perches and more particularly described and delineated in the plan drawn hereon or annexed hereto and numbered P.M.L. 1 for the purpose of mining for working and winning chromite and magnesite TO HOLD the said premises hereby demised with the appurtenances subject to such rights interests and authorities as may be lawfully subsisting therein or which may be reserved by the said Act at the date of these presents and subject also to such conditions provisos and stipulations as are herein contained UNTO the said lessee from the date hereof for the term of twenty years FOR the purpose of mining 40 therein thereon or thereunder in manner aforesaid for chromite and magnesite and for no other purpose YIELDING AND PAYING therefor unto the owner for the time being of the land hereby demised yearly and every year during the said term the yearly rent of fifty-six pounds being at the rate of twenty shillings per acre for that portion of the

surface of the land hereby demised such rent to be paid half-yearly in advance the first half-yearly payment having been made and the next half-yearly payment to be made on the sixth day of February next and thereafter on the sixth day of August and the sixth day of February in each and every year during the said term such rent to be paid to the owner for the time being of the said land AND the said lessee doth hereby covenant with Us Our Heirs and Successors in manner following that is to say:

Exhibit A.
(Continued)
—
Mining Lease of
Private Lands
No. 460
(P.M.L. 1).
—
2nd Sept., 1937.

1. THAT the said lessee shall during the term hereby granted
10 pay unto the owner of the land hereby demised the rent hereby reserved at the times hereinbefore appointed for payment thereof clear of all deductions.

2. AND shall from time to time during the said term pay to the Secretary for Mines in Sydney on demand on behalf of the owner for the time being of the minerals in the land hereby demised a sum equal to one and one-eighth per centum of the gross value of the minerals (other than such as come within Clause 3) won from the said land and such sum shall be dealt with as prescribed by the Mining Acts and Regulations thereunder for the time being in force.

3. AND shall also pay to the Colonial Treasurer in Sydney
20 on demand a royalty of one per centum of the gross value of all gold and minerals reserved to the Crown obtained from the said land.

4. AND shall as often as required so to do make and deliver to the Secretary for Mines or any Officer appointed or instructed to collect obtain or receive the same (a) all such true and proper returns of the gross quantity and value of the gold and all other minerals won from the said land as the said Secretary for Mines may from time to time direct or as shall be required by any Regulations under the said Acts for the time being in force and (b) all such particulars
30 information and evidence as the said Secretary for Mines may from time to time require to ascertain or verify the percentages and royalties payable by the lessee under this lease.

5. AND shall during the said term or any renewal thereof from time to time as may be necessary renew his miner's right.

6. AND shall within thirty days from the time hereby appointed for the payment to the owner of the rent hereby reserved produce to the Secretary for Mines or some officer appointed by him a receipt from such owner for such rent or otherwise satisfy the Secretary for Mines that the rent hereby reserved has been paid.

7. AND shall during the said term upon and during all lawful
40 working days continuously work the mines upon in under and below the said land and premises hereby demised in the best and most effectual manner and according to the practice of efficient mining and shall employ in the construction of the works or in mining operations on or under the said land during the first twelve months of the said term and during the usual hours of labour not less than three able and competent workmen and miners and during the remainder of the

Exhibit A.
(Continued)
—
Mining Lease of
Private Lands
No. 460
(P.M.L. 1).
—
2nd Sept., 1937.

said term and during the usual hours of labour shall employ as aforesaid not less than six such workmen and miners unless prevented by inevitable accident or during the execution of repairs Provided that the lessee or if there be more than one lessee each lessee who shall work as aforesaid shall count as and be deemed for the purposes of these presents to be a workman or miner employed as aforesaid.

8. AND shall during the said term effectually drain the said mine and pump all water likely to cause injury thereto or which would prevent or interfere with the working thereof and if the said mine shall be affected or be liable to be affected by the same flow or body of water as any other mine or mines contiguous thereto shall if and whenever requested so to do contribute with the lessee or lessees or owner or owners of such other mines a reasonable proportion of the machinery and labour necessary to free and keep such mine or mines free from water to a workable extent or if the said mine shall be kept free from water to a workable extent either wholly or partially by means of the machinery and labour of a contiguous mine or mines or by reason of any works constructed or money expended by the lessee or lessees owner or owners of such contiguous mine or mines then shall pay to such lessee or lessees owner or owners as aforesaid a reasonable proportion of the cost of such machinery labour or works or a reasonable proportion of the money so expended and the Secretary for Mines may if and whenever he shall think fit depute some efficient person who shall have access to and inspection of all such mines to determine when the said mine is so freed or kept wholly or partially free from water and what are the reasonable proportions of such expenses aforesaid and to whom and when the same are to be paid such decision to be final and conclusive on all parties.

9. AND shall make such provision for the disposal of the detritus dirt waste or refuse of the said mine that the same shall not be an inconvenience nuisance or obstruction to any roadway river creek or private or Crown lands or in any manner occasion any public or private damage or inconvenience.

10. AND shall make such provision for decency and the observance of sanitary regulations as the Secretary for Mines shall approve of or direct.

11. AND shall maintain boundary marks at each angle of the said land and at such points along its boundary lines as shall be necessary so as accurately to define the boundary lines and angles of the said land and in case posts shall be erected each such post shall be fixed firmly in the ground and shall project above the surface thereof not less than three feet.

12. AND shall if required in writing so to do by the owner or occupier of the said land without delay cause a secure fence to be erected and kept in good repair round the shafts machinery or other works in connection with mining operations carried on hereunder so as effectually to prevent all accidental access thereto and when the

Secretary for Mines shall consider any such shaft as unnecessary and shall notify the same then the said lessee shall effectually fill up and substantially enclose the same.

13. AND shall not mine for or extract any chromite and magnesite except from those portions of the said land on in or under which he is hereby entitled so to do and in manner hereinbefore mentioned or mine at a less depth than he is hereby entitled so to do and shall not use such portions of land or permit the same to be used or occupied or any parts thereof for other than mining or mining
10 purposes nor mine therein for any mineral metal or ore other than chromite and magnesite.

14. AND shall as often as required so to do during the said term make and deliver to the Secretary for Mines or any officer appointed or instructed to collect obtain or receive the same all such true and proper plans sections returns statements and statistics of the workings and operations of the said mine made up to the last day of the preceding month (the truth and accuracy of which shall be verified by the statutory declaration of the lessee or the manager or other officer having the charge control and direction of the works of
20 the said mine) as the Secretary for Mines shall from time to time direct or as shall be required by any regulation and shall whenever required by the Secretary for Mines so to do deliver to any officer appointed or instructed as aforesaid samples of the minerals metals and ores or any of them found in or upon such land.

15. AND shall at all times during the said term keep and preserve the said mine and premises from all avoidable injury or damage and also the levels drifts shafts watercourses roads ways works erections and fixtures therein in good repair and condition except such of the matters and things last aforesaid as shall from time to time
30 be considered by a mining surveyor or other proper officer authorised by the Secretary for Mines to inspect and report upon such matters and things to be unnecessary for the proper working of the said mine and in such state and condition shall at the end or sooner determination of the said term deliver peaceable possession thereof and of all and singular the premises hereby demised to Us Our Heirs and Successors or to the Warden or other officer authorised to receive possession thereof.

16. AND shall not plead acceptance of rent by or on behalf of the owner as a waiver of the right of Us or of the Secretary for Mines
40 or other officer on Our behalf to enforce observance of the covenants herein contained or of the right of the Governor with the advice of the Executive Council to cancel this lease for breach of any such covenant.

17. PROVIDED always and it is hereby agreed and declared as follows:—

Exhibit A.
(Continued)

—
Mining Lease of
Private Lands
No. 460
(P.M.L. 1).
—
2nd Sept., 1937.

Exhibit A.
 (Continued)
 —
 Mining Lease of
 Private Lands
 No. 460
 (P.M.L. 1).
 —
 2nd Sept., 1937.

- (a) If the said lessee at any time during the term of this demise—
 (i) fails to fulfil or contravenes the conditions and covenants contained herein or
 (ii) fails to use the land bona fide for the purpose for which it has been demised or
 (iii) uses it for a purpose other than that for which it has been demised

this lease may be cancelled by the Governor and the cancellation shall take effect on the date notified in the Government Gazette and the production of the Government Gazette containing a notice purporting to be signed by the Secretary for Mines declaring the lease cancelled shall be conclusive evidence of the facts stated therein and upon the date notified as aforesaid it shall be lawful for the Governor with the advice of the Executive Council to authorise the owner to and the owner with such authority may without any previous demand whatever enter forthwith into and upon the said land and premises and shall repossess and enjoy the same as fully and effectually to all intents and purposes as if these presents had not been made and the said lessee to expel and remove without any legal process and as effectually as the Sheriff of the said State might do in case judgment in ejectment had been obtained and a writ of habere facias possessionem had been issued on such judgment and in case of such entry and any legal proceedings taken in respect thereof the defendants in such proceedings may plead leave and license in bar thereof and these presents shall be conclusive evidence of such leave and license by the lessee or other person or persons plaintiff or plaintiffs in such proceedings for such entry or other matters complained of in such proceedings.

- (b) That no implied covenant for title or for quiet enjoyment shall be contained herein.
- (c) That all conditions and provisions contained in the "Mining Act, 1906-1935," and the Acts amending the same, and the regulations thereunder or any other law or statute now or hereafter to be passed or prescribed so far as the same may be applicable are embodied and incorporated with these presents as conditions and provisions of the lease hereby granted and the said lessee hereby covenants to observe fulfil and perform the same.
- (d) That such of the provisions and conditions herein declared and contained as require or prescribe anything to be done or not to be done by the lessee shall in addition to being read and construed as conditions of the lease hereby expressed to be granted be also read and construed as covenants whereby the lessee covenants with Us Our Heirs and Successors to observe and perform the said provisions and conditions.

(e) That We do reserve unto Us Our Heirs and Successors the surface of such portion of the land hereby demised as may be required at any time hereafter by any person or persons being the holder or holders of a lease authority to enter or other holding lawfully acquired under the "Mining Act, 1906-1935," or any amendment thereof for the purpose of giving access from the land occupied under such lease authority or other holding to the nearest practicable point of a public road with full power to his or their agents servants or workmen to use the said road as a right-of-way to and from the land held as aforesaid to the nearest practicable point of a public road.

Exhibit A.
(Continued)
—
Mining Lease of
Private Lands
No. 460
(P.M.L. 1).
—
2nd Sept., 1937.

18. AND it is hereby specially agreed and declared that the lessee shall not interfere in any way with the fencing, shed or hut upon the said land unless with the consent of the owner thereof first had and obtained.

IN TESTIMONY WHEREOF WE have caused this Our Lease to be sealed with the Seal of Our said State.

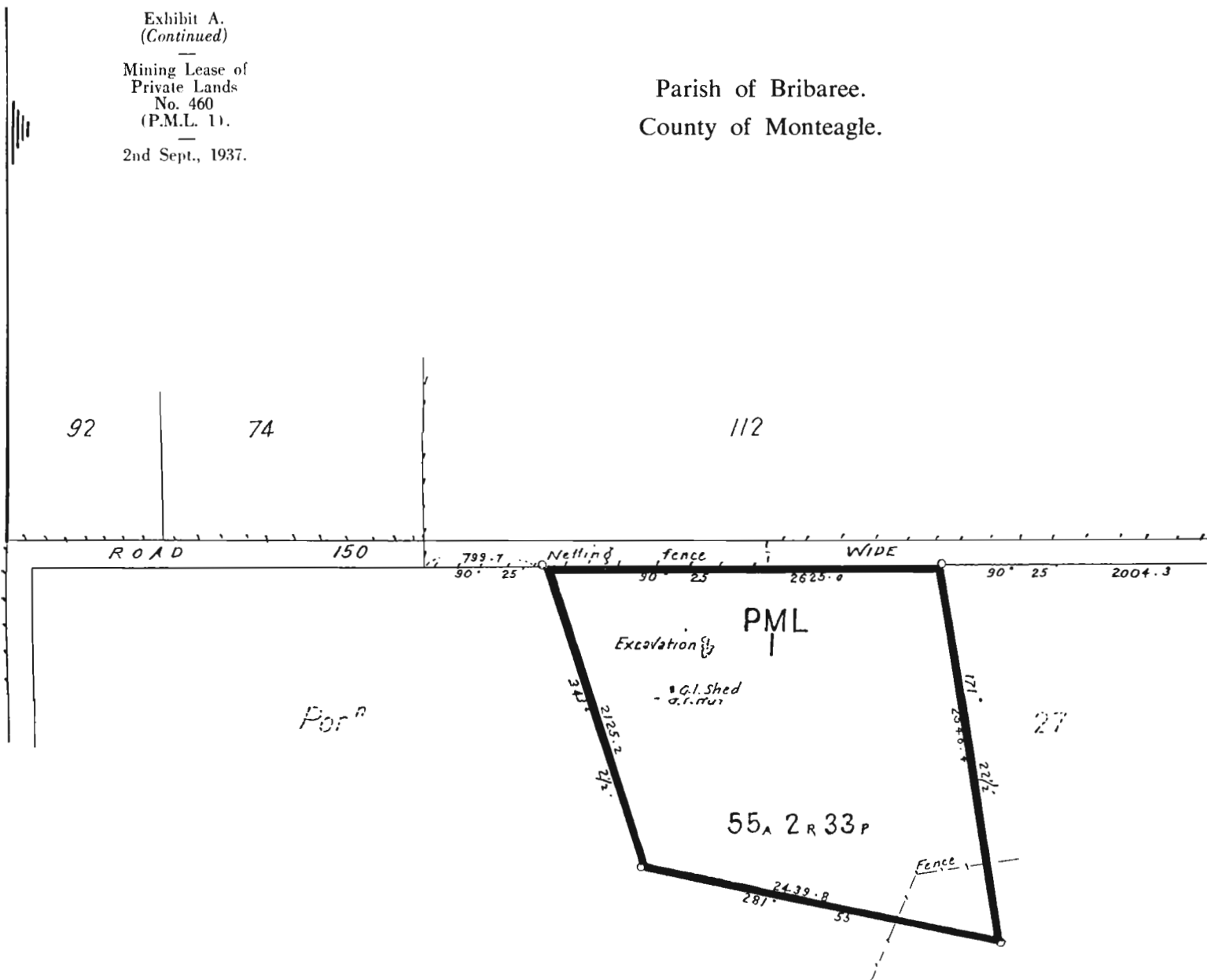
WITNESS Our Trusty and Well-beloved His Excellency the Right Honourable JOHN DE VERE, BARON WAKEHURST, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Captain in the Reserve of Officers of the Territorian Army, Governor of the State of New South Wales and its Dependencies in the Commonwealth of Australia, at Sydney in Our said State, this second day of September in the first year of Our Reign, and in the year of Our Lord one thousand nine hundred and thirty-seven.

(Sgd.) F. C. Jordan,
By Deputation from His Excellency the Governor.

30 (Sgd.) ROY S. VINCENT,
(L.S.)

Exhibit A.
(Continued)
Mining Lease of
Private Lands
No. 460
(P.M.L. 1).
2nd Sept., 1937.

Parish of Bribaree.
County of Monteaale.



Scale 10 chains to an inch.
SIGNED Sealed and Delivered by the said
JOSEPH PETER HUGHES
in the presence of—
(Sgd.) J. P. Hughes (L.S.)

(Sgd.) H. J. Cox,
Warden's Clerk.

REGISTERED in the Department of Mines at Sydney, this twenty-eighth day of October, A.D. 1937, at the hour of ten o'clock in the forenoon, and numbered in the Register 460.

(Sgd.) E. GOODMAN.
Registrar.

Exhibit A.
(Continued)
—
Mining Lease of
Private Lands
No. 460
(P.M.L. 1).
—
2nd Sept., 1937.

Probate No. 314166 dated 12th June, 1946 produced and Robert Frank Hughes and Clarence Vivian Hughes as executors of the Will of the late Joseph Peter Hughes registered as lessees this twenty-seventh day of February, 1947 at the hour of ten o'clock in the forenoon.

10

(Sgd.) R. E. S. BIRKETT,
Registrar.

Exhibit N.
 —
 Partnership
 Agreement
 Caldwell Bros.
 and
 J. P. Hughes.
 —
 15th June, 1936.

EXHIBIT N

Original Partnership Agreement of 1936

This is to certify that an agreement between Caldwell Bros. of Cairn Hill and J. P. Hughes of Thuddungra for the mining of Magnesite and Chrome on Portion 27 Parish of Bribbaree County of Monteaagle has been entered into this day under the following conditions.

J. P. Hughes agrees to give Caldwell Bros. two shares out of the total of six shares. Each party is to pay their share of the costs, or provide the necessary labor for their share of the said costs when the mine is proved payable.

Dated at Cairn Hill this fifteenth day of June, 1936.

Signed Caldwell Bros.
 per Logan H. Caldwell.

Witness. R. F. Hughes

J. P. Hughes.

EXHIBIT P

Original Licence to Plaintiff: 6 Oct. 1942

New South Wales	New South Wales	New South Wales	New South Wales
Stamp Duty	Stamp Duty	Stamp Duty	Stamp Duty
One Pound	Four Pounds	One Pound	Fine Paid
G.18.10.43.F	Fifteen shillings	G.14.5.43.U	G.14.5.43.U.
	G.14.5.43.U		

Exhibit P.
—
Licence
Agreement
J. P. Hughes
& Ors.
to Australian
Blue Metal Coy.
—
6th Oct., 1942.

AN AGREEMENT made this Sixth day of October One thousand nine hundred and forty two BETWEEN JOSEPH PETER HUGHES, FREDERICK CHARLES HUGHES, VICTOR RAYMOND HUGHES, ROBERT FRANK HUGHES, LOGAN HUNTER CALDWELL and GEORGE WIGHAM CALDWELL all of Young in the State of New South Wales, Miners and working a certain Magnesite mine under a syndicate known as "Hughes and Caldwell" (hereinafter referred to as the "Grantor Syndicate") of the First Part, the abovenamed JOSEPH PETER HUGHES of the Second Part, and THOMAS MICHAEL O'NEIL, JOHN ROBERT O'NEIL, ALFRED STANLEY O'NEIL, LESLIE JAMES O'NEIL, RONALD FREDERICK O'NEIL, and LANCE RAPHAEL O'NEIL (trading as the Australian Blue Metal Coy.) and (hereinafter referred to as the "Grantee Syndicate") of the Third Part, WHEREBY IT IS AGREED as follows:—

1. The Grantor Syndicate hereby grants unto the Grantee Syndicate during the period of five years from the date hereof, full license and authority to enter upon the lands situate near Thuddungra and known as Registered P.L.L. No. 460 Department of Mines, for the purpose of digging, winning, working, and carrying away Magnesite and marketing same, upon the terms and conditions herein set out.
2. The Grantee Syndicate shall bear and defray all mining costs, and costs of transport and all selling costs.
3. All royalties payable to the Mines Department shall be paid by the said Joseph Peter Hughes but upon payment thereof the Grantee Syndicate shall pay to the Grantor Syndicate one half of the amount thereof paid by the said Joseph Peter Hughes as aforesaid.
4. Proper books shall be kept by the Grantee Syndicate and the Grantor Syndicate or their authorised representative shall be at liberty to inspect and examine same and take extracts therefrom from time to time.
5. The Grantee Syndicate shall issue a docket for each and every lorry load that leaves the mine and shall furnish these dockets to the Grantor Syndicate or their representative daily.
6. Every fourteen days a statement shall be furnished by the Grantee Syndicate to the Grantor Syndicate or their representative setting out the quantities of Magnesite sold and the prices obtained

Exhibit P.
(Continued)
—
Licence
Agreement
J. P. Hughes
& Ors.
to Australian
Blue Metal Coy.
—
6th Oct., 1942.

therefor accompanied by dockets, vouchers, sale notes etc. and all evidence that may be reasonably be required in connection with the said statements.

7. Every fourteen days a cheque shall be paid by the Grantee Syndicate to the Grantor Syndicate for moneys due to them in connection with all Magnesite sold during that period in accordance with the terms hereof.

8. Not more than twenty six thousand (26,000) tons of magnesite shall be removed from the mine under this agreement in any one year. At least Five thousand two hundred (5,200) tons of Mag- 10
nesite shall be won, transported and sold, from the mine, under this agreement by the Grantee Syndicate, in each and every year, whilst this agreement remains in force.

9. No Magnesite mined under this agreement by the Grantee Syndicate, shall be sold for less than Forty shillings (40/-) per ton F.O.R. Weedallion.

10. The proceeds of the sales of all Magnesite won and sold by the Grantee Syndicate under this agreement shall be divided between the Syndicates as follows:—The first Twenty two shillings and six pence (22/6d) per ton of the selling price on the basis of 20
F.O.R. Weedallion, shall belong to the Grantee Syndicate and the balance of such purchase money up to the sum of 45/- per ton shall be divided equally between the Grantor and Grantee Syndicate after deducting freights, (if any,) paid on any such sales.

11. The Grantor Syndicate or their representative are hereby authorised by the Grantee Syndicate to check all truckings of magnesite at rail, of all deliveries made and the Grantee Syndicate hereby agrees to sign and further authorisation that may be required or necessary for this purpose.

12. The Grantee Syndicate agrees to observe and perform all 30
the terms and conditions of the said Lease.

13. All pits, if not filled in, are to be left with a three in one batter, that the gates on the lease shall be shut at night or when the mine is not working and that no dogs shall be allowed on the Lease.

14. Should any deposit of Chrome be unearthed during the working of the mine by the Grantee Syndicate, same are to be treated on the same basis and conditions as herein provided for the mining and marketing of Magnesite by the Grantee Syndicate.

15. This license shall not be transferred or under-let without
leave. 40

16. The Grantee Syndicate shall have the right to terminate this agreement at any time upon giving eight weeks previous notice in writing; such notice to be delivered personally to Joseph Peter Hughes or sent to him through the registered post to his last known or usual address in New South Wales.

17. This license shall be exclusive with the exception that Robert

Frank Hughes and Victor Raymond Hughes shall be at liberty to mine for Magnesite on the Lease at such pit as is now being operated by them or at any further pits they may open up and further provided, that such working by the said Robert Frank Hughes and Victor Raymond Hughes shall be restricted to the employment of a total of four men at any one time.

Exhibit P.
(Continued)

—
Licence
Agreement
J. P. Hughes
& Ors.
to Australian
Blue Metal Coy.

—
6th Oct., 1942.

18. The Grantee Syndicate shall have an option of renewal of this license for a further period of five years from the date of the expiry of this license and shall give to the Grantor Syndicate three
10 months notice in writing before the expiry of this license, of the intention to exercise such option; such notice shall be delivered in the same manner as provided in Clause 16 thereof.

19. And the said Joseph Peter Hughes, as the Registered Holder of the said Lease, hereby confirms this Agreement.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

SIGNED SEALED AND DELIVERED by
the said JOSEPH PETER HUGHES in
the presence of,

J. P. Hughes

20 E. M. Spark
Solicitor Young

SIGNED SEALED AND DELIVERED by
the said JOSEPH PETER HUGHES and
LOGAN HUNTER CALDWELL for and
on behalf of "Hughes and Caldwell", in the
presence of,

For and on behalf of
Hughes & Caldwell
Logan H. Caldwell
J. P. Hughes

E. M. Spark

SIGNED SEALED AND DELIVERED by
the said LESLIE JAMES O'NEIL in the
30 presence of,

Les. O'Neil

E. M. Spark

SIGNED SEALED AND DELIVERED by
the said LESLIE JAMES O'NEIL for and
on behalf of the Australian Blue Metal Coy.
in the presence of,

For and on behalf of
Australian Blue Metal
Co.

Les. O'Neil

E. M. Spark

Exhibit P.
(Continued)
—
Supplemental
Agreement
J. P. Hughes
& Ors.
to Australian
Blue Metal Coy.
—
11th Oct., 1943.

New South Wales
Stamp Duty
One Shilling
G.18.10.43.F.

EXHIBIT P—Continued

Supplemental Agreement: 11 Oct. 1943

THIS AGREEMENT (supplementary to an Agreement dated the Sixth day of October One thousand nine hundred and forty two made between the same parties as are parties hereto) made this Eleventh day of October One thousand nine hundred and forty three BETWEEN 10 JOSEPH PETER HUGHES FREDRICK CHARLES HUGHES VICTOR RAYMOND HUGHES ROBERT FRANK HUGHES LOGAN HUNTER CALDWELL AND GEORGE WIGHAM CALDWELL all of Young in the State of New South Wales Miners and working a certain magnesite mine under a syndicate known as "Hughes and Caldwell" (hereinafter called the "Grantor Syndicate") of the first part and the said JOSEPH PETER HUGHES of the second part AND THOMAS MICHAEL O'NEILL JOHN ROBERT O'NEILL ALFRED STANLEY O'NEILL LESLIE JAMES O'NEILL RONALD CEDRIC O'NEILL AND LANCELOT 20 RAPHAEL O'NEILL carrying on business under the firm name or style of the Australian Blue Metal Company (hereinafter referred to as the "Grantee Syndicate") of the third part WHEREAS the parties hereto are desirous of altering the provisions of the said Agreement of the Sixth day of October One thousand nine hundred and forty two (hereinafter referred to as the "Principal Agreement") in manner hereinafter appearing NOW THIS AGREEMENT WITNESSETH as follows:—

The Principal Agreement is hereby varied in manner following that is to say:— 30

(a) Clause 8 of the Principal Agreement is varied by substituting for the words and figures "twenty six thousand tons (26,000 tons)" the words and figures "forty six thousand tons (46,000 tons)."

AUTHOR—ARE QUOTES CORRECT?

(b) As from the 31st day of October One thousand nine hundred and forty three Clause 10 of the Principal Agreement shall be deemed revoked and the following clause substituted in its stead: "Clause 10—The proceeds of the sales of all magnesite won and sold by the Grantee Syndicate under this Agreement shall be divided between the Grantor and Grantee Syndicates as follows:— 40

The first Twenty two shillings and six pence (22/6d.) per ton of the selling price on the basis of f.o.r. Weedallion shall belong to the Grantee Syndicate and the balance of such purchase money up to the sum of Forty-five shillings (45/-d.) per ton shall be divided

equally between the Grantor and Grantee Syndicates after deducting freight (if any) paid on such sale. In the event of the selling price f.o.r. Weedallion exceeding the sum of Forty five shillings (45/-d.) per ton any excess over such sum of Forty five shillings (45/-d.) per ton up to the sum of Fifty shillings (50/-d.) per ton shall belong to the Grantee Syndicate and any amount over Fifty shillings (50/-d.) per ton shall be equally divided between the Grantor and Grantee Syndicates.

Exhibit P.
(Continued)

—
Supplemental
Agreement
J. P. Hughes
& Ors.
to Australian
Blue Metal Coy.
—
11th Oct., 1943.

IN WITNESS whereof the said parties to these presents have
10 hereunto set their hands the day and year first before written.

SIGNED by the said JOSEPH PETER
HUGHES AND LOGAN HUNTER
CALDWELL for and on behalf of
Hughes & Caldwell in the presence of:
G. Harris

Logan H. Caldwell
J. P. Hughes

SIGNED by the said JOSEPH PETER
HUGHES in the presence of:—
G. Harris

J. P. Hughes

SIGNED by LESLIE JAMES O'NEILL
20 for and on behalf of the Australian
Blue Metal Company in the presence
of:—

Australian Blue Metal Co.
Les. O'Neil Manager.

A. C. Freeman

Exhibit O.
 —
 Partnership
 Agreement
 J. P. Hughes
 & Ors.
 14th Aug., 1943.

EXHIBIT O

Partnership Agreement: 14th August 1943

N.S.W. Stamp Duty
 One Pound

THIS DEED made this 14 day of August One thousand nine hundred and forty three BETWEEN JOSEPH PETER HUGHES of Young, Retired Farmer, FREDERICK CHARLES HUGHES of Young, Farmer, VICTOR RAYMOND HUGHES of Young, Farmer, and ROBERT FRANK HUGHES of Young, Farmer and GEORGE WHIGHAM CALDWELL Of Cairn Hill, Thuddungra Grazier and 10 LOGAN HUNTER CALDWELL OF Katrine Bank, Thuddungra Grazier WITNESSETH that the said parties hereto mutually covenant to become and remain partners in the business of mine proprietors upon and subject to the following conditions, namely:—

1. The partnership shall be for the term of Private Lands Lease No. 460, Mining amendment Act 1924, given by His Majesty the King to the said Joseph Peter Hughes of 55 acres, 2 roods, 33 perches, situated in the Parish of Bribaree County of Monteagle.
2. The name of the firm shall be Hughes and Caldwell and the business shall be carried on at the site of the said lease or at such 20 other places as the partners shall from time to time agree upon.
3. The bank of the firm shall be the Bank of Australasia at Young wherein all moneys shall be banked by any partner who receives the same within twenty-four hours of receiving such moneys and all cheques on the said account shall be signed by the said Joseph Peter Hughes and the said Logan Hunter Caldwell provided that if either partner shall become unable to sign cheques another member of the firm shall be appointed from the other partners to sign the cheques.
4. The capital of the firm is at present represented by the said 30 Mining Lease and ore therein and any moneys which stand to the credit of the firm or owing to them, and it is hereby declared that all such assets and moneys belong to the partners in equal shares.
5. All outgoing and expenses incurred in carrying on the said business or in any wise relating thereto shall be charged against revenue in the profit and loss Account of

Logan H. Caldwell	J. P. Hughes	F. C. Hughes
R. F. Hughes	V. R. Hughes	G. W. Caldwell

of the said business; and any deficiency appearing therein upon the settlement of an annual general account shall be refunded to capital 40 of the partners in equal shares and until refunded shall remain debited to the respective capital accounts with the firm in the shares aforesaid.

6. Each partner shall at all times during the partnership be at

liberty to inspect the workings of the mine and accounts kept in connection therewith and shall attend all meetings of shareholders but shall not otherwise be required to devote any of his time to the affairs of the partnership.

Exhibit O.
(Continued)

—
Partnership
Agreement
J. P. Hughes
& Ors.
14th Aug., 1943.

7. Each partner shall punctually pay and discharge his present and future separate debts and engagements and shall at all times keep indemnified the other partners and their representatives and the property of the partnership against the same and all actions, proceedings, costs, claims and demands in respect thereof.

10 8. No partner shall without the written consent of the other partners:—(a) Become bail or surety for any person or corporation nor suffer anything whereby the property of the partnership may be detached or taken in execution. (b) Assign or mortgage his share or interest in the partnership. (c) Sign, draw, endorse or negotiate any bill, promissory note, bond, or any other security in the name of or on behalf of the firm other than a bona fide bill, note or security of the firm which shall have been regularly recorded in the books thereof. (d) Lend money or give credit to or have any dealings with (on behalf of the partnership) with any person or company whom the
20 other partners shall previously have forbidden him to trust or deal with. (e) Buy, order or contract for any real or leasehold property on behalf of the partnership without a consent in writing of the majority of the partners first had and obtained.

9. The partners shall be entitled to the net profits of the business in equal shares, and the net profits shall be divided between the partners immediately after the settlement

Logan H. Caldwell
R. F. Hughes

J. P. Hughes
V. R. Hughes

F. C. Hughes
G. W. Caldwell

of the quarterly general account in each year.

30 10. Proper books of account shall be kept on behalf of the the partnership by the said Logan Hunter Caldwell and entries shall be made therein of all such matters and things as are usually entered in books of account kept by persons engaged in concerns of a similar nature, and the said books of account and all letters, papers, and documents belonging to the partnership shall be kept at the office of the said Logan Hunter Caldwell and each partner shall at all times have free access by himself or his agent to examine and copy same. On the 31st day of December in each year or as soon as possible afterwards a general account shall be taken of the assets and liabilities
40 of the partnership and all dealings and transactions thereof for the preceeding year and all matters and things usually comprehended in accounts of a like nature taken by persons in like concerns and in taking such accounts a just valuation of all items (if any) shall be made. Such accounts shall be entered in a book which shall be signed

Exhibit O.
 (Continued)
 —
 Partnership
 Agreement
 J. P. Hughes
 & Ors.
 14th Aug., 1943.

by each partner and when signed shall be binding on them save that if any manifest error shall be discovered therein and signified by any partner to the others within three calendar months of such signature such error shall be rectified.

11. No partner shall draw any salary or allowance from the partnership except his proper proportion of the profits and all partners shall be honest to each other in all transactions.

12. If the partnership be determined by notice or be dissolved by the death or bankruptcy of a partner or by reason of his having suffered his share to be charged under the Partnership Act 1892 for his separate debts or be dissolved by the Court under Section 35 of the said Act on account of the insanity incapacity or misconduct of the partner in any such cases the other partners may purchase the share of the partner who has so determined the partnership by his death, bankruptcy, insanity, incapacity or misconduct or the charging of whose share has caused the dissolution (hereinafter called the outgoing partner) in the partnership property upon giving to the outgoing partner or his personal representative notice in writing of their intention in that behalf at any time within three calendar months from the date of the dissolution, such purchase to take effect as from the date of dissolution. A notice left at the usual or last known place of abode or business of the person for whom it is intended shall be deemed to be given him for the purposes of this clause.

13. The sum to be paid for the purchase of the share of the outgoing partner shall be the net value at the date of the dissolution after providing for the debts and liabilities of the partnership.

14. All matters in difference relating to the affairs of the partnership or the dissolution thereof or the construction of these presents or anything therein contained or the rights and liabilities of the partners or their representatives under these presents or otherwise in relation to the premises shall be referred to two arbitrators, one to be appointed by each party or their umpire pursuant of the Arbitration Act 1902 or any statutory modification or reenactment thereof for the time being in force.

15. All excavations made upon the land embraced in the said Lease in carrying on the said Mining operations shall be filled in by the partnership as far as possible by refilling with the earth and other material taken from the said mine and in so far as such material shall prove insufficient to completely fill in such excavations, the same shall have their sides ramped off to a batter of one in five or thereabouts and provision for completing this work shall be made by retaining sufficient money for that purpose before the final distribution of the assets of the partnership.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year hereunder written.

SIGNED SEALED AND DELIVERED
by the said JOSEPH PETER HUGHES
on the 14th day of August 1943 at Young
Before me,

H. H. McGregor J.P.

J. P. HUGHES

Exhibit O.
(Continued)
—
Partnership
Agreement
J. P. Hughes
& Ors.
14th Aug., 1943.

SIGNED SEALED AND DELIVERED
by the said FREDERICK CHARLES
HUGHES on the 14th day of August
1943 at Young Before me,

10 H. H. McGregor J.P.

F. C. HUGHES

SIGNED SEALED AND DELIVERED
by the said VICTOR RAYMOND
HUGHES on the 14th day of August
1943 at Young, Before me,

H. H. McGregor J.P.

V. R. HUGHES

SIGNED SEALED AND DELIVERED
by the said ROBERT FRANK HUGHES
on the 14th day of August 1943 at
Young, Before me,

20 H. H. McGregor J.P.

R. F. HUGHES

SIGNED SEALED AND DELIVERED
by the said GEORGE WHIGHAM
CALDWELL on the 14th day of August
1943 at Young, Before me,

S. Burtinshardt J.P.

G. W. CALDWELL

SIGNED SEALED AND DELIVERED
by the said LOGAN HUNTER CALD-
WELL on the 14th day of August 1943
at Young, Before me,

30 S. Burtinshardt J.P.

LOGAN H. CALDWELL

Exhibit B.Q.

—
 Extract of
 Plaintiff's
 Operations on
 P.M.L. 1.
 —
 1942 to 1946.

EXHIBIT B.Q.

Extract of Plaintiff's Operations, 1942-1946

This record contained in analytical form details, inter alia, of the tonnages won by the Australian Blue Metal Co. and the royalties paid by it to Hughes and Caldwell in connection with the mining operations in P.M.L. 1 from 1942 to 1946, both years inclusive.

It shows that for a period from the 12th October 1942 until the end of December 1942 the tonnage won was 1361 tons 12 cwt. 3 qrs. and that royalties paid in respect thereof at the rate of 11/3 per ton totalled £794:5:11. 10

For the twelve months ending 31st December 1943 the tonnage won was 20,880 tons 13 cwt. and that the royalties paid in respect thereof at the same rate totalled £11,739:13:2.

For the period from the 8th January to the 5th August 1944 the tonnage won was 6049 tons 4 cwt. 3 qrs. and that the royalties paid in respect thereof at the same rate totalled £3402:13:10.

EXHIBIT D.L.
(Extract only)

Extract from Department of Mines File

Exhibit D.L.
—
Extract from
Mines
Department File
P.M.L. 19.
—

12th Oct., 1955.

This file includes an Application for Authority to Enter in the form of Schedule 26 to the Regulations under the Mining Act 1906-1935.

It is dated 12th October 1955 and signed by Logan H. Caldwell. It was made in respect of Portion No. 27 (P.M.L. 19). The area of land required is shown as 11 acres, 1 rood, 26 perches, the owner 10 of the land applied for is described as G. W. Caldwell of Cairn Hill Thuddungra and it indicates the class of deposit to be sought for as being magnesite.

The Authority to Enter in favour of Logan Hunter Caldwell was issued by the Warden in the form of Schedule 27 to the said Regulations on the 9th April 1956.

Exhibit B.M.

—
 Extract from
 Cheque Butts,
 L. H. Caldwell
 P.M.L. 19.

—
 21st April, 1956
 and
 4th Feb., 1957.

EXHIBIT B.M.
 (Extract only)

Extract from Cheque Butts, L. H. Caldwell

Cheque butt of April 21st 1956 contains the following entry:—

G. G. & Guigni
 costs re A. to E.
 P.M.L. 19

This cheque: £5:6:6.

Cheque butt for 4th February 1957 contains the following entry:—

The Warden's Clerk
 P.M.L. 19

Application for Lease

Rent $\frac{1}{2}$ year £6:0:0

Survey fee 2:0:0

Filing Schedule 5:0

This cheque £8:5:0

10

EXHIBIT B.N.
(Extract only)

Exhibit B.N.
—
Extract from
Exercise Book.
—

Extract from Record of Mining Interests, L. H. Caldwell

Included in the matters entered on the folio tendered is the following:—

Mining Interests.

1/6 Profits from Syndicate in P.M.L. 1 and P.M.L. 19. Hughes & Caldwell.

10	1/- per ton from Magnesite mined from P.M.L. 13.	}	Guiliano Leases.
	9d. " " " " " " " " P.M.L. 12.		
	50/50 Profits less exes from P.M.L. 21 L.H.C.'s Lease shared with Caldwell Pastoral Co		

Exhibit A.T.

—
Extract of
Cheque
drawn by
L. H. Caldwell
and
R. F. Hughes.

EXHIBIT A.T.
(Extract only)

Cheque drawn by L. H. Caldwell and R. F. Hughes

—
21st June, 1956. Cheque drawn on Australian and New Zealand Bank Ltd.,
Young Branch, dated June 21st 1956, by Logan H. Caldwell and R.
F. Hughes for the sum of £25:12:8 in favour of Eric Campbell Grant
& Omant.

EXHIBIT A.A.
(Extract only)

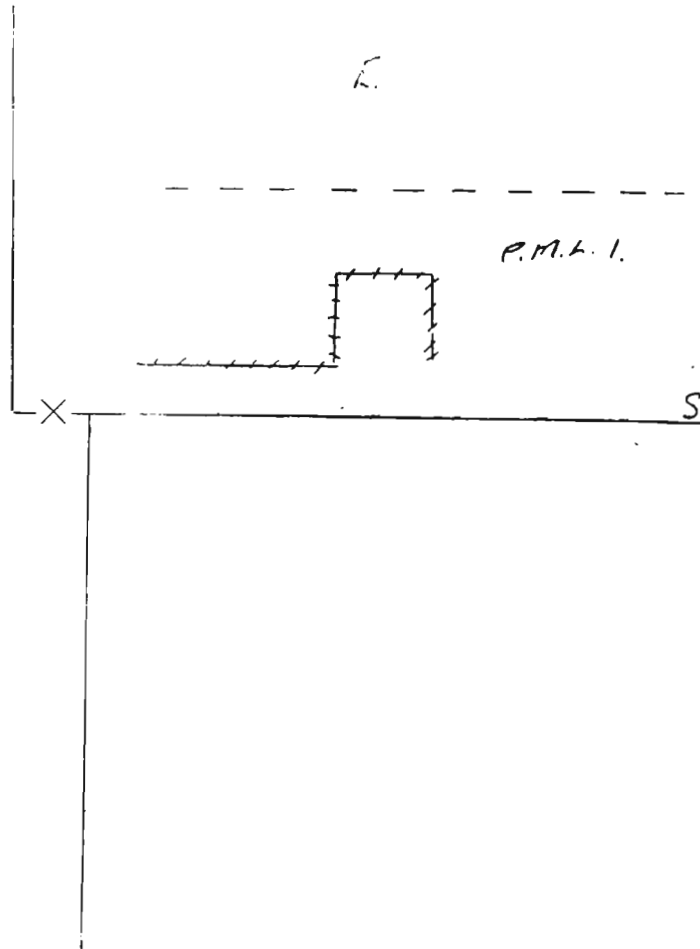
Extract from the Will of George Wigham Caldwell

Exhibit A.A.
—
Extract of
Clause 9 of
Will of
George Wigham
Caldwell.
—

“9. I DECLARE that my Trustees shall have full power and discretion to carry on any business whether farming or grazing or otherwise in which I am interested or concerned at the date of my death and to agree to the extension and continuance of any partnership arrangements or agreements made by me during my lifetime or enter into any partnership or trading agreements with any person or persons
10 whatsoever and notwithstanding that such person or persons may be Trustees of this my Will and for or in connection with the purposes aforesaid or any of them or otherwise in the consideration of my affairs as they in their discretion think fit borrow money and mortgage or give security over any property forming part of my estate and no Mortgagee or other person shall be concerned to enquire as to the propriety of any mortgage or other security over any property forming part of my estate or as to the application of any money raised thereby.”
(The Testator died on the 21st July 1956.)

Exhibit B.A.
 —
 Instructions
 from
 L. H. Caldwell
 to
 Gordon, Garling
 & Giugni.
 —

EXHIBIT B.A.

Instructions from L. H. Caldwell to Gordon Garling & Giugni

To mine in P.M.L. 1 east from a point running south from turn in the fence marked X and to pay Hughes and Caldwell 10/- per ton for all magnesite so mined.

Statements and proceeds to be delivered to Logan Hunter Caldwell in monthly statements.

Cheques to be made out to Hughes and Caldwell.

No dogs, and excavations to be filled up except last one which is to be left with a three in one batter.

Gates to be kept closed.

EXHIBIT A.V.

Agreement Plaintiff and Defendants of January 1957

Exhibit A.V.

—
Agreement
between
Plaintiff and
Defendants.—
31st Jan., 1957.

AN AGREEMENT made this 31st day of January in the year One thousand nine hundred and fifty seven BETWEEN AUSTRALIAN BLUE METAL LTD. (herein called the Company) of the one part and ROBERT FRANK HUGHES, CLARENCE VIVIAN HUGHES, FREDERICK CHARLES HUGHES, VICTOR RAYMOND HUGHES, LOGAN HUNTER CALDWELL and THE EXECUTORS OF GEORGE WHIGHAM CALDWELL (hereinafter
10 called Hughes and Caldwell) of the other part WHEREAS Hughes and Caldwell are entitled to receive royalties from P.M.L. 1 (Young) and the Company wishes to mine for Magnesite on P.M.L. 1 and have agreed to pay to Hughes and Caldwell a flat rate royalty of ten shillings (10/-) per ton in respect of magnesite won and delivered from the said Private Mining Lease NOW THIS AGREEMENT WITNESSETH:—

1. The Company shall have the right to mine for magnesite on P.M.L. 1 east of a line running south from a turn in the fence on the northern boundary of such P.M.L. 1.
- 20 2. The Company will pay to Hughes and Caldwell royalty of ten shillings (10/-) per ton in respect of all magnesite won and delivered from such area.
3. The weights for the purposes of ascertaining the amount of royalties payable hereunder shall be ascertained and calculated by weigh-bridge weights at the siding where the metal is taken.
4. The Company will pay such royalties and render statements monthly to the aforesaid Logan Hunter Caldwell.
5. In the event of their (sic) arising any difficulties as to weights or quantities Hughes and Caldwell or their nominee may have access
30 to the Companys books or records for the purposes of ascertaining the quantity of metal delivered hereunder. AND the Company will make such books and records available to Hughes and Caldwell or their nominee if so required.
6. The Company will use its best endeavours to insure that all gates to the said P.M.L. 1 are kept closed and no dogs are taken thereon.
7. The Company will fill in all excavations made by it or its employees except the last excavation which is to be left with three in one batter.

40 AS WITNESS the hands and seals of the parties hereto the day and year firstly before written.

SIGNED for and on behalf of
AUSTRALIAN BLUE METAL LTD.

Thos. M. O'Neil
Logan H. Caldwell

SIGNED for and on behalf of
HUGHES and CALDWELL.

G. F. Guigni, Solr., Young.

Exhibit A.Y.

EXHIBIT A.Y.

—
 Letter,
 Gordon, Garling
 & Giugni to
 Plaintiff.

Letter, Gordon, Garling & Giugni to Plaintiff: 31 January 1957

—
 31st Jan., 1957.

The Secretary,
 Australian Blue Metal Limited,
 Challis House,
 10. Martin Place,
 SYDNEY.

31 January 1957

Dear Sir,

re MAGNESITE MINES, THUDDUNGRA.

10

Attention Mr. Driscoll.

Mr. Logan Caldwell and your Manager, Mr. Tom Buckley, have made arrangements for Mr. Tom Buckley to mine part of P.M.L. 1. We enclose a short Agreement in duplicate on these lines executed by Mr. Caldwell. We have been through it with Mr. Buckley and he thinks it is all right. At the present time the metal, we understand, is weighed at Cootamundra and statements are rendered to Mr. Caldwell every three months. Despite Clauses 3 and 4 of the Agreement, he is quite prepared to allow these arrangements to continue.

We would be pleased if you would sign the Agreement on behalf of the Company and then return one copy to us for Mr. Caldwell. 20

Yours truly,

GORDON, GARLING & GIUGNI

Per G. F. Giugni

EXHIBIT A.Z.

Exhibit A.Z.

Copy, Letter Plaintiff to Gordon, Garling & Giugni: 5 February 19571. Letter,
Plaintiff to
Gordon, Garling
& Giugni.RMD/MAV
Messrs. Gordon, Garling & Giugni,
Box 21, Post Office,
YOUNG N.S.W.

5th February, 1957

5th Feb., 1957.

Dear Sirs,

Returned herewith is an Agreement duly executed by this Company in connection with the mining of magnesite from P.M.L. 1, Young. The original copy of the Agreement has been retained at this Office for reference purposes.

It is noted that the Company has the right to mine any magnesite on P.M.L. 1, east of a line running south from a turn in the fence in the Northern boundary. I have perused the layout plan for P.M.L. 1 but there does not seem to be any turn in the fence on such plan. No doubt, however, the fence in itself is a true marking for this boundary but it may be as well just to verify the actual point. Your further remarks in this matter would be appreciated please.

Concerning P.M.L. 20 it is noted that this lease was registered in the name of Marina Graciella Craig as is also P.M.L. 9. It would be appreciated if investigations could be made as to whether these leases are in fact current and whether appropriate workings are being carried out thereon.

The amalgamation clause of Mr. Giuliano will shortly be coming for review once again and it is felt that in view of the fact that he is not working many of his leases at the present time in any shape or form, some action should be taken to try to break the amalgamation down to some degree. Your further advice in this connection would be appreciated please.

30

Yours faithfully,

for AUSTRALIAN BLUE METAL LIMITED
SECRETARY

Exhibit A.Z.
(Continued)

EXHIBIT A.Z.

2. Letter,
Gordon, Garling
& Giugni to
Plaintiff.

Letter, Gordon, Garling & Giugni to Plaintiff: 15 February 1957

15th February, 1957

15th Feb., 1957. The Secretary,
Australian Blue Metal Limited,
Challis House,
10. Martin Place,
S Y D N E Y.

re MAGNESITE MINES, THUDDUNGRA.

Dear Sir,

10

We refer to yours to us herein of the 5th instant, reference RND/MAV. Firstly—as to the boundary line in regard to the Company's right to mine on P.M.L. 1, we have discussed same with Mr. Buckley and he confirms with us that the fence in itself does mark the boundary and that the turn in the fence is quite a clear marking. He is quite happy with this arrangement and we feel matters could be allowed to rest there.

P.M.L. 20 and P.M.L. 9 are current in the name of M. G. Cray, and we understand are controlled by Non Metallics Limited.

Mr. Buckley informs us that P.M.L. 9 is from time to time 20 being tested and to some extent worked by Mr. Liggezolli—presumably on behalf of Non Metallics Limited. He also tells us that P.M.L. 20 has been tested to his knowledge quite often and he does not think it is of any use from a Magnesite point of view at all.

As to Giuliano's amalgamation—we have also discussed this with Mr. Buckley. Mr. Buckley is inclined to let matters go as they are as he points out that Giuliano's case is not very much different from your own in that at the present time you are holding two Leases and not working them. Of course, Giuliano is holding a lot more but his recent argument to the Court, when the question of the cancella- 30 tion of 15 and 16 came up, was that a large number of Leases was necessary to guarantee the long term stability of the industry, which he, in conjunction with Young Mining Company and Causmag Limited, had established at Young.

There seems to be a lot of merit in this argument and indeed the Magistrate was almost swayed by same in the Court Appearances. It might be advisable for you to discuss this matter with a senior member of the Mines Department and try and ascertain the Department's views in the matter.

Yours truly,
GORDON, GARLING & GIUGNI
Per G. F. Giugni

40

EXHIBIT B.B.

**Agreement, L. H. Caldwell with M. P. Regan and Others of
7 February 1957**

Exhibit B.B.
—
Agreement,
L. H. Caldwell
and
M. P. Regan
& Ors.
—
7th Feb., 1957.

AN AGREEMENT made this 7th day of February One thousand nine hundred and fifty seven BETWEEN LOGAN HUNTER CALDWELL of Young Grazier of the first part and MARY PEGGY REGAN Lorna Whigham Regan, Nancy Whigham Regan and Jean Heather Caldwell of the other part WHEREAS the said Logan Hunter Caldwell and George Whigham Caldwell are entitled to share in certain royalties received or to be received and to mine certain leases in the Young Mining District AND WHEREAS it has been agreed between the parties hereto that all proceeds of such royalties and mining leases shall be divided equally between Logan Hunter Caldwell as to one half and between Mary Peggy Regan, Nancy Whigham Regan, Lorna Whigham Regan and Jean Heather Caldwell as to the other one half AND WHEREAS it is desired to clarify the terms of such agreement NOW THIS AGREEMENT WITNESSETH that as to P.M.L. 21 all proceeds shall be shared equally and all expenses shall be shared equally as aforesaid between Logan Hunter Caldwell as to one part and as to the other four parties as to the other one part.

As to P.M.L. 12, royalties of 1/6 per ton are due from one Giuliano and these shall be shared equally as aforesaid.

As to P.M.L. 13, royalties of 2/- per ton are due from one Giuliano and these shall be shared equally as aforesaid.

As to P.M.L. 1, P.M.L. 19 and P.M.L. 7, royalties from these shall be paid into an account of Hughes and Caldwell of which the aforesaid Logan Hunter Caldwell is entitled to a one sixth share and the aforesaid other four parties are between them entitled to a one sixth share.

AS WITNESS the hands of the parties hereto the day and year firstly before written.

SIGNED by the said LOGAN HUNTER CALDWELL in the present of:—

Logan H. Caldwell

G. Giugni

SIGNED by the said MARY PEGGY REGAN, NANCY WHIGHAM REGAN, LORNA WHIGHAM REGAN and JEAN HEATHER CALDWELL in the presence of:—

M. P. Regan
Lorna W. Regan
Nancy Whigham Regan
H. J. Caldwell

G. Giugni

Exhibit D.B.
—
Extract from
Record of
Consignment
by Plaintiff.
—

EXHIBIT D.B.
(Extract only)

Extract from Folio 12 of Particulars of Consignments by Plaintiff

This record contained in respect of each consignment of magnesite railed by Australian Blue Metal Limited to Broken Hill Pty. Co. Ltd. the date of the invoice, the date railed, rail truck numbers and tonnages as well as dates and amounts of payments from and the results of analyses performed by the Broken Hill Pty. Co. Ltd.

Folio 12 reveals that the date of the railing of the last consignment prior to the 15th June was the 7th June.

EXHIBIT A.W.

Agreement, Plaintiff with Defendants of June 1957

Exhibit A.W.

—
Agreement
between
Plaintiff and
Defendants.
—

14th June, 1957.

AN AGREEMENT made this 14th day of June in the year One thousand nine hundred and fifty seven BETWEEN AUSTRALIAN BLUE METAL LTD. (herein called the Company) of the One Part and ROBERT FRANK HUGHES, CLARENCE VIVIAN HUGHES, FREDERICK CHARLES HUGHES, VICTOR RAYMOND HUGHES, LOGAN HUNTER CALDWELL and THE EXECUTORS OF GEORGE WHIGHAM CALDWELL (hereinafter called Hughes and Caldwell) of the Other Part WHEREAS Hughes and Caldwell are entitled to receive royalties from P.M.L. 1 (Young) and the Company wishes to mine for Magnesite on P.M.L. 1 and have agreed to pay to Hughes and Caldwell a flat rate royalty of Six shillings (6/-) per ton in respect of magnesite won and delivered from the said Private Mining Lease NOW THIS AGREEMENT WITNESSETH:

1. The Company shall have the right to mine for Magnesite on P.M.L. 1 east of a line running south from a turn in the fence on the Northern boundary of such P.M.L. 1.
- 20 2. The Company will pay to Hughes and Caldwell a royalty of Six shillings (6/-) per ton in respect of all magnesite won and delivered from such area as from 1 June 1957.
3. The weights for the purposes of ascertaining the amount of royalties payable hereunder shall be ascertained and calculated by weigh-bridge weights at the siding where the metal is taken.
4. The Company will pay such royalties and render statements monthly to the aforesaid Logan Hunter Caldwell.
5. In the event of their (sic) arising any difficulties as to weights or quantities, Hughes and Caldwell or their nominee may have access 30 to the Company's books or records for the purposes of ascertaining the quantity of metal delivered hereunder AND the Company will make such books and records available to Hughes and Caldwell or their nominee if so required.
6. The Company will use its best endeavours to insure that all gates to the said P.M.L. 1 are kept closed and no dogs are taken thereon.
7. The Company will fill in all excavations made by it or its employees except the last excavation which is to be left with three in one batter.

Exhibit A.W.
(Continued)

—
Agreement
between
Plaintiff and
Defendants.
—

14th June, 1957.

AS WITNESS the hands and seals of the parties hereto the day
and year firstly before written.

SIGNED for and on behalf of
AUSTRALIAN BLUE METAL LTD.

Thos. E. Buckley

G. F. Giugni

SIGNED for and on behalf of
HUGHES AND CALDWELL.

Logan H. Caldwell

G. F. Giugni

EXHIBIT A.X.

Letter, Gordon Garling & Giugni to Plaintiff of 14 June 1957

14th June 1957

The Secretary,
Australian Blue Metals Ltd.,
Challis House,
10. Martin Place,
SYDNEY.

Exhibit A.X.

—
Letter,
Gordon, Garling
& Giugni to
Plaintiff.

—
14th June, 1957.

re MAGNESITE MINES THUDDUNGRA.

10 Dear Sir,

Mr. Buckley on behalf of the Company and Mr. Logan Caldwell on behalf of Hughes and Caldwell have signed a fresh royalty agreement to the effect that royalty paid to Hughes and Caldwell shall be reduced as from the 1st June, 1957 to 6/- per ton.

As we only had one copy of the agreement executed we will hold this on behalf of the Company and the partnership jointly.

We write to let you know this although we understand that Mr. Buckley has informed you earlier.

20

Yours truly,
GORDON, GARLING & GIUGNI,
Per G. F. Giugni

Exhibit B.R.
—
Extract from
Record of
Tonnage of
magnesite
trucked by
Plaintiff.
—

EXHIBIT B.R.
(Extract only)

Extract from Folio 14—Record of Tonnage trucked by Plaintiff

December, 1957. This shows that the total tonnage trucked ex Weedallion for the period January 1st to May 31st 1957 was 3523 tons 10 cwt. and for the period June 1st to December 31st 1957 9811 tons, a total of 13,334 tons 10 cwt. for the calendar year 1957.

EXHIBIT 5
(Extract only)

Extract from Returns: Plaintiff to Mines Department

Exhibit 5.
—
Extract from
Returns,
Plaintiff to
Mines
Department.

These returns rendered by Australian Blue Metal Ltd. to the Mines Department disclose that:— 10th Jan., 1957.

- 10 (i) For the quarter ended 31st December 1956 there was mined from P.M.L. 1, 4, 15 and 16, by Australian Blue Metal Ltd. a total of 1950 tons of magnesite having a value of £7,312 in respect of which total charges from mine to point of despatch or delivery amounted to £4,045.
- (ii) For the quarter ended 31st March 1957 there was mined from P.M.L. 1 by Australian Blue Metal Ltd. a total of 1750 tons of magnesite of which were despatched 1714 tons having a value of £6426 in respect of which total charges from mine to point of despatch or delivery amounted to £3338.
- 20 (iii) For the quarter ended 30th June 1957 there was mined from P.M.L. 1 by Australian Blue Metal Ltd. a total of 2350 tons of magnesite of which were despatched 2318 tons having a value of £9274 in respect of which total charges from mine to point of despatch or delivery amounted to £3987.

Exhibit D.M.

EXHIBIT D.M.

Letter,
R. F. and C. V.
Hughes to
Department of
Mines.

Letter, R. F. and C. V. Hughes to Department of Mines

17th July, 1957.

(Address) C/- Box 124 P.O.,
Young.
17th July, 1957.

The Under Secretary,
Department of Mines,
Box 48, G.P.O.,
SYDNEY.

Dear Sir,

10

P.L.L. 460 (Act 1924)
Re Por. P.M.L. 1 55a. 2r. 33p.
Parish Bribbaree County Montegale.

I/We hereby apply for the renewal of the abovementioned lease
for a further term from 2nd. September 1957.

Ø Method of working:— open cut.

Yours faithfully,
R. F. Hughes
C. V. Hughes
Lessee

20

Ø State whether by means of shafts,
tunnels, open, cuts, sluicing etc.

EXHIBIT C

Letter, Tester Porter & Company to Plaintiff of 19th August, 1957

HUGHES & CALDWELL PARTNERSHIP

Box 5 P.O.,
YOUNG.
19th August, 1957.

Exhibit C.
—
Letter,
Tester Porter
& Company to
Plaintiff.
—
19th Aug., 1957.

The Manager,
Australian Blue Metal Company,
Challis House,
10 SYDNEY.

Dear Sir,

We desire to convey to you a resolution passed by the Partners of Hughes & Caldwell at a meeting of their syndicate held on 14th August, 1957.

“That the Australian Blue Metal Company, be requested to immediately vacate P.M.L. 1, and therefore cease to work this lease for magnesite.”

We will therefore be pleased if you will kindly cease operations immediately on P.M.L. 1.

20

Yours faithfully,
TESTER, PORTER & COMPANY.
Per: P. G. PORTER

Copy of this letter handed to your Manager on the Mine site.

Exhibit 16.

—
Letter,
Plaintiff's
Solicitors to
Tester Porter
& Company.

EXHIBIT 16

Letter, Plaintiff's Solicitors to Tester, Porter & Co.

21st August, 1957.

—
21st Aug., 1957. Messrs. Tester Porter & Co.,
Box 5, Post Office,
YOUNG, N.S.W.

Dear Sirs,

Re: Australian Blue Metal Limited and
Hughes & Caldwell Partnership

We act on behalf of Australian Blue Metal Limited and have 10 been instructed to reply to your letter of the 19th August, 1957 in which you have advised of a resolution by the partners of Hughes & Caldwell purporting to terminate our client's mining rights in respect of P.M.L. 1 near Young.

We have advised our client that it is not within the power of the Hughes & Caldwell partnership to terminate the agreement under which our client Company is operating this mining lease and that our client Company proposes to continue with mining operations.

Yours faithfully,
HUGHES HUGHES & GARVIN 20
G. E. F. Hughes

EXHIBIT D.D.

Letter, Defendants' Solicitor to Plaintiff of 2 Sep. 1957

2nd September, 1957

Exhibit D.D.

1. Letter,
Defendants'
Solicitor to
Plaintiff.

2nd Sept., 1957.

The Secretary,
Australian Blue Metal Co. Ltd.
10 Martin Place,
Sydney

re Hughes and Caldwell — P.M.L. 1

Dear Sir,

10 We are informed that two members of our client syndicate at different times spoke to you regarding a solution of the present difficulty arising out of the licence agreement dated the 14th June 1957, and that you indicated to them that your company would like to consider a new agreement re-defining the land to be affected so as to exclude certain cultivable lands from the area quoted in the above-mentioned licence.

In view of this the syndicate recently met to consider the position and instructed us to inform you that they would be prepared to discuss a new licence to you, for part only of the area mentioned in the
20 abovementioned licence and providing that the royalty revert to 10/- as from the time and figures when it was reduced to 6/- per ton.

The syndicate would agree to any reasonable term and suggests one year with an option to extend for a further year.

We would be obliged if you would have the position considered and advise us whether you would like a licence on this basis. We would anticipate there would be other usual clauses in such a licence not limited to the previous licence.

In order to define the area some members of our syndicate will now approach your manager on the spot with the object of fixing
30 the Southern boundary of this proposed licence by pegs commencing at a point on the North-South line from the step in the Northern fence and running thence on a generally South Easterly direction to the Eastern boundary of the lease.

In conclusion, it is to be clearly understood that until brought to fruition any proposal is without prejudice to the syndicate's existing rights arising out of the termination of the licence and your continued occupation.

Yours truly,
For ERIC CAMPBELL, OMANT & GRANT
R. B. OMANT

Exhibit D.D.
(Continued)

EXHIBIT D.D.—Continued

2. Letter,
Plaintiff to
Defendants'
Solicitors.

Copy, Letter Plaintiff to Defendants' Solicitors of 10 Sep. 1957

RMD/MAV

10th September, 1957

10th Sept., 1957.

Messrs. Eric Campbell, Omant & Grant,
Solicitors,
27 Lynch Street,
YOUNG NSW.

Dear Sirs,

Ref: HUGHES & CALDWELL — P.M.L. 1

Receipt of your communication dated 2nd September last is 10 acknowledged, relative to the above matter.

It is desired to advise that this Company is prepared to negotiate relative to the solution of the present difficulty relative to the mining of magnesite from P.M.L. 1. It is suggested that some members of your syndicate approach this Company's local Manager on the spot, with the object of discussing appropriate boundaries. Should an agreement be forthcoming from such discussions, the local Manager will not have power to finalise any agreement or boundaries but will refer his recommendation to this Office for finalisation.

It is to be clearly understood that until such time as an agree- 20 ment is reached, any proposal is absolutely without prejudice to this Company's existing rights in accordance with the Agreement dated 14th June, 1957 and subsequent correspondence.

It is desired to point out that had previous mining sites been on a profitable basis, no application would have been made to your syndicate for a reduction of royalty to 6/- but it was only on account of losses on account of such mining, that such application had to be made to your syndicate and the subsequent approval was forthcoming.

Therefore, subject to this present deposit remaining satisfactory from a profit-making point of view, without prejudice, as mentioned 30 previously, this Company would be prepared to return to the original 10/- per ton royalty but would point out that should the deposit again become unprofitable, we would expect the syndicate to again consider reduced royalty.

Your proposal to a reasonable term for mining within re-defined boundaries to be discussed, would appear to be too brief.

It is suggested that a term of three years, with option of a further two years, would be a satisfactory reasonable term from this Company's point of view.

Yours faithfully,
for AUSTRALIAN BLUE METAL LTD. 40
R. M. Driscoll
SECRETARY

EXHIBIT 22

Letter, Plaintiff to Department of Mines of 10 Sep. 1957

10th September, 1957.

Exhibit 22.

—
Letter,
Plaintiff to
Department of
Mines.

—
10th Sept., 1957.

RMD:WM
Under Secretary,
Department of Mines,
Bridge Street,
SYDNEY.

Dear Sir:

10 It is understood that any agreement to any lease must be registered with the Mines Department, and in this connection we attach hereto a certified copy of an agreement between the Hughes Bros. as stated and this Company relative to the mining of magnesite on P.M.L. 1.

This copy of the agreement has been certified by Mr. Giugni, Solicitor at Young, who drew up the original agreement. It would be appreciated if such could be registered on the records of the Department please.

Should any fees be applicable in this connection, the Company
20 will of course pay same.

Yours faithfully,
AUSTRALIAN BLUE METAL LIMITED
R. Driscoll
SECRETARY

EXHIBIT 17

Exhibit 17.

—
1, Letter,
Defendants'
Solicitors to
Plaintiff.

Letter, Defendants' Solicitors to Plaintiff of 11 Sep. 1957

RBO/UC

11th Sepr. 1957

11th Sept., 1957.

The Secretary,
Australian Blue Metal Co. Ltd.,
10 Martin Place,
Sydney

re Hughes and Caldwell — P.M.L. 1

Dear Sir,

Referring to our letter of the 2nd instant, it is desired to inform 10 you that no agreement could be reached as to the Southern boundary of a licence area for you and the granting of a licence is no longer possible.

Your continued mining of the lease after the letter of the 19th August is an open defiance of our clients', and an unwarranted removal of mineral in respect of which our clients will file a claim for damages. Furthermore, unless the property is vacated by you immediately we will seek appropriate Orders for an injunction and to be put into sole possession of the lease.

Yours truly,
for ERIC CAMPBELL, OMANT & GRANT 20
R. B. OMANT

EXHIBIT 17—Continued

**Copy Letter, Plaintiff's Solicitors to Defendant's Solicitors of
13 September 1957**

JHG/H. 13th September 1957.

Messrs. Eric Campbell Omant & Grant,
Solicitors,
Box 124 Post Office,
YOUNG.

Exhibit 17.
(Continued)

—
2. Letter,
Plaintiff's
Solicitors to
Defendants'
Solicitors.

—
13th Sept., 1957.

10 Dear Sirs,

AUSTRALIAN BLUE METAL LIMITED RE HUGHES
AND CALDWELL.

We act as solicitors to the company and are instructed to reply to your letter of the 11th instant.

We have perused the agreement of the 14th June last which is indefinite in time and have advised our client that your clients cannot terminate it forthwith as they have purported to do. Our clients must be given a reasonable period within which to enjoy the benefits of the rights conferred on them and they will resist any proceedings that 20 may be taken by your clients in the matter.

Yours faithfully,
HUGHES, HUGHES & GARVIN
J. H. Garvin

Exhibit 2.

EXHIBIT 2

Letter,
Lionel Dare &
Reed & Martin
to Plaintiff.

**Letter, Solicitors for R. F. and C. V. Hughes to Plaintiff of
16 October 1957**

16th Oct., 1957.

Sydney, 16th October, 1957.

The Secretary,
Australian Blue Metal Limited,
Challis House,
10 Martin Place,
SYDNEY.

Dear Sir,

10

re: Private Lands Lease No. 460

We act for Messrs. Robert Frank Hughes and Clarence Vivian Hughes, the Executors of the Will of Joseph Peter Hughes deceased, who are the registered lessees of Private Lands Lease No. 460 under the Mining Act, 1906 as amended.

We are instructed that your Company has entered upon the lands of the estate of the deceased without authority and has removed large quantities of magnesite therefrom. You are hereby given notice that our clients do not consent to your entry upon the lands which are the subject of the lease and to your removal of magnesite or any other material therefrom. Your action in entering upon the lands is a trespass and we are instructed to give you sixteen (16) days from the date hereof to vacate such lands. Unless you give an undertaking that you will withdraw your plant and workmen from the lands by such time, we shall make an application to the Equity Court to restrain you at your Company's risk as to costs and for auxiliary relief.

In addition, our clients are entitled to compensation for the material removed and unless you agree to compensate our clients for the material you have removed from the land, our instructions are to seek damages in respect of the wrongful removal of material from the land.

In view of the operations which are being conducted by your Company on the lands, we must ask you to let us have your assurance by twelve o'clock on the 21st October 1957, that you will cease operations within the time asked upon the lands and failing receipt of your assurance as aforesaid, we will be compelled to presume that you intend to defy our clients and consequently we will be compelled to move the Equity Court forthwith.

Yours faithfully,
LIONEL DARE & REED & MARTIN 40
Per: A. T. Martin

EXHIBIT D.J.

Agreement between Defendants of November 1957

Exhibit D.J.

—
Agreement
between
Defendants.—
5th Nov., 1957.

MEMORANDUM OF AGREEMENT made this fifth day of November One thousand nine hundred and fifty seven BETWEEN the undersigned in contemplation of legal proceedings being taken against Australian Blue Metal Limited in respect of its occupation of Mining Lease No. 460 WHEREBY IT IS AGREED AS FOLLOWS:

1. All parties hereby approve and to the extent desirable lend their names to the proposed litigation.
- 10 2. The legal costs and disbursements of such litigation shall be borne equally by and discharged by Robert Frank Hughes, Clarence Vivian Hughes, Victor Raymond Hughes and Frederick Charles Hughes (hereinafter called the litigating parties) to the exclusion of Logan Hunter Caldwell and the Estate of the late George Whigham Caldwell (hereinafter called the passive parties) who are hereby indemnified by the former against the same.
- 20 3. In the event of damages or compensation being paid by the said company there shall be paid thereout to the partnership of all parties hereto in the said lease the difference between the amount of royalty paid to such partnership by the said company and the amount which would have been payable if the royalty were 10/- per ton of magnesite removed by the said company since the 1st day of June last and the balance shall belong to the litigating parties alone.
4. The litigating parties are granted the exclusive conduct of all litigation against or at the suit of the said company in respect of the premises and its conclusion settlement or compromise as if the passive parties had no interest whatsoever in the subject matter thereof; this authority is irrevocable.

IN WITNESS WHEREOF the parties hereto have hereunto set
30 their hands on the day and year first above written.

SIGNED by the said
ROBERT FRANK HUGHES in
the presence of:
R. B. Omant
Solicitor
Young.

R. F. HUGHES (Sgd.)

SIGNED by the said
CLARENCE VIVIAN HUGHES in
the presence of:
40 R. B. Omant

C. V. HUGHES (Sgd.)

Exhibit D.J. <i>(Continued)</i> <hr style="width: 10%; margin: 5px auto;"/> Agreement between Defendants. <hr style="width: 10%; margin: 5px auto;"/> 5th Nov., 1957.	SIGNED by the said VICTOR RAYMOND HUGHES in the presence of: R. B. Omant	V. R. HUGHES (Sgd.)
	SIGNED by the said FREDERICK CHARLES HUGHES in the presence of:	F. C. HUGHES (Sgd.)
	SIGNED by the said LOGAN HUNTER CALDWELL in the presence of: R. B. Omant	LOGAN H. CALDWELL 10 (Sgd.)
	SIGNED on behalf of the Estate of GEORGE WHIGHAM CALDWELL in the presence of: R. B. Omant	N. V. REGAN (Sgd.)

EXHIBIT 20

Statement of Claim in Suit No. 1414 of 1957

Exhibit 20.

—
Statement of
Claim in Suit
No. 1414 of
1957.—
19th Nov., 1957.**IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY**

No. 1414 of 1957.

BETWEEN ROBERT FRANK HUGHES and
CLARENCE VIVIAN HUGHES
Executors of the Will of the late Joseph
Peter Hughes.

10

Plaintiffs.

AND AUSTRALIAN BLUE METAL LIMITED
Defendant.

STATEMENT OF CLAIM

1. The Plaintiffs are and at all material times have been the executors of the last Will of one Joseph Peter Hughes. Probate of the last Will of the said Joseph Peter Hughes was granted to the Plaintiffs by the Supreme Court of New South Wales in its Probate Jurisdiction on the twelfth day of June One thousand nine hundred and forty-six.

2. The Plaintiffs are and at all material times have been the lessees under a certain lease duly registered under the provisions of the Mining Act (N.S.W.) 1906-1952. The said lease demises to the Plaintiffs all that piece or parcel of land containing an area of 55 acres 2 roods 33 perches being part of Portion 27 situated in the Parish of Bribaree County of Montegale and being the land comprised in Private Lands Lease No. 460 under the Mining Act (N.S.W.) 1906-1952 registered in the Department of Mines at Sydney (hereinafter referred to as "the said land") for the purpose of mining for and winning minerals on and from the said land.

3. The Defendant has wrongfully entered upon the said land and has worked and won minerals therefrom and is still entering upon the said land and is working and winning minerals thereon.

4. The Defendant has wrongfully brought machinery and mining plant and equipment upon the said land and has operated and continues to operate the said machinery and mining plant and equipment thereon.

5. The Plaintiffs have requested the Defendant to refrain from entering upon the said land and from working and winning minerals thereon but the Defendant has refused and still refuses so to do.

6. The Plaintiffs have requested the Defendant to remove its machinery mining plant and equipment from the said land but the

Exhibit 20.
(Continued)

Statement of
Claim in Suit
No. 1414 of
1957.

19th Nov., 1957.

Defendant has neglected and refused and still neglects and refuses so to do.

7. The Plaintiffs fear that unless it is restrained the Defendant will continue to enter upon the said land and will continue to work and win minerals thereon and will not remove its machinery mining plant and equipment therefrom and that they will thereby suffer serious loss and damage.

THE PLAINTIFFS THEREFORE CLAIM:

1. THAT the Defendant its servants and agents and each of them may be restrained from entering upon all or any of that piece or parcel of land containing an area of 55 acres 2 roods 33 perches being part of Portion 27 situated in the Parish of Bribaree County of Monteaule and being the land comprised in Private Lands Lease No. 460 under the Mining Act (N.S.W.) 1906-1952 registered in the Department of Mines at Sydney (hereinafter referred to as "the said land").

2. THAT the Defendant its servants and agents and each of them may be restrained from working and winning minerals in on or under the said land.

3. THAT the Defendant may be ordered to remove its mining plant machinery and equipment from the said land.

4. THAT the Defendant may be ordered to pay to the Plaintiffs the damages which the Plaintiffs have sustained by reason of the entry of the Defendant upon the said land and by reason of the Defendant working and winning minerals thereon and that it may be referred to the Master in Equity to inquire what is the amount of such damages.

5. THAT the Defendant may be ordered to pay to the Plaintiffs the Plaintiffs' costs of this suit.

6. THAT the Plaintiffs may have such further or other relief as the nature of the case may require.

30

R. J. Marr,
Counsel for the Plaintiffs.

Note: This Statement of Claim is filed by Messrs. Lionel Dare & Reed & Martin of 11c Castlereagh Street, Sydney, Solicitors for Clarence Vivian Hughes and Robert Frank Hughes of 6 Bocrowa Street, Young.

EXHIBIT 20—Continued

Citation in Suit No. 1414 of 1957

Exhibit 20.
(Continued)Citation in
Suit No. 1414
of 1957

19th Nov., 1957.

ELIZABETH II

TO THE WITHIN NAMED DEFENDANT GREETING:

We command you that within eight days after the service hereof on you, exclusive of the day of such service, you cause an appearance to be entered for you in the Equity Office of our Supreme Court, Elizabeth Street, Sydney in the State of New South Wales, to the within Statement of Claim

- 10 AND that you do at the same time of entering your appearance file in the said Equity Office a memorandum stating in effect that you dispute, in whole or in part, the Plaintiff's claim (specifying which part) or that you submit to such decree or order as the Court thinks fit to make or that you disclaim all right, title and interest in the subject matter of the within Statement of Claim.

WITNESS the Honourable Ernest David Roper
the Chief Judge in Equity at Sydney the 19th
day of November in the year One thousand nine
hundred and fifty-seven and in the Sixth year
of Our Reign.

20

A. G. White,
For CHIEF CLERK IN EQUITY.

NOTE: If you neglect to enter your appearance or to file a memorandum as abovementioned, you will be subject to such order as the Court thinks fit to make in your absence.

Exhibit 20.
(Continued)

EXHIBIT 20—Continued

—
Appearance in
Suit No. 1414
of 1947

Appearance in Suit No. 1414 of 1957

—
19th Nov., 1957.

No. 1414 of 1957.

BETWEEN

ROBERT FRANK HUGHES and CLARENCE
VIVIAN HUGHES Executors of the Will of
the late Joseph Peter Hughes.

Plaintiffs.

AND

AUSTRALIAN BLUE METAL LIMITED. 10
Defendant.

The abovenamed defendant Australian Blue Metal Limited by
James Herbert Garvin his solicitor appears herein and disputes the
whole of the plaintiff's claim.

Dated this twenty second day of November 1957.

J. H. Garvin (sign'd)
Solicitor for the Defendant.

NOTE: This appearance is filed by James Herbert Garvin of 16
Barrack Street, Sydney which is the address for service of all further
proceedings herein on the abovenamed defendant of 10 Martin Place 20
Sydney.

EXHIBIT 3
(Extract only)

Extract from Return of Royalties by Plaintiff

Exhibit 3.
—
Extract from
Return of
Royalties by
Plaintiff.
—

12th Feb., 1958.

This is a Return of Royalties made in the form of Schedule 45 to the Regulations under the Mining Act by Australian Blue Metal Ltd. in respect of magnesite raised from land held under the lease by R. F. and C. V. Hughes for the year ending 31st December 1957.

It shows that for the period 1st January 1957 to 1st September 1957 6340 tons 8 cwt. 2 qrs. were mined by Australian Blue Metal 10 Ltd. having a gross value of £25490:13:9 and a net value after deducting cartage costs of £9678:4:8 of £15812:9:1.

It also shows that from the 2nd September 1957 to the 31st December 1957 the tonnage mined by Australian Blue Metal Ltd. was 6365 tons 6 cwt.

Exhibit B.

Renewal of
Private Lands
Lease No. 460.

31st July, 1958.

EXHIBIT B

Renewal of Private Lands Lease No. 460

Stamp Duty £1.17.0.

23.9.58.

Sections 62(3) and 70C Mining Act,
1906-1952.

RENEWAL OF A MINING LEASE OF PRIVATE LAND
Under the Mining Act, 1906-1952.

Elizabeth the Second, by the Grace of God of the United Kingdom, 10
Australia and Her other Realms and Territories Queen, Head of the
Commonwealth, Defender of the Faith.

TO ALL TO WHOM THESE PRESENTS SHALL COME,
GREETING:—

WHEREAS these presents are intended to be read as if endorsed
upon or annexed to a lease by His Majesty King George VI to
JOSEPH PETER HUGHES dated the second day of September one
thousand nine hundred and thirty-seven registered as number 460 in
the Department of Mines, Sydney (hereinafter called the "Within 20
Lease") the term of which expired on the second day of September
one thousand nine hundred and fifty-seven

AND WHEREAS the Within Lease now stands registered in the
said Department of Mines in the names of ROBERT FRANK
HUGHES AND CLARENCE VIVIAN HUGHES

AND WHEREAS in pursuance of the provisions of the Mining Act,
1906-1952 and the Regulations thereunder the said ROBERT FRANK
HUGHES AND CLARENCE VIVIAN HUGHES have duly applied
for renewal of the "Within Lease" which We have agreed to grant 30
for a further term of twenty years to commence on the second day
of September one thousand nine hundred and fifty-seven subject to
the conditions covenants and provisions of the said lease save as
modified by the provisions hereinafter reserved and contained or
referred to NOW KNOW YE that in pursuance of the provisions of
the Mining Act 1906-1952 and in consideration of the covenants and
conditions herein contained or referred to WE DO HEREBY GRANT
unto the said ROBERT FRANK HUGHES AND CLARENCE
VIVIAN HUGHES (who with their executors administrators and
assigns are hereinafter referred to as "the Lessees") ALL AND
SINGULAR the piece or parcel of land and premises comprised in 40
and demised by the "Within Lease" (except and reserving as is
excepted and reserved by the "Within Lease" and excluding such land
if any which may have been surrendered cancelled or otherwise excised

from the "Within Lease") TO HOLD the land and premises herein-
 before expressed to be demised (subject to such rights and interests
 as may be lawfully subsisting therein at the date of these presents)
 unto the said lessees for the term of twenty years commencing on the
 second day of September one thousand nine hundred and fifty-seven
 for the purpose for which the "Within Lease" was expressed to be
 granted and for no other purpose YIELDING AND PAYING therefor
 unto the owner for the time being of the land hereby demised during
 the said term the yearly rent of fifty-six pounds and such rent shall
 10 be paid half yearly in advance without any deduction and clear of
 all rates taxes and assessments to which the said land and premises
 are now or at any time during the said term may be subject or liable
 and subject to the terms conditions and covenants in the Within
 Lease contained and subject to the conditions hereinafter provided

AND IT IS HEREBY AGREED that

(a) the lessees shall pay unto Us Our Heirs and Suc-
 cessors yearly and in every year during the said term royalty on behalf
 of the owner for the time being of the minerals in the area demised
 at the rate of one shilling per ton of all magnesite and one and three-
 20 quarters per centum of the value of all chromite won from the area
 demised.

(b) All such royalty shall be payable at the time and
 place and in the manner prescribed by the Regulations in force for
 the time being under the Mining Act 1906 and the Acts amending
 the same.

AND IT IS HEREBY AGREED AND DECLARED that
 Clause 3 of the Within Lease shall be and is hereby deleted.

AND THAT the lessees shall observe and perform the following
 Special Conditions:—

- 30 (i) Operations on the area demised shall be conducted in such
 a manner as not to cause any danger to persons and stock
 and the said lessees shall provide and maintain adequate
 protection to the satisfaction of the Secretary for Mines
 around each shaft or excavation opened up or used by the
 said lessees.
- (ii) (a) The said lessees as work progresses shall return residues
 to excavations already made reasonably level off the
 material so deposited batter the sides of excavations to
 a safe low angle and effectually drain any depression
 and such filling levelling battering and draining shall
 40 be done to the satisfaction of the Secretary for Mines.
- (b) The said lessees shall ensure that run off from any
 mined area including the overflow from any depression
 or ponded area is discharged in such a manner that it
 will not cause erosion.

Exhibit B.
 (Continued)

—
 Renewal of
 Private Lands
 Lease No. 460.

—
 31st July, 1958.

Exhibit B.
(Continued)
—
Renewal of
Private Lands
Lease No. 460.
—
31st July, 1958.

- (iii) The said lessees shall lodge with the Secretary for Mines a deposit of twenty-five pounds (£25.0.0.) as a guarantee that the foregoing conditions shall be fulfilled.
- (iv) (a) The said lessees shall not excavate within fifty (50) feet of the boundaries of the road(s) shown on the said plan unless with the consent of the Secretary for Mines first had and obtained and subject to such conditions as he may stipulate.
- (b) Notwithstanding that the said lessees shall have complied with this condition the said lessees shall pay to the local Council Department of Lands or the Department of Main Roads the cost of making good any damage to such road(s) caused by mining operations by the said lessees.

IN TESTIMONY WHEREOF WE have caused this Our Lease to be sealed with the Seal of Our said State.

(sgd.)
J. B. SIMPSON
(L.S.)

WITNESS our Trusty and Well-beloved Lieutenant- 20
General Sir Eric Winslow Woodward, Knight Com-
mander of Our Most Distinguished Order of Saint
Michael and Saint George, Companion of Our Most
Honourable Order of the Bath, Commander of Our
Most Excellent Order of the British Empire, Com-
panion of Our Distinguished Service Order, Knight
of the Venerable Order of St. John of Jerusalem,
Governor of Our State of New South Wales and
its Dependencies, in the Commonwealth of Aus-
tralia, at Sydney, in Our said State, this thirty-first 30
day of July in the seventh year of Our Reign, and
in the year of Our Lord one thousand nine hundred
and fifty-eight.

(sgd.) K. W. STREET,
By Deputation from
His Excellency the Governor.

ROBERT FRANK HUGHES AND CLARENCE VIVIAN
HUGHES hereby accept the extension of the term granted by this
Renewal of Lease for a period of twenty years from the second day
of September one thousand nine hundred and fifty-seven and agree 40
to be bound by the covenants and conditions thereof during the
currency of such extended period.

Signed sealed and delivered by the said
ROBERT FRANK HUGHES
and
CLARENCE VIVIAN HUGHES
in the presence of
(sgd.) D. Boyd, J.P.

(sgd.) R. F. Hughes (L.S.)
" C. V. Hughes (L.S.)

Exhibit B.
(Continued)
—
Renewal of
Private Lands
Lease No. 460.
—
31st July, 1958.

Certified copy of Renewal of P.L.L.
460 (Act 1924)

Examined by E. Charlwood
S. Walker

Department of Mines, Sydney
Date 7.10.58.

EXHIBIT 4

Exhibit 4.
—
Letter,
Plaintiff to
Department of
Mines.

Letter, Plaintiff to Department of Mines of 11 September 1958

11th Sept., 1958.

RMD:CES
The Under Secretary,
Department of Mines,
Box 48, Post Office,
SYDNEY.

11th September, 1958.

Dear Sir,

YOUR REF. 58/8575. L.B.—ROYALTY 1956—MAGNESITE
P.L.L. 460 ('24 ACT) P.M.L. 1. PARISH 10
BRIBAREE

Receipt is acknowledged of your communication dated 25th August last, relative to the mining of magnesite on the abovenumbered area.

In reply thereto it is desired to state:

- (1) The quantity and value of magnesite mined from 1.1.56 to 22.3.56. is nil.
- (2) The quantity and value of magnesite mined out from 23.3.56 to 31.12.56 is 345 tons 12 cwt. 1 qr. valued at £1,295.18.0.

Yours faithfully, 20
for AUSTRALIAN BLUE METAL LIMITED
R. M. Driscoll,
SECRETARY

EXHIBIT B.V.
(Extract only)

Extract from Rate Notices issued to R. F. and C. V. Hughes

Rate Notices issued by the Shire of Burrangong in respect of the land being part of Portion 27 Parish of Bribbaree County of Monteagle to Messrs. Robert Frank Hughes and Clarence Vivian Hughes as lessees under Mining Lease P.M.L. 1 Young for the undermentioned years and in the undermentioned amounts with receipts for payment, attached:

10	1955	£57.1.0
	1956	£28.4.0
	1957	£38.3.3
	1958	£42.6.3

These payments were made by Logan Hunter Caldwell out of the Hughes and Caldwell Account. (Exhibits B.G. and B.M.)

Exhibit B.V.
—
Extract from
Rate Notices
issued to
R. F. and C. V.
Hughes.
—
1955, 1956,
1957, 1958.

Exhibit B.O.
—
Extract of
Mining Lease
No. P.M.L. 19.
—
9th Feb., 1959.

EXHIBIT B.O.
(Extract only)

Extract from Private Mining Lease

Mining Lease of private lands dated 9th February 1959 from Her Majesty the Queen to Logan Hunter Caldwell (deceased) of 11 acres, 1 rood, 26 perches, numbered P.M.L. 19 for the purpose of mining for magnesite for a term of 20 years from the date of the lease.

EXHIBIT CC

**Letter, The Broken Hill Proprietary Coy. Limited to Plaintiff of
13 February 1956**

Exhibit C.C.

I. Letter,
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.

13th February, 1956.

13th Feb., 1956.

AGM:CR
The Manager,
Australian Blue Metals Limited,
10 Martin Place,
SYDNEY.

10 Dear Sir:

P.13/2—Magnesite—Weedallion:

Following to-day's telephone conversation with Mr. Freeman, we now have pleasure in enclosing our order No. 0.996 for magnesite delivered f.o.r. Weedallion.

We will be pleased to accept up to your maximum production for a year from the date hereof, provided the quality is acceptable, as specified.

Yours truly,

C. H. Bishop
Acting Manager.

Exhibit C.C.
(Continued)

EXHIBIT CC—Continued

2. Letter,
Order No. 0.996
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.

Letter, Order No. 0996: the B.H.P. Company Limited to Plaintiff

The Manager,

Newcastle, 13 February 1956

13th Feb., 1956. Australian Blue Metals Limited,
10 Martin Place,
SYDNEY. N.S.W.

Order No. 0.996.

I hereby certify that the Broken Hill Proprietary
Company Limited is the holder of Sales Tax Certificate
N.7313.

10

For the Broken Hill Proprietary Co. Ltd.
R. G. NEWTON, Public Officer,
per R. L. Burns.

Please forward the undermentioned goods per rail.
to B.H.P. Morandoo Siding

INVOICES IN DUPLICATE must be posted on date Goods are
despatched.

Packing Note must accompany Goods, and Order Number be stated.

MAGNESITE — WEEDALLION:

QUANTITY:

20

Your maximum production for the period.

QUALITY:

High grade specially selected magnesite, free from adhering clay
impurity and from any quartz or dolomite inclusions.

Chemical Analysis not to exceed 2% of either SiO₂ or CaO nor
to be less than 44% MgO.

Sizing to be not more than nine (9) inches dimensions, and to
contain a minimum of fines less than one and a half (1½) inches.

RIGHT OF REJECTION:

30

We reserve the right to reject any truck which is outside these
specifications and to cancel our order should you repeatedly supply
off-grade material.

PRICE:

Basic rate of three pounds fifteen shillings (£3/15/-) per ton
f.o.r. Weedallion, subject to the following bonuses or penalties
to be based on our weekly bulk analyses:—

Bonus	for each	1% MgO	above 45% — 4/-d.	per ton	
Penalty	„ „	1% MgO	below 44% — 4/-d.	„ „	
Bonus	„ „	1% SiO ₂ +CaO	below 3% — 4/-d.	„ „	40
Penalty	„ „	1% SiO ₂ +CaO	above 4% — 4/-d.	„ „	

WEIGHT & PAYMENT:

Payment to be made fortnightly, based on trucks received at Newcastle, the railway weights of which are available. Any freight penalty for unloading or overloading to be deducted from your account.

Exhibit C.C.
(Continued)

—
2. Letter,
Order No. 0.996
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.

PERIOD:

One (1) year from the date hereof.

—
13th Feb., 1956.

“Important Notice”

“This order is given and delivery
10 of the goods will be accepted
only on the strict condition that
the manufacturer and/or sup-
plier has fully complied with all
Government Regulations and
provisions.”

AGM:CR

Packages to be Marked:

Order No. 0.996

B.H.P. Co. Ltd. R. L. Burns

I. & S. Works For Acting Manager

Exhibit C.D.

EXHIBIT C.D.

Letter,
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.

**Letter, The Broken Hill Proprietary Coy. Limited to Plaintiff of
23 April 1958**

23rd April, 1956.

23rd April, 1956.

The Managing Director,
Australian Blue Metal Ltd.,
Challis House,
Martin Place,
SYDNEY. N.S.W.

Dear Sir,

10

J.12/1A—Magnesite—Thuddunga.

As discussed with you by Mr. Macandie, we desire to add the following clauses to our Order No. 0996 dated the 13th February 1956, and would be pleased to receive your acceptance.

A bonus will be paid for tonnage delivered from your present leases at Thuddunga to Morandoo, averaged weekly for each successive four (4) weekly period as under:—

0-150 tons per week—no	bonus rate—£3:15:0	per ton.	
150-175 " " "	— 5/-	bonus rate—£4: 0:0	per ton.
175-200 " " "	—10/-	" " —£4: 5:0	per ton. 20
200-225 " " "	—15/-	" " —£4:10:0	per ton.
over 225 " " "	—20/-	" " —£4:15:0	per ton.

Should cumulative tonnage from commencement of this bonus exceed 250 tons per week average, then such excess may be applied to the current four (4) weekly period, but not retrospectively to previous months, for the purpose of calculating average delivery rate for that period, provided that after a period of one (1) year this cumulative provision shall commence afresh.

This bonus will commence from 8 a.m. on Sunday of the week during which deliveries commence to arrive at Morandoo, and will 30 continue until you are otherwise notified after a minimum period of one (1) year from the date hereof.

We reserve the right to revise this bonus rate should production be undertaken from other leases than those you own at present.

Yours truly,
G. H. Bishop,
Acting Manager.

EXHIBIT C.L.

**Copy Letter, Plaintiff to The Broken Hill Proprietary Coy. Limited of
31 January 1957**

Exhibit C.L.
—
Letter,
Plaintiff to
The Broken Hill
Proprietary Coy.
Limited.
—
31st Jan., 1957.

Broken Hill Pty. Ltd.,
NEWCASTLE, N.S.W.

31st January, 1957.

Attention Mr. McAndie.

Ref: MAGNESITE SUPPLIES

Dear Sirs,

10 In connection with the winning of magnesite at Thuddungra it is desired to advise that on account of increased costs, and adverse weather conditions, the figures to December, 1956, indicated these works are unprofitable. This Company had hoped to extend its works in this field at Thuddungra and even at the present time, is looking for additional leases to increase production and effect economies at the Mine.

20 Magnesite supplied to your Company has been always in the form of good, clean stone and during a recent visit to Young, Mr. McAndie saw, first hand, the trouble and care that was exercised in the selection of ore for riling. To achieve this object it is not possible to effect economies and the cost of winning, grading and riling, you can appreciate, is very high.

30 Discussions with Mr. L. J. O'Neil, the Chairman of Directors of the Company, who has been away overseas until recent weeks have resulted in this Company requesting a review in the basic price of magnesite from £3/15/- to a suggested figure of say £4/5/- per ton, i.e. an increase of 10/- per ton. It is felt that should such increase be granted, this Company could carry on its work and at the same time, investigate the possibility of taking over other leases and opening new fields and in say six months time, the matter could once again be reviewed.

It would be appreciated, therefore, if consideration to these matters could be given at your early convenience please.

Yours faithfully,
AUSTRALIAN BLUE METAL LIMITED.

Exhibit C.M.

EXHIBIT C.M.

Letter,
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.

**Letter, The Broken Hill Proprietary Coy. Limited to Plaintiff of
15 February 1957**

15th Feb., 1957.

15th February 1957.

The Secretary,
Australian Blue Metal Limited,
Challis House,
10 Martin Place,
SYDNEY. N.S.W.

Dear Sir:

10

P. 13/2 — MAGNESITE — WEEDALLION:

We acknowledge your letter of 31st ult. and your request for an increased price for magnesite f.o.r. Weedallion.

This request is receiving our careful consideration, which you will appreciate must take into account the general economics of our other suppliers and our requirements. In the meantime we presume that your Company has discontinued operations.

As we see it, one of the principal difficulties in your economic operation at the present price has been the necessity to pay a 10/-d. per ton royalty to the lease owner, and we do feel that in granting 20 any increase we would be condoning and perpetuating a royalty basis which we consider to be unduly high.

Yours truly,
Y. H. Bishop.
Manager.

EXHIBIT 9

**Copy Letter, Plaintiff to The Broken Hill Proprietary Coy. Limited of
18 February 1957**

Exhibit 9.
—
Letter,
Plaintiff to
The Broken Hill
Proprietary Coy.
Limited.
—
18th Feb., 1957.

18th February, 1957.

Broken Hill Pty. Co. Ltd.,
NEWCASTLE. N.S.W.

Dear Sirs,

Ref: 13/2 — MAGNESITE — WEEDALLION

Receipt of your communication dated 15th inst., is acknowledged
10 and we thank you for the careful consideration being given to the
request for an increase in price for magnesite.

It is desired to advise that this Company has been mining mag-
nesite from its own leases, namely P.M.L. 15 and 16 until approxi-
mately mid-November last and during December, arrangements were
completed to enable the Company to mine magnesite under an Agree-
ment from P.M.L. 1, on a royalty basis. It is pointed out that the
10/- per ton increase in price was considered to be a minimum, not
on account of any royalty that is being paid to lease-owners but on
account of economic operations in connection with the winning of
20 this material.

Whilst this matter is receiving your consideration the Company
is still carrying on its works at Thuddungra but on account of over-
haul of certain items of plant, production will not be high for the
next few weeks.

Yours faithfully,

AUSTRALIAN BLUE METAL LTD.
SECRETARY.

Exhibit 11.

EXHIBIT 11

Letter,
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.

**Copy Letter, The Broken Hill Proprietary Coy. Limited to Plaintiff
of 6 March 1957**

6th March, 1957.

AGM:CR
The Secretary,
Australian Blue Metal Limited,
Challis House,
10 Martin Place,
SYDNEY. N.S.W.

6th March, 1957.

Dear Sir,

10

P.13/2 — Magnesite — Weedallion:

It is proposed that Mr. A. Macandie of this office shall visit the magnesite quarries at Thuddungra on Tuesday, 12th inst.

We would be glad of your permission for Mr. Macandie to inspect your workings and would be pleased if he could take the opportunity of discussing your recent application for an increase in price.

Mr. Macandie expects to stay at the Commercial Hotel, Young, on the Monday night.

Yours truly,

20

Manager.

EXHIBIT C.R.

**Copy Letter, Plaintiff to The Broken Hill Proprietary Coy. Limited
of 15 April 1957**

Exhibit C.R.

1, Letter,
Plaintiff to
The Broken Hill
Proprietary Coy.
Limited.

15th April, 1957

15th April, 1957.

Attention — Mr. McAndie.
Broken Hill Pty. Ltd.,
NEWCASTLE. N.S.W.

Dear Sir,

Ref: MAGNESITE SUPPLIES . . .

10 It is desired to draw to your notice, that the order relative to the supply of magnesite from this Company to your works has expired.

It would be appreciated if further instructions in this connection could be advised at your earliest convenience.

It is understood this Company's communication dated 31st January last relative to an increase in price of Magnesite at 10/- per ton is receiving consideration and it is anticipated that your advice in this connection will be received at an early date.

Yours faithfully,

AUSTRALIAN BLUE METAL LTD.
SECRETARY.

EXHIBIT C.R.—Continued

Exhibit C.R.
(Continued)

2. Letter,
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.

**Letter, The Broken Hill Proprietary Coy. Limited to Plaintiff of
29 May 1957**

29th May, 1957.

29th May, 1957. The Manager,
Australian Blue Metal Ltd.,
Challis House,
10 Martin Place,
SYDNEY. N.S.W.

Dear Sir:

10

J.12/1A — MAGNESITE — WEEDALLION:

We take pleasure in advising you that we are prepared to increase our price for magnesite by 10/-d a ton, to £4/5/- per ton base price f.o.r. Weedallion.

We enclose our order No. 0.1024, replacing our order No. 0.996.
We would appreciate your acceptance of our order in due course.

Yours truly,

G. H. BISHOP
Manager.

Encl.

20

EXHIBIT C.R.—Continued

**Letter, Order No. 0.1024—The Broken Hill Proprietary Coy. Limited
to Plaintiff of 29 May 1957**

Exhibit C.R.
(Continued)

2. Letter,
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.

ORDER NO. 0.1024
(Superseding our Order No. 0.996) 29th May, 1957.

The Manager,
Australian Blue Metal Ltd.,
10 Martin Place,
SYDNEY.

29th May, 1957
Despatch per Rail
Deliver to B.H.P. Morandoo Sid.

10 MAGNESITE — WEEDALLION

QUANTITY:

Your maximum production for the period

QUALITY:

High grade specially selected magnesite, free from adhering clay impurity and from any quartz or dolomite inclusions.

Chemical Analysis not to exceed 2% of either SiO₂ of CaO nor to be less than 44% MgO.

Sizing to be not more than nine (9) inches dimensions, and to contain a minimum of fines less than one and a half (1½) inches.

20 RIGHT OF REJECTION:

We reserve the right to reject any truck which is outside these specifications and to cancel our order should you repeatedly supply off-grade material.

PRICE:

Basic rate of four pounds five shillings (£4.5.0) per ton f.o.r. Weedallion, subject to the following bonuses or penalties to be based on our weekly bulk analyses:—

	Bonus for each 1% MgO	above 45%	— 4/-	per ton
	Penalty for each 1% MgO	below 44%	4/-	per ton
30	Bonus for each 1% SiO ₂ +CaO	below 3%	4/-	per ton
	Penalty for each 1% SiO ₂ +CaO	above 4%	4/-	per ton

A Bonus will be paid for tonnage delivered from your present leases at Thuddungra to Morandoo, averaged weekly for each successive four (4) weekly period as under:

	0-150 tons per week—no	bonus base rate—£4/ 5/-	per ton
	150-175 tons per week— 5/-	bonus base rate	£4/10/- „ „
	175-200 „ „ „ 10/-	„ „ „	£4/15/- „ „
	200-225 „ „ „ 15/-	„ „ „	£5/ -/- „ „
	over 225 „ „ „ 20/-	„ „ „	£5/ 5/- „ „

40 Should cumulative tonnage from commencement of this bonus exceed 250 tons per week average, then such excess may be applied to the current four (4) weekly period, but not retrospectively to previous months, for the purpose of calculating average

Exhibit C.R.
(Continued)

—
3. Letter,
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.
—
29th May, 1957.

delivery rate for that period, provided that after a period of one (1) year this cumulative provision shall commence afresh.

WEIGHT & PAYMENT:

Payment to be made fortnightly, based on trucks received at Newcastle, the railway weights of which are available.

Any freight penalty for underloading or overloading to be deducted from your account.

PRICE:

One (1) year from 1st June, 1957.

BROKEN HILL PTY. CO. LTD. 10

EXHIBIT C.X.

Exhibit C.X.

1, Memo,
R. M. Driscoll
to T. Buckley.

2nd July, 1957.

The Sequence of the Reports and Letters in evidence that passed between Driscoll and Buckley is as follows:—

	21/10/56	Driscoll from Buckley	Ex. C.F.
	13/11/56	” ” ”	Ex. C.G.
	14/11/56	” ” ”	Ex. C.H.
	27/11/56	” ” ”	Ex. C. J.
	5/12/56	” ” ”	Ex. C.K.
10	22/ 1/57	” ” ”	Ex. 7
	12/ 2/57	” ” ”	Ex. 8
	4/ 3/57	” ” ”	Ex.10
	9/ 5/57	” to ”	Ex. C.P.
	10/ 5/57	” ” ”	Ex. C.Q.
	15/ 5/57	” from ”	Ex. 12
	16/ 5/57	” ” ”	Ex. C.S.
	20/ 5/57	” ” ”	Ex. 6
	28/ 5/57	” ” ”	Ex. C.T.
	2/ 6/57	” ” ”	Ex. 13
	4/ 6/57	” to ”	Ex. 14
20	6/ 6/57	” ” ”	Ex. C.U.
	10. 6/57	” from ”	Ex. C.Y.
	13/6/57	” to ”	Ex. 1
	19/ 6/57	” from ”	Ex. 15
	25/ 7/57	” ” ”	Ex. C.Z.
	1/ 8/57	” ” ”	Ex. D.A.
	6/ 8/57	” ” ”	Ex. O.B.
	7/ 8/57	” ” ”	Ex. O.A.

Exhibit C.X.
(Continued)

EXHIBIT C.X.—Continued

2. Letter,
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.

Copy Memorandum, Driscoll to Buckley of 2 July 1957

2nd July, 1957.

28th June, 1957.

Subject

To MR. T. BUCKLEY

Enclosed herewith, for your reference, please find a copy of a letter received from B.H.P. in connection with recent samples of magnesite.

R. M. DRISCOLL

EXHIBIT C.X.—Continued

**Letter, The Broken Hill Proprietary Coy. Limited to Plaintiff of
28 June 1957**

Exhibit C.X.
(Continued)
—
2. Letter,
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.
—
28th June, 1957.

The Secretary,
Australian Blue Metal Ltd.,
Challis House,
10 Martin Place,
SYDNEY. N.S.W.

28th June, 1957.

Dear Sir:

10 P.13/2 — Magnesite — Weedallion:

We confirm hereunder the analyses given to Mr. Driscoll by 'phone yesterday, and now give you the full analysis of our bulk sample for the week ended 8a.m. 21.6.57.

Bulk Sample Week Ended 8a.m. 14.6.57:

Truck Numbers:	SiO ₂ :	Fe ₂ O ₃ :	Al ₂ O ₃ :	CaO:	MgO:	Ign. Loss:
U.24795, K.27164						
K.27504, K. 7810						
K.23436, U.24932	3.18	.84	.22	1.53	44.93	49.25

20 **Bulk Sample Week Ended 8a.m. 21.6.57:**

K.27447, K.26821, K.27618, S. 701	1.89	.63	.32	1.32	45.21	50.58
U.24080	2.40			1.98		
U. 7693	4.15			1.10		
K.27168,U.21879	1.45			4.66		

Yours truly,

G. H. BISHOP
Manager

Exhibit C.F.

—
Letter,
Buckley to
Driscoll.—
21st Oct., 1956.

EXHIBIT C.F.

Letter, Buckley to Driscoll of 21 October 1956C/- Magnesite Mines,
21/10/1956.

My Dear Bob:

Enclosed you will find doctor's certificate for Hargraves and release paper from Haylan.

I have also written to Mines Department for licence for magazine (quoting your name and phone number if they require it.) The Police at Young say we first have to apply to the Mines Department and 10 they in turn will notify the police.

The weather today, Sunday, is perfect here and we will start work again in the morning.

Have seen Vic Hughes regarding No. 4 and they are quite happy at the arrangement. They do not wish to draw royalties all the time but would rather wait until we owe them the £1,000. and then pay them in one lump and they in turn will make leases over to us.

Have begun stripping on No. 4 and will most probably begin working on Tuesday.

Yours faithfully, 20

(Thos. E. Buckley)

EXHIBIT C.G.

Letter, Buckley to Driscoll of 13 November 1956

Exhibit C.G.

—
Letter,
Buckley to
Driscoll.

—
13th Nov., 1956.

C/- Magnesite Mines
Thuddungra
13.11.56.

To Mr. Driscoll,

Dear Bob,

Enclosed you will find an account from District Hospital Young 10 being for attention to Hargraves, am forwarding this to you as I presume Insurance will pay that also is a note from Dr. Rowe to say that Hargraves would be ready for light duties. He never turned up and I find out that Dr. Rowe has given him another week.

In regarding to mining last Friday No. 4 yielded approx. 40 tons it rained heavily again this weekend and there was no work yesterday "Monday" we again mined 40 tons, as it is a stone of good quality and requires little shooting I think we may stop there for a while unless we get below that quota.

Have seen Vic Hughes regarding No. 1 and we think that that is 20 all O.K. but first of all I have to go to town and discuss it with Mr. Logan Caldwell. I will notify you as soon as I have located him.
Until then,

Yours faithfully,
Thos. Buckley.

Exhibit C.H.

—
 Letter,
 Buckley to
 Driscoll.

—
 14th Nov., 1956.

EXHIBIT CH

Letter, Buckley to Driscoll of 14 November 1956

Magnesite Mines
 Thuddungra.
 14.11.56.

My Dear Bob,

In regard to No. 1 I have not located Mr. Logan Caldwell as yet to enter. I have sent the dozer over to test this evening with Vic Hughes' permission.

I will keep you posted on results.

10

Bob I don't know if I did the right thing in regard to B. Downey's. I'll tell you briefly what happened. He owed £30/10/- and the police were going to put him in for three months. He offered the Court £5 a week but they would only accept the full amount.

Now Bob he knows more about picking the foreign elements in the Magnesite than the rest of us and he is also an excellent worker.

Now Bob I've paid his warrant and arranged with Gordon Giugni to deduct £5 a week out of his pay. Now I'll take full responsibility and if anything goes wrong and there is any money owing to A.B.M. then I'll pay it.

20

Yours faithfully,

Thos. Buckley.

EXHIBIT C.J.

Letter, Buckley to Driscoll of 27 November 1956

Exhibit C.J.

—
Letter,
Buckley to
Driscoll.

—
27th Nov., 1956.

27/11/56.

C/- Magnesite Mines
Thuddungra.

My Dear Bob,

Am forwarding you Certificate of Discharge for I. Hargraves from Dr. Rowe. Hargraves started yesterday 25.11.56.

Also am able to tell you we received a Licence for Explosives 10 being B.-class No. 342 carrying 300 lbs. of Nitro C Compounds plus 500 Detonators being stored separately.

We are working No. 1 (top portion) and from Monday 19.11.56 to Friday 23.11.56 we mined approx. 210 tons. I think we can improve slightly on that as we are having drilling trouble, unfortunately the stone is big sometimes weighing up to 30 cwts or more so requires a lot of pepping and also a lot of cleaning.

Was speaking to Logan Caldwell regarding leases and prices, we can work No. 1 and 21 but they will not sell their leases only deal on the 10/- a ton basis. Later on we may be able to work No. 7 20 but not at the moment as it has to be discussed by all concerned in it. Being 4 Hughes, Miss Caldwell and Logan himself.

I am going to try and mine some rock with the dozer and two pickers on contract rates, hoping to begin this Thursday, it could be done easily with a ripper, and I think it can be done with a dozer only at the same time I would be opening another pit for the navy.

Am starting to rail this week-end with an order of 400 tons hoping it do a 1,000 over the three week-ends.

Could you let us know what the Break will be as Xmas. We at the moment are finishing on the 21.12.56.

30 The shaft sent up from Isas was wrong but we made it workable the shaft we wanted had an oil hole right down centre.

Yours faithfully,

Tom Buckley.

P.S. I believe that working on this mining lease entitled us to spare parts less sales tax. It cost us £3 odd for a coil for dozer last week. Let us know if that's right and how I can claim it.

Exhibit C.K.

—
Letter,
Buckley to
Driscoll.

5th Dec., 1956.

EXHIBIT C.K.

Letter, Buckley to Driscoll of 5 December 1956

5th Dec 1956.

C/- Mines

Thuddungra.

My Dear Bob,

We have now completed raiing all stone mined from No. 4 and the tonnage as near as I can make it over weighbridge at Weedallion is 253 tons "two fiftythree", 16 cwts, the rock we mined and railed from No. 4 was soft white powdery and seemed of good quality, but 10 nevertheless, being exposed to weather so long as soon as we started to load over grizley, it began to kick up and go through rails so ended up had to load direct onto haulage trucks thereby they may get excessive **fines**.

Am still having trouble with drilling in No. 1. Have taken up to 4 and 5 hours to get a hole down the rock is still big and dirty needing a lot of popping and I think there will be a lot of waste, am moving over to another position in No.1 this evening I have stripped and exposed a good surface rock but we will get the proof as soon as we start with shovel. 20

Have applied to 80 acres over the back of No. 21. There is a little rock over there I know but how much or how deep we have to find out. There is good quality rock in places in No. 21 but it is only 2' to 4' or 6' deep/. Could be worked better with dozer and ripper plus a couple of pickers, unfortunately we have no ripper or winch.

E. Hargraves and J. Curtis have finished up on wages. Hargraves finished up on the 27/11/56. Curtis J. finishing 28/11/56 so if they have any holiday pay coming you can fix that up. Hargraves has finished altogether. J. Curtis is now picking off dump at 30/- a ton.

In regard to Mr. Palmer's union business I'll see Lash when next 30 he is out here. He is not here again to-day.

Well Bob that about finishes us in my next note will enclose a plan of new lease, that I have applied for.

Yours faithfully,

T. Buckley

P.S. Last Thursday Jim Patterson navy driver for Young Mining Co. was crushed between shovel and truck. He died that night and was buried Monday evening. We closed for funeral after dinner.

EXHIBIT 7

Letter, Buckley to Driscoll of 22 January 1957

Exhibit 7.

—
Letter,
Buckley to
Driscoll.

22/1/1957.

—
22nd Jan., 1957.

Mr. Driscoll

Dear Bob:

During Christmas period 126 tons of stone was railed, 15 tons picked up at dumps at 30/- and 111 loaded off main dump at 13/7. That cleaned us out of rock. Two rail trucks K-357—25 tons 2 cwts and S-8080—15 tons 9cwts came from No. 15 pit, the balance being 10 from No. 1. Any payment of royalties for No. 1 are to be made out to Hughes & Caldwell, payable to Mr. L. Caldwell.

Braham stopped and worked on the 14/1/57 at my request, together we went over the navy checking all oils and adjustments and greasing points. We did not work the shovel on the Monday as Mr. Lark's trucks did not turn up. I believe they were working on them and painting.

I myself drove the shovel. The four days worked last week we produced 130 tons. Have now started off J. Ricketts as driver of navy. We produced 40 tons yesterday 21/1/57. This morning the drop pin 20 on the bucket broke in two. We had it welded but broke again so am waiting for a new one to be made in town.

Healy was here during weekend and fixed motor but there is a lot more to do. He was going to arrange to come up next weekend and give motor overhaul, also work on bucket and wearing parts on clutches etc.

We are going to rail again starting 1st or 2nd February, if possible. Would appreciate a talk on the spot if possible as soon as possible.

Yours faithfully,

Exhibit 8.

—
 Letter,
 Buckley to
 Driscoll.
 —

12th Feb., 1957.

EXHIBIT 8

Letter, Buckley to Driscoll of 12 February 1957

Thuddungra
 Tuesday 12/2/57.

My Dear Bob,

Re: Brian Downey

He assured me he'd be here after Xmas. He has not been heard of since and Alf George has taken his place. He had also promised to do fencing for L. Caldwell during Xmas and Caldwell was looking for him. 10

Leases No.s 9 and 20 belong to Non Metallic. Joe Canderle has been testing No. 9 and No. 20 was tested 18 months or so ago by Joe. He put two lines of holes in 12 to 15' deep and also used the dozer and from what I can make out found Nil. Bob Wade did the drilling and he verified the results.

We railed 400 tons over weekend and have approximately 100 tons left. The navy has held us up again breaking the drive chain from clutch shaft and tearing teeth of sproggit. Healey is sending two men up with parts to fix. While pulling sproggit off found it had been welded to shaft. 20

All these hold ups have cost us a lot of time (another two or three days now)/. We haven't a hope of railing 1,000 tons now so suggest we forget railing and go on stockpiling. We are going to turn into the floor in No. 1 putting another road in with dozer tomorrow. We then maybe be in a position to rail 1,000 in March, or leave railing until April, having a chance of sending 1,000 two or three months running.

I definitely will not rail this coming weekend, so if you wish to send any this month let me know before the 20th so I can order trucks for the 23rd. 30

Yours faithfully,

(sgd.-) Tom Buckley.

EXHIBIT 10

Letter, Buckley to Driscoll of 4 March 1957

Exhibit 10.

—
Letter,
Buckley to
Driscoll.—
4th March, 1957.C/- Magnesite Mines,
Thuddungra.
4/3/1957.

My Dear Bob,

Just a few lines in regard to last week. The chap from "Inter" that came up here worked well and long hours while here although a
is so

10 good day seemed wasted trying to find out why motor/dead. The results to me seems that the machine is twice as good as it was, but definitely not 100%. While here we pulled radiator off and fixed bad leak and checked over adjustments. It would pull a ripper now and I'd suggest that we get a winch and ripper for it.

There is a Tourneau winch off D7 at Quarry. Maybe you could see if it would fit TD14. There is also a ripper at Quarry if they are not using them. It would probably want teeth done up a bit as I remember it unless you took the shoes off it wouldn't go in the ground.

I am quite sure that with the use of the ripper I could work
20 Lease No. 21 with two extra men throwing out. There is other places on No. 1 that could be worked the same way.

I have seen Asters re their property and they are quite okay regarding what we are doing. I cannot replace their fence for a few weeks otherwise I couldn't back fill the hole we have made on their property, Lease No. 15. After pointing that out to them they were quite happy. Actually it is Norman Regan who is making the noise.

Incidentally Bob, Asters wants to know if there is any agreements regarding mining on their property as their Solicitor cannot seem to find any. (They bought the property about 18 months ago off Frank
30 Hughes.) I told them I would ask you as I didn't know of any, only a rental paid each year due about now.

Will write a note to Railways Cootamundra regarding derailing of S truck at Weedallion placing the onus on Lark and suggesting they write to him.

The floor of No. 1 is yielding rather well from last Monday till Saturday inclusive mined 300 tons, but of course there is a lot of cleaning and popping to be done.

Vic Hughes says he has sent you a copy of the letter he sent to B.H.P.

40

Yours faithfully,

(Sgd) T. Buckley

Exhibit C.P.

—
Letter,
Driscoll
to Buckley.

9th May, 1957.

EXHIBIT C.P.

Letter, Driscoll to Buckley of 9 May 1957

9th May, 1957.

Mr. T. Buckley,
c/ Mr. Giugni,
Box 21, Post Office,
YOUNG. N.S.W.

Dear Tom,

Many thanks for your communication of the 2nd May, bringing me up to date with the railings and your stock figure at that date. 10

I note you have ordered 400 tons for railing, week ending 2nd May and I would assume at the end of April, you would have had approximately 350 tons on hand. I need this figure, really, for some calculations at this Office.

The pit has dropped considerably over the period of the last few weeks and at the present time, we are definitely running at a loss but I hope that with the aid of the ripper and dozer, you will, within the next few weeks, be able to rectify this downward trend.

In connection with the royalties paid to Vic Hughes, it would appear that we here at Head Office are unable to reconcile your 20 figures of railings with our records. You show the following information:

Date: 23rd October, 1956.

Your Tonnage: 16 ton 8 cwt.

Our Tonnage.

No record is held at this Office of a railing of 16 ton 8 cwt. on this day. We have, however, railings on that date, in excess of this tonnage. Please advise the consignment Note Number of this railing.

Date: 24th October, 1956. 30

Your Tonnage: 17 ton 11 cwt.

Our Tonnage: Nil.

Remarks: No record held of railing 17 ton 11 cwt.

Please advise consignment note number.

9th May, 1957.

Date: 25th October, 1956.

Your Tonnage 16 ton 9 cwt.

Our Tonnage: Nil

Remarks: No record held of railing 16 ton 9 cwt. but we have a railing of 25 ton 2 cwt. on this day. Please advise 40 the consignment note number relative to the 16 ton 9 cwt. railed.

Date: 2nd December 1956.

Your Tonnage: 203 ton 8 cwt.

Our Tonnage: 187 ton 18 cwt.

Remarks: It would appear that truck number 18402 for 15 ton 10 cwt. has been duplicated on your consignment note. It appears as a third item on 1941 and it appears again as a third item on 1942, both on 2nd December. You will note that 1942 indicates magnesite taken from our own lease and not subject to royalty. In the case of railings on 23rd, 24th and

10 25th there is nothing on the dockets at all, nor on the consignment notes to indicate they had in fact come from No. 4 and consequently, it has been assumed, this tonnage came from 15 and 16. Please advise on these matters as soon as possible, so that we can clear up the royalty position with Vic. Hughes regarding No. 4.

It is absolutely essential Tom, that you get the maximum production and rail as much as possible during the next few weeks.

20 It would be appreciated if you would advise your stock on hand at the 31st May, as we will be taking out profit figures as at that date and it is essential to know what stock you have (estimated only) for this purpose.

Exhibit C.P.
(Continued)

—
Letter,
Driscoll
to Buckley.

—
9th May, 1957.

Yours faithfully,

For AUSTRALIAN BLUE METAL LTD.
Secretary

Exhibit C.Q.

Letter,
Driscoll to
Buckley.

10th May, 1957.

EXHIBIT C.Q.

Letter, Driscoll to Buckley of 10 May 1957

10th May, 1957.

Mr. T. Buckley,
c/- Mr. Giugni,
Box 21, Post Office,
YOUNG. N.S.W.

Dear Tom,

As mentioned in my communication of a couple of days ago, your figures for the last few months are very bad. 10

It is actually costing for cartage and dumping, £2/4/10 per ton, which of course, is stupidity. It will be necessary for you, therefore, to arrange for Lark to receive his deliveries at 30/- per ton and not 35/- as previously and consideration must also be given to the cost of carting to railhead, remembering that here in Sydney, for a 10 mile haul, we are getting 7/3 per ton.

I feel, therefore, that Mr. Lark must be contacted and told his rate from the beginning of next pay period, will be 30/- and not 35/- per hour, also 7/6 per ton and not 10/-. I would appreciate your discussion with me of these matters, prior to a final arrangement with 20 Lark of these new rates and no doubt, you will be able to give me a phone call in connection with the matter.

I have not heard any report yet on McAndie's visit to Young. I tried to contact him at B.H.P. but he won't be back till Monday. Any information you can give in connection with discussions with McAndie would be appreciated.

It is the general feeling at Head Office that 10/- per ton, now as an increase, is not enough and the increase must be at least £1 per ton or consideration will be given to immediately pulling out of Young and forgetting about magnesite. Please advise. 30

Yours faithfully,

EXHIBIT 12

Letter, Buckley to Driscoll of 15 May 1957

Exhibit 12.

—
Letter,
Buckley to
Driscoll.

15th May 1957.

—
15th May, 1957.

My Dear Bob;

Just received two letters from you here at Guignis. Bob I have already cut Lark back to 30/- beginning this pay.

I'll give you an explanation of tonnages as soon as I return to mine.

The weights I gave you are from No. 4. The small tallies came 10 as we railed it during week. They were included in rock that a couple of men were picking up by hand and the big quantity went out in a weekend railing. I guarantee these weights as Weedallion weights.

Yours faithfully,

(Sgd) Thos E. Buckley

Exhibit C.S.

EXHIBIT C.S.

Letter,
Buckley to
Driscoll.

Letter, Buckley to Driscoll of 16 May 1957

16th May, 1957.

C/- Mines, Thuddungra.
16th May, 1957

My dear Bob;

In regard to royalties on P.M.L. 4.

On the 23.10.56 we were mining on that lease and as Hughes shovel was idle at the time we were able to rail direct from pit. On the 23rd of the 10th we loaded—2—US.25595 and 8705 to a total weight of 48 tons 9 cwt. 16 tons 8 cwt came from No. 4 the balance 10 being loaded by hand from No. 15.

On the 24.10.56 we loaded a K-27140 25 tons 4 cwt, 17 tons 11 cwts. being from No. 4, the balance being from No. 15. We again loaded a K.23967 on the 25.10.56 with 25 tons 2 cwts of which 16 tons 9 cwts came from No. 4, the balance being from No. 15 The consignment notes were 1938 and 1939.

We stockpiled after that at No. 4. Couldn't find enough to pay our way so eventually shifted.

On the 30th November we began a weekend railing, being the first railing for December. First we shifted all we had at No. 4 which weighed out at 203 tons 8 cwts then we loaded the balance from No. 15. I dated both pits the 2nd December.

In regard to the duplication of rail truck S-18402, that is evidently an error on my part. Whether it belongs to No.4 or No.15 I would not have a clue now. I have spoken to Vic Hughes about it and we have decided to place it as belonging to No. 15 so that gives you the following rail tonnages from No. 4.

23.10.56	16 tons	8 cwts	
24.10.56	17	„	11 „
25.10.56	16	„	9 „
2.12.56	187	„	18 „

Total 238 Tons 6 cwts @ 10/-

Check on the railings of the 2.12.56 and see if you were paid for an S. that I didn't have down. If such was the case I'd say S-18402 belongs to No. 4.

We are doing everything possible to get as much stone as we can. I have ordered 250 tons for this weekend which will make 885 tons so far this month and we should now be assured of a 1000 tons this month and at end of month will tell you what we have on hand.

Re letter 10.5.1957.

A few days ago I informed Lark that at the end of pay ending 18th I was dropping his trucks all to 30/- an hour pointing out he was still better off than the other pits.

In regard to carting to rail at a lower rate I'm afraid we would draw a blank as Hughes have been paying 10/- and we have to use the same trucks. Joe Canderle pays 9/- to one truck and he has promised to increase it to 10/-.

McCandie's visit here told us nothing. He asked a lot of questions regarding how many men we employed and what rates we were paying our trucks, what hours we worked, and I told him we were working almost 7 days a week and long day. We paid a lot of overtime and we had to do this to win any stone at all. He could not tell me if there would be any rise or not as he had to wait till he returned to B.H.P. before a decision could be made.

The pit has picked up to 40 or 50 tons a day but I'm afraid the life will be short. The ripper has come in handy for stripping but wherever we strike stone it's not so hot. Its also leaking a lot of oil on the bands.

I have tried a few tests with it but so far have drawn nil.

Bob I hope this is all clear to you and later I'll try and ring you or see you.

Yours faithfully,

(sgd) Thos. E. Buckley

Exhibit C.S.
(Continued)

—
Letter,
Buckley to
Driscoll.

—
16th May, 1957.

Exhibit 6.

—
 Letter,
 Buckley to
 Driscoll.
 —

20th May, 1957.

EXHIBIT 6

Letter, Buckley to Driscoll of 20 May 1957

The Mines,
 THUDDUNGRA.
 20.5.57.

My Dear Bob,

The week-end raling amounted to 289 tons and we have approx. 100 tons on ground.

I checked up with Guigni regarding PML.7 we had discussed it before. After I went over to the crust and checked. It has been 10 applied for and is going through on an A.T.E. Logan Caldwell is the applicant and it is in conjunction with Hughes.

Peter welded the saddle on navy but he said it should be plated. He also did a few hours welding for Vic Hughes so that squares us up for use of welder.

We are still carrying on with our pit on No. 1 although it looks as if it is weakening but we have opened a fair area of floor which we can fall back on.

I'll approach Caldwell regarding royalties as soon as I receive check probably Wednesday unless I have to go to town sooner. 20

My Miner's Right No. is 1956/68 Lachlan at Young. I applied for 80 acres on the 28/11/56.

Yours faithfully,
 Thos. E. Buckley

EXHIBIT C.T.

Letter, Buckley to Driscoll of 28 May 1957

Exhibit C.T.

—
Letter,
Buckley to
Driscoll.—
28th May, 1957.Tuesday, 28th.
The Mines,

My dear Bob,

Enclosed are weights for weekend approximately 123 tons.

I cannot get any away before end of month so will rail again coming weekend for June. We have approximately 150 tons on hand. We are having trouble with drive chains on navvy, they keep jumping
10 off. It's not so very long ago since the quarry sent the gears and chains up and fitted same. I think they are out of alignment, the cause being worn bearings on the big main shaft that comes through to the big drive gear. I will get Joe Canderle opinion of it later and the two of us should find fault.

Logan Caldwell was here yesterday evening and he says that they are prepared to talk on royalties any time after this Thursday as Frank Hughes will be finished shearing by then and if you would ring him at his home in Demondrille St. Young, they will make arrangements to meet you out here at the mine. He also mentioned
20 that he wishes to have the cheques made out to Hughes and Caldwell.

Yours faithfully,

(sgd) Thos/E. Buckley.

Exhibit 13.

Letter,
Buckley to
Driscoll.

2nd June, 1957.

EXHIBIT 13

Letter, Buckley to Driscoll of 2 June 1957

The Mines,
2nd June, 1957.

My dear Bob,

In reply to your letter of the 27th re royalties from P.M.L. 1. to Hughes and Caldwell. Following I will list Sheet Nos. with dates plus Truck Nos. and Weights. These will be all from No. 1 as there are a few other trucks on same pages that I don't list, then you will know they are from No. 15. 10

Sheet 1945 — 14/15/12/56.

U-24622	=24 tons 9 cwts	K-8021	=25 tons 0 cwts
U-24803	24 „ 9 „	K-27215	24 „ Odd
K-23787	25 „ 6 „	U-25522	24 „ 2 „
S-19437	15 „ 6 „	U-23964	24 „ 4 „
S-17697	15 „ 6 „	K-26893	25 „ 10 „

Sheet No. 1947 — 26/12/56.

S-21305 15 tons K-21624 25 tons 5 cwts

S-19432 15 „

Sheet =1948 — 9/1/57. 20

Ton Cwt.

S-15936 15 „ 8 „ S-31 15 tons 3 cwts

Sheet No. 1952 — 14/2/57

S-12960 15 ton 15 cwt. S-17909 15 tons

Sheet 1956 — 15/3/57.

U-24537 23 tons 14 cwts K-27160 24 tons 16 cwts

K-506 25 „ 10 „ K-27417 25 „ 10 „

K-21645 24 „ 16 „ K-2940 25 „ 0 „

U-24824 24 „ 18 „ KC-21671 25 „ 3 „

K-8928 25 „ 0 „ K-8464 25 „ 9 „ 30

Sheet 1957 — 15/3/57.

K-21889 25 ton 14 cwt. S-1235 15 tons 14 cwts

K-11684 24 „ 16 „ K-7729 25 „ 8 „

U-24808 25 „ 10 „ K-24636 25 „ 0 „

U-21574 23 „ 9 „

From there on we seem to be up to date.

Unfortunately, Bob I couldn't get any extra away during May, but I have every hope of getting a thousand away this month. We have started off well with 225 tons on Saturday. We have a few repairs to do today. I will write or phone you during next weekend. 40

Yours faithfully,

(sgd.) Thos. E. Buckley.

EXHIBIT 14

Letter, Driscoll to Buckley of 4 June 1957

Exhibit 14.

1. Letter,
Driscoll to
Buckley.

4th June, 1957.

MEMO

Form No. 56

4th June, 1957.

To MR. TOM BUCKLEY — YOUNG.

Attached hereto is a letter received this day from B.H.P. together with an official order for magnesite.

Please note that we have certain quantity bonus rates with this order, which no other operator on the field has. This must be kept strictly confidential and I suggest you tear up the copy of the order when you have read it and are acquainted with the detail of it.

Glad to receive your advice this morning of the big tonnage you are getting at the present time.

R. M. DRISCOLL. . .

Exhibit 14.
(Continued)

EXHIBIT 14—Continued

1, Letter,
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.

**Letter, The Broken Hill Proprietary Coy. Limited to Plaintiff of
29 May 1957**

29th May, 1957.

29th May, 1957.

The Manager,
Aust. Blue Metal Ltd.,
10 Martin Place,
SYDNEY.

Dear Sir,

J.12/1A MAGNESITE — WEEDALLION:

10

We take pleasure in advising you that we are prepared to increase our price for magnesite by 10/- per ton to £4.5.0. per ton base price f.o.r. Weedallion.

We enclose our Order No. 0.1024 replacing our order No. 0.996.
We would appreciate your acceptance of our order in due course.

Yours truly,

Manager.

EXHIBIT 14—Continued

**Letter, Order No. 0.1024 The Broken Hill Proprietary Coy. Limited
to Plaintiff of 29 May 1957**

Exhibit 14.
(Continued)

3. Letter,
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.

29th May, 1957.

The Manager,
Australian Blue Metal Limited,
10 Martin Place,
SYDNEY

ORDER NO. 0.1024
(Superseding our Order No. 0.996)

10

DATE 29th May, 1957

Despatch per Rail
Deliver to B.H.P. Morandoo
Sid

MAGNESITE — WEEDALLION

QUANTITY:

Your maximum production for the period

QUALITY:

20

High grade specially selected magnesite, free from adhering
clay impurity and from any quartz or dolomite inclusions.

Chemical Analysis not to exceed 2% of either SiO₂ or CaO nor
to be less than 44% MgO.

Sizing to be not more than nine inches dimensions, and to contain
a minimum of fines less than one and a half inches.

RIGHT OF REJECTION:

We reserve the right to reject any truck which is outside these
specifications and to cancel our order should you repeatedly
supply off-grade material.

PRICE:

30

Basic rate of four pounds five shillings (£4.5.0.) per ton f.o.r.
Weedallion, subject to the following bonuses or penalties to be
based on our weekly bulk analysis:—

Bonus for each 1% MgO above 45% — 4/- per ton

Penalty for each 1% MgO below 44% — 4/- „ „

Bonus for each 1% SiO₂+CaO below 3% — 4/- per ton

Penalty for each 1% SiO₂+CaO above 4% — 4/- „ „

A Bonus will be paid for tonnage delivered from your present
leases at Thuddungra to Morandoo, averaged weekly for each suc-
cessive four weekly period as:

40

0-150 tons per week	no bonus base rate	£4.5.0. per ton
150-175 tons per week	5/- bonus base rate	4.10.0. „ „
175-200 „ „ „	10/- „ „ „ „	4.15.0. „ „
200-225 „ „ „	15/- „ „ „ „	5. 0.0. „ „
over 225 „ „ „	20/- „ „ „ „	5. 5.0. „ „

Exhibit 14.
(Continued)
—
3, Letter,
The Broken Hill
Proprietary Coy.
Limited to
Plaintiff.
—
29th May, 1957.

Should cumulative tonnage from commencement of this bonus exceed 250 tons per week average, then such excess may be applied to the current four (4) weekly period but not retrospectively to previous months, for the purpose of calculating average delivery rate for that period provided that after a period of one (1) year this cumulative position shall commence afresh.

WEIGHT & PAYMENT:

Payment to be made fortnightly, based on trucks received at Newcastle, the railway weights of which are available.

Any freight penalty for underloading or overloading to be 10 deducted from your account.

PRICE:

One (1) year from 1st June, 1957.

THE BROKEN HILL PTY. CO. LIMITED

EXHIBIT C.U.

Letter, Driscoll to Buckley of 6 June 1957

Exhibit C.U.

Letter,
Driscoll to
Buckley.

6th June, 1957.

6th June, 1957.

RMD:MAV

Mr. T. Buckley,
c/- Mr. Giugni,
Box 21, Post Office,
YOUNG

Dear Tom,

I had a long chat with Logan Caldwell on the telephone at Young
10 last night and subject to final confirmation from him, after his discus-
sion with the partners, I have arranged that the royalty on all magne-
site mined by us from the 1st June, will be at 6/- per ton instead of
10/- in effect, the position now appears to be this:

Assuming we have a production of 1000 ton per month, we have
now gained a further margin of profit in the following degree:

(1) 1000 tons at 10/- increase per ton from B.H.P.	£500
(2) By reduction of cartage rates payable A. Lark:	
4 trucks each @ 8 hours a day @ 35/- per hour:	£56
4 trucks each @ 8 hours a day @ 30/- per hour:	£48
20 Saving per day on transport	£ 8
At 50 tons per day, on 1000 tons	£160
(3) Decrease in royalty payment from 10/- to 6/- at 1000 tons	£200
(4) On the quantity bonus not available to us earlier, any order 1000 tons @ £1	£1000
	<hr/>
Total additional monthly profit now available	£1860

It will be seen therefore, that provided you can maintain sales at
30 1000 tons per month minimum, the proposition of magnesite mining
does become a reasonable proposition.

Please keep this information strictly confidential and I would
suggest when you have digested the figures I have given above, tear
the memo up and destroy it thoroughly.

In connection with the royalty reduction, I requested Logan
Caldwell to let you know when final confirmation has been received
from his partners, and when this has been confirmed, please arrange
for Mr. Giugni to make the appropriate alteration to the agreement
immediately and one copy to be signed by Logan Caldwell on behalf
40 of the others, as soon as it is available.

By the time you receive this communication, you will have
received my telegram regarding the bearing for the navy.

Yours faithfully,

for AUSTRALIAN BLUE METAL LIMITED.

Exhibit C.Y.

—
 Letter,
 Buckley to
 Driscoll.

10th June, 1957.

EXHIBIT C.Y.

Letter, Buckley to Driscoll of 10 June 1957

10th June, 1957.

My Dear Bob:

Enclosed find consignment notes for a couple of trucks plus sheet from Caltex.

Will be railing 250 next weekend due to no plane leaving city until 4 p.m. Friday failed to get shovel working until after lunch Saturday.

Opened up new pit on No. 1 today and it's coming in quite 10 well, we mined 50 tons today and the stone can be sent direct to rail if we had a ramp. Saw railway people at Milvale 5 p.m. this evening and hope to have some word from them tomorrow after they have been in touch with Cootamundra.

I could build a temporary loading ramp at Weedallion in a day with a dozer if given permission from costa.

Suggest you chase it up down there.

Yours faithfully,

(sgd.) Thos. E. Buckley.

EXHIBIT 1

Letter, Driscoll to Buckley of 13 June 1957

Exhibit 1.

—
Letter,
Driscoll to
Buckley.

13th June, 1957.

—
13th June, 1957.

Mr. T. Buckley,
c/- Mr. Giugni,
Box 21, Post Office,
YOUNG

Dear Tom,

I have just had a ring from Mr. McAndie from B.H.P. They
10 have apparently just received the first section of the new magnesite
and he agrees it looks to be a very good sample very heavy, but he
stated there was 3% or 4% of brown clay adhering to the magnesite,
which will nullify the actual bonus that can be gained by good quality
stone, if it does not cut out.

We all appreciate the fact that B.H.P. are pretty tough but I
would suggest that if you can continue to watch it and keep the clay
to a minimum, we will possibly receive bigger bonus payments for
our magnesite.

20

Yours faithfully,
For AUSTRALIAN BLUE METAL LIMITED.
SECRETARY

Exhibit 15.

—
Letter,
Buckley to
Driscoll.—
19th June, 1957.

EXHIBIT 15

Letter, Buckley to Driscoll of 19 June 1957c/- Mines,
Wednesday, 19/6/57.

My Dear Bob,

Enclosed are rail weights for weekend 18th near 300 tons making approximately 550 tons this month to date.

The new pit is coming along well. Yesterday we mined 80 tons. The old pit that we were in was of very poor quality and very dirty and I think a lot of silica. As soon as you get the test back from 10 B.H.P. let us know immediately.

I met the railway people yesterday regarding ramp. A Mr. Sellick and engineer. They will allow us to build a ramp ourselves, but they will not build it. They will supply us with secondhand timber which we will have to pay for. They will charge us from 1/- to 10/- a year rent and we will also have to sign an agreement for responsibility for it and in event of leaving have to demolish it or leave it safe. (I think you had better take it up down there). I offered to build the dirt if they built the woodwork, which I think was quite fair.

They also think there is an agreement between the railways and 20 A.B.M. for responsibility on one of the existing ramps there now. If so they suggest we make an agreement with Non Metallic for them to have responsibility. From what I can find out, Hughes bought the ramp off A.B.M. and Non Metallic are using it, and then other people claim that Hughes is using the ramp we built. I cannot find much out at all.

May be you could find out which one we built, the one near the goods shed or the one near the wheat silo.

If the Young Mining Co. ever get a surplus of rock and want to send some to B.H.P. there will be chaos at siding. 30

Yours faithfully,

(sgd.) Thos. E. Buckley.

EXHIBIT C.Z.

Letter, Buckley to Driscoll of 25 July 1957c/- Mines, Thuddungra.
25/7/57.

Exhibit C.Z.

—
Letter,
Buckley to
Driscoll.—
25th July, 1957.

My Dear Bob,

Enclosed are consignment notes of railing to date and bringing the total tonnage for this month to 730 tons approx.

If, as we hope, the shovel is working sometime during weekend, we may still get close to 1,000 tons. In the event of Fred being sure 10 shovel will be working, will order 100 tons for Sunday.

Unfortunately had a hold up in ramp construction. Lark was going to build that while we were working on navy. He went down last Friday morning, had a look at it, then decided to wait till I came back (the following Tuesday). He is in Sydney now. It is under way now. I have Jimmy Haylan and another chap down there. We should have it finished ready for use beginning next month.

Re, J. Ricketts—Workers Comp. He will be 21 on the 9.1.58 (Being 20 now)

20 Hospital — Sacred Heart Hospital, Young.

Doctor — Dr. Charles Rowe, Young.

P.S. Get J. O'Neil to send up some refills for pen.

Yours sincerely,

(sgd) Thos. E. Buckley.

Exhibit D.A.

—
 Letter,
 Buckley to
 Driscoll.

1st Aug., 1957.

EXHIBIT D.A.

Letter, Buckley to Driscoll of 1 August 1957

c/- Mines, Thuddungra.
 1/8/57.

My Dear Bob,

Enclosed are final consignment notes for July. The final tally for month was just over 900 tons, so considering weather and repairs to shovel that wasn't too bad.

The ramp is finished and we are now using it. It rained before we could gravel so later on I will have to take some more gravel 10 down. We were bogging on it yesterday.

The shovel seems to be 100% better now, and we have learned a lot on the maintenance of it.

Bob, from this pay coming up, or from today the 1.8.57 I have promised to pay Max Ryan more money. He is now driving navvy in place of Ricketts who is on comp. We will pay him the same as Ricketts and they will work as a team—driving navvy, servicing and doing the boxing, from compressor. Don't let me down on this Bob or I will be less a navvy driver, and the makings of a good one.

Yours faithfully, 20

(sgd) Thos. E. Buckley.

EXHIBIT C.B.

Letter, Buckley to Driscoll of 6 August 1957

6th August, 1957.
c/- Mines, Thuddungra.

Exhibit C.B.

—
Letter,
Buckley to
Driscoll.

6th Aug., 1957.

My Dear Bob,

Well everything seems to be running smoothly here. Our ramp is working well. After today's raling is loaded will take down two more loads of gravel and that should be it. At the moment am raling 60 tons a day. That is the order placed with railways.

10 Vic Hughes is very worried now we are in a patch of stone. Doesn't want us to rail more than 8,000 tons a year. He tells me you agreed not to send more than that for fear of flooding market and they would be all out of work. "I await your reply on that". I told him my instructions were to get away 1,000 to 1,100 a month.

After this pay, Bob we should be running quite well there should be only four men. Ricketts Ryan Piper and Haylan plus myself on wages, raling direct is going to be a saving on pit meaning only three trucks on husty (except when railway cannot put trucks in for us. Then we will have to have an open truck to dump).

20 6th August, 1957.

The plant is running quite well. The navvy extra well except for using oil. The dozer is O.K. I have to put a new hose on water jacket. The compressor is running well. I may want some clutch parts later on.

The building of ramp cost us 32 hours labour for one of larks' men at 10/- 42 hours for J. Haylan including 20 with dozer. £2. to Ashton Bros. for box timber taken off xxxxx their property. 30 second hand sleepers from Railways. Price quoted 3/- each.

30 Cartage of gravel from mine lease at 10/- a ton (listed on day sheets).

Now Bob, for myself, I want you to see Les O'Neil or one of them and tell them I'd like a rise in wages at home. Its impossible to live up here at £5 a week. I'm always bringing a couple of pounds or so back from home and there's hardly enough at home now with three girls going to High School.

When we get our Group Certificate found out, we get less money than last year, and for being home only two days every fortnight plus half that spent at quarry. Well I don't think that's a fair go at all nor worth it.

40

Yours faithfully,

(sgd) Thos. E. Buckley.

Exhibit C.A.

—
Letter,
Buckley to
Driscoll.—
7th Aug., 1957.

EXHIBIT C.A.

Letter, Buckley to Driscoll of 7 August 1957c/- Mines, Thuddungra.
7th August, 1957.

My Dear Bob:

Storm clouds are now gathering out here. It looks as if we are running into trouble with Hughes, since we have been on this good show. Vic has been looking down in the mouth, and this morning he informed me I have to go and see Frank Hughes as we had no right to mine where we are, that he never ever gave us permission to cross the creek, that the line from the break in the fence was meant only to the gully, and not right across the lease, that something has to be done about it as they are only getting 10d. a ton out of it.

But the whole gist of it is they are jealous and I believe they are trying to force us out.

Now Bob, I'll see Frank and then I'll ring you (before you get this). But it looks bad to me and I think someone will have to come up and sort it out.

He definitely said from the break in the fence across the lease.

Yours faithfully, 20

(sgd) Thos. E. Buckley.

EXHIBIT B.X.

Exhibit B.X.
—
Summary of
Correspondence.
—

1. Letter to Mr. L. H. Caldwell from A.B.M. —
15th May 1957
2. Letter from Mr. L. H. Caldwell to A.B.M. —
16th May 1957
3. Letter from Mr. L. H. Caldwell to A.B.M.
23rd May 1957.
4. Letter to Mr. L. H. Caldwell from A.B.M. —
7th June 1957.
- 10 5. Letter to Mr. L. H. Caldwell from A.B.M. —
27th June 1957.
6. Letter from Mr. L. H. Caldwell to A.B.M. —
27th June 1957.
7. Letter from Mr. L. H. Caldwell to A.B.M. —
30th June 1957.
8. Letter to Mr. L. H. Caldwell from A.B.M. —
1st July 1957.
9. Letter to Mr. L. H. Caldwell from A.B.M. —
26th July 1957.
- 20 10. Letter to Mr. L. H. Caldwell from A.B.M. —
15th Aug., 1957.
11. Letter to Mr. L. H. Caldwell from A.B.M. —
13th Sept., 1957.
12. Letter to Mr. L. H. Caldwell from A.B.M. —
22nd Oct., 1957.
13. Letter from Mr. L. H. Caldwell to A.B.M. —
24th Oct., 1957.
14. Copy letter to Mr. L. H. Caldwell from A.B.M. —
11th Nov., 1957.
- 30 15. Letter to Mr. L. H. Caldwell from A.B.M. —
28th Nov., 1957,
16. Letter from Mr. L. H. Caldwell to A.B.M. —
2nd or 3rd Dec., 1957.
17. Letter to Mr. L. H. Caldwell from A.B.M. —
16th Dec., 1957.
18. Letter to Mr. L. H. Caldwell from A.B.M. —
31st Dec., 1957.
19. Letter from Mr. L. H. Caldwell to A.B.M. —
2nd Jan., 1958.
- 40 20. Letter to Mr. L. H. Caldwell from A.B.M. —
21st Jan., 1958.
21. Letter from Mr. L. H. Caldwell to A.B.M. —
10th March, 1958.
22. Letter to Mr. L. H. Caldwell from A.B.M. —
28th March, 1958.

Exhibit B.X.

1, Letter,
Plaintiff to
Caldwell.

15th May, 1957.

EXHIBIT B.X. (1)

Letter, Plaintiff to Caldwell of 15 May 1957

15th May, 1957

JEH:CES
Mr. L. H. Caldwell,
YOUNG.

Dear Sir,

In accordance with our agreement with you dated, 31st January, 1957, we enclose herewith this Company's Cheque, No. 7449 for £794.6.0., being Royalty of 10/- per ton on Magnesite mined from 10 P.M.L. 1 from December, 1956 to 30th April, 1957.

Following is a statement showing monthly tonnages, giving a total of 1,588 tons 12 cwt.

31/12/56	352 tons	5 cwt
28/ 2/57	432 „	10 „
31/ 3/57	625 „	2 „
30/ 4/57	178 „	15 „

Yours faithfully,

for AUSTRALIAN BLUE METAL LIMITED.
SECRETARY.

20

EXHIBIT B.X. (2)

Letter, Caldwell to Plaintiff of 16 May 1957

Exhibit B.X.

2. Letter,
Caldwell to
Plaintiff.

May 16th 1957.

16th May, 1957.

The Secretary,
Australian Blue Metal Co.,
Challis House,
Martin Place,
SYDNEY.

Dear Sir,

10 Up to date Hughes & Caldwell have not received any proceeds from the mining on P.M.L. 1 by your Company. By agreement signed by your Manager at the Mines Mr. T. Buckley. Hughes & Caldwell were to receive 10/- per ton for all Magnesite mined by your Company.

To date approx. 3,000 tons have been mined from P.M.L. 1

Would you make all cheques out in favour of Hughes & Caldwell and post to me at the above address with statements.

Yours faithfully,

Logan H. Caldwell.

Exhibit B.X.

3. Letter,
Caldwell to
Plaintiff.

23rd May, 1957.

EXHIBIT B.X. (3)

Letter, Caldwell to Plaintiff of 23 May 1957

May 23rd 1957.

The Secretary,
Australian Blue Metal Ltd.,
Challis House,
Martin Place,
SYDNEY.

Dear Sir,

Your letter of the 15th May 1957 (JEH:CES) enclosing cheque 10 of £794. 6. 0. being for Royalty of 10/- per ton on 1588 tons 12 cwt of Magnesite mined from P.M.L. 1 was received.

Your statement shows 1588 tons 12 cwt mined from December, 1956 to 30th April, 1957.

According to truck numbers and weights handed to me by your Mr. Buckley the tonnage railed at Weedallion Railway Siding for the period from December, 1956 to 30th April, 1957 is 2471 tons 6 cwt a difference of 882 tons 14 cwt. short in your statements.

To enable me to check your weights against weights given to me by Mr. Buckley it would be necessary for you to show the numbers 20 of the railway trucks and their respective weights in your statements.

Yours faithfully,

Logan H. Caldwell.

P.S. I understand that Mr. Buckley will be seeing you re the above at the week-end.

L.H.C.

EXHIBIT B.X. (4)

Letter, Plaintiff to Caldwell of 7 June 1957

7th June, 1957

JEH:CES
Mr. L. H. Caldwell,
54 Simondrille (Sic) Street,
YOUNG.

Dear Sir,

Enclosed, please find this Company's Cheque, No. 7521 for 10 £449/10/- being balance of Royalty due on Lease P.M.L. 1 of 899 tons at 10/- per ton, to the 30th April, 1957.

We apologise for the delay in forwarding you this Cheque, as the required information necessary to calculate this Royalty had been omitted from Mr. Buckley's Consignment Notes at Young, and we had to verify these tonnages with him before we could send the Cheque.

Also enclosed is a Statement giving all the truck nos. and their respective tonnages, for the period mentioned above, and we feel sure that you will agree with these figures.

20

Yours faithfully,
for AUSTRALIAN BLUE METAL LIMITED.
SECRETARY.

Exhibit B.X.
(Continued)

4. Letter,
Plaintiff to
Caldwell.

7th June, 1957.

EXHIBIT B.X. (4)—Continued

Exhibit B.X.
(Continued)

4. Statement of Magnesite Mined from P.M.L. 1 for December, 1956, January, February, March and April, 1957.

Statement of Magnesite Mined for Months of Dec. 1956, Jan, Feb, Mch, April 1957

STATEMENT OF MAGNESITE MINED
P.M.L. 1

	DECEMBER, 1956	L. H. CALDWELL	
7.12.56	K 27533	24.19. 0	
	K 27203	25. 3. 0	
	K 27348	25. 4. 0	
	U 21885	24. 7. 0	10
	K 22629	25. 6. 0	
	K 26886	25. 9. 0	
	K 27667	25. 4. 0	
	G 5343	40. 5. 0	
	K 23480	25. 1. 0	
	K 23062	24.15. 0	
	S 2647	15. 5. 0	
	S 19143	15. 4. 0	
	G 3857	41. 3. 0	
13.12.56	S 4231	15. 0. 0	20

352 tons 5 cwts @ 10/- per ton

	FEBRUARY 1957		
8-9. 2.57	S 16641	15. 0. 0	
	S 15140	15. 0. 0	
	K 21951	26. 1. 0	
	K 27174	24.19. 0	
	K 21924	25.13. 0	
	K 26880	25.14. 0	
	K 4784	24.16. 0	30
	S 16496	15. 2. 0	
	S 19641	15. 5. 0	
	S 15181	15. 3. 0	
	S 1278	15. 2. 0	
	S 3290	15. 2. 0	
	S 5892	15. 8. 0	
	S 4390	15. 0. 0	
11. 2.57	Kc/u 23509	25. 8. 0	
	K 27519	25. 0. 0	
20. 2.57	S 15508	15. 6. 0	40
	K 11560	25. 2. 0	
22. 2.57	U 12024	24. 7. 0	
	U 24608	24. 2. 0	

		S 6186	15. 0. 0
		S 7841	15. 0. 0
		432 tons 10 cwts @ 10/- per ton	
		MARCH, 1957	
	22-23. 3.57	K 26822	24.10. 0
		K 27411	24.14. 0
		KC27335	24. 9. 0
		U 19647	24.4. 0
		KC24614	23.13. 0
10		K 1562	24.13. 0
		K 21827	24.10. 0
		K 23877	25. 4. 0
		K 27399	24.17. 0
		K 27211	24. 0. 0
		K 21516	24. 8. 0
		U 21557	25. 1. 0
	30. 3.57	G 4406	39.16. 0
		K 27076	24.19. 0
		U 23747	24.13. 0
20		K 24610	24.19. 0
		KC25371	25. 2. 0
		U 24927	25. 5. 0
		K 1108	24.10. 0
		K 26891	25. 2. 0
		K 11380	23.12. 0
		KR27004	20. 9. 0
		K 27668	24. 9. 0
		K 23485	24.10. 0
		K 26986	23.13. 0
30		625 tons 2 cwts @ 10/- per ton	
		APRIL, 1957	
	13. 4.57	S 9038	15. 6. 0
		S 2306	15. 7. 0
		U 24726	24. 5. 0
		K 9672	24.14. 0
		K 27054	24.13. 0
		K 22708	25. 2. 0
		K 12185	24.18. 0
		K 390	24.10. 0
		40 178 tons 15 cwts @ 10/- per ton paid to here 14/5/57 £794.6.0.	
	12. 2.57	G 5496	40. 9. 0
		K 27095	25. 5. 0
		K 24023	24. 7. 0
		K 26884	25. 3. 0

Exhibit B.X.
(Continued)

4. Statement of
Magnesite
Mined from
P.M.L. 1 for
December, 1956,
January,
February,
March and
April, 1957.

Exhibit B.X.
(Continued)
—
4. Statement of
Magnesite
Mined from
P.M.L. 1 for
December, 1956,
January,
February,
March and
April, 1957

	U 9662	23.11. 0	
	138 tons 15 cwts @ 10/- per ton		
14-15.12.56	U 24622	24. 9. 0	
	K 8021	25. 0. 0.	
	K 27215	24. 12.0.	
	K 23787	25. 6. 0.	
	U 25522	24. 2. 0.	
	S 19437	15. 6.	
	U 23964	24. 4. 0.	
	S 17697	15. 6.	10
	K 26893	25. 0. 0.	
26.12.56	S 21305	15. 0. 0.	
	S 19432	15. 0. 0.	
	K 21624	25. 5. 0.	
	K 356	25. 2. 0.	
9. 1.57	S 18936	15. 8. 0.	
	S 31	15. 3. 0.	
14. 2.57	S 12960	15.15. 0.	
	S 17909	15. 0. 0.	
15. 3.57	U 24537	23.14. 0.	20
	K 506	25.10. 0.	
	K 21645	24.16. 0.	
	U 24824	24.18. 0.	
	K 8928	25. 0. 0.	
	K 27160	24.16. 0.	
	K 27417	25.10. 0.	
	K 2940	25. 0. 0.	
	KC21671	25. 3. 0.	
	K 8464	25. 9. 0.	
	K 21889	25.14. 0.	30
	K 11684	24.16. 0.	
	U 24808	25.10. 0.	
	U 21574	23. 9. 0.	
	S 1235	15.14. 0.	
	K 7729	25. 8. 0.	
	K 24636	25. 0. 0.	
	760 tons 5 cwt @ 10/- per ton		

EXHIBIT B.X. (5)

Letter, Plaintiff to Caldwell of 27 June 1957

JEH:CES

27th June, 1957.

Exhibit B.X.
(Continued)

—
5. Letter,
Plaintiff to
Caldwell.

—
27th June, 1957.

Dear Sir,

Enclosed please find this Company's Cheque, No. 7609 for £526/7/-, being Royalty due to you on Magnesite mined from Lease PML.1 to 30th May, 1957.

Also enclosed, please find Statement giving individual weights of each rail truck, showing the total tonnage mined for May, of 1,052 10 tons 14 cwt.

We trust this Statement will agree with your record of truck numbers, given to you by Mr. Buckley.

Yours faithfully,

for AUSTRALIAN BLUE METAL LIMITED.
SECRETARY.

EXHIBIT B.X. (6)

Letter, Caldwell to Plaintiff of 27 June 1957

June 27th 1957.

The Secretary,
Australian Blue Metal
Challis House,
SYDNEY.

Exhibit B.X.
(Continued)

6. Letter,
Caldwell to
Plaintiff.

27th June, 1957.

Dear Sir,

Your letter of the 7th June 1957 (JEH:CES) enclosing state-
10 ment and cheque covering Magnesite mined from P.M.L.1 to 30th
April 1957 was received.

I checked up with your Mr. T. Buckley on the figures and find
that your statements show 2487 tons 12 cwt. mined against figures
given to me by Mr. Buckley of 2471 tons 13 cwt. These figures show
that there is a difference of 15 tons 19 cwt my way.

On checking through my figures I find that in the trucking of
December 13-14-18th 1957 you have credited me with truck No.
17697 of 15 tons 6 cwt which does not show in my figures. If this
is correct by deducting this 15 tons 5 cwt. from the difference of 15
20 tons 19 cwt. shown above the total balance still shows 13 cwt my way.

Yours faithfully,

Logan H. Caldwell.

P.S. In future would you kindly draw cheques to favour of
Hughes & Caldwell and post to me.
& oblige L.H.C.

Exhibit B.X.
(Continued)

EXHIBIT B.X. (7)

7. Letter,
Caldwell to
Plaintiff.

Letter, Caldwell to Plaintiff of 30 June 1957

June 30th, 1957.

30th June, 1957.

The Secretary,
Australian Blue Metal Co.,
Challis House,
SYDNEY.

Dear Sir,

Your letter of the 27th June 1957 enclosing cheque and statement for Magnesite mined from P.M.L. 1 during May 1957 is to hand. Your **total** of tonnage balances with figures handed to me by Mr. Buckley and your statement did not show Truck No. U22393 of 24 tons 9 cwt. railed during 3.4.5. May 1957, but the 24 tons 9 cwt. is included in your **total** amount of 1052 tons 14 cwt.

On the matter of the reduction of Royalty paid by you from 10/- to 6/- per ton coming under discussion by Messrs. Hughes & Caldwell Syndicate, it was felt that with the higher prices being received for Magnesite, that these higher prices **reduce** their income, due to the fact that the amount to be paid to the Department of Mines at 1-1/8% increases as the value of Magnesite mined increases. 20

Messrs. Hughes & Caldwell have asked me to write you on this matter and to ask you would you pay the Government Royalty of 1-1/8% as from the 1st June 1957.

In arriving at the value of Magnesite at the Mine, Messrs. Hughes & Caldwell would not have the figures available for making out the return.

Yours faithfully,

LOGAN H. CALDWELL.

EXHIBIT B.X. (8)

Letter, Plaintiff to Caldwell of 1 July 1957

1st July 1957.

Mr. L. H. Caldwell,
54 Simondrille (Sic) Street,
YOUNG.

Dear Sir,

We acknowledge receipt of your letter of the 27th June 1957 regarding an overpayment of 10/- per ton, on 15 tons 19 Cwt.

10 According to our records Rail Truck No. S 17697 contained magnesite mined from Lease P.M.L. 1 and we would ask you to accept our cheque which we sent to you on the 7th June last.

We also wish to advise that we have noted your post script and all future Royalty cheques will be made payable to Messrs. Hughes & Caldwell and posted to yourself.

Yours faithfully,

AUSTRALIAN BLUE METAL LIMITED
Secretary

Exhibit B.X.
(Continued)

8. Letter,
Plaintiff to
Caldwell.

1st July, 1957.

Exhibit B.X.
(Continued)

EXHIBIT B.X. (9)

9. Letter,
Plaintiff to
Hughes and
Caldwell.

Letter, Plaintiff to Hughes & Caldwell of 26 July 1957

26th July 1957.

26th July, 1957. Messrs. Hughes & Caldwell,
c/o Mr. L. H. Caldwell,
54 Simondrille (Sic) Street,
YOUNG.

Dear Sirs,

Please find enclosed this Company's cheque No. 7754 for £326.0.9 being Royalty due on magnesite mined from Lease P.M.L. 101 for the month of June 1957.

Also enclosed please find statement giving weights and truck numbers of individual loads showing total tonnage mined of 1086 tons 16 Cwt.

We trust that this statement will agree with the list of truck numbers given to you by Mr. Buckley.

Yours faithfully,
AUSTRALIAN BLUE METAL LTD.
SECRETARY.

EXHIBIT B.X. (9)—Continued

Statement of Magnesite Mined for June 1957

MAGNESITE MINED FROM LEASE P.M.L. 1 FOR THE
MONTH OF JUNE, 1957.Exhibit B.X.
(Continued)9. Statement of
Magnesite
Mined from
P.M.L. 1.
June, 1957.

1.6.57	U.24795	24.13. 0	21.6.57	K.21927	25. 0. 0
	U.25527	24. 5. 0		K.22779	24.10. 0
	U.24932	23.17. 0		K.27506	25. 9. 0
	K.27504	24. 6. 0		U.22516	24.10. 0
	K.7810	25. 3. 0		U.7858	24.11. 0
10	K.26848	25. 4. 0		K.21898	25. 6. 0
	KC21887	25. 1. 0		K.21135	25. 5. 0
	K.23436	25. 0. 0		K.4546	25. 7. 0
	K.27164	24.13. 0	22.6.57	K.27667	25. 7. 0
4.6.57	K.22723	25.10. 0		K.26805	25.11. 0
7.6.57	S. 15270	15. 0. 0		K.2394	24.15. 0
15.6.57	S. 701	15.12. 0		S. 9167	15. 9. 0
	K.27447	25. 8. 0	26.6.57	S. 18869	15.13. 0
	K.26821	25.16. 0		K.19027	24.10. 0
	K.27618	25. 4. 0		K.27392	24.13. 0
20	K.27168	25. 0. 0		K.9529	24.12. 0
	K.19332	25. 1. 0		K.7855	25. 0. 0
	K.27446	24.18. 0	28.6.57	S. 4478	15.10. 0
	K.27515	25. 2. 0		S. 19259	15. 5. 0
	U.21879	24. 2. 0		K.27691	25. 0. 0
	K.24068	25. 4. 0		U.24743	24. 0. 0
	U.23080	24. 2. 0		K.27182	24.13. 0
	U.7693	23.14. 0			
21.6.57	K.23659	25. 5. 0			1,086.16. 0
	1086 tons 16 cwt @ 6/- per ton — £326.0.9.				

Exhibit B.X.
(Continued)

EXHIBIT B.X. (10)

10. Letter,
Plaintiff to
Hughes and
Caldwell.

Letter, Plaintiff to Hughes & Caldwell of 15 August 1957

15th August 1957.

15th Aug., 1957. YOUNG. N.S.W.

Dear Sirs,

Please find enclosed this Company's Cheque No. 7850 for £278. 3. 3. being royalty due on magnesite mined from lease P.M.L. 1 for the month of July 1957.

Also enclosed please find statement giving weight and truck numbers of individual loads showing total tonnage mined of 927 10 tons 5 cwt.

We trust that this statement will agree with the list of truck numbers given to you by Mr. Buckley.

Yours faithfully,

AUSTRALIAN BLUE METAL LTD.
SECRETARY.

Exhibit B.X.
(Continued)

EXHIBIT B.X. (11)

11. Letter,
Plaintiff to
Hughes and
Caldwell.

Letter, Plaintiff to Hughes & Caldwell of 13 September 1957

13th Sept., 1957.

JEH:CES
Messrs. Hughes & Caldwell,
C/- Mr. L. Caldwell,
54 Simondrille Street,
YOUNG.

13th September, 1957.

Dear Sir,

Please find enclosed this Company's Cheque, No. 8017 for £447/5/-, being Royalty due on Magnesite mined from Lease PML.1 10 for the month of August, 1957.

Also enclosed, please find Statement giving weight and truck numbers of individual loads, showing a total tonnage of 1,490 tons 7 cwt.

We trust that this Statement will agree with the list of truck numbers, given to you by Mr. Buckley.

Yours faithfully,
for AUSTRALIAN BLUE METAL LIMITED.
SECRETARY.

EXHIBIT B.X. (11)—Continued

Statement of Magnesite Mined for August 1957

STATEMENT OF MAGNESITE MINED FROM PML1, FOR THE MONTH OF AUGUST, 1957.					
1.8.57	S. 15611	14.18. 0.	15.8.57	K.23840	25. 0. 0.
	G. 7927	39.12. 0.		K.26875	24.18. 0.
2.8.57	S. 16186	14.18. 0.		S. 16672	15. 5. 0.
	S. 17950	15.10. 0.	16.8.57	K.27364	24.18. 0.
	S. 1012	15. 0. 0.		S.16635	15.15. 0.
10 5.8.57	K.26828	24.15. 0.		S. 4180	14.18. 0.
	G. 9777	40. 2. 0.		S. 13130	15. 2. 0.
	K.10087	24.18. 0.	19.8.57	S. 19267	14.18. 0.
6.8.57	K.11526	24.14. 0.		K235832	24. 6. 0.
	U.24944	24. 2. 0.		G. 3859	41. 9. 0.
7.8.57	U.11010	24. 8. 0.	20.8.57	G. 9832	41.11. 0.
	S. 21374	14.16. 0.	22.8.57	G. 5154	40.10. 0.
	S. 7793	15.13. 0.		G. 1391	40.12. 0.
	S. 6392	14.13. 0.		G. 4968	41.14. 0.
8.8.57	S. 16910	15. 0. 0.		G. 5518	41. 9. 0.
20	U.23901	24.10. 0.	23.8.57	S. 1771	15.10. 0.
	S. 18431	15.10. 0.		G. 3565	41. 8. 0.
	U.22423	24.11. 0.	24.8.57	G. 6251	41.17. 0.
	K.27312	25. 4. 0.	26.8.57	G. 6940	40. 8. 0.
9.8.57	K.23438	24.17. 0.	27.8.57	G. 7734	42.14. 0.
	KC21688	24. 9. 0.		G. 5163	40.11. 0.
	S. 16377	15.14. 0.	28.8.57	U.12282	24. 8. 0.
12.8.57	S. 3943	15.14. 0.		KC8242	25. 7. 0.
	S. 16649	15.15. 0.	29.8.57	K.23549	24. 0. 0.
	K. 9702	25.14. 0.		K.26810	25. 3. 0.
30 13.8.57	U.24705	24.18. 0.		K.26815	24.16. 0.
	U. 4930	24. 9. 0.	30.8.57	G. 6591	40.16. 0.
	K.27234	25. 0. 0.			
14.8.57	U.25435	23.19. 0.			T 1,490.17. 0.
	U.24866	24. 2. 0.			
	K.23441	24. 9. 0			

T 1,490.17.0. @ 6/- = £447.5.0.

Exhibit B.X.
(Continued)11. Statement
of Magnesite
Mined from
P.M.L. 1.
August, 1957.

Exhibit B.X.
(Continued)

EXHIBIT B.X. (12)

12. Letter,
Plaintiff to
Hughes and
Caldwell.

Letter, Plaintiff to Hughes & Caldwell of 22 October 1957

22nd Oct., 1957.

JEH:CES

22nd October, 1957.

Messrs. Hughes & Caldwell,
C/- Mr. L. H. Caldwell,
54 Simondrille (Sic) Street,
YOUNG. N.S.W.

Dear Sirs,

Please find enclosed this Company's Cheque, No. 8193 for £363/5/-, being Royalty due on magnesite mined from Lease PML1, 10 for the month of September, 1957.

Also enclosed, please find Statement giving weight and truck nos. of individual loads, showing total tonnage mined of 1,210 tons 17 cwt.

We trust that this Statement will agree with the list of truck nos. handed to you, by Mr. Buckley.

Yours faithfully,

for AUSTRALIAN BLUE METAL LIMITED.
SECRETARY.

EXHIBIT B.X. (13)

Letter, Hughes & Caldwell to Plaintiff of 24 October 1957

October 24th 1957.

The Secretary,
Australian Blue Metal Ltd.,
Challis House,
SYDNEY.

Exhibit B.X.
(Continued)

13. Letter,
Hughes and
Caldwell to
Plaintiff.

24th Oct., 1957.

Dear Sir,

Your letter of the 22nd October 1957 (JEH:CES) with state-
10 ment and cheque covering magnesite mined from Lease P.M.1 during
month of September 1957 was received.

According the figures handed to me by Mr. Bukley 1212 tons
17 cwt. was mined during September.

The difference of two tons occurs in Truck No. K21751 trucked
on the 21/9/57. Mr. Buckley's figure was 25 tons 6 cwt against
your 23 tons 6 cwt. a difference of 2 tons.

Yours faithfully,

Hughes & Caldwell.
per Logan H. Caldwell.

EXHIBIT B.X. (14)

Exhibit BX
(Continued)
14. Letter,
Plaintiff to
Hughes and
Caldwell.

Letter, Plaintiff to Hughes & Caldwell of 11 November 1957

—
11th Nov., 1957.

JEH:HG
Messrs. Hughes & Caldwell,
c/- Mr. L. H. Caldwell,
54 Simondrille (Sic) Street,
YOUNG.

11th November, 1957.

Dear Sirs,

We acknowledge receipt of your letter of the 24th ultimo with regard to a difference of 2 tons in the total magnesite mined from 10 lease PML 1 during the month of September, 1957.

Please find enclosed this company's cheque No. 8256 for 12/- in payment of the additional 2 tons.

Yours faithfully,

for AUSTRALIAN BLUE METAL LIMITED.
SECRETARY.

Encl.:—

EXHIBIT B.X. (14)—Continued

Exhibit B.X.
(Continued)

Statement of Magnesite Mined for September 1957

14. Statement
of Magnesite
Mined from
P.M.L. 1.
September, 1957.

STATEMENT OF MAGNESITE MINED FROM PML1 FOR THE MONTH OF SEPTEMBER, 1957.						
	2.9.57	G. 8759	41. 3. 0.	21.9.57	K.21751	23. 6. 0.
		S. 18443	15. 5. 0.		K.27697	25.16. 0.
	3.9.57	G. 8135	40.18. 0.	22.9.57	KC5948	25.17. 0.
		G. 408	39.14. 0.		K. 8931	25. 9. 0.
	5.9.57	G. 2622	40.10. 0.		K.22785	26. 0. 0.
10		U.25460	24. 1. 0.	23.9.57	K.26975	25.18. 0.
	6.9.57	S.19681	16. 7. 0.		S. 9688	15.14. 0.
		S. 8565	15.14. 0.		S. 4061	15.15. 0.
		S. 24951	15.11. 0.		K. 2107	25.11. 0.
	9.9.57	S. 2132	16. 7. 0.	24.9.57	U.26790	24. 0. 0.
		U.25398	24.12. 0.		U.23945	24.14. 0.
	10.9.57	K.22979	24.14. 0.		K.21889	25. 3. 0.
		K.27557	25. 7. 0.	25.9.57	U.24912	24.10. 0.
		K. 6481	24.11. 0.		K.11478	25.13. 0.
	11.9.57	S. 1963	15.12. 0.		K. 5526	25. 6. 0.
20		K.23610	24.16. 0.	26.9.57	G. 7242	40.11. 0.
		K.27150	24.19. 0.		K.24903	25.13. 0.
	12.9.57	K.26817	24.19. 0.	27.9.57	K.23669	25.16. 0.
		S. 19211	14.17. 0.		K.26782	25. 1. 0.
	13.9.57	KK27558	20. 1. 0.		U.24907	24. 7. 0.
		U.24009	23.19. 0.	30.9.57	U.25472	24. 3. 0.
	16.9.57	K.27209	24.18. 0.		K.23742	24. 3. 0.
	18.9.57	U.23928	24. 2. 0.		K. 7573	25. 9. 0.
		K.22684	25. 2. 0.			
	20.9.57	K.11561	24.10. 0.			
30		U.23738	24.13. 0.			
						T 1210.17. 0.
						+ 2-0-0

T 1210.17.0. @ 6/- = £363.5.0.

Exhibit B.X.
(Continued)

EXHIBIT B.X. (15)

15. Letter,
Plaintiff to
Hughes and
Caldwell.

Letter, Plaintiff to Hughes & Caldwell of 28 November 1957

28th Nov., 1957.

JEH:CES

28th November, 1957.

Messrs. Hughes & Caldwell,
C/- Mr. L. H. Caldwell,
54 Simondrille (Sic) Street,
YOUNG.

Dear Sirs:

Please find enclosed, this Company's Cheque, No. 8447 for £487/8/2, being Royalty due on magnesite mined from Lease PML.1 10 for the month of October, 1957.

Also enclosed, please find Statement giving weight and truck nos. of individual loads, showing total tonnage mined of 1,624 tons 14 cwt.

We trust that this Statement will agree with the list of truck nos. handed to you, by Mr. Buckley.

Yours faithfully,

for AUSTRALIAN BLUE METAL LIMITED.
SECRETARY.

EXHIBIT B.X. (15)—Continued

Statement of Magnesite Mined for October 1957

Exhibit B.X.
(Continued)15. Statement of
Magnesite
Mined from
P.M.L. 1.
October, 1957.

STATEMENT OF MAGNESITE MINED FROM PML1, FOR THE MONTH OF OCTOBER, 1957.						
	1.10.57	K. 5933	25. 8. 0.	18.10.57	K.19034	24.18. 0.
		K.27551	24.15. 0.		U.24718	24. 2. 0.
		K.22702	23.18. 0.		U.24757	24.17. 0.
		K.22509	25. 4. 0.	19.10.57	U.24735	24. 4. 0.
10	2.10.57	K.22803	25. 2. 0.		K.19030	25. 5. 0.
		K. 707	25. 6. 0.		K.23873	25. 1. 0.
	3.10.57	K.22715	25. 0. 0.	21.10.57	K.23973	24.10. 0.
		K.27345	24.18. 0.		U.25483	24.12. 0.
		U.21534	23.19. 0.		K.23353	24.13. 0.
		K.26902	25. 7. 0.	22.10.57	S. 19188	15. 4. 0.
	4.10.57	K.10780	24.17. 0.		U.23954	24.10. 0.
		K.24684	24.17. 0.		K.27464	25. 7. 0.
	8.10.57	K. 1589	25. 4. 0.	23.10.57	U.23376	24.10. 0.
		U.24934	24. 6. 0.		G. 4293	41. 7. 0.
		K.27124	25. 0. 0.	24.10.57	K. 4897	25. 4. 0.
20	9.10.57	K.12138	25. 2. 0.		K.23021	24.12. 0.
		K.26868	25. 7. 0.		U.24886	24.10. 0.
		K.27546	24.10. 0.	25.10.57	U.22405	24. 4. 0.
	10.10.57	K.11986	25.10. 0.		U.25422	24.15. 0.
		K.15657	25. 5. 0.		K.27290	25.12. 0.
		K.27210	25.17. 0.	26.10.57	K.11822	25. 6. 0.
	11.10.57	K. 2036	25. 5. 0.		K. 5910	25. 1. 0.
		U.21651	24.12. 0.	28.10.57	K.22389	24.12. 0.
		K. 1931	25. 5. 0.		U.21744	24. 5. 0.
	12.10.57	KC.9937	24.19. 0.		U.22615	24. 7. 0.
30		U.21864	24.16. 0.	29.10.57	K.27321	25. 2. 0.
	14.10.57	K.27641	25. 9. 0.		U.18199	25.10. 0.
		KC.5019	25. 2. 0.	30.10.57	KK27715	19.16. 0.
	15.10.57	K26963	25. 9. 0.	31.10.57	U.23572	24. 5. 0.
		K.22792	24.12. 0.		U.23059	24. 4. 0.
		S. 9157	15. 2. 0.		K.21781	24.14. 0.
	17.10.57	U.24094	24. 3. 0.			
		G. 8772	41. 2. 0.			
		K.11656	25. 7. 0.			
						T 1,624.14. 0.

T 1,624.14.0. @ 6/- = £487.8.2.

Exhibit B.X.
(Continued)

EXHIBIT B.X. (16)

16. Letter,
Hughes and
Caldwell to
Plaintiff.

Letter, Hughes & Caldwell to Plaintiff of 2 December 1957

Dec. 2nd 1957.

2nd Dec., 1957. The Secretary,
Australian Blue Metal Co.
Challis House,
SYDNEY.

Dear Sir,

Your letter of the 25th November, 1957 (JEH:CES) with statement and cheque enclosed is to hand. 10

The truck numbers and weights handed to me by Mr. Buckley for October totalled 1648 tons 19 cwt. as against your total of 1624 tons 12 cwt.

The difference occurs as follows:

Truck No. K27508 of 25 tons 5 cwt railed on the 15.10.57 is not shown in your statement.

Truck No. U18199 railed on the 29.10.57 is shown in my figures as 24 tons 10 cwt. against your figure of 25 tons 10 cwt.

I make the balance as follows

	Your figure	1624 tons 14 cwt.	20
	Truck No. K 27508	25 „ 5 „	
		<hr/>	
		1649 „ 19 „	
	Truck No. V18199—1 ton over	1	
	Total	<hr/> 1648 tons 19 cwt. <hr/>	

Yours faithfully,

Hughes & Caldwell
Per: Logan H. Caldwell. 30

EXHIBIT B.X. (17)

Letter, Plaintiff to Hughes & Caldwell of 16 December 1957

JEH:CES
Messrs. Hughes & Caldwell,
C/- Mr. L. H. Caldwell,
54 Simondrille (Sic) Street,
Y O U N G.

16th December, 1957.

Exhibit B.X.
(Continued)

—
17. Letter,
Plaintiff to
Hughes and
Caldwell.
—
16th Dec., 1957.

Dear Sirs:

Please find enclosed, this Company's Cheque, No. 8536, for 10 £7/11/2.

This is payment for Truck No. K.27508 (T25.5), railed from Moorandoo on 15th October last, and was omitted from our previous Statement.

Yours faithfully,

for AUSTRALIAN BLUE METAL LIMITED.
SECRETARY.

Exhibit B.X.
(Continued)

EXHIBIT B.X. (18)

18. Letter,
Plaintiff to
Hughes and
Caldwell.

Letter, Plaintiff to Hughes & Caldwell of 31 December 1957

31st Dec., 1957.

JEH:CES

31st December, 1957

Messrs. Hughes & Caldwell,
C/- Mr. L. H. Caldwell,
54 Simondrille (Sic) Street,
YOUNG.

Dear Sirs:

Please find enclosed, this Company's Cheque, No. 8581 for £622/4/7, being Royalty due on magnesite mined from Lease PML.1, 10 for the month of November, 1957.

Also enclosed, please find Statement giving weight and truck numbers of individual loads, showing the total tonnage mined of 2,074 tons 2 cwt.

We trust that this Statement will agree with the list of truck numbers, handed to you by Mr. Buckley.

Yours faithfully,

for AUSTRALIAN BLUE METAL LIMITED.
SECRETARY.

EXHIBIT B.X. (18)—Continued

Statement of Magnesite Mined for November 1957

STATEMENT OF MAGNESITE MINED FROM PML 1 FOR THE
MONTH OF NOVEMBER 1957.

Exhibit B.X.
(Continued)
—
18. Statement of
Magnesite
Mined from
P.M.L. 1.
—
November, 1957.

	1.11.57	K.16920	24.17. 0	13.11.57	K. 5775	25.17. 0
		K.23786	25. 9. 0		K.21937	24.17. 0
	2.11.57	G. 7101	40. 0. 0	14.11.57	K.27008	24.18. 0
	3.11.57	G. 574	40.15. 0		K.23489	24.14. 0
		G. 6336	39.14. 0		U.24826	24.10. 0
10	4.11.57	G. 9782	40.18. 0	14.11.57	K.27576	24.10. 0
		KC.9677	24.18. 0		U.23784	23.15. 0
		KC21917	24.18. 0	15.11.57	U.24605	24.13. 0
	5.11.57	K.21531	25. 7. 0		K. 5994	25. 2. 0
		G. 4637	42. 2. 0		K. 2760	25.10. 0
		KC21901	24.13. 0		U.23954	24. 6. 0
	6.11.57	U. 9922	24.19. 0	18.11.57	KC23975	24.16. 0
		K.22736	25.10. 0		K.24802	24.13. 0
		K.23712	25.14. 0		K. 2090	25.13. 0
		K.1168	24.18. 0		G. 9839	41. 8. 0
20	7.11.57	U.23682	25. 6. 0	19.11.57	K. 9136	24.14. 0
		U.22359	24.12. 0		K.23809	24.12. 0
		K.22689	25.15. 0		K.27664	25.11. 0
	8.11.57	U.24701	24. 9. 0	20.11.57	U.23955	24. 8. 0
		KC21736	25.14. 0		G 5220	41.13. 0
		G. 4365	42.13. 0		K.27390	25. 3. 0
	9.11.57	K.23614	25. 3. 0	21.11.57	S. 2511	15. 4. 0
		U.24030	23.15. 0		G. 485	41.17. 0
		S. 19145	15. 2. 0		G. 5381	38.19. 0
30	11.11.57	U. 8263	24. 3. 0	22.11.57	G. 9818	40.16. 0
		K. 5994	25.10. 0		G. 7734	41. 0. 0
		G. 5123	40. 4. 0	25.11.57	G. 4293	41. 6. 0
	12.11.57	K.11366	24.19. 0		G. 4829	40.18. 0
		K. 2470	24.13. 0	26.11.57	G. 1003	41.13. 0
		K.22985	25.15. 0		U.21742.	24.16. 0
	13.11.57	U.23540	24.10. 0	27.11.57	Kc21707	25. 6. 0
	27.11.57	U.23933	24. 6. 0	29.11.57	U.24626	24. 0. 0
		S. 2357	14. 6. 0	30.11.57	KC21970	24. 4. 0
	28.11.57	S. 16718	15. 4. 0		K.20721	25.16. 0
		S. 17664	16.12. 0		K. 7677	25.12. 0
40		S. 4067	15. 3. 0		G. 7579	41.14. 0
		S. 6774	15. 1. 0			
	29.11.57	U.19014	2316. 0			
		U.24054	24.15. 0			
					T 2074. 2. 0	

T 2074.2.0 @ 6/- per ton = £622.4.7.

Exhibit B.X.
(Continued)

19. Letter,
Hughes and
Caldwell to
Plaintiff.

2nd Jan., 1958.

EXHIBIT B.X. (19)

Letter, Hughes & Caldwell to Plaintiff of 2 January 1958

Jan. 2nd 1958.

The Secretary,
Australian Blue Metal Co.,
Challis House,
SYDNEY.

Dear Sir,

Your letter of the 31st December, 1957 enclosing statement and cheque for Magnesite mined from P.M.L.1 during November 1957 10 was received.

Mr. Buckley's figures for November were 2073 tons 9 cwt.

Your figures show 2074 ,, 2 ,,

A difference of 13 cwt.

The difference occurs in the following trucks.

Truck No. G9839 trucked on the 18.11.57 Your figure 41.8.0.

,, ,, K9136 ,, ,, 19.11.57 ,, ,, 24.14.0

Mr. Buckley's fig.

41. 5. 0.

24. 4. 0. 20

Yours faithfully,

Hughes & Caldwell
per L. H. Caldwell.

EXHIBIT B.X. 20

Letter, Plaintiff to Hughes, & Caldwell of 21 January 1958

21st January, 1958.

Messrs. Hughes & Caldwell,
C/- Mr. L. H. Caldwell,
54 Simondrille (Sic) Street,
YOUNG.

Dear Sirs,

Please find enclosed, this Company's Cheque, No. 8678 for
10 £450/16/10, being Royalty due on magnesite mines from Lease
PML.1 for the month of December, 1957.

Also enclosed, please find Statement giving weight and truck nos.
of individual loads, showing the total tonnage mined, of 1,502 tons
16 cwt.

We trust that this Statement will agree with the list of truck nos.
handed to you by Mr. Buckley.

Yours faithfully,

for AUSTRALIAN BLUE METAL LIMITED.
SECRETARY.

Exhibit B.X.
(Continued)

—
20. Letter,
Plaintiff to
Hughes and
Caldwell.

—
21st Jan., 1958.

Exhibit B.X.
(Continued)

EXHIBIT B.X. (20)—Continued

20. Statement of
Magnesite
Mined
from P.M.L. 1.
December, 1957.

Statement of Magnesite Mined for December 1957

STATEMENT OF MAGNESITE MINED FROM PML.1 FOR THE MONTH OF DECEMBER, 1957.					
2.12.57	U.24600	24.11. 0.	10.12.57	K.26861	24.12. 0.
	G. 4026	42.13. 0.		K.21566	25. 8. 0.
	K.23965	25.17. 0.		G. 8051	39.15. 0.
	U. 1095	24. 7. 0.	11.12.57	K.10952	24. 8. 0.
3.12.57	S.15958	16. 0. 0.		K. 9684	25. 0. 0.
	K.23889	23.15. 0.		KC21767	24.19. 0. 10
	S. 3122	15.13. 0.	12.12.57	KC21958	24. 6. 0.
	K.27668	24.18. 0.		K.27033	25. 9. 0.
	K.27607	26. 0. 0.	13.12.57	G. 4275	39. 4. 0.
	S. 794	16. 0. 0.		G. 6126	41. 6. 0.
4.12.57	U.24925	24. 9. 0.	14.12.57	G. 874	39. 1. 0.
	S.17423	15.15. 0.		G. 5120	41. 1. 0.
	S. 2001	15. 0. 0.		K.21087	25. 4. 0.
	S.19774	15.15. 0.	16.12.57	S. 7170	15. 6. 0.
	U.23556	24.11. 0.		K.23890	25. 5. 0.
5.12.57	U.23363	24. 0. 0.		G. 5718	40. 7. 0. 20
	K.26775	25. 1. 0.	17.12.57	G. 8308	41. 7. 0.
	U. 3762	23.19. 0.		G. 5241	41.17. 0.
	KC25487	25.11. 0.		G. 9777	41.14. 0.
6.12.57	K.26933	25. 5. 0.	18.12.57	S.13992	14.13. 0.
	K.23520	24.14. 0.		S.14055	15. 6. 0.
	S. 1101	15. 1. 0.		K.23521	24. 6. 0.
	S.15317	16. 0. 0.		K.27552	24.11. 0.
7.12.57	K.23699	25. 6. 0.	19.12.57	K. 8164	24. 2. 0.
	KR27706	20.13. 0.		K.10716	25. 3. 0.
9.12.57	K. 119	25.14. 0.		K. 8705	25. 3. 0. 30
	K.27770	25. 1. 0.	20.12.57	G. 3306	41.10. 0.
	K.27051	24. 4. 0.		S.19556	15.13. 0.
	KC21961	25.17. 0.			
10.12.57	K.24851	25.10. 0.			
					<u>T1,502.16. 0.</u>

T. 1,502.16.0 @ 6/- = £450.16.10.

EXHIBIT —B.X. (20)—Continued

3.12.57 — K.23889 — diff. of 1.18.0.
1,504.14.0.

Exhibit B.X.
(Continued)

20. Statement of
Magnesite
Mined from
P.M.L. 1.

December, 1957.

Exhibit B.X.
(Continued)

EXHIBIT B.X. (21).

21. Letter
Hughes and
Caldwell to
Plaintiff.
10th Mar., 1958.

Letter, Hughes & Caldwell to Plaintiff of 10 March 1958.

54 Demondrille Street,
Young.
March 10th 1958.

The Secretary,
Australian Blue Metal Co.,
Challis House,
SYDNEY.

Dear Sir,

10

Your letter of the 21st January 1958 enclosing cheque for Magnesite mined from Lease PML.1 for month of December 1957 was received.

According to figures supplied to me by your Mr. Buckley & checked by him the tonnage for December 1957 is 1502 tons 14 cwt against your figure of 1502 tons 16 cwt a difference of 1 ton 18 cwt.

The difference occurs in truck No. K23889 railed on 3/12/57. Your figures show 23 tons 15 cwt for this truck whereas the right figures are 25 tons 13 cwt.

Yours faithfully, 20
Hughes & Caldwell
per L. H. Caldwell

EXHIBIT B.X. (22)

Letter, Plaintiff to Hughes & Caldwell of 28 March 1958

28th March 1958.

Messrs. Hughes & Caldwell,
c/o Mr. L. H. Caldwell,
54 Demondrille St.,
YOUNG.

Dear Sirs,

Please find enclosed this Company's cheque No. 9387 for
20 £235. 7. 0 being royalty due on magnesite mined from Lease P.M.L. 1
for the month of January 1958.

Also enclosed please find statement giving weight and truck nos.
of individual loads, showing the total tonnage mined of 784 tons
10 Cwts.

We trust that this statement will agree with the list of truck Nos.
handed to you by Mr. Buckley.

Yours faithfully,

AUSTRALIAN BLUE METAL LTD.
SECRETARY.

Exhibit B.X.
(Continued)

—
22. Letter,
Plaintiff to
Hughes and
Caldwell.

—
28th Mar., 1958.

EXHIBIT 19

**Extract from Questions from Defendants' Interrogatories and of
Answers by Plaintiff.**

Exhibit 19.
—
Extract of
Questions from
the Defendants'
Interrogatories
and of Answers
by Plaintiff.
—

QUESTION 12

- (a) Is it alleged in paragraph 23 of the amended Statement of Claim that the defendants adopted and ratified the alleged agreements otherwise than by accepting certain benefits thereunder namely the alleged royalties?

ANSWER 12

- 10 (a) It is alleged that the Defendants (other than Steele Hunter Caldwell) adopted and ratified the agreement mentioned in paragraph 23 of the amended Statement of Claim by accepting royalties paid thereunder with knowledge that such payments were referable to an agreement made on their behalf by Logan Hunter Caldwell; it is further alleged that each of the Defendants (other than Steele Hunter Caldwell) was aware of the nature and effect of such agreement.

QUESTION 12

- 20 (b) When is it alleged that each of the persons mentioned in paragraph 7 of the amended Statement of Claim adopted and ratified the alleged agreement referred to and set out in paragraph 16 thereof?

ANSWER 12

- 30 (b) The Plaintiff is unable to allege precisely when each of the persons mentioned in paragraph 7 of the amended Statement of Claim (other than Logan Hunter Caldwell) adopted and ratified the agreement mentioned in paragraph 16 of the amended Statement of Claim, beyond saying that the adoption and ratification depended upon the acceptance of royalties as mentioned in paragraph 12 (a).

QUESTION 12

- (c) Is it alleged that the said adoption and ratification was express or implied?

ANSWER 12

- (c) Implied from conduct.

QUESTION 12

- (g) If it is alleged that the said adoption and ratification of the said alleged agreement was implied what are the facts and

Exhibit 19.
 (Continued)
 —
 Extract of
 Questions from
 the Defendants'
 Interrogatories
 and of Answers
 by Plaintiff.
 —

matters relating to each of the persons mentioned in paragraph 7 of the amended Statement of Claim allegedly giving rise to the said implication?

ANSWER 12

- (g) See answer to 12 (a).

QUESTION 13

- (a) Is it alleged in paragraph 30 of the amended Statement of Claim that the defendants adopted and ratified the alleged agreements otherwise than by accepting certain benefits thereunder namely the alleged royalties? 10

ANSWER 13

- (a) It is alleged that the Defendants (other than Steele Hunter Caldwell) adopted and ratified the agreement mentioned in paragraph 30 of the amended Statement of Claim by accepting royalties paid thereunder with knowledge that such payments were referable to an agreement made on their behalf by Logan Hunter Caldwell; it is further alleged that each of the Defendants (other than Steele Hunter Caldwell) was aware of the nature and effect of such agreement.

QUESTION 13

20

- (b) When is it alleged that each of the persons mentioned in paragraph 7 of the amended Statement of Claim adopted and ratified the alleged agreement referred to and set out in paragraph 25 thereof?

ANSWER 13

- (b) The Plaintiff is unable to allege precisely when each of the persons mentioned in paragraph 7 of the amended Statement of Claim (other than Logan Hunter Caldwell) adopted and ratified the agreement mentioned in paragraph 25 of the amended Statement of Claim, beyond saying that the adoption and ratification depended upon the acceptance of royalties as mentioned in paragraph 12 (a).

QUESTION 13

- (c) Is it alleged that the said adoption and ratification was express or implied?

ANSWER 13

- (c) Implied from conduct.

QUESTION 13

- (g) If it is alleged that the said adoption and ratification of the said alleged agreement was implied what are the facts and 40

matters relating to each of the persons mentioned in paragraph 7 of the amended Statement of Claim allegedly giving rise to the said implication?

Exhibit 19.
(Continued)

—
Extract of
Questions from
the Defendants'
Interrogatories
and of Answers
by Plaintiff.
—

ANSWER 13

(g) See answer to 13 (a).

QUESTION 14

- (a) Did the plaintiff at any time prior to the execution of the document set out in paragraph 16 of the amended Statement of Claim, and if so, when,
- 10 (i) enter upon any portion of the land therein described;
(ii) bring mining plant thereon;
(iii) work and win magnesite therefrom?

ANSWER 14

(a) (i), (ii), (iii), Yes.

QUESTION 14

- (b) If yea to (a) (i), did the plaintiff so enter upon any portion of the said land by virtue of permission granted to the said plaintiff by the persons mentioned in paragraph 7 of the amended Statement of Claim or any and if so which of them?

20 ANSWER 14

- (b) Yes, to the best of my knowledge information and belief pursuant to permission granted by Logan Hunter Caldwell and Victor Raymond Hughes on behalf of the Defendants (other than Steele Hunter Caldwell).

QUESTION 14

- (d) If yea to (b) when, where to whom and by what means was such permission granted?

ANSWER 14

- 30 (d) To the best of my knowledge information and belief permission was granted orally to Thomas Ernest Buckley shortly prior to 19th November 1956 at Thuddungra and Young.

QUESTION 17

- (a) Has the plaintiff ever tendered to the Department of Mines for the concurrence or sanction of the Minister for Mines or for registration either of the documents set out in paragraph 16 and 25 of the amended Statement of Claim?

ANSWER 17

(a) Yes.

QUESTION 17

- 40 (b) If yea to (a) when were each of the documents so tendered?

Exhibit 19.
(Continued)

ANSWER 17

—
Extract of
Questions from
the Defendants'
Interrogatories
and of Answers
by Plaintiff.
—

- (b) A copy of the agreement set out in paragraph 25 of the amended Statement of Claim was submitted for registration under cover of a letter dated 10th September 1957 written by the Plaintiff to the Under Secretary, Department of Mines.

EXHIBIT M

Exhibit M.

—
 Consolidated
 Answers of the
 Defendants to
 the Plaintiff's
 Interrogatories.
 —

Consolidation of Certain Answers to Plaintiff's Interrogatories

QUESTION (1)

Were not you one of the persons referred to in the letter dated 19th August 1957 set out in paragraph 32 of the amended Statement of Claim as "the Partners of Hughes and Caldwell?"

ANSWER ALL

Yes: However, I did not draft the letter or authorise my being described as a partner of "Hughes & Caldwell".

10 QUESTION (2)

Who were the other persons so referred to in the said letter?

ANSWER ALL:

The persons referred to are: Robert Frank Hughes, and Clarence Vivian Hughes as executors of Joseph Peter Hughes. Norman Vivian Regan, Lindsay Regan and Margaret Caldwell as executors of George Wigham Caldwell. Victor Raymond Hughes, Frederick Charles Hughes, Robert Frank Hughes and Logan Hunter Caldwell.

QUESTION (14)

20 Did not you, Victor Raymond Hughes, in or about December 1956 or January 1957 discuss with Thomas Ernest Buckley in a conversation with him a proposal to allow the Plaintiff to enter upon such land and mine for magnesite thereon?

ANSWER V.R.H.

Yes, but in or about the month of October or November, 1956.

QUESTION (15)

30 Did not you Victor Raymond Hughes, then discuss with the said Thomas Ernest Buckley in a conversation with him the definition of an area within which the Plaintiff might be allowed to mine for magnesite?

ANSWER V.R.H.

Yes.

QUESTION (16)

Did not you, Victor Raymond Hughes, then define such areas in the course of conversation with the said Thomas Ernest Buckley by reference to (inter alia) a line running south from a turn in the fence along the northern boundary of the land comprised within P.M.L. 1 Young?

ANSWER V.R.H.

40 No, not on the occasion referred to. However the area was so defined in a later conversation between myself and Thomas Ernest Buckley.

QUESTION (17) Did not you

(a) visit the land comprised in P.M.L. 1. Young, between the

Exhibit M.
(Continued)

Consolidated
Answers of the
Defendants to
the Plaintiff's
Interrogatories.

31st day of January 1957 and the 19th day of August 1957,
and,

(b) See when so visiting the said land that the Plaintiff was
carrying out mining activities thereon?

ANSWER R.F.H., C.V.H., V.R.H., L.G.R., N.V.R.

(a) Yes.

(b) Yes.

QUESTION (18)

If yes to 17(a) how many times (approximately) did you visit
the said land between the dates mentioned in 17(a), and what 10
were, approximately the dates of any such visits?

ANSWER R.F.H., C.V.H.

Once early in June 1957.

ANSWER V.R.H.

Approximately 18 times per month on the average.

ANSWER L.G.R.

Twice about July and approximately end August 1957.

ANSWER N.V.R.

Probably weekly, mostly during the weekends.

QUESTION (19)

20

Did not you become aware on or after the 31st day of January
1957, that Logan Hunter Caldwell had arranged to let the
Plaintiff into possession of portion of the land comprised within
P.M.L. 1 Young for the purpose of carrying out mining activities
thereon?

ANSWER ALL

I became aware after the 31st January 1957 that he had purported
to do so.

QUESTION (20)

If yes to 19, when did you so become aware?

30

ANSWER R.F.H., C.V.H., F.C.H., V.R.H., M.V.R.

On or about 9th August, 1957.

ANSWER M.F.C., L.G.R.

At the end of August or early September 1957.

QUESTION (20A)

If yes to 19, did not you also become aware that in so arranging
Logan Hunter Caldwell had purported to act on your behalf?

ANSWER ALL

Yes.

QUESTION (20B)

40

If yes to 20A, when did you so become aware?

ANSWER R.F.H., C.V.H., F.C.H., V.R.H., N.V.R.

On or about 9th August, 1957.

ANSWER M.F.C., L.G.R.

At the end of August or early September 1957.

QUESTION (25)

Did not Logan Hunter Caldwell ask you, before the 14th day of June 1957, whether you would agree to a reduction in the royalty payable for magnesite won by the Plaintiff from the land, being portion of the land comprised in P.M.L. 1 Young upon which the Plaintiff was conducting mining operations?

Exhibit M.
(Continued)

Consolidated
Answers of the
Defendants to
the Plaintiff's
Interrogatories.

ANSWER R.F.H.

I remember Logan Hunter Caldwell informing me that he had had a request from the Plaintiff for a reduction of royalty to
10 6/- per ton as they (the plaintiffs) were doing no good.

ANSWER V.R.H.

I do not remember being asked by Logan Hunter Caldwell. I knew however that a reduction in royalty was being sought by the Plaintiff having discussed it with one of my brothers.

QUESTION (26)

If yes to 25, did not you tell Logan Hunter Caldwell that you would agree to a reduction in the royalty so payable from 10/- per ton to 6/- per ton?

ANSWER R.F.H.

20 Yes.

ANSWER V.R.H.

I do not remember speaking to Logan Hunter Caldwell about it at all.

QUESTION (27)

Did you not know, before the 14th day of June 1957, that Logan Hunter Caldwell intended to make an arrangement with the Plaintiff for a reduction in the said royalty?

ANSWER R.F.H.

30 No. However, I told Logan Hunter Caldwell to inform the plaintiff that I had no objection to a reduction.

ANSWER V.R.H.

No. However, I expected one of the co-owners to instruct Logan Hunter Caldwell to inform the Plaintiff that I had no objection to a reduction.

QUESTION 28

Did not you become aware on or after the 14th day of June 1957, that Logan Hunter Caldwell had in fact arranged with the Plaintiff for a reduction in the said royalty?

ANSWER ALL

40 I became aware that he had purported to do so.

QUESTION (29)

If yes to 28, when did you become aware?

ANSWER R.F.H., C.V.H., V.R.H., N.V.R.

On or about 9th August, 1957.

ANSWER F.C.H.

After the 9th August, 1957 but I do not know when.

Exhibit M.
(Continued)
—
Consolidated
Answers of the
Defendants to
the Plaintiff's
Interrogatories.
—

ANSWER M.F.C., L.G.R.

Late in August or early September 1957.

QUESTION (29A)

If yes to 28, did not you also become aware that in so arranging the said Logan Hunter Caldwell had purported to act on your behalf?

ANSWER ALL

Yes.

QUESTION (29B)

If yes to 29A when did you so become aware?

10

ANSWER R.F.H., C.V.H., V.R.H., N.V.R.

On or about 9th August, 1957.

ANSWER F.C.H.

After the 9th August 1957 but I do not know when.

ANSWER M.F.C., L.G.R.

Late in August or early September, 1957.

QUESTION (30)

Did not you, Victor Raymond Hughes, say to Thomas Ernest Buckley after the 14th day of June 1957 that the royalty payable by the Plaintiff had been dropped to 6/- a ton.

20

ANSWER V.R.H.

I remember discussing with Thomas Ernest Buckley after the 14th June 1957 a reduction in the royalty payable by the Plaintiff but I do not recall using the words referred to.

QUESTION (31)

Did not you see the document (or a copy thereof) bearing date the 14th day of June, 1957, being the document set out in paragraph 25 of the amended Statement of Claim on or before the 19th day of August, 1957?

ANSWER R.F.H., V.R.H., N.V.R.

30

Yes.

ANSWER C.V.H.

I have never seen the document or a copy of it. However, I learned of it early in August 1957.

QUESTION (32) If yes to 31,

(a) when did you first see the said document or a copy thereof?

ANSWER R.F.H., V.R.H., N.V.R.

On or about 9th August, 1957.

ANSWER F.C.H.

No, I have never seen the said document or a copy of it. However, I learned of it after 9th August 1957 although I do not know when.

40

ANSWER L.G.R.

Early in September, 1957.

(b) by whom was the same, or a copy of the same, shown to you?

NOT ANSWERED BY ALL.

QUESTION (33)

On what dates between the death of George Wigham Caldwell and the death of Logan Hunter Caldwell did you receive the moneys described in paragraph 8 and 10 of the amended Statement of Defence as "moneys which from time to time accrued by reason of mining activities carried out on portion of the land mentioned and described in paragraphs 16 and 25 of the amended Statement of Claim.

Exhibit M.
(Continued)
—
Consolidated
Answers of the
Defendants to
the Plaintiff's
Interrogatories.
—

QUESTION (34)

10 By whom were such moneys paid?

QUESTION (36)

What was the amount of each of such payments?

ANSWER ALL

(33), (34) & (36) The co-owners ultimately received into the joint account of Robert Frank Hughes and Logan Hunter Caldwell.

	10.11.56	£464	8	10	Victor Raymond Hughes
	23. 2.57	512	2	0	Victor Raymond Hughes
	13. 5.57	461	13	0	Victor Raymond Hughes
	23. 5.57	793	10	0	Plaintiff
20	15. 6.57	449	1	0	Plaintiff
	27. 6.57	390	16	0	Victor Raymond Hughes
	8. 7.57	525	16	0	Plaintiff
	3. 8.57	254	19	0	Victor Raymond Hughes
	7. 8.57	325	13	9	Plaintiff
	9. 8.57	251	11	0	Victor Raymond Hughes
	19. 8.57	277	17	3	Plaintiff
	19. 9.57	446	16	0	Plaintiff
	11.10.57	296	9	6	Victor Raymond Hughes
	11.11.57	175	1	0	Victor Raymond Hughes
30	22. 2.58	581	16	0	Victor Raymond Hughes
	3. 5.58	16	8	3	Young Mining Company
	7. 6.58	714	18	0	Victor Raymond Hughes

QUESTION (35)

By whom on your behalf were such monies received in the first instance from the person or persons paying the same?

ANSWER ALL

I do not know. However, all the cheques above other than that on the 22nd February 1958 and 3rd May 1958 were deposited in such account by Logan Hunter Caldwell. The last mentioned were deposited by Robert Frank Hughes.

QUESTION (41)

Between the death of George Wigham Caldwell and the death of Logan Hunter Caldwell, out of what monies were any rents or royalties payable to the Crown under the provisions of any lease of the land comprised in P.M.L. 1 Young, paid?

Exhibit M.
(Continued)
—
Consolidated
Answers of the
Defendants to
the Plaintiff's
Interrogatories.
—

ANSWER ALL

Those of the co-owners.

QUESTION (48)

Between the death of George Wigham Caldwell and the death of Logan Hunter Caldwell were not profits received by you as a result of any, and if so, what person being allowed to mine for magnesite on the land comprised in P.M.L. 1 Young?

ANSWER ALL (except that M.F.C. and L.G.R. answer on belief)

The co-owners received the sums of money set out in answer 36 above. These sums were the result of mining activities of 10 Victor Raymond Hughes, the plaintiff and the Young Mining Co. on the land set out in answer 38.

QUESTION (49) If yes to 48,

- (a) what were such net profits?
- (b) what expenses were deducted for the purpose of computing the amount of such net profits?
- (c) between whom were such expenses shared?

ANSWER ALL

(a) The sums received are as set out in answer 36 above.

(b) 18.12.56	Bank fee	10.	0	20
22.12.56	Cheque book	7	6	
5. 2.57	Warden's clerk	8	5	0
7. 3.57	Shire of Burrangong	38	3	3
11. 3.57	Under Secretary for Mines	284	13	0
12. 6.57	Bank Fee	10	0	
3. 8.57	Cheque Book	7	6	
2. 9.57	E.C.O.G. (Legal fees)	4	4	0
16.12.57	Bank fee	10	0	
7. 3.58	Under Secretary for Mines	324	1	6
29. 5.58	Cash	25	0	9 30
24. 6.58	Bank fee	10	0	
8. 7.58	Shire of Burrangong	42	6	3
27. 8.58	Warden's clerk	3	17	0
26. 9.58	E.C.O.G. (Legal costs)	4	4	0
12.12.58	Bank fee	10	0	

(c) The interests referred to in answer 2 above.

QUESTION (50)

- (a) What moneys do you admit (as mentioned in paragraphs 15 and 17 of the amended Statement of Defence) that Logan Hunter Caldwell received before the 31st day of January 1957. 40

ANSWER ALL

£464. 8. 0.

- (b) When, by whom and in what amounts were such moneys paid to the said Logan Hunter Caldwell?

ANSWER ALL

On or about 10th November 1956 on behalf of Victor Raymond Hughes.

(c) In respect of what matters or transactions were such moneys paid?

ANSWER ALL

Mining for magnesite on the lease.

(d) What was done with the said moneys after the same had been paid to the said Logan Hunter Caldwell?

10 ANSWER ALL

Deposited in account of Robert Frank Hughes and Logan Hunter Caldwell.

QUESTION 51

(a) What moneys do you admit (as mentioned in paragraphs 16 and 18 of the amended Statement of Defence) that Logan Hunter Caldwell received after the 31st day of January 1957?

ANSWER ALL

The balance of the monies in answer 36 excepting cheque of 22nd February 1958 for £581.16.0 and 3rd May 1958 for £16.8.3.

20 (b) When, by whom, and in what amounts were such moneys paid to the said Logan Hunter Caldwell.

ANSWER ALL

See answer 36 above.

(c) In respect of what matters or transactions were such moneys paid?

ANSWER ALL

Mining operations on the lease.

(d) What was done with the said moneys after the same had been paid to the said Logan Hunter Caldwell?

30 ANSWER ALL

Deposited in Robert Frank Hughes' and Logan Hunter Caldwell's account.

QUESTION 52

Which of the royalties mentioned in paragraph 14A of the amended Statement of Claim do you say were received by Logan Hunter Caldwell without your knowledge or consent?

ANSWER ALL

40 I knew that from time to time the Plaintiff was sending cheques to Logan Hunter Caldwell and that he was banking them in the account mentioned in answer 51. I did not know of his actual receipt of any particular cheque from the plaintiff at any particular time.

QUESTION 57

Do not you admit that until the 14th day of June 1957 you received from the Plaintiff some sums of money and if so what sums of money mentioned in paragraph 25 of the amended State-

Exhibit M.
(Continued)

—
Consolidated
Answers of the
Defendants to
the Plaintiff's
Interrogatories.
—

Exhibit M.
(Continued)

Consolidated
Answers of the
Defendants to
the Plaintiff's
Interrogatories.

ment of Defence as royalties in respect of magnesite won by the Plaintiff from land comprised in P.M.L. 1. Young?

ANSWER ALL

Yes those receipts from the Plaintiff prior to 14th June 1957 set out in answer 36.

QUESTION 60

Do not you admit that after the 14th day of June 1957 you received from the Plaintiff some sums of money and if so what sums of money mentioned in paragraph 34 of the amended Statement of Defence as royalties in respect of magnesite won 10 by the Plaintiff from land comprised in P.M.L. 1. Young?

ANSWER ALL

Yes those receipts from the Plaintiff after 14th June 1957 set out in answer to 36.

QUESTION 63

(a) What sums of money are referred to in paragraphs 26 of the amended Statement of Defence?

ANSWER ALL

Those of the appropriate dates set out in answer 36.

(b) By whom, when and in what amounts were such sums paid? 20

ANSWER ALL

As set out in answer 36.

(e) Were the sums of money referred to in paragraph 26 of the amended Statement of Defence received by Robert Frank Hughes and Logan Hunter Caldwell on joint account for and on behalf of any, and if so, what other person or persons?

ANSWER ALL

Yes, those persons mentioned in answer 2.

(f) With what Bank and what branch thereof did Robert Frank Hughes and Logan Hunter Caldwell have the account into 30 which such sums of money were paid?

ANSWER ALL

Australia and New Zealand Bank, Young.

(g) To whom, when and in what shares or proportions were such sums of money paid or disbursed by Robert Frank Hughes and Logan Hunter Caldwell?

ANSWER ALL

To the persons mentioned in answer 2.

On or about 13th May 1957 equally; and on or about 25th May 1957 equally.

40

QUESTION 64

(a) What sums of money are referred to in paragraph 35 of the amended Statement of Defence?

ANSWER ALL (except that M.F.C. and L.G.R. answer on belief)

Exhibit M.
(Continued)

Those of the appropriate dates set out in answer to 36. In addition approximately five weeks after the death of Logan Hunter Caldwell an amount of £88.13.0 was paid by the Young Mining Company to the account of Robert Frank Hughes and Logan Hunter Caldwell.

Consolidated
Answers of the
Defendants to
the Plaintiff's
Interrogatories.

(b) By whom, when and in what amounts were such sums paid?

ANSWER ALL (except that M.F.C. and L.G.R. answer on belief)

As set out in answer 36.

- 10 (e) Were the sums of money referred to in paragraph 35 of the amended Statement of Defence received by Robert Frank Hughes and Logan Hunter Caldwell on joint account for and on behalf of any, and if so, what other person or persons?

ANSWER ALL (except that M.F.C. and L.G.R. answer on belief)

Yes those persons mentioned in answer 38.

(f) With what Bank and what Branch thereof did Robert Frank Hughes and Logan Hunter Caldwell have the account into which such sums of money were paid?

ANSWER ALL (except that M.F.C. and L.G.R. answer on belief)

- 20 Australia and New Zealand Bank, Young.

(g) To whom and in what shares or proportions were such sums of money paid or disbursed by Robert Frank Hughes and Logan Hunter Caldwell?

ANSWER ALL (except that M.F.C. and L.G.R. answer on belief)

To the persons mentioned in answer 2 in June, August, September and November 1957 and June 1958 in equal shares.

QUESTION 66

Was the interest of Joseph Peter Hughes in such partnership ever sold?

- 30 ANSWER R.F.H., C.V.H., F.C.H., V.R.H.

No.

ANSWER M.F.C., L.G.R., N.V.R.

Not so far as I am aware.

QUESTION 71

Was the partnership mentioned in paragraph 2 of the amended Statement of Claim;

(a) Created by, or

(b) recorded in, and, and if so, what written document or documents?

- 40 ANSWER ALL

(a) No.

(b) Deed of partnership dated 14th August 1943.

Exhibit M.
(Continued)
—
Consolidated
Answers of the
Defendants to
the Plaintiff's
Interrogatories.
—

QUESTION 73

After the death of George Wigham Caldwell what became of his interest in the partnership referred to in paragraph 2 of the amended Statement of Claim?

QUESTION 74

Was the interest of George Wigham Caldwell in such partnership ever sold?

ANSWER ALL

No.

QUESTION 78

Was the business of the partnership referred to in paragraph 2 of the amended Statement of Claim ever wound up after the death of George Wigham Caldwell.

10

ANSWER ALL

No.

QUESTION 89

Was not a letter dated 15th October 1957 written by Messrs. Gordon, Garling and Guigni on behalf of you Margaret Ferguson Caldwell, Lindsay George Regan, and Norman Vivian Regan (as Executors of the Will of George Wigham Caldwell) to Messrs. 20 Eric Campbell Omant and Grant in the following terms:

“We have been instructed by the Executors of George Caldwell, deceased, to write to you in connection with certain proposed proceedings the Syndicate Hughes and Caldwell on the one hand and Australian Blue Metal Limited on the other. The Executors instruct us to inform you that they do not in any way wish to be associated with these proceedings. They do not approve of them and insist that, if the other members of the Syndicate pursue such proceedings, it is to be on the clear understanding that the Executors are 30 to be in no way responsible or liable for any legal costs whatsoever.”

ANSWER M.F.C., L.G.R., N.V.R.

Yes.

EXHIBIT D.E.

**Admissions by Defendants other than the Defendant Steele Hunter
Caldwell**

Exhibit D.E.
—
Admissions by
Defendants
other than the
Defendant
Steele Hunter
Caldwell.
—

The Defendants (other than Steele Hunter Caldwell) make the following admissions:—

1. That the following amounts were on the dates respectively mentioned paid by the persons or companies respectively mentioned opposite such payments to the credit of the Hughes & Caldwell bank account, for the price of magnesite sold to the persons and Companies mentioned, such magnesite being won from P.M.L. 1.

	Person or Company	Amount
	1947	
	1st February Minerals Limited	£35 5 11
	6th February Newbold Refractories	134 1 3
	22nd February Minerals P/L	36 4 7
	1st March " "	36 17 7
	22nd March " "	36 14 8
	24th March Newbold Refractories	404 1 5
	19th April Minerals P/L Melbourne	37 7 10
20	21st April Minerals P/L Sydney	37 2 9
	26th April Newbold Refractories	493 1 11
	26th April Minerals P/L Sydney	56 3 4
	10th May Minerals P/L Victoria	36 5 5
	17th May Minerals P/L Victoria	136 12 4
	29th May Newbold Refractories	901 11 0
	5th June Austral Rock	64 0 0
	5th June Minerals Pty. Limited	60 7 2
	4th July " " "	63 5 2
	1947	
30	9th August Minerals P/L Sydney	74 9 1
	16th August B.H.P.	151 0 6
	4th September B.H.P.	187 13 0
	4th September B.H.P.	423 16 6
	11th September H. H. Book	37 9 0
	26th September A.B.M. (firm)	8 8 3
	4th October Minerals Pty. Limited	611 0 5
	11th October Minerals Pty. Limited	115 12 4
	18th October " " "	59 19 9
	1st November B.H.P.	106 10 6
40	8th November Newbold Refractories	134 6 4
	15th November B.H.P.	222 14 4
	29th November Minerals P/L	210 3 9
	13th December B.H.P.	378 18 8
	20th December Minerals P/L	37 7 2

Exhibit D.E. (Continued)	1948			
—	7th February	Newbold Refractories	77	18 0
Admissions by	14th February	Minerals Vic. P/L	96	9 0
Defendants	6th March	Minerals Sydney P/L		
other than the		Newbold Refractories	566	5 3
Defendant	13th March	Minerals P/L	63	3 6
Steele Hunter	15th March	B.H.P.	157	14 6
Caldwell.	20th March	"	173	6 0
—	3rd April	Minerals P/L	38	14 0
	10th April	B.H.P.	244	8 6 10
	17th April	Minerals P/L	35	10 3
	24th April	Newbold Refractories	681	10 7
	24th April	B.H.P.	59	8 6
	15th May	Minerals P/L	34	11 10
	24th May	" "	39	7 5
	5th June	McLeod & Co.	37	19 0
	5th June	Newbold Refractories	262	7 11
	3rd July	Minerals P/L	75	0 11
	17th July	" "	150	9 10
	24th July	" "	98	19 11 20
	21st August	" "	38	3 8
	24th September	" "	75	3 5
	25th September	Newbold Refractories	689	15 0
	18th October	Minerals P/L	36	2 2
	18th October	Minerals P/L	113	7 6
	6th November	" "	75	19 7
	15th November	" "	32	13 3
	20th November	Minerals P/L	38	17 9
	27th November	" "	75	16 11
	4th December	Newbold Refractories	224	19 11 30
	13th December	Minerals P/L	75	1 4
	30th December	" "	111	19 4
	1949			
	29th January	Minerals P/L	74	11 7
	5th February	" "	148	10 9
	12th February	" "	37	9 8

2. That on the dates hereunder mentioned payments were made from Hughes & Caldwell Bank Account to the Defendants R. F. Hughes and C. V. Hughes as follows:—

1947	Amount	40
28th March	£464 0 0	
3rd May	675 0 0	
2nd June	763 10 0	
7th July	600 0 0	
18th August	375 0 0	

	8th September	637	10	0	Exhibit D.E. (Continued) — Admissions by Defendants other than the Defendant Steele Hunter Caldwell. —
	13th October	15	0	0	
	13th October	483	0	0	
	11th November	411	0	0	
	8th December	478	10	0	
	1948				
	12th January	133	5	6	
	9th February	585	0	0	
	8th March	555	0	0	
10	12th April	742	0	0	
	19th April	25	0	0	
	17th May	140	12	0	
	7th June	304	0	0	
	19th July	361	0	0	
	9th August	285	0	0	
	13th September	334	8	0	
	11th October	142	10	0	
	22nd November	228	0	0	
	13th December	199	10	0	
20	1949				
	7th January	142	10	0	
	14th February	196	3	7	

3. That the abovementioned payments represented the balance of the proceeds of sale of magnesite won by R. F. & C. V. Hughes after deducting an amount per ton as a royalty payment from R. F. & C. V. Hughes to Hughes & Caldwell. That such magnesite was won from P.M.L. 1.
4. That the following amounts were on the dates respectively mentioned, paid by groups consisting of some or all of the following persons: V. R. Hughes, one Wade, Cecil Vivian Hughes and one Bruce, to the credit of the "Hughes & Caldwell" Bank Account.
5. That such amounts were paid by the abovementioned group as royalties for magnesite won by such group from P.M.L. 1.

	1955	Amount		
	21st February	£235	2	0
	3rd August	469	0	0
	16th December	715	7	0
	1956			
40	25th February	181	16	0
	23rd April	131	2	0
	1st June	654	4	0
	10th November	464	8	0
	1957			
	23rd February	512	2	0

Exhibit D.E. (Continued)	14th May	461	13	0
—	27th June	390	16	0
Admissions by Defendants	3rd August	254	19	0
other than the Defendant	9th August	251	11	0
Steele Hunter	11th October	296	9	6
Caldwell.	11th November	175	1	0
—	1958			
	22nd February	581	16	0
	17th June	714	18	0

EXHIBIT C.E.

Profit & Loss Account of Plaintiff—Young Trading half year ended 31 December 1956

AUSTRALIAN BLUE METAL LIMITED
YOUNG TRADING ACCOUNT FOR HALF YEAR ENDED 31st DECEMBER, 1956

To Stock on Hand 1st			
July, 1956	£1,125	0	0
„ Work in Progress	3,319	0	6
„ Wages	3,209	18	3
„ Cartage and			
Dumping	7,688	7	11
„ Repairs Plant	207	13	0
„ Repairs Traxcavator	110	13	5
„ Petrol and Oils	402	14	8
„ Stores and Working			
Expenses	143	8	4
„ Explosives	297	15	1
„ Freight	5	5	6
„ Repairs Vehicles	123	12	6
„ Royalty	132	14	11
„ Travelling Expenses			
& Accommodation	117	0	0
„ Payroll Tax and			
Workers' Compen-			
sation Insurance	162	18	6
„ General Expenses	10	10	11
„ Administration			
Expenses	197	9	0
		17,254	2 6
		£17,254	2 6

By Sales	£13,080	15	9
„ Work in Progress	2,703	8	0
„ Stock on Hand 31st December,			
1956	175	0	0
„ Loss for Half Year	1,294	18	9

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£17,254 2 6

Exhibit C.E.
Profit and Loss
Account of the
Plaintiff—
Young Trading
for half-year
ended 31st
December, 1956.

EXHIBIT C.O.

Schedule of Loss by Plaintiff—Young Trading 5 months ended 31 May, 1957

SCHEDULE DETAILING LOSS INCURRED FOR FIVE MONTHS ENDED 31st MAY, 1957

	Gross Sales to 30th June 1957		£29,147	0	2
DEDUCT	Gross Sales to 31.12.56	£13,080	15	9	
	„ „ „ 31. 5.57	10,294	6	5	
			<u>23,375</u>	<u>2</u>	<u>2</u>
	June Gross Sales		5,771	18	0
	Less June Working Expenses		<u>3,587</u>	<u>0</u>	<u>6</u>
	June, Increase in cash position		2,184	17	6
	Works in Progress 30.6.57	£4,513	10	9	
	„ „ „ 31.5.57	2,951	5	9	
			<u>£1,562</u>	<u>5</u>	<u>0</u>
	Increase in Works in Progress June, 1957		1,562	5	0
	Stock on Hand 30.6.57	2,714	17	0	
	„ „ „ 31.5.57	468	15	0	
			<u>2,246</u>	<u>2</u>	<u>0</u>
	Increase in Stock June, 1957		2,246	2	0
	Net Return June, 1957	5,993	4	6	
	Less Profit for year ended 30.6.57	2,309	19	10	
			<u>3,683</u>	<u>4</u>	<u>8</u>
	Loss to 31.5.57 (11 months)	3,683	4	8	
	Loss six months to 31.12.56	1,294	18	9	
Made Up of	Loss five months 1.1.57—31.5.57	2,388	5	11	
			<u>£3,683</u>	<u>4</u>	<u>8</u>

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Exhibit C.O.
Schedule of
Loss by Plaintiff
for 5 months
ended 31st May,
1957.

EXHIBIT C.O.—Continued

Trading Account of Plaintiff—Young Trading year ended 30 June 1957

AUSTRALIAN BLUE METAL LIMITED—YOUNG, N.S.W.

TRADING ACCOUNT FOR YEAR ENDED 30th JUNE, 1957

To Stock on Hand 1st July, 1956	1,125	0	0	By Sales	29,147	0	2
„ Work in Progress as at 1st July, 1956	3,319	0	6	„ Work in Progress as at 30th June, 1957	4,513	10	9
„ Wages	6,589	12	1	„ Stock on Hand 30th June, 1957	2,714	17	0
„ Cartage and Dumping	15,358	3	8				
„ Repairs Plant	577	10	10				
„ Repairs Excavator	1,488	9	7				
„ Petrol and Oils	796	9	3				
„ Stores and Working Expenses	258	2	0				
„ Repairs Vehicle	241	14	0				
„ Travelling Expenses	313	15	0				
„ Tyres and Tubes	12	13	4				
„ Exchange and Bank Charges	25	17	11				
„ Plant Hire	36	0	0				
„ Royalties	2,362	7	11				
„ Payroll Tax	164	11	6				
„ Workers' Compensation Insurance	197	8	8				
„ Explosives	744	3	10				
„ Freight	5	5	6				
„ Legal Expenses	197	9	0				
„ Telephone	1	13	6				
„ Proportion New South Wales Administrative Overhead	250	0	0				
	<u>34,065</u>	<u>8</u>	<u>1</u>				
„ Net Profit—							
4/5ths Taxable	1,848	10	7				
1/5th "Tax Free"	461	9	3				
	<u>2,309</u>	<u>19</u>	<u>10</u>				
	<u>£36,375</u>	<u>7</u>	<u>11</u>		<u>£36,375</u>	<u>7</u>	<u>11</u>

EXHIBIT 18

Letter, Plaintiff's Accountants to Plaintiff of 20 February 1961

20th February, 1961.

The Secretary,
Australian Blue Metal Limited,
Challis House,
10 Martin Place,
SYDNEY.
New South Wales.

Exhibit 18.
—
Letter,
Messrs.
England,
Roberts &
Molesworth,
Plaintiff's
Accountants,
to Plaintiff.
—
20th Feb., 1961.

10 Dear Sir,

Operations at Young

As requested, we have prepared from the books of Account, the Trading and Profit and Loss Account for the five months ended 31st May, 1957, which show a net loss of £2,388.5.11.

The net profit as per the Annual Annual (sic) Accounts amounted to £2,309.19.10 and this has been arrived at as under:—

	Half year to the 31st December, 1956, Loss	£1,294	18	9
	Loss for the 5 months to the 31st May, as set out in the attached account	£2,388	5	11
		<hr/>		
		£3,683	4	8
	Profit for the month of June, 1957	5,993	4	6
		<hr/>		
	Net profit for year	£2,309	19	10

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Should you require any further information kindly let us know.

Yours faithfully,

ENGLAND, ROBERTS & MOLESWORTH

EXHIBIT B.Z.

Photograph of Site of P.M.L. 1

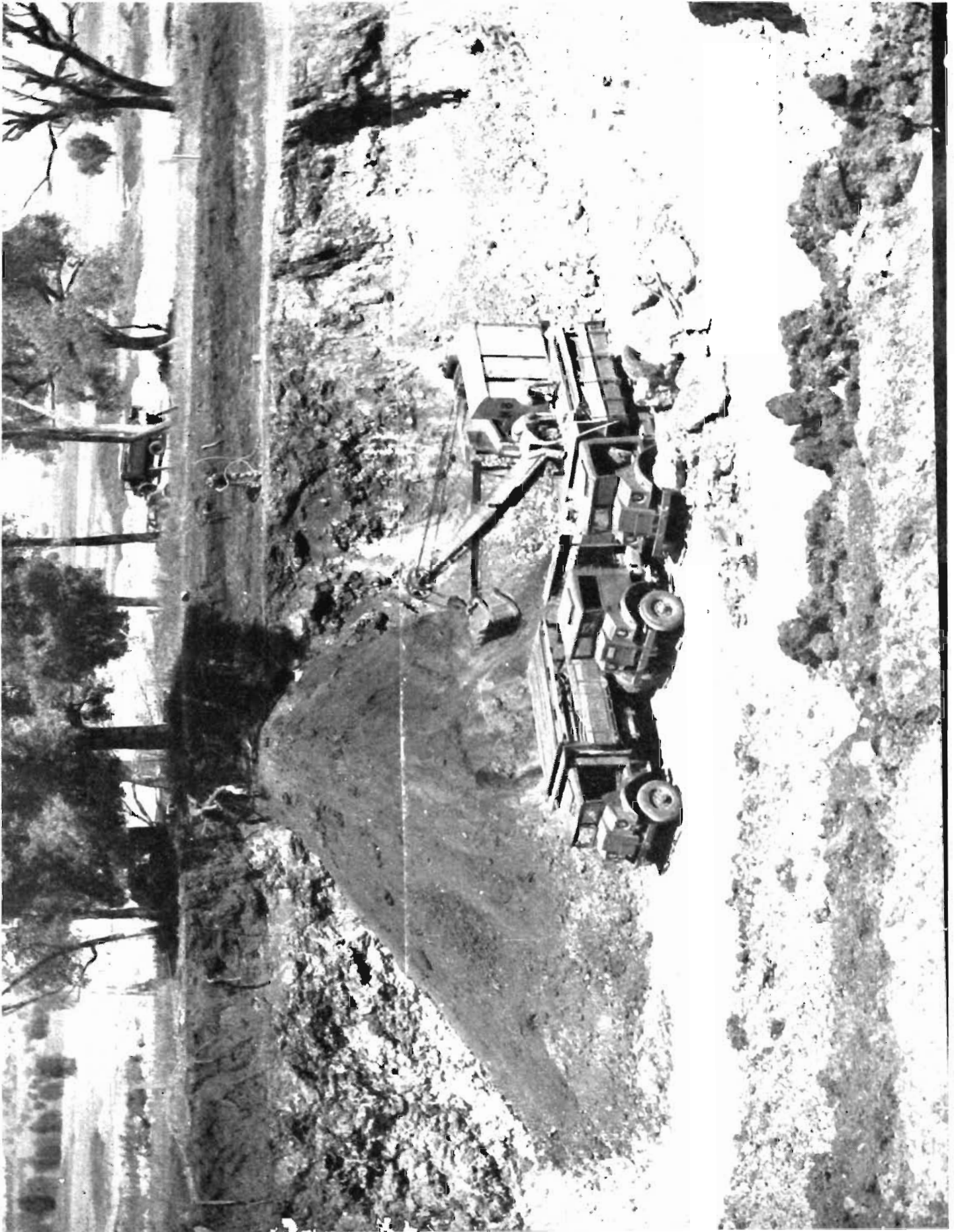


EXHIBIT B.Y.

See sketch pages 550/51.

549A

EXHIBIT B.Y.

See sketch pages 550/51.

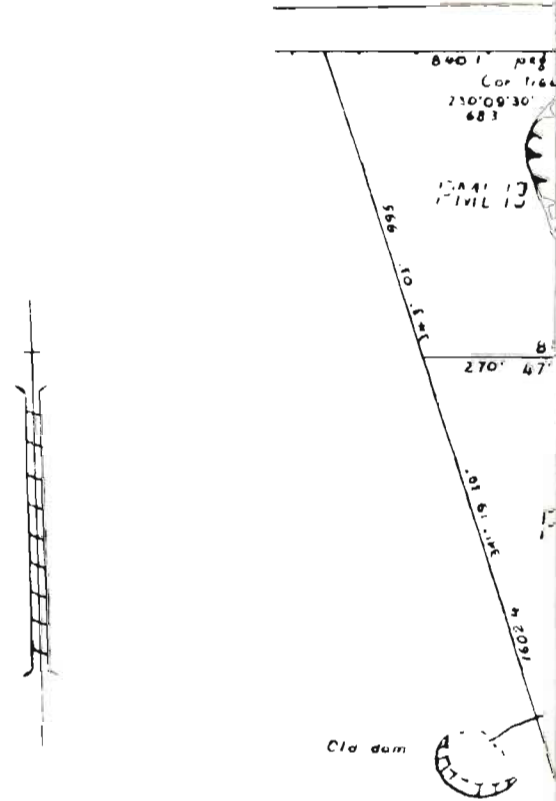
549B

EXHIBIT B.Y.

See sketch pages 550/51.

EXHIBIT BY

Sketch of Mr. Surveyor Oswald Watson of Mining Leases on Portions
112 and 27 Parish of Bribaree County Montegale.



A	North	of	Water	Course	2
B	South	"	"	"	10
C	"	"	"	"	5
D	North	"	"	"	19

