

(i)

IN THE PRIVY COUNCIL

No. of 1964.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH

WALES IN ITS COMMERCIAL CAUSES

JURISDICTION IN CAUSE NO. 8189 of 1963

Between

UNIVERSAL GUARANTEE PTY. LIMITED

Appellant (Plaintiff)

and

THE NATIONAL BANK OF AUSTRALASIA LIMITED

Respondent (Defendant)

TRANSCRIPT RECORD OF PROCEEDINGS

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PART 11 - EXHIBITS

Mark	By whom Tendered	Description of Exhibits
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D (Part only)	Plaintiff	Calculations of Interest on Files 1 to 165
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PART I

TRANSCRIPT RECORD
OF
PROCEEDINGS
DOCUMENTS INCLUDED IN
THE RECORD

NO. 1.

WRIT OF SUMMONS

No. 1
Writ of
Summons

16th September,
1963.

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Australia and her other realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

10 To THE NATIONAL BANK OF AUSTRALASIA LIMITED
of 340-346 George Street, Sydney.

WHEREAS the abovenamed Plaintiff has commenced an action against you in this Court:

We command you that if you desire to contest its claim you do, within ten (10) days after service of this writ upon you, file in the office of the Court a notice of appearance in the form prescribed by the rules of the Court and serve a copy
20 thereof on the plaintiff or its solicitor.

AND take notice that such notice of appearance may be filed on your behalf by a solicitor of this Court or by yourself in person, in which latter case the address given therein for service of documents upon you must be within two miles of the General Post Office, Sydney.

AND take notice that if you fail to file such notice of appearance within the time limited for your appearance the
30 plaintiff may proceed with the action as provided by the Common Law Procedure Act, 1899, and the rules made thereunder.

WITNESS – The Honourable LESLIE JAMES HERRON
Chief Justice of our said Court at Sydney this 16th
day of September, 1963.

For the Prothonotary

40

J. LIEPENS

(L.S.)

Clerk of the Supreme Court

This writ was issued by BRIAN BULLOCK of 125
York Street, Sydney.

No. 1
Writ of
Summons

16th September,
1963.

(Continued)

The address for service of documents is C/ Remington
& Co., Solicitors, 125 York Street, Sydney.

The Plaintiff claims One Hundred and fifteen thousand
pounds (£ 115,000. 0. 0.) and Sixteen pounds ten shillings
(£ 16. 10. 0.) for his cost together with the fees properly
paid for service of this writ upon you and if those sums
be paid to him or his solicitor within the time above
limited for your appearance further proceedings in this
10 action will be stayed.

B. BULLOCK

Plaintiff's Solicitor

NO. 2.
ISSUES FOR TRIAL
 (AS AMENDED)

No. 2
 Issues for Trial
 (As Amended)

2nd June, 1964.

Points of
 Claim.

Writ issued: 16th September 1963

Appearance filed: 19th September 1963

10

AMENDED POINTS OF CLAIM

1. The Plaintiff is a Company duly incorporated in the State of Victoria in accordance with the Companies Legislation of that State and is registered as foreign Company in New South Wales in accordance with the Companies Legislation of the latter State.

20 2. The plaintiff was incorporated on the 17th day of December, 1926 and has since the 6th day of September, 1937 carried on business in New South Wales.

3. The business carried on by the plaintiff in New South Wales was at all material times and still is that of a Finance House relating principally to dealings with motor vehicles, farming equipment, and radio and electrical goods.

30 4. The defendant is a Company duly incorporated in Victoria as aforesaid and is and has been at all material times registered as a foreign Company in New South Wales as aforesaid.

5. The defendant has for many years and still does carry on the business of banking in New South Wales from various branch offices including one known as the Wentworth Avenue Branch.

40 6. For many years the defendant has through its Wentworth Avenue Branch in Sydney acted as bankers to the plaintiff.

7. On the 22nd July, 1952 the plaintiff gave to the defendant an authority for the transaction of banking business by the plaintiff with the defendant in the following terms:-

No. 2
Issues for
Trial
(As Amended)
2nd June, 1964.

"TO

22nd July, 1952

THE NATIONAL BANK OF AUSTRALASIA LIMITED

Points of
Claim.
(Continued)

We the undersigned (1) ARTHUR GEORGE WARNER

PERCY JOHN SALMON

10 being Chairman of Directors and (2) SECRETARY
of (3) UNIVERSAL GUARANTEE PTY. LIMITED
whose registered office is situated at 131 BOUVERIE
STREET CARLTON N.3 advise you regarding the banking
account for the Company under the style of UNIVERSAL
20 GUARANTEE PTY. LIMITED.

We have handed you copy Memorandum and Articles of Association also (for inspection and return) Certificate of Incorporation and (x) Certificate that company is entitled to commence business. Authority has been given to (4) Chairman of Directors solely or any two of the following jointly: A .K. STEAD, G. L. FOLLETT, C.V. , N.J. HEFFERMAN, W.R. MOFFITT, to do all or any of the following acts and things in the name and on behalf of the company, namely:-

- 30
- (a) Sign draw make accept endorse discount or make arrangements with you regarding cheques bills of exchange promissory notes and other instruments and to overdraw the account.
- (b) Endorse assign or give you security over bills of lading warehouse certificates and other documents conferring a right to or insuring goods and receive such documents and if required give trust receipts for
- 40 same .
- (c) Place money on fixed deposit and receive repayment and interest and receive boxes deeds or documents .
- (d) Sign or execute guarantees or indemnities protecting you in relation to (1) missing bills of lading or other document conferring a right to or insuring goods (2)

guarantees or undertakings by you in favour or on behalf of the Company (3) letters of credit.

No. 2
Issues for Trial
(As Amended)
2nd June, 1964.

Any one of the directors or the secretary treasurer manager accountant sub-accountant cashier .

Points of
Claim.
(Continued)

10 (5) of the company for the time being has also been authorised to endorse cheques and other instruments payable to or to the order of the company.

Should the said authority be terminated you will be notified in writing by the company.

..... CHAIRMAN

..... SECRETARY

20 (x) Certificate that Company is entitled to Commence Business. For Exemptions see regulations, Authorities - 6, para 3."

30 8. The plaintiff claims that it was an implied term and condition or warranty of the contract whereby the defendant acted as the plaintiff's bankers that in respect of all cheques drawn by the plaintiff on its bank account with the defendant and crossed generally within the meaning of that expression as defined in the Bills of Exchange Act 1909-1958 (Commonwealth) and payable to a named payee that it would not debit any such cheques against the plaintiff's bank account with the defendant if the name of the payee endorsed on the back of the cheque was forged.

40 9. The plaintiff further claims that it was an implied term and condition or warranty of the contract whereby the defendant acted as the plaintiff's bankers that in respect of all cheques drawn by the plaintiff on its bank account with the defendant and crossed generally within the meaning of that expression as defined in Bills of Exchange Act 1909-1958 (Commonwealth) the defendant would not pay any such cheque to the holder thereof unless it was presented by the holder thereof through a bank for payment.

10. The plaintiff further claims that it was an implied term and condition or warranty of the contract whereby the defendant acted as the plaintiff's bankers that in respect of cheques drawn in favour of a named payee by the plaintiff on

No. 2
Issues for Trial
(As Amended)
2nd June, 1964.

Points of
Claim.
(Continued)

its bank account with the defendant and crossed "Not Negotiable Account Payee only" that the bank would not debit any cheques so endorsed against the plaintiff's account with the defendant if the name of the payee endorsed on the back of the cheque was forged.

11. The plaintiff further claims that it was an implied term and condition or warranty of the contract whereby the defendant acted as the plaintiff's bankers that in respect of
10 cheques drawn in favour of a named payee by the plaintiff on its bank account with the defendant and crossed "Not Negotiable Account Payee Only" that the bank would not debit any cheque so endorsed against the plaintiff's account with the defendant unless the cheque had been negotiated through another bank or paid to the credit of the payee in an account with the defendant.

12. The plaintiff further claims that it was an implied term and condition or warranty of the contract whereby the
20 defendant acted as the plaintiff's bankers that it would not accept any cheque drawn by the plaintiff to a named payee other than the plaintiff and crossed "Not Negotiable Account Payee Only" sought to be deposited to the credit of the plaintiff's account with the defendant unless such cheque was endorsed on behalf of the plaintiff by the signatures of two officers of the plaintiff authorised to draw cheques.

13. The plaintiff further claims that it was an implied term and condition or warranty of the contract whereby the
30 defendant acted as bankers for the plaintiff that upon deposits being made by the plaintiff to the credit of its account with the defendant that the duplicate receipt issued by the defendant to the plaintiff would correspond in all particulars with the original receipt retained by the defendant.

14. The plaintiff further claims that the defendant acting as its banker owed the plaintiff a duty in respect of all cheques drawn by the plaintiff on its bank account with the defendant and crossed generally within the meaning of that expression as
40 defined in the Bills of Exchange Act 1906-1958 (Commonwealth) and payable to a named payee that it would not debit any such cheque to the plaintiff's bank account with the defendant if the name of the payee endorsed on the back of the cheque was forged.

15. The plaintiff further claims that the defendant acting as its banker owed the plaintiff a duty in respect of all cheques

drawn by the plaintiff on its bank account with the defendant and crossed generally within the meaning of that expression as defined in Bills of Exchange Act 1906-1958 (Commonwealth) not to pay any such cheque to the holder thereof unless it was presented by the holder thereof through a bank for payment .

No. 2
Issues for Trial
(As Amended)
2nd June, 1964.

Points of
Claim.
(Continued)

16. The plaintiff further claims that the defendant acting as its banker owed the plaintiff a duty in respect of cheques drawn in favour of a named payee by the plaintiff on its bank account with the defendant and crossed "Not Negotiable Account Payee Only" that it would not debit any such cheques against the plaintiff's bank account with the defendant if the name of the payee endorsed on the back of the cheque was forged.

17. The plaintiff further claims that the defendant acting as its banker owed the plaintiff a duty in respect of cheques drawn in favour of a named payee by the plaintiff on its bank account with the defendant and crossed "Not Negotiable Account Payee Only" that it would not debit any cheques so endorsed against the plaintiff's account with the defendant unless the cheque had been negotiated through another bank or paid to the credit of the payee in an account with the defendant.

18. The plaintiff further claims that the defendant acting as its banker owed the plaintiff a duty that it would not accept any cheque drawn by the plaintiff payable to a named payee other than the plaintiff and crossed "Not Negotiable Account Payee Only" sought to be deposited to the credit of the plaintiff's account with the defendant unless such cheque was endorsed on behalf of the plaintiff by the signatures of two officers of the plaintiff authorised to draw cheques.

19. The plaintiff further claims that the defendant acting as its banker owed the plaintiff a duty that upon deposits being made by the plaintiff to the credit of its account with the defendant that the duplicate receipt issued by the defendant to the plaintiff would correspond in all particulars with the original receipt retained by the defendant.

20. The plaintiff further claims that in breach of the implied term and condition or warranty of the contract referred to in paragraph 8 hereof and through the negligence of its servants and in breach of the duty referred to in paragraph 14 hereof that the defendant wrongly debited against the plaintiff's account with the defendant the undermentioned

No. 2
Issues for Trial -
(As Amended)
2nd June, 1964.

cheques which were drawn in favour of a named payee and the name of the payee signed on the back of the cheque was a forgery:

Points of
Claim.
(Continued)

	<u>File</u> <u>No.</u>	<u>Cheque No.</u>	<u>Date Paid</u>	<u>Amount</u>	<u>Payee</u>
	1	6531	2/12/54	£195	K. R. Henry
	2	6605	15/12/54	£260	E.G. Williams
10	3	6706	31/12/54	£325	E.J. Parker
	4	7198	14/ 3/55	£160	P. J. Bruce
	5	7282	25/ 3/55	£225	"
	6	7379	6/ 4/55	£265	"
	7	7421	15/ 4/55	£255	"
	8	7484	26/ 4/55	£250	"
	9	7546	5/ 5/55	£245	"
	10	7615	16/ 5/55	£250	"
	11	7626	19/ 5/55	£185	"
	12	7740	30/ 5/55	£250	"
20	13	7796	3/ 6/55	£295	"
	14	7859	14/ 6/55	£265	"
	15	7880	16/ 6/55	£225	"
	16	9917	31/ 8/55	£200	"
	17	10718	27/10/55	£275	"
	18	B35423	6/12/55	£365	J. Bruce
	19	8039	16/12/55	£198	"
	20	8087	23/12/55	£213	"
	21	8192	11/ 1/56	£225	"
	22	8199	16/ 1/56	£215	"
30	23	8230	23/ 1/56	£220	"
	24	10804	31/ 1/56	£198	"
	25	10854	8/ 2/56	£220	"
	26	10883	20/ 2/56	£215	"
	27	10907	21/ 2/56	£198	"
	28	10923	24/ 2/56	£210	"
	29	10962	29/ 2/56	£215	"
	30	8502	6/ 3/56	£198	"
	31	8537	14/ 3/56	£225	"
	32	8553	21/ 3/56	£210	"
40	33	8582	23/ 3/56	£205	"
	34	8614	28/ 3/56	£215	"
	35	8664	6/ 4/56	£225	"
	36	8669	10/ 4/56	£220	"
	37	8696	16/ 4/56	£225	"
	38	8734	19/ 4/56	£215	"
	39	8799	30/ 4/56	£225	"
	40	8857	9/ 5/56	£225	"

<u>File No.</u>	<u>Cheque No.</u>	<u>Date Paid</u>	<u>Amount</u>	<u>Payee</u>	No. 2 Issues for Trial (As Amended) 2nd June, 1964. --- Points of Claim. (Continued)
	41	8891	16/ 5/56	£225	J. Bruce
	42	8905	18/ 5/56	£220	"
	43	8933	23/ 5/56	£225	"
	44	8956	28/ 5/56	£230	"
	45	9070	15/ 6/56	£225	"
	46	9127	26/ 6/56	£235	"
10	47	9201	4/ 7/56	£235	"
	48	9242	16/ 7/56	£225	"
	49	9274	24/ 7/56	£240	"
	50	9361	2/ 8/56	£235	"
	51	11245	9/10/56	£525	T.R.Green
	52	11285	15/10/56	£200	J. Bruce
	53	11630	4/12/56	£265	"
	54	12073	13/ 2/57	£525	"
	55	12157	25/ 2/57	£415	"
	56	12583	11/ 4/57	£445	"
20	57	12727	1/ 5/57	£470	"
	59	12853	15/ 5/57	£450	"
	60	12942	23/ 5/57	£480	"
	61	13148	13/ 6/57	£475	"
	62	13248	25/ 6/57	£400	"
	63	13368	9/ 7/57	£445	"
	64	13689	6/ 8/57	£400	"
	65	13761	13/ 8/57	£420	"
	66	P.C.283549	17/ 9/57	£400	"
	67	14107	9/10/57	£430	"
30	68	14834	17/12/57	£450	"
	69	15469	27/ 2/58	£445	"
	70	15641	11/ 3/58	£450	"
	71	15942	9/ 4/58	£460	"
	72	16535	13/ 5/58	£450	"
	73	16694	27/ 5/58	£450	"
	74	16372	10/ 6/58	£440	"
	75	16802	25/ 6/58	£425	"
	76	17267	22/ 7/58	£450	"
	77	17548	7/ 8/58	£400	"
40	78	17689	19/ 8/58	£357	"
	79	17936	3/ 9/58	£440	"
	80	18142	16/ 9/58	£465	"
	81	18246	23/ 9/58	£430	"
	82	18484	14/10/58	£400	"
	83	P.C.329086	30/10/58	£350	"
	84	P.C.329258	11/11/58	£430	"
	85	P.C.331948	14/11/58	£450	"

No. 2 Issues for Trial (As Amended) 2nd June, 1964. ---	<u>File No.</u>	<u>Cheque No.</u>	<u>Date Paid</u>	<u>Amount</u>	<u>Payee</u>
	86	P.C.334448	10/12/58	£440	J. Bruce
Points of Claim. (Continued)	87	19180	10/ 2/59	£440	"
	88	19249	17/ 2/59	£460	"
	89	19344	24/ 2/59	£445	"
	90	19565	10/ 3/59	£460	"
	91	19646	17/ 3/59	£465	"
10	92	19784	1/ 4/59	£455	"
	93	19917	10/ 4/59	£400	"
	94	19962	15/ 4/59	£440	"
	95	20124	28/ 4/59	£440	"
	96	20247	5/ 5/59	£420	"
	97	20295	11/ 5/59	£360	"
	98	20512	27/ 5/59	£420	"
	99	20599	4/ 6/59	£450	"
	100	20748	17/ 6/59	£400	N. Byatt
	101	20749	18/ 6/59	£470	J. Bruce
20	102	20811	23/ 6/59	£450	N. Byatt
	103	20885	30/ 6/59	£460	J. Bruce
	104	P.C.360727	16/ 7/59	£425	N. Byatt
	105	P.C.360880	28/ 7/59	£445	"
	106	21278	4/ 8/59	£440	"
	107	21366	12/ 8/59	£435	"
	108	21375	17/ 8/59	£450	J. Bruce
	109	21489	21/ 8/59	£430	N. Byatt
	110	21574	31/ 8/59	£400	"
	111	21611	1/ 9/59	£420	J. Bruce
30	112	21665	7/ 9/59	£425	N. Byatt
	113	21734	8/ 9/59	£465	J. Bruce
	114	21843	15/ 9/59	£460	"
	115	21842	17/ 9/59	£440	N. Byatt
	116	21935	22/ 9/59	£440	B. Byatt
	117	22003	28/ 9/59	£430	J. Bruce
	118	22079	1/10/59	£445	N. Byatt
	119	22189	7/10/59	£440	J. Bruce
	120	22213	12/10/59	£450	N. Byatt
	121	22259	14/10/59	£400	J. Bruce
40	122	22334	20/10/59	£440	N. Byatt
	123	22368	22/10/59	£450	J. Bruce
	124	22452	27/10/59	£440	N. Byatt
	125	22484	29/10/59	£390	J. Bruce
	126	21165	4/11/59	£450	N. Byatt
	127	21176	6/11/59	£350	J. Bruce
	128	22750	8/12/59	£400	Noel Byatt
	129	22784	11/12/59	£330	N. Byatt

File No.	<u>Cheque No.</u>	<u>Date Paid</u>	<u>Amount</u>	<u>Payee</u>	No. 2 Issues for Trial (As Amended) 2nd June, 1964. --- Points of Claim (Continued)
	130	22785	15/12/59	£ 350	J. Bruce
	131	22856	21/12/59	£ 320	"
	132	22903	23/12/59	£ 300	"
	133	23019	8/ 1/60	£ 300	"
	134	23129	14/ 1/60	£ 350	"
	135	23137	15/ 1/60	£ 315	N. Byatt
10	136	23417	9/ 2/60	£ 290	J. Bruce
	137	23555	23/ 2/60	£ 300	"
	138	23715	3/ 3/60	£ 325	"
	139	23898	23/ 3/60	£ 475	N. Byatt
	140	23909	24/ 3/60	£ 350	J. Bruce
	141	24006	31/ 3/60	£ 440	N. Byatt
	142	24107	7/ 4/60	£ 315	J. Bruce
	143	24162	13/ 4/60	£ 450	N. Byatt
	144	24214	22/ 4/60	£ 425	"
	145	24300	28/ 4/60	£ 400	"
20	146	24302	29/ 4/60	£ 410	J. Bruce
	147	24437	10/ 5/60	£ 550	N. Byatt
	148	24499	16/ 5/60	£ 395	"
	149	24577	24/ 5/60	£ 350	"
	150	24642	31/ 5/60	£ 450	"
	151	24640	1/ 6/60	£ 300	J. Bruce
	152	24708	7/ 6/60	£ 475	N. Byatt
	153	24796	16/ 6/60	£ 430	"
	154	24851	21/ 6/60	£ 420	"
	155	24942	29/ 6/60	£ 400	"
30	156	25390	10/ 8/60	£ 450	"
	157	25536	23/ 8/60	£ 400	"
	158	25599	30/ 8/60	£ 450	"
	159	25757	7/ 9/60	£ 430	"
	160	25811	13/ 9/60	£ 300	"
	161	25851	14/ 9/60	£ 450	"
	162	25994	27/ 9/60	£ 560	"
	163	26165	5/10/60	£ 535	"
	164	26209	11/10/60	£ 400	"
	165	26351	21/10/60	£ 400	"

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21. The plaintiff further claims that in breach of the implied term and condition or warranty of the contract referred to in paragraph 9 hereof and through the negligence of its servants and in breach of the duty referred to in paragraph 15 hereof that the defendant wrongly debited against the plaintiff's account with the defendant the cheques set out in paragraph 20 hereof which said cheques

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 (As Amended)
 2nd June, 1964.

 Points of Claim.
 (Continued)

were drawn and crossed generally within the meaning of that expression as defined in the Bills of Exchange Act 1909-1958 (Commonwealth) and which were not presented to the defendant for payment by the holder thereof through a bank.

22. The plaintiff further claims that in breach of the implied term and condition or warranty of the contract referred to in paragraph 10 hereof and through the negligence of its servants and in breach of the duty referred to in paragraph 16 hereof that the defendant wrongly debited to the plaintiff's account with the defendant the cheques set forth in paragraph 20 hereof which cheques were crossed "Not Negotiable Account Payee Only" and the name of the payee on the back of the cheque was forged.

23. The plaintiff further claims that in breach of the implied term and condition or warranty of the contract referred to in paragraph 11 hereof and through the negligence of its servants and in breach of the duty referred to in paragraph 16 hereof that the defendant wrongly debited to the plaintiff's account with the defendant the cheques set forth in paragraph 20 hereof which were drawn in favour of a named payee and were crossed "Not Negotiable Account Payee Only" and which were not negotiated through another bank or paid to the credit of the payee in an account with the defendant.

24. The plaintiff further claims that in breach of the implied term and condition or warranty of the contract referred to in paragraph 12 hereof and through the negligence of its servants and in breach of the duty referred to in paragraph 18 hereof that the defendant wrongly accepted the cheques set forth in paragraph 20 hereof to the credit of the plaintiff's account with the defendant which were not endorsed on behalf of the plaintiff by the signatures of two officers of the plaintiff authorised to draw cheques and in consequence of the defendant so accepting such cheques wrongly endorsed thereupon wrongly debited such cheques against the plaintiff's account with the defendant.

25. The plaintiff further claims that the defendant in breach of the implied term and condition or warranty of the contract referred to in paragraph 13 hereof and through the negligence of its servants and in breach of the duty referred to in paragraph 19 hereof gave to the plaintiff duplicate receipts for deposits made by the plaintiff to the credit of the account of the plaintiff with the defendant which

did not correspond in all particulars with the original receipts retained by the bank. The duplicate receipts referred to above are set out hereunder with an indication of the way in which such duplicate receipts did not correspond with the originals.

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Points of Claim.
(Continued)

File No.

10	50	2/ 8/56	Cheque of Universal Guarantee Pty. Ltd. for £230 in original but not duplicate Deposit Slip.
	51	9/10/56	Cheque of Universal Guarantee Pty. Ltd. for £525 and cheque of Moffitt's in original but not in duplicate Deposit Slip.
	52	15/10/56	Cheque of Universal Guarantee Pty. Ltd. for £200 in original but not duplicate Deposit Slip.
20	54	13/ 2/57	Cheque of Universal Guarantee Pty. Ltd. for £525 in original and not duplicate Deposit Slip.
	55	25/ 2/57	Cheque of Universal Guarantee Pty. Ltd. for £415 in original and not duplicate Deposit Slip.
30	56	11/ 4/57	Cheque of Universal Guarantee Pty. Ltd. for £445 in original but not duplicate Deposit Slip.
	57	29/ 4/57	Cheque of Universal Guarantee Pty. Ltd. for £495 in original but not duplicate Deposit Slip.
40	58	1/ 5/57	Cheque of Universal Guarantee Pty. Ltd. for £420 in original and not duplicate Deposit Slip together with another cheque for £500 of "W. Kone".
	59	15/ 5/57	Cheque of Universal Guarantee Pty. Ltd. for £450 in original but not duplicate Deposit Slip together with cheque of Universal Guarantee Pty. Ltd. for £41.12.2.

No. 2 Issues for Trial (As Amended) 2nd June, 1964. --- Points of Claim. (Continued)	<u>File No.</u>	
	60	23/ 5/57 Cheque of Universal Guarantee Pty. Ltd. for £480 in original but not duplicate Deposit Slip.
	61	13/ 6/57 Cheque of Universal Guarantee Pty. Ltd. for £400 in original but not duplicate Deposit Slip together with Moffitt's cheque for £8.4.11. Summary of deposits in original and duplicate do not agree.
10		
	62	25/ 6/57 Cheque of Universal Guarantee Pty. Ltd. for £400 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate deposits slips do not agree.
	63	9/ 7/57 Cheque of Universal Guarantee Pty. Ltd. for £445 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate Deposit Slips do not agree.
20		
	64	6/ 8/57 Cheque of Universal Guarantee Pty. Ltd. for £400 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate Deposit Slips do not agree.
30		
	65	13/ 8/57 Cheque of Universal Guarantee Pty. Ltd. for £420 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate do not agree. Cheque of W. H. Wheeler £136. 2.0. deleted from original but not from duplicate.
	66	17/ 9/57 Cheque of Universal Guarantee Pty. Ltd. for £400 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate do not agree.
40		
	67	9/10/57 Cheque of Universal Guarantee for £130 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate do not agree.

<u>File No.</u>			No. 2 Issues for Trial (As Amended) 2nd June, 1964. --- Points of Claim. (Continued)
68	17/12/57	Cheque of Universal Guarantee for £450 deposited with the deposits on that date but cheque not shown in duplicate deposit slip.	
10	71 9/ 4/58	Cheque of Universal Guarantee for £400 and cheque of Moffitt's appears on original Deposit Slip but not on duplicate .	
	72 13/ 5/58	Cheque of Universal Guarantee Pty. Ltd. for £450 in original but not duplicate Deposit Slip .	
20	73 27/ 5/58	Cheque of Universal Guarantee for £450. Summary on original Deposit Slip and on duplicate do not agree and cheque only on original Deposit Slip .	
	74 10/ 6/58	Cheque of Universal Guarantee for £440 and one of Moffitt's for 12/5 these appear only on original Deposit Slip .	
30	75 25/ 6/58	Cheques of Universal Guarantee for £425 and one of Moffitt's for £1.8.8. only on original Deposit Slip .	
	76 22/ 7/58	Cheque of Universal Guarantee for £450 only on original Deposit Slip .	
	77 7/ 8/58	Cheque of Universal Guarantee for £400 only on original Deposit Slip .	
	78 19/ 8/58	Cheque of Universal Guarantee for £357 only on original Deposit Slip .	
40	79 3/ 9/58	Cheque of Universal Guarantee for £440 only on original Deposit Slip .	
	80 16/ 9/58	Cheque of Universal Guarantee for £465 only on original Deposit Slip .	
	81 23/ 9/58	Cheque of Universal Guarantee for £430 only on original Deposit Slip .	

No. 2 Issues for Trial (As Amended) 2nd June, 1964. --- Points of Claim (Continued)	<u>File No.</u>		
	82	14/10/58	Cheque of Universal Guarantee for £400 only on original. Summary of deposits in original and duplicate slip do not agree.
10	83	30/10/58	Cheque of Universal Guarantee for £350 only on original deposit slip. Summary of deposits in original and duplicate slip do not agree.
	84	11/11/58	Cheque of Universal Guarantee for £430 in original but not duplicate Deposit Slip. Summaries do not agree.
20	85	14/11/58	Cheque of Universal Guarantee for £450 only on original Deposit Slip. Also cheque of Moffitt's £15 and two other cheques for £20 and £70 only on original.
	86	10/12/58	Cheque for £440 in original but not duplicate Deposit Slip.
	87	10/ 2/59	Cheque for £440 in original but not duplicate Deposit Slip.
30	88	17/ 2/59	Cheque of Universal Guarantee for £460 and for £5 in original but not duplicate Deposit Slip.
	89	24/ 2/59	Cheque for £445 only on original deposit Slip Summary of deposits in original and duplicate deposit slip does not agree.
	90	10/ 3/59	Cheque of Universal Guarantee Pty.Ltd. for £460 in original but not duplicate Deposit Slip.
40	91	17/ 3/59	Cheque of Universal Guarantee Pty.Ltd. for £465 in original but not duplicate Deposit Slip.
	92	1/ 4/59	Cheque of Universal Guarantee Pty.Ltd. for £445 in original but not duplicate Deposit Slip.
	93	10/ 4/59	Cheque of Universal Guarantee Pty.Ltd.

<u>File No.</u>			No. 2 Issues for Trial (As Amended) 2nd June, 1964. --- Points of Claim (Continued)
		for £400 in original but not duplicate Deposit Slip. Cheque of Universal Guarantee Pty. Ltd. shown as £3.8.6. in original and as £7 in duplicate Cheque of Universal Guarantee for £175.18.11. deleted from original but not duplicate. Summaries of deposits in original and duplicate Deposit Slip do not agree.	
10			
	94	15/ 4/59	Cheque of Universal Guarantee Pty.Ltd. for £440 in original but not duplicate Deposit Slip.
	95	28/ 4/59	Cheque of Universal Guarantee Pty.Ltd. for £440 in original but not duplicate Deposit Slip.
20			
	96	5/ 5/59	Cheque of Universal Guarantee Pty.Ltd. for £420 in original but not duplicate Deposit Slip.
	97	11/ 5/59	Cheque of Universal Guarantee Pty.Ltd. for £360 in original but not duplicate Deposit Slip.
30			
	98	27/ 5/59	Cheque of Universal Guarantee Pty.Ltd. for £420 in original but not duplicate Deposit Slip.
	99	4/ 6/59	Cheque of Universal Guarantee Pty.Ltd. for £450 in original but not duplicate Deposit Slip. Moffitt's Cheque £10.18.0.only in original and cheque £141.19.0. deleted from original but not from duplicate. Summary of deposits in original and dup- licate Deposit Slips do not agree.
40			
	100	17/ 6/59	Cheque of Universal Guarantee Pty.Ltd. for £400 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate Deposit Slip does not agree.
	101	18/ 6/59	Cheque of Universal Guarantee Pty.Ltd. for £470 in original but not duplicate

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Points of Claim
(Continued)

File No.

Deposit Slip.

	102	23/ 6/59	Cheque of Universal Guarantee Pty.Ltd. for £450 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate Deposit Slip does not agree.
10	103	30/ 6/59	Cheque of Universal Guarantee Pty.Ltd. for £460 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate Deposit Slip does not agree.
	104	16/ 7/59	Cheque of Universal Guarantee Pty.Ltd. for £425 in original but not duplicate Deposit Slip.
20	105	28/ 7/59	Cheque of Universal Guarantee Pty.Ltd. for £445 in original but not duplicate Deposit Slip. Universal Guarantee cheque for £39.10.0. in original shown as £19.10.0. in duplicate.
	106	4/ 8/59	Cheque of Universal Guarantee Pty.Ltd. for £440 in original but not duplicate Deposit Slip.
30	107	12/ 8/59	Cheque of Universal Guarantee Pty. Ltd. for £425 in original but not duplicate Deposit Slip.
	108	17/ 8/59	Cheque of Universal Guarantee Pty.Ltd. for £450 in original but not duplicate Deposit Slip.
40	109	28/ 8/59	Cheque of Universal Guarantee Pty.Ltd. for £430 in original but not duplicate Deposit Slip.
	110	31/ 8/59	Cheque of Universal Guarantee Pty.Ltd. for £400 in original but not duplicate Deposit Slip.
	111	1/ 9/59	Cheque of Universal Guarantee Pty.Ltd. for £420 in original but not duplicate

<u>File No.</u>		Deposit Slip.	No. 2 Issues for Trial (As Amended) 2nd June, 1964. --- Points of Claim (Continued)
		Deposit Slip.	
112	7/ 9/59	Cheque of Universal Guarantee Pty.Ltd. for £425 in original but not duplicate Deposit Slip.	
10	113	8/ 9/59	Cheque of Universal Guarantee Pty.Ltd. for £465 in original but not duplicate Deposit Slip.
	114	15/ 9/59	Cheque of Universal Guarantee Pty.Ltd. for £460 in original but not duplicate Deposit Slip.
20	115	17/ 9/59	Cheque of Universal Guarantee Pty.Ltd. for £440 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate Deposit Slip do not agree.
	116	22/ 9/59	Cheque of Universal Guarantee Pty.Ltd. for £440 in original but not duplicate Deposit Slip.
	117	28/ 9/59	Cheque of Universal Guarantee Pty.Ltd. for £430 in original but not duplicate Deposit Slip.
30	118	1/10/59	Cheque of Universal Guarantee Pty.Ltd. for £445 in original but not duplicate Deposit Slip.
	119	7/10/59	Cheque of Universal Guarantee Pty. Ltd. for £440 in original but not duplicate Deposit Slip.
40	120	12/10/59	Cheque of Universal Guarantee Pty.Ltd. for £450 in original but not duplicate Deposit Slip.
	121	14/10/59	Cheque of Universal Guarantee Pty.Ltd. for £400 in original but not duplicate Deposit Slip.
	122	20/10/59	Cheque of Universal Guarantee Pty. Ltd. for £400 in original but not duplicate Deposit Slip.

No. 2 Issues for Trial (As Amended) 2nd June, 1964. --- Points of Claim (Continued)	<u>File No.</u>		
	123	22/10/59	Cheque of Universal Guarantee Pty.Ltd. for £450 in original but not duplicate Deposit Slip.
	124	27/10/59	Cheque of Universal Guarantee Pty.Ltd. for £440 in original but not duplicate Deposit Slip.
10	125	29/10/59	Cheque of Universal Guarantee Pty.Ltd. for £390 included in deposits on this date but not shown in either original or duplicate Deposit Slip.
	126	4/11/59	Cheque of Universal Guarantee Pty. Ltd. for £450 in original but not duplicate Deposit Slip.
20	127	6/11/59	Cheque of Universal Guarantee Pty. Ltd. for £350 in original but not duplicate Deposit Slip.
	128	8/12/59	Cheque of Universal Guarantee Pty.Ltd. for £400 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate do not agree.
30	129	11/12/59	Cheque of Universal Guarantee Pty. Ltd. for £330 in original but not duplicate Deposit Slip. Summary of deposits in original and Duplicate do not agree.
	130	15/12/59	Cheque of Universal Guarantee Pty. Ltd. for £350 in original but not duplicate Deposit Slip.
40	131	21/12/59	Cheque of Universal Guarantee Pty.Ltd. for £320 in original but not duplicate Deposit Slip.
	132	23/12/59	Cheque of Universal Guarantee Pty.Ltd. for £300 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate do not agree.
	133	8/ 1/60	Cheque of Universal Guarantee Pty.Ltd. for £300 in original but not duplicate Deposit Slip.

<u>File No.</u>			No. 2 Issues for Trial (As Amended) 2nd June, 1964. --- Points of Claim (Continued)
134	14/ 1/60	Cheque of Universal Guarantee Pty. Ltd. for £350 in original but not duplicate Deposit Slip.	
135	15/ 1/60	Cheque of Universal Guarantee Pty. Ltd. for £315 in original but not duplicate Deposit Slip.	
10	136	9/ 2/60	Cheque of Universal Guarantee Pty. Ltd. for £290 in original but not duplicate Deposit Slip.
	137	23/ 2/60	Cheque of Universal Guarantee Pty. Ltd. for £300 in original but not duplicate Deposit Slip.
20	138	3/ 3/60	Cheque of Universal Guarantee Pty. Ltd. for £325 and Moffitt's cheque £133.3.2. in original but not duplicate Deposit Slip.
	139	23/ 3/60	Cheque of Universal Guarantee Pty. Ltd. for £475 in original but not duplicate Deposit Slip.
	140	24/ 3/60	Cheque of Universal Guarantee Pty. Ltd. for £350 in original but not duplicate Deposit Slip.
30	141	31/ 3/60	Cheque of Universal Guarantee Pty. Ltd. for £440 in original but not duplicate Deposit Slip.
	142	7/ 4/60	Cheque of Universal Guarantee Pty. Ltd. for £315 in original but not duplicate Deposit Slip.
40	143	13/ 4/60	Cheque of Universal Guarantee Pty. Ltd. for £450 in original but not duplicate Deposit Slip. Cheque £196.6.8. in original and not in duplicate.
	144	22/ 4/60	Cheque of Universal Guarantee Pty. Ltd. for £425 in original but not duplicate Deposit Slip.

No. 2 Issues for Trial (AS Amended) 2nd June, 1964. --- Points of Claim (Continued)	<u>File No.</u>	
	145	28/ 4/60 Cheque of Universal Guarantee Pty. Ltd. for £400 in original but not duplicate Deposit Slip.
	146	29/ 4/60 Cheque of Universal Guarantee Pty. Ltd. for £410 in original but not duplicate Deposit Slip.
10	147	10/ 5/60 Cheque of Universal Guarantee Pty. Ltd. for £550 only in original but not duplicate Deposit Slip also cheque for £13.7.0.
	148	16/ 5/60 Cheque of Universal Guarantee Pty. Ltd. for £395 in original but not duplicate Deposit Slip.
20	149	24/ 5/60 Cheque of Universal Guarantee Pty. Ltd. for £350 in original but not duplicate Deposit Slip. Also cheque for £477.9.9.
	150	31/ 5/60 Cheque of Universal Guarantee Pty. Ltd. for £450 in original but not duplicate Deposit Slip.
	151	1/ 6/60 Cheque of Universal Guarantee Pty. Ltd. for £300 in original, but in duplicate drawer not shown.
30	152	7/ 6/60 Cheque of Universal Guarantee Pty. Ltd. for £475 in original but not duplicate Deposit Slip.
	153	16/ 6/60 Cheque of Universal Guarantee Pty. Ltd. for £430 in original but not duplicate Deposit Slip.
40	154	21/ 6/60 Cheque of Universal Guarantee Pty. Ltd. for £420 in original but not duplicate Deposit Slip.
	155	29/ 6/60 Cheque of Universal Guarantee Pty. Ltd. for £400 in original out not duplicate Deposit Slip.

<u>File No.</u>			No. 2 Issues for Trial (As Amended) 2nd June, 1964. --- Points of Claim (Continued)
156	10/ 8/60	Cheque of Universal Guarantee Pty. Ltd. for £450 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate deposit Slip do not agree.	
10	157	23/ 8/60	Cheque of Universal Guarantee Pty. Ltd. for £400 included in deposits but not shown in duplicate.
	158	30/ 8/60	Cheque of Universal Guarantee Pty. Ltd. for £450 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate Deposit Slip do not agree.
20	159	7/ 9/60	Cheque of Universal Guarantee Pty. Ltd. for £430 in original but not duplicate Deposit Slip.
	160	13/ 9/60	Cheque of Universal Guarantee Pty. Ltd. for £300 in original but not duplicate Deposit Slip.
30	161	14/ 9/60	Cheque of Universal Guarantee Pty. Ltd. for £450 in original but not duplicate Deposit Slip. Summary of deposits in original and duplicate Deposit Slip do not agree.
	162	27/ 9/60	Cheque of Universal Guarantee Pty. Ltd. for £560 in original but not duplicate Deposit Slip.
40	163	5/10/60	Cheque of Universal Guarantee Pty. Ltd. for £535 in original but not duplicate Deposit Slip.
	164	11/10/60	Cheque of Universal Guarantee Pty. Ltd. for £440 in original but not duplicate Deposit Slip.
	165	21/10/60	Cheque of Universal Guarantee Pty. Ltd. for £400 in original but not duplicate Deposit Slip.

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 Issues for Trial
 (As Amended)
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 Points of Claim
 (Continued)

26. The plaintiff claims to recover a verdict against the defendant for the total amount of all the cheques wrongly debited by the defendant to the plaintiff's account with the defendant as set out in paragraph 20 hereof together with all interest charged by the defendant to the plaintiff's account in respect of the amount of each cheque from the date when each cheque was wrongly debited as aforesaid to the date of the Writ.

10 27. The plaintiff also claims alternatively to the claims set out in paragraph 26 hereof a verdict for the total amount of all the cheques set out in paragraph 20 hereof wrongly debited by the defendant to the plaintiff's account with the defendant as money payable by the defendant to the Plaintiff for moneys received by the defendant for the use of the plaintiff and for money payable by the defendant to the plaintiff for money lent by the plaintiff to the defendant together with all interest charged by the defendant to the plaintiff's account in respect of the amount of each cheque from the date
 20 when each cheque was wrongly debited as aforesaid to the date of the Writ.

28. The plaintiff further claims to recover a verdict against the defendant for the damages it suffered by the misappropriations of its funds perpetrated by an employee of the plaintiff, one William Raymond Moffitt, after the first cheque referred in paragraph 20 hereof was wrongly debited by the defendant to the plaintiff's account with the defendant.

30 29. The plaintiff also claims alternatively to the claims set out in paragraph 28 hereof to recover a verdict against the defendant for the damages it suffered by the misappropriations of its funds perpetrated by the said William Raymond Moffitt after the first incorrect duplicate receipt was issued by the defendant to the plaintiff as set out in paragraph 25 hereof.

Dated this 2nd day of June 1964.

40

B. Bullock
 Solicitor for the Plaintiff

POINTS OF DEFENCE

Dated the 4th of March, 1964.

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Points of
Defence

1. In answer to Paragraph 2 of the Points of Claim the Defendant does not admit that the Plaintiff has since the sixth day of September, 1937, carried on business in New South Wales.

10 2. In answer to Paragraph 6 of the Points of Claim the Defendant does not admit that it has for many years through its Wentworth Avenue Branch in Sydney or at all acted as bankers to the Plaintiff.

3. In answer to Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 of the Points of Claim the Defendant does not admit any of the allegations in any of the said Paragraphs contained.

20 4. In answer to Paragraph 20, 21, 22, 23 and 24 of the Points of Claim the Defendant does not admit that it debited against the Plaintiff's account with the defendant all or any of the cheques in paragraph 20 of the Points of Claim referred to or that any such cheque was in the amount or bore the number or was made out in favour of the payee in the said paragraph alleged.

30 5. In further answer to Paragraph 20 of the Points of Claim the Defendant does not admit that any of the cheques in the said paragraph mentioned which were debited against the Plaintiff's account with the Defendant was drawn in favour of a named payee or that the name of the payee signed on the back of any such cheque was a forgery.

40 6. In further answer to Paragraph 20 of the Points of Claim the Defendant denies that any of the cheques in the said paragraph mentioned which were debited against the Plaintiff's account with the Defendant was wrongly so debited or was so debited in breach of the implied term or condition or warranty in the said paragraph alleged or was so debited through the negligence of the servants of the defendant or any of them or was so debited in breach of the duty in the said paragraph alleged.

7. In further answer to Paragraph 21 of the Points of Claim the Defendant does not admit that any of the cheques in the said paragraph mentioned which were debited against the

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Points of
Defence
(Continued)

Plaintiff's account with the Defendant was drawn or or crossed generally within the meaning of that expression as defined in the Bills of Exchange Act 1909-1958 (Commonwealth) or that any such cheque was not presented to the Defendant for payment by the holder thereof through a bank.

8. In further answer to Paragraph 21 of the Points of Claim the Defendant denies that any of the cheques in the said paragraph mentioned which were debited against the Plaintiff's account with the Defendant was wrongly so debited or was so debited in breach of the implied term or condition or warranty in the said paragraph alleged or was so debited through the negligence of the servants of the Defendant or any of them or was so debited in breach of the duty in the said paragraph alleged.

9. In further answer to Paragraph 22 of the Points of Claim the Defendant does not admit that any of the cheques in the said paragraph mentioned which were debited against the Plaintiff's account with the Defendant was crossed "Not Negotiable Account Payee Only" or at all or that the name of the payee on the back of any such cheque was forged.

10. In further answer to Paragraph 22 of the Points of Claim the Defendant denies that any of the cheques in the said paragraph mentioned which were debited against the Plaintiff's account with the Defendant was wrongly so debited or was so debited in breach of the implied term or condition or warranty in the said paragraph alleged or was so debited through the negligence of the servants of the Defendant or any of them or was so debited in breach of the duty in the said paragraph alleged.

11. In further answer to paragraph 23 of the Points of Claim the Defendant does not admit that any of the cheques in the said paragraph mentioned which were debited against the Plaintiff's account with the Defendant was written in favour of a named payee or that any such cheque was crossed "Not Negotiable Account Payee" or at all or that any such cheque was not negotiated through another bank or paid to the credit of the payee in an account with the Defendant.

12. In further answer to Paragraph 23 of the Points of Claim the Defendant denies that any of the cheques in the said paragraph mentioned which were debited against the Plaintiff's account with the Defendant was wrongly so debited or was so debited in breach of the implied term or cond-

ition or warranty in the said paragraph alleged or was so debited through the negligence of the servants of the Defendant or any of them or was so debited in breach of the duty in the said paragraph alleged.

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Issues for Trial
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Points of
Defence
(Continued)

10 13. In further answer to Paragraph 24 of the Points of Claim the Defendant denies that any of the cheques in the said paragraph mentioned which were debited against the Plaintiff's account with the Defendant was not duly endorsed on behalf of the Plaintiff.

14. In further answer to Paragraph 24 of the Points of Claim the Defendant does not admit that any of the cheques in the said paragraph mentioned was accepted by it and the Defendant denies that any of the cheques in the said paragraph mentioned which were accepted by it or debited by it against the Plaintiff's account with the Defendant was wrongly endorsed.

20 15. In further answer to Paragraph 24 of the Points of Claim the Defendant denies that any of the cheques in the said paragraph mentioned which were debited against the Plaintiff's account with the Defendant was wrongly so debited.

30 16. In further answer to Paragraph 24 of the Points of Claim the Defendant admits that the cheques in the said paragraph mentioned were credited to the Plaintiff's account with the Defendant but the Defendant denies that such cheques were so credited in breach of the implied term or condition or warranty in the said paragraph alleged or were so debited through the negligence of the servants of the Defendant or any of them or was so debited in breach of the duty in the said paragraph alleged.

40 17. In answer to Paragraph 25 of the Points of Claim the Defendant denies that it gave to the Plaintiff any duplicate receipts for deposits made by the Plaintiff to the credit of the account of the Plaintiff with the Defendant which did not correspond in all particulars with the original receipts retained by the Bank.

18. In further answer to Paragraph 25 of the Points of Claim the Defendant denies that any of the actions of the Defendant in the said paragraph alleged was in breach of the implied term or condition or warranty in the said paragraph alleged or was in breach of the duty in the said paragraph alleged or was through the negligence of the

No. 2
 Issues for Trial
 (As Amended)
 2nd June, 1964.

 Points of
 Defence
 (Continued)

servants of the Defendant or any of them.

19. In answer to Paragraph 26, 27 and 28 of the Points of Claim the Defendant repeats the matter and denials in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 hereof set forth.

20. In further answer to Paragraph 27 of the Points of Claim the Defendant denies that it has ever had or received any moneys for the use of the Plaintiff or that any moneys are payable by it to the Plaintiff as in the said paragraph alleged.

21. In further answer to Paragraph 28 of the Points of Claim the Defendant does not admit that the Plaintiff suffered all or any of the damages in the said paragraph mentioned and the Defendant says and it is the fact that any such damages suffered by the Plaintiff were not the natural or probable or foreseeable consequence or result of and did not flow from any of the matters or things in the said paragraph or in the Points of Claim alleged to have been done or omitted or permitted or caused to be done by the Defendant and that such damages are too remote for any part thereof to be recoverable from the Defendant.

22. In answer to Paragraph 29 of the Points of Claim the Defendant repeats the denials contained in paragraphs 17 and 18 thereof.

23. In further answer to paragraph 29 of the Points of Claim the Defendant does not admit that the Plaintiff suffered all or any of the damages in the said paragraph mentioned and the Defendant says and it is the fact that any such damages suffered by the Plaintiff were not the natural or probable or foreseeable result or consequence of and did not flow from any of the matters or things in the said paragraph or in the Points of Claim alleged to have been done or omitted or permitted or caused to be done by the Defendant and that any such damages are too remote for any part thereof to be recoverable from the Defendant.

24. In answer to the whole of the Points of Claim the Defendant says and it is the fact that insofar as the Plaintiff's claim is in respect of any cheques debited or alleged to have been debited by the Defendant against the Plaintiff's account with the Defendant on or prior to the sixteenth day

of September, One Thousand nine hundred and fifty seven or arises from any such debiting or alleged debiting or is in respect of or arises from any act or thing alleged to have been done or caused to be done or permitted or omitted by the Defendant or its servants or agents or any of them on or prior to that date or is in respect of or arises from any alleged error or inaccuracy in any duplicate receipt given to the Plaintiff on or before that date or any difference between any such duplicate receipt and
 10 the original thereof the Plaintiff's alleged cause of action did not arise within six years before the date of commencement of this action.

25. In further answer to the whole of the Points of Claim the Defendant says and it is the fact that any cheques in the Points of Claim mentioned which were debited to the account of the Plaintiff with the Defendant were each and all so debited by reason of and in consequence of the fact that payment of the full amount of each such cheque
 20 was made by the Defendant to the Plaintiff and in the case of each such cheque the full amount represented thereby was either received by the Plaintiff from the Defendant or was paid by the Defendant to the direction of the plaintiff.

26. In further answer to the whole of the Points of Claim the Defendant says and it is the fact that, in each case where a debit entry was made against the account of the Plaintiff with the Defendant in respect of any cheque
 30 in the Points of Claim mentioned at the time such debit entry was made a credit entry was made in the said account in favour of the Plaintiff arising from and by reason of and in the identical amount of such debit entry and being in respect of such cheque.

27. In further answer to the whole of the Points of Claim and in particular to Paragraphs 26, 27 and 28 thereof the Defendant says that any of the cheques in the Points of Claim mentioned which were paid by the Defendant or
 40 which were debited against the Plaintiff's account with the Defendant was so paid and debited by the Defendant in good faith and without negligence and to a banker.

28. In further answer to the whole of the Points of Claim and in particular to Paragraphs 26, 27 and 28 thereof the Defendant says and it is the fact that any of the cheques in the Points of Claim mentioned which were paid by

No. 2
 Issues for Trial
 (As Amended)
 2nd June, 1964.

 Points of
 Defence
 (Continued)

No. 2
 Issues for Trial
 (As Amended)
 2nd June, 1964.

 Points of
 Defence
 (Continued)

the Defendant or were debited against the Plaintiff's account with the Defendant was so paid and debited by the Defendant in good faith and in the ordinary course of business.

29. In further answer to the whole of the Points of Claim and in particular to Paragraphs 26, 27 and 28 thereof the Defendant says and it is the fact that any of the cheques in the Points of Claim mentioned which were paid by the Defendant or which were debited against the Plaintiff's account
 10 with the Defendant was so paid or debited through and as a result of the negligence of the Plaintiff in failing to take adequate or proper or usual or reasonable precautions to prevent forgery and in failing to maintain an adequate or proper or usual or reasonable system of book-keeping and in failing properly to supervise its employees and directors to prevent forgery by them and in permitting and allowing one W. R. Moffitt to be placed in a position where he could and did embezzle and misappropriate large sums of money from the Plaintiff and where he could and did mislead the Defend-
 20 ant into so paying and so debiting such cheques and in permitting and allowing the said W. R. Moffitt to have and to obtain possession of such cheques and in permitting and allowing such cheques to be drawn on the Plaintiff's account with the Defendant.

30. In further answer to the whole of the Points of Claim and in particular to Paragraph 29 thereof the Defendant says and it is the fact that any duplicate receipts given by the Plaintiff to the Defendant for deposits made by the
 30 Plaintiff to the credit of the account of the Plaintiff with the Defendant which did not correspond in all particulars with the original receipts retained by the bank were so given by the Defendant to the Plaintiff as a result of the negligence of the Plaintiff in failing to take adequate or proper or usual or reasonable precautions to prevent forgery and in failing to maintain an adequate or proper or usual or reasonable system of book-keeping and in failing properly to supervise its employees and directors to prevent forgery by them and in allowing one W. R. Moffitt to be placed in a position
 40 where he could and did embezzle and misappropriate large sums of money from the Plaintiff and where he could and did mislead the Defendant into giving such duplicate receipts.

31. In further answer to the whole of the Points of Claim the defendant by way of defence or, alternatively, by way of cross-action says that the Plaintiff impliedly

warranted to the Defendant -

No. 2
Issues for Trial
(As Amended)
2nd June, 1964.

Points of
Defence
(Continued)

- (a) That each of the cheques referred to in the Points of Claim could properly and validly be debited against the Plaintiff's bank account with the Defendant.
- 10 (b) That the Defendant could properly and validly pay each of the cheques referred to in the Points of Claim by debiting the same against the Plaintiff's bank account with the Defendant.
- (c) That the Defendant could properly and validly credit each of the cheques referred to in the Points of Claim to the Plaintiff's bank account with the Defendant.
- 20 (d) That each duplicate deposit slip mentioned in the Points of Claim properly and correctly recorded the information set forth on the original deposit slip or that the same contained on it such information as the Plaintiff required.

30 These implied warranties were made by the Plaintiff through its servant and agent, W.R. Moffitt, acting in the course of his employment with the Plaintiff and were so made by him to the receiving teller on behalf of the Defendant at the Defendant's said bank on the dates when the various deposits were made. Insofar as the Plaintiff's claims herein may be established, the Defendant says that the same amount to breaches of one or more of the afore-said implied warranties in respect of which breaches the Defendant is entitled and claims to recover from the Plaintiff the amount of the damages established by the Plaintiff against the Defendant."

40 32. AND for a further plea of cross action the Defendant sues the Plaintiff for moneys payable by the Plaintiff to the Defendant for money received by the Defendant for the use of the Plaintiff. The Defendant's claim against the Plaintiff is based upon the following facts: If it is found in the action herein that any of the cheques particulars of which are set out in Paragraph 20 of the Points of Claim herein was wrongly paid by the Defendant or was wrongly debited by the defendant against the account of the Plaintiff with the Defendant the amount of each such cheque was as a result of mistake of fact credited by the Defendant to the Plaintiff's said account with the Defend-

No. 2
 Issues for Trial
 (As Amended)
 2nd June, 1964.

ant and the amount of each such cheque was through mistake of fact paid by the Defendant to the Plaintiff or paid by the Defendant at the request and direction of the Plaintiff.

 Points of
 Defence
 (Continued)

AND The Defendant claims from the Plaintiff by the way of cross action the sum of SEVENTY FIVE THOUSAND POUNDS (£75,000).

10

R. H. MINTER

SOLICITOR FOR THE DEFENDANT

20 These Points of Defence and Counterclaim are filed by Messes. Minter Simpson & Co. Solicitors, of The World Building, 29 Reiby Place. Sydney the Solicitors for the National Bank of Australasia Limited whose registered office is situate at 340 George Street, Sydney.

REPLICATION

No. 2
 Issues for Trial
 (As Amended)

 2nd June, 1964.

 Replication

1. The Plaintiff joins issue with the Defendant as to the matter set out in the Points of Defence paragraphs 1 to 15 inclusive.

2. The Plaintiff joins issue with the Defendant as to the denial set out in paragraph 16 of the Points of Defence.

10 3. The Plaintiff joins issue with the Defendant as to the matter set out in the Points of Defence paragraphs 17 to 24 inclusive.

4. As to the matter set out in paragraph 25 of the Points of Defence the Plaintiff denies that in the case of each such cheque the full amount represented thereby was either received by the Plaintiff from the Defendant or was paid by the Defendant to the direction of the Plaintiff.

20 5. The Plaintiff joins issue with the Defendant as to the matter set out in the Points of Defence paragraphs 27 and 28.

6. As to the matter set out in paragraph 29 of the Points of Defence the Plaintiff denies that any of the cheques in the Points of Claim mentioned which were paid by the Defendant or which were debited against the Plaintiff's account with the Defendant were so paid or debited as a result of the negligence of the Plaintiff in failing to take adequate or proper
 30 or usual or reasonable precautions to prevent forgery and in failing to maintain an adequate or proper or usual or reasonable system of book-keeping and in failing properly to supervise its employees and directors to prevent forgery by them and in permitting and allowing one W.R. Moffitt to be placed in a position where he could and did embezzle and misappropriate large sums of money from the Plaintiff and where he could and did mislead the Defendant into so paying and so debiting such cheques and in permitting and allowing the said
 40 W. R. Moffitt to have and to obtain possession of such cheques and in permitting and allowing such cheques to be drawn on the Plaintiff's account with the Defendant.

7. As to the matter set out in paragraph 30 of the Points of Defence the Plaintiff denies that any duplicate receipts given by the Plaintiff to the Defendant for deposits made by the Plaintiff to the credit of the account of the Plaintiff with the Defendant which did not correspond in all particulars

No. 2
 Issues for Trial
 (As Amended)
 2nd June, 1964.

 Replication
 (Continued)

with the original receipts retained by the bank were so given by the Defendant to the Plaintiff as a result of the negligence of the Plaintiff in failing to take adequate or proper or usual or reasonable precautions to prevent forgery and in failing to maintain an adequate or proper or usual or reasonable system of book-keeping and in failing properly to supervise its employees and directors to prevent forgery by them and in allowing one W. R. Moffitt to be placed in a position where he could and did
 10 embezzle and misappropriate large sums of money from the Plaintiff and where he could and did mislead the Defendant into giving such duplicate receipts.

8. As to the matter set out in paragraph 31 of the Points of Defence (as amended) the Plaintiff denies that it impliedly warranted to the Defendant -

- 20 (a) That each of the cheques referred to in the Points of Claim could properly and validly be debited against the Plaintiff's bank account with the Defendant.
- (b) That the Defendant could properly and validly pay each of the cheques referred to in the Points of Claim by debiting the same against the Plaintiff's bank account with the Defendant.
- 30 (c) That the Defendant could properly and validly credit each of the cheques referred to in the Points of Claim to the Plaintiff's bank account with the Defendant.
- (d) That each duplicate deposit slip mentioned in the Points of Claim properly and correctly recorded the information set forth on the original deposit slip or that the same contained on it such information as the Plaintiff required.

40 9. As to the matter set out in paragraph 32 of the Points of Defence (as amended) the Plaintiff says it was never indebted as alleged.

B. Bullock

Solicitor for the Plaintiff

NO. 3.

PROCEEDINGS BEFORE HIS HONOUR MR. JUSTICE MANNING
MONDAY 8TH JUNE, 1964.

UNIVERSAL GUARANTEE PTY. LIMITED v. NATIONAL
BANK OF AUSTRALASIA LIMITED.

MR. NEWTON, Q.C., with MR. ATWILL appeared for
the plaintiff.

MR. STREET, Q.C., with MR. DEANE and MR. McLELLAND
appeared for the defendant.

No. 3
Proceedings
before
His Honour
Mr. Justice
Manning

8th June, 1964.

10

(Mr. Newton opened the case to His Honour.)

(By consent file of correspondence tendered,
admitted and marked Exhibit A.)

(Mr. Newton sought leave to file amended points
of claim.)

20 HIS HONOUR: I will note Mr. Newton asks for leave to file
amended points of claim of 2nd June last, which have been
incorporated in the issues.

MR. STREET: I have no objection. I had not seen them
before this morning in Court. I take it they embody the
amendments fore-shadowed in the correspondence?

30

(After further discussion, Mr. Newton stated that
the amendments sought did not go as far as amend-
ments fore-shadowed in the letter of 2nd June,
with the exception of the paragraph as to interest.
Application to file amended points of claim granted.)

(Mr. Newton sought leave to add, at the end of para-
graphs 26 and 27, the words indicated in the letter
of 2nd June.)

40 HIS HONOUR: I will note that Mr. Newton asks leave to add
at the end of each of paragraphs 26 and 27 the words set out
in the letter of 2nd June, 1964, included in Exhibit A; (Not
objected to; application granted.)

I will note Mr. Newton asks leave to delete the word
"defendent" where it appears at the end of the fifth line of
paragraph 25 of the points of claim and to substitute the
word "plaintiff". (Not objected to; application granted.)

No. 3
 Proceedings
 before
 His Honour
 Mr. Justice
 Manning
 (Continued)
 8th June, 1964.

HIS HONOUR: I will note that Mr. Street seeks an order to amend the points of defence in the manner indicated in the letter of 3rd June, 1964, comprised in Exhibit A. (Not objected to; application granted)

I direct that the plaintiff's solicitor file amended issues for trial incorporating the various amendments which I have ordered by Wednesday next.

Plaintiff's 10
 Evidence
 No. 3(i)
 William
 Raymond
 Moffitt

 Examination

WILLIAM RAYMOND MOFFITT,
 Sworn, examined, deposed:

TO MR. NEWTON: My full name is William Raymond Moffitt.

Q. And you are at present serving a sentence? You are at Emu Plains at the moment? A. I am back now at Long Bay temporarily, waiting for this case to be finished, then I will be at Emu Plains.

20 Q. And your sentence will expire some time this year, will it? A. Yes. Fourteenth October, sir.

Q. And what age are you, Moffitt? A. 34. 35 next week.

Q. And when did you first join Universal Guarantee? A. On 6th December, 1945.

Q. What age were you then? A. I was 16½, or just under 16½.

30

Q. You went straight from school? A. I think the next day after I left school I started there.

Q. I do not want to go into details, but the staff at that time consisted of a manager, an accountant and yourself, is that so? A. That is right.

Q. And some girls? A. About three girls, three or four girls.

40

Q. And was the business of the company concerned with lending money or hire purchase? A Yes.

Q. And you continued with the company up till I think the end of 1960, did you not? A. 30th November, 1960, I was asked to resign.

Q. And you first started taking some money from the company, or dealing with the documents of the company, when?
(Objected to; question not pressed)

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Q. Do you remember when Mr. Tyack came to the company as manager? A. Yes.

Examination
(Continued)

Q. Do you remember when it was? A. Yes. When he came?

10 Q. Yes. A. About the beginning of October, 1954.

Q. Prior to him coming as manager, had you been taking money from the company? A. Well, could I have one matter clear, Mr. Newton, please? As you know, I got charged with embezzling for stealing £53,000 as from October, 1955. I have tried to assist everybody up to that point and I am not putting myself in a dangerous position, am I, by disclosing anything?

20 HIS HONOUR: It is my duty at once to tell you that if your answering any questions which Mr. Newton may ask will expose you to criminal proceedings and which involves some question of your guilt in respect of such proceedings, you are not obliged to answer that.

MR. NEWTON: Perhaps I will approach it from another angle, Your Honour.

HIS HONOUR: I will have it noted that by arrangement between counsel there are various files of documents which have
30 been made available by the defendant bank and it is agreed that these may be tendered by Mr. Newton without his making a formal call.

MR. NEWTON: Q. I show you this document, Mr. Moffitt.
(Shown) -

Q. Do you recognise that cheque? A. Yes.

40 Q. Do you recognise the signature on it. A. On the face of it?

Q. First of all, on the right-hand side of the face of it?
A. Yes, that is my own signature.

Q. And whose is the other signature? A. Mr. Follett.

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Examination
(Continued)

Q. You and Mr. Follett could sign cheques at that time on behalf of Universal Guarantee? A. Yes.

Q. To whom is that payable? A. K.R. Henry.

Q. What did you do prior to signing that cheque yourself?

A. It would have been either hire purchase - what did I do prior? I mean I had the cheque prepared from the hire purchase agreement.

10

Q. Where did you get the hire purchase agreement from?

A. I would have compiled it myself.

HIS HONOUR: Q. You say you would have compiled it yourself? A. I did.

MR. NEWTON: Q. Was K.R. Henry a client? A. No, a fictitious person.

20 Q. Then you got Mr. Follett to sign it. What did you do with the cheque thereafter? A. I suppressed that amount of money, the £195, from the Universal Guarantee, starving the banking, and supplemented that cheque for it after I duly endorsed it.

HIS HONOUR: Q. What you mean you did was - first of all, how much was the cheque for? A. £195.

30 Q. You took £195 out of the cash? A. Out of the cash, Yes.

Q. And you put this cheque in lieu of £195? A. That is right.

MR. NEWTON: Q. Would you have a look at the back of the cheque, K.R. Henry is on the back? A. That was written by myself.

40 Q. And there is "endorsement guaranteed" and a stamp of Universal Guarantee? A. Yes.

Q. Who put the stamp on? A. I did.

Q. And is that your signature? A. Yes.

Q. Did you include that in the banking of the money paid to the credit of Universal Guarantee on the 2nd December 1954? A. Well, I would not know.

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Examination
(Continued)

Q. Well, have a look at that: is that the original deposit slip? A. Yes. It is included in that deposit.

Q. Whose writing is that deposit slip in? A. I have no idea.

10

Q. Do you know whose signature that is? A. I think we had a young chap employed there at that time, Joe Mocaré, or some name like that. It looks like his signature. I don't recall him very well. I don't recall that particular chap very well, but I think his name was Mocaré. He was only there a short time.

Q. You see Universal Guarantee, £195, on what is it, the second sheet? A. There are no numbers on these sheets.
20 It is on one of the sheets.

Q. Who wrote that in, can you tell, first of all? A. Strange, it does not look like my writing, though it would normally have had to be my writing, but in 1954 it doesn't look - - -

MR. NEWTON: I will tender the file with both the cheque and the deposit, and that is all that is in the file.

30 (File No. 1 abovementioned marked Exhibit B1)

Q. I hand you file No. 2. First of all, will you look at the cheque? Is that your signature on the left-hand side on the front of it. A. Yes.

Q. And Mr. Tyack, is it, on the right-hand side? A. Yes.

Q. First of all, it is payable to E. G. Williams. Who
40 is E. G. Williams? A. A fictitious person.

Q. And you prepared some documents before you got that cheque signed by Mr. Tyack, did you? A. Yes.

Q. When you say you prepared some documents, there was a hire purchase agreement prepared in respect of some particular goods, was it? A. At this particular

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Examination
(Continued)

- time not necessarily, it might not have been a hire purchase agreement. There was a time round about this period when just a transaction schedule would have been sufficient.

Q. That is some internal document? A. An internal document. It was only in Mr. Tyack's time as manager that we had to give him the list of cheques, like the hire purchase agreements, when getting the signatures for the cheques, but I am not sure just when he introduced that system. At this
10 time he had been with us only three months and he might have been working on the old system.

Q. Anyhow, where there were hire purchase agreements you filled in the hire purchase agreement, is that so? A. Yes.

Q. That gave some references, did it? A. Yes, like completed as a normal application.

20 Q. That would be an offer to hire? A. An offer to hire from another fictitious person with fictitious addresses and fictitious references and fictitious goods.

Q. And you would indicate on the document that you had made enquiries as to the credit? A. At a later time. Like, at the beginning I had nothing to do other than to make out an internal slip for payment, but whether this had a hire purchase agreement on it at that particular time I cannot recall.

30

Q. Anyhow, you prepared some documents that enabled you to have this cheque signed by Mr. Tyack? A. Yes.

Q. And you signed it yourself? A. Yes.

Q. What did you do with it then? A. The same procedure as before: I endorsed the back, writing E. G. Williams, and endorsed it myself and then suppressed the cash for the value of the cheque.

40

Q. And you put the rubber stamp for Universal Guarantee on the back of the cheque did you? A. Yes.

Q. That was deposited with the deposits of the 15th December 1954 which apparently were made by the same man as the last deposit? A. Yes. And I did not write that cheque in.

Q. You did not write the Universal Guarantee Pty. Limited £260 on the deposit slip? A. No.

(File abovementioned tendered and marked Exhibit B2).

HIS HONOUR: Mr. Newton, it might be as well if you have some arrangement with Mr. Street. I did say I would admit some of this early material on the basis that it goes to the computation of your damage, but it might be as well,
 10 if you wish to rely on these earlier transactions on the issue of liability, to make that clear.

MR. NEWTON: I now have to face the Statute of Limitations but we have certain submissions we propose to put, Your Honour.

HIS HONOUR: Do you want me to admit the evidence and defer the limitations, or deal with it at this stage?

20 MR. NEWTON: I would think it more convenient to do it this way, Your Honour, and Your Honour will get the picture over the whole period.

MR. STREET: Ultimately of course it is going to become a matter for argument. There is no jury and it is easy enough for the Court to switch off at a particular point going back. But I would submit there is no dispute about any of the facts of these earlier transactions. I do not require my friend to go through each file with the witness and get the evidence
 30 such as he seeks in respect of each individual one, particularly if it is only on this computation matter or background. If my friend wants to put some general formulation I would accede to it.

MR. NEWTON: Subject to anything my friend might say, it does not seem to me that the printed forms of these earlier documents matter, but when one comes within the six-year period it may be relevant to know whether the alterations were made before or after the banking.

40 HIS HONOUR: Mr. Newton, I will have it noted for a start that by arrangement I will admit the whole of the evidence you seek to tender irrespective of the fact that it is outside the six-year period, and permit you and Mr. Street, to argue later what the result of the Statute is upon these transactions; and, secondly, if you care to formulate some general questions and put the whole of the files between the

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Examination
(Continued)

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Examination
(Continued)

one you have last tendered and the one next before 16th
September 1957, that may be done at once.

MR. NEWTON: I feel a difficulty about that, Your
Honour, to attempt to take short cuts. They do vary
and they are not identical.

HIS HONOUR: No, but I suppose the essential is this, is
it not, that in every case the payee was a fictitious person
and the witness misappropriated the proceeds of the cheque
10 for his own benefit?

MR. NEWTON Yes, Your Honour.

HIS HONOUR: If you get that general statement in respect
of all these files, would not that be sufficient and would not
the files speak for themselves in respect of the rest of the
matters?

MR. NEWTON: But I cannot do that without putting the doc-
20 uments in the hands of the witness, Your Honour. The first
three are fictitious ones and then one comes on to a different
matter.

HIS HONOUR: I will not stop you. You take your own course
and if there is anything of value in these matters that you
wish to extract, you do so.

MR. NEWTON: Q. Would you look at file No. 3 - and
perhaps I can shorten it by leading, Your Honour - E. J.
30 Parker was a fictitious person; you prepared fictitious doc-
uments to get Mr. Tyack to sign this cheque, you wrote
E. J. Parker on the back of the cheque and you wrote "End-
orsement guaranteed" and signed it W. R. Moffitt and you
put the rubber stamp on. Would you look at this deposit?
This deposit was made by you? A. Yes, this was completely
my deposit, the whole issue.

Q. The cheque for Universal Guarantee for £325 - is that
written in your handwriting in the deposit slip? A. Yes,
40 some of the deposit slips are other people's writing but the
£325 is my writing.

(Abovementioned file tendered and marked Exhibit B3).

MR. NEWTON: Then perhaps I can do this, Your Honour:

I will take the files 4 to 15 and hand them to the Witness .

Q. You can check these if you want to, Mr. Moffitt, but you will find that each of the cheques is payable to P. J. Bruce for various amounts and is included in the deposit slip in the appropriate file? A. Yes.

Q. Is that so? A. Yes.

10 Q. First of all, was there such a person as P. J. Bruce?

A. No. There was a dealer J. D. Bruce.

Q. Did the company do business with J. D. Bruce? A. Yes.

Q. In each of these cases you prepared false documents and obtained the signature of either of the two signing officers and yourself, you wrote the name of Bruce on the back of it, you put "endorsement guaranteed" with the
20 rubber stamp and you signed the endorsement and it was included in the banking for the day indicated in the deposit slips in those files? A. Yes.

HIS HONOUR: Q. In each case you took the money for yourself? A. Yes.

MR. NEWTON: Q. Did you do the banking on any of those occasions. A. No. 9 I did the banking, and No. 10.

30 Q. Just a minute. No. 9 you did the banking, and what was the Universal Guarantee cheque there? £245? A. No, I did not write that in there.

Q. No. 10 you did the banking? A. I did the banking of No. 10.

Q. And the cheque for? A. £250. I wrote the figure 250 in.

40 Q. And has ditto marks under other cheques of Universal Guarantee. A. That is right. I did the banking for No. 11 and I did not write the £185 in the bank.

Q. No. 12? A. No. 12 I did the banking.

Q. And who wrote the £250? A. It was not my writing. I did the banking for 13 and I did not write in --

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Examination
(Continued)

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Examination
(Continued)

Q. You did or did not? A. I did not. For £295.

Q. 14? A. I did the banking for 14 and I did not write £265 in the bank. I did the banking for 15 and I did not write the figure in.

(Abovementioned files tendered and marked
Exhibits B4 to B15 inclusive)

10 HIS HONOUR: May I ask, Mr. Newton: one of the signatories to the cheque No. 4 appears to be A. Sorbie?

MR. NEWTON: He was the accountant at that time, Your Honour.

HIS HONOUR: He is not shown in the authority set out in the points of claim. Is there any significance in this?

MR. NEWTON: No. Perhaps he was not there in 1952.
20 I am not sure.

Q. Do you know? A. No, he started in January 1955 I think it was. Follett left in January 1955 and Sorbie started straight after.

HIS HONOUR: I gather that no question arises as to whether or not he was an authorised officer?

MR. NEWTON: No, Your Honour. All these cheques
30 are properly signed or signed by authorised officers, anyhow.

Q. I show you now file No. 16. That is a cheque payable to P. J. Bruce signed by Mr. Sorbie and yourself. The same applies: you prepared fictitious documents and obtained the cheque, took the money out of the till and you signed "P.J. Bruce" on the back, wrote "Endorsement guaranteed", put the rubber stamp on and signed it. Is that so? A. Yes. I did not take the money out of the till.
40 I took it out of the banking.

Q. Did you do the banking that day? A. No, and I did not write the £200 in. It is not my writing, the £200.

Q. How did you get the money if you did not do the banking?
A. I had easy access to the cashier's banking. I may have

endorsed the complete issue of the cheques that day; that is probably how I got hold of the whole issue. I most likely would have endorsed the whole issue of the banking and it was after it was written up on the deposit book and I handed the book back to Mocare to take it to the bank.

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Examination
(Continued)

Q. Just before I leave that file, would you have a look at these further documents; in that particular case is that the false document that you prepared, in that second file I have handed
10 you, the hire purchase agreement? Yes, that would be the false documents in connection with the obtaining of the £200.

Q. Is that in your writing? A. Yes, the hire purchase agreement is in my writing.

Q. What other documents are there? A. The cheque authorities, the copy.

20 Q. That is a copy of a cheque authority, is it? A. A copy of a cheque authority.

Q. What other documents? A. There is a copy of a receipt that was forwarded to any dealer for his signature.

Q. Is that made out by you? A. The preparation was not made out by me: the receipt was made out by me.

30 Q. Is there anything else in that file? A. There is the office copy that just goes through the machine. It is only all done by the Fordograph machine, and there is a schedule of transactions made out by me, and there is the remittance slip made out by me and there are the rough calculations and credit rating made out by me.

(File prepared by bank and numbered 16 and also file prepared by the plaintiff company and numbered 16 tendered and together marked Exhibit B16).

40 MR. STREET: Before passing from that, Your Honour, perhaps I should indicate in the bank documents the deposit slips are not the whole of the slips used for that deposit, as Your Honour will see.

HIS HONOUR: Yes.

MR. STREET: Whether it is the first or the last, it is one with the summary filled in and then the sheet with the

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relevant cheque in it.

HIS HONOUR: No, there is more than that here. The sheets are not totalled, so it is very hard to tell whether all the cheques are in fact computed, but there is the first sheet in which the totals have been added and there are two more sheets before the last one in which the £200 appears.

MR.STREET: Yes, I am sorry.

10

HIS HONOUR: But it is still very hard to tell whether they are all here because there are no totals.

MR.NEWTON: Q. I hand you file No.17. That again is a cheque payable to P.J.Bruce. You made false documents to get a cheque signed by Mr.Sorbie and yourself in favor of P.J. Bruce; you exchanged the cheque for money of the company, you signed P.J.Bruce on the back, you wrote "Endorsement guaranteed" and put the rubber stamp on and
20 signed in W.R.Moffitt? A.Yes.

Q. Mr.Henderson did the banking apparently on that day, is that so? I don't recall Henderson there. I think it was a girl who might have done the banking.

Q. That cheque is for how much? A. £275, and it is not my writing on the deposit slip.

(File No.17 tendered and marked Exhibit B17.)

30

Q. Now I show you files 18 to 22 inclusive. In each of those files there is a cheque payable to J.Bruce, is that so?

A. Yes.

Q. The J.Bruce referred to there-is that a fictitious person?

A. As I mentioned earlier, we had dealt with J.D.Bruce and I did put these through, letting the other people in the office think they were dealing with J.D.Bruce.

40 Q. One of your dealers? A. Yes, one of our dealers.

MR.STREET: The question has been answered, but I would object to the latter part of it.

HIS HONOUR: I will admit it subject to objection and we can debate the relevance of it later on.

MR.STREET: It is only what other people thought; that is the only bit.

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HIS HONOUR: To me, he is rather saying that he did this with the design to induce them to think, not that they did in fact.

MR.STREET: If that is what it is taken to mean, I do not object.

10

HIS HONOUR: That is what I take it to mean unless Mr. Newton puts something further.

MR.NEWTON: Q. In each of these cases, 18 to 22, inclusive, you made out false documents, obtained the signatures of two signing officers for a cheque, took money from the company and replaced it with that cheque, having signed J.Bruce on the back, put "Endorsement guaranteed" on it and signed it W.R. Moffitt? A. Cheque 19, it is
20 my signature on the face of it.

Q. In case 19 you were one of the signing officers? A. That is right, and not in every case did I write on it. The first two I did not write the figure in.

Q. You are dealing now with the deposit slips? A. Yes.

Q. Did you do the banking in any of those cases? A. The first three I have not. No, I did not do the banking in
30 any of them.

Q. Did you write in the amount of the cheque that you had taken in any of them? A. I may have written £215 on cheque 22. The others I did not.

Q. File 22. A. I think that may be my writing, that one, £215, in 22.

(Files numbered 18 to 22 tendered and marked
40 Exhibits B18 to B22 inclusive).

HIS HONOUR: I don't suppose anything turns upon it but some part of the rubber stamp here is illegible.

MR.NEWTON: That is one of the bank cheques. Is that the National Bank cheque, Your Honour.

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- HIS HONOUR: Yes.

MR. NEWTON: That is No. 18. They apparently ran out of printed forms at that time.

HIS HONOUR: I was drawing it to your attention. I do not know whether anything turns upon it but on the original cheque the words "Not Negotiable" are decipherable and then something else and all that one can make out is probably the
10 first letter is a "B" or an "E" and the last letters are "nly": but the second line is otherwise quite indecipherable. I do not know whether anything turns on it.

MR. NEWTON: Probably not, because my learned friend has admitted that they were all not negotiable, account payee only.

HIS HONOUR: The inference being that the indecipherable part is "Bank Account Payee only"?
20

MR. NEWTON: Yes....

I propose to deal with 23 separately, Your Honour, because that is the first one in which we have a duplicate deposit slip.

Q. I show you banks file No. 23. That is again a cheque payable to J. Bruce. You made out fictitious documents, you obtained the signature of Mr. Sorbie and Mr. Tyack to
30 the cheque, you took money from the company. replaced it with the cheque and you signed J. Bruce, wrote "Endorsement guaranteed" and signed it, putting your name on the back of the cheque - is that right? A. Yes.

Q. The banking was done by Mr. Henderson apparently, was it? A. Yes, E. Henderson. I do not recall that person. It is not my writing.

Q. It is not your writing where the cheque for £220 is
40 shown? A. That is right.

Q. I show you the duplicate deposit slip. Is that the duplicate deposit slip for the deposit, including that cheque for £220? A. Yes.

(File No. 23 and duplicate deposit slip tendered and by consent marked Exhibit B23.)

MR.NEWTON: Your Honour will notice that the deposit slip for each day go backwards. In other words, the summary is on the last sheet and if Your Honour turns towards the front from the flag Your Honour will see the deposit slip made on that day.

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HIS HONOUR: What is the significance of what you call the duplicate deposit slip? Why is it tendered?

10 MR.NEWTON: I was hoping it would be of some assistance to show Your Honour the way in which it was done. Until we get to 50 they are not relevant.

HIS HONOUR: There is no, what you call, failure to ensure that the duplicates and originals correspond until we get to file No. 50?

MR.NEWTON: Yes.

20 MR.STREET: While Your Honour has it there, Your Honour will see, and I think I am correct in saying all the evidence will show that on every duplicate deposit slip with the bank stamp there are the words "Lodged as per slip therewith", as part of the bank stamp. I draw attention to it now merely to save going over the evidence later on. My belief is, and I think the evidence will substantiate it, that every duplicate tendered has that stamp on it.

MR.NEWTON: And some of the originals, too.

30

HIS HONOUR: I think as a matter of practice the same stamp is used for both copies.

MR.NEWTON: No, Your Honour, and this will become significant later.

HIS HONOUR: What I have now is in fact stamped with precisely the same stamp, original and duplicate.

40 MR.NEWTON: That sometimes happens, but Your Honour will see the rectangular stamp N.B.A. which has a teller's number on it and a deposit number and the date and the words "Not negotiable" underneath. I understand that all the cheques with that deposit are stamped with that stamp and that number so it is possible to tell.

HIS HONOUR: But there was a day, Mr.Newton, that you

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and I will remember although Mr. Atwill may not, when we would go to a bank and do the banking for our respective firms and ourselves and the teller would put this stamp on every one of the whole bundle of documents, but as I understand it from my more recent enquiries, that is not now the custom. The teller is so busy now that he does not do that and the N.B.A. stamp is put on by the assistant behind the teller's cage, so I do not think it necessarily follows one way or the other. If the teller is not busy he
10 might put his N.B.A. stamp on, himself, but if there is a queue of people waiting someone else might do it.

MR. NEWTON: Some of the originals do not have that rectangular stamp on them, and I thought possibly it was an error.

HIS HONOUR: This is the method by which you tie these things together. It has to be on each cheque paid with this deposit.

20

I need mark the file only and we can treat the deposit slip as if it were incorporated in the file?

MR. NEWTON: Yes, Your Honour.

HIS HONOUR: I will have the file marked with the exhibit number and I will leave the flagging there and treat the copy in the flagged book as if it had been actually put in the file, but without doing it.

30

MR. NEWTON: Q. We can take now 24 to 43 inclusive. Would you have a look at those and you might put to one side those you did the banking in? A. 27 has no banking with it. 29 has no banking.

MR. STREET: That is only a duplicate. There is no original.

WITNESS: 32, no banking.

40

MR. NEWTON: Q. 24 to - what is the first one with no banking in? A. 27.

Q. That is 24, 25 and 26; would you put all those together? They were all cheques payable to J. Bruce, all obtained by fictitious documents prepared by you, exchanged for cash from the company's funds, you signed

the name J.Bruce on the back and then "Endorsement guaranteed", putting the rubber stamp on and you signed the cheque W.R.Moffitt? A. Yes.

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Q. In those cases 24, 25 and 26? A. Yes. I did the banking on each of those occasions.

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Q. And did you write in the amount? A. On 24 it is not my writing. 25 is and 26 is.

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(Continued)

10

(Files numbered 24, 25 and 26 tendered and marked Exhibits B24, B25 and B26.)

HIS HONOUR: Q. What is the significance of asking the witness whether he did the banking or wrote it himself?

MR. NEWTON: This is difficult to say, Your Honour. It is probably not relevant. It may touch the banker-customer relationship. In 27 there is a slight problem, Your Honour.

20 Neither the original deposit slip nor photostat is available, Your Honour.

Q. Would you have a look at 27? Is that another cheque payable to J.Bruce, obtained by you with fictitious document, exchanged by you for moneys out of the company's funds, and in which you wrote the name "J.Bruce" on the back and put "Endorsement guaranteed", putting the rubber stamp on and signing your name, W.R.Moffitt? A. Yes.

30 (File numbered 27 tendered and marked Exhibit B27)

HIS HONOUR: Mr. Newton, if Mr. Street in fact concedes, as I understand he does, that this witness followed the same pattern in each and every one of these instances; in other words, fraudulently procured a cheque signed by the company in favor of a fictitious payee, and later himself signed the endorsement of the fictitious payee in the name of that payee, and also guaranteed the endorsement as a signing officer for the company, could they not be put
40 in the one block lot then at least down to 1957?

MR. NEWTON: There are difficulties, Your Honour. In some cases there are cheques missing and in others original deposit slips missing. The difficulty is to get some formula that will cover all of them.

HIS HONOUR: Are there any cheques missing up to 1957?

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MR.NEWTON: No, Your Honour, but there are original cheques missing.

MR.STREET: I do not think there is any dispute as to what was on them. My friend has been very co-operative on discovery, we have seen these documents, and there is no question as to these, having gone through these file numbers as set out in the points of claim.

10 HIS HONOUR: Can it be admitted in respect of each of the file numbers set out in the points of claim that the cheque or copy cheque was procured by this witness fraudulently?

MR.STREET: Yes.

HIS HONOUR: That is in the sense that he obtained the signatures of authorised signing officers?

MR.STREET: Yes.

20

HIS HONOUR: And appropriated moneys for which the cheque was substituted?

MR.STREET: Yes. I have not directed my mind to the way this may be put, but I can make an admission. I think we would be prepared to admit everything that my friend wants on these

(LUNCHEON ADJOURNMENT)

30

MR.NEWTON: We have been able to reduce this matter to a formula and I hand Your Honour a copy of the formula.

HIS HONOUR: I suppose you tender the documents first, do you?

MR.NEWTON: Subject to Your Honour's approval what I would propose to do is to tender the files 1 to 50.

40 HIS HONOUR: The files up to 27 are actually in.

MR.NEWTON: I will tender 28 to 49.

MR.STREET: May I suggest, to prevent there being too many extraneous documents, if it is convenient that this be read on to the notes?

HIS HONOUR : Yes .

(Files 28 to 49 inclusive tendered and marked Exhibits B28 to B49 inclusive)

HIS HONOUR : Need I go through those ?

MR. NEWTON : I think not, Your Honour; the picture is the same .

10

HIS HONOUR : In other words , if I look at the schedule in your points of claim, that gives me the relevant amounts , dates and names ?

MR. NEWTON : Yes . From 49 on because the deposit receipts are relevant, I will not lead any evidence about the cheques , but I want to deal with the evidence in relation to the deposits .

20 HIS HONOUR : Are you tendering the files first ?

MR. NEWTON : If convenient, Yes .

(Files numbered 49 to 165 inclusive tendered and marked Exhibits B49 to B165 inclusive)

HIS HONOUR : At this stage do you suggest I record the agreement and then you can supplement those with your pay-in slips ?

30

MR. NEWTON : Yes .

HIS HONOUR : Very well . I order by consent that the cheques contained in files numbered 28 to 165 inclusive referred to in paragraph 20 of the points of claim are to be deemed to have been procured by W.R.Moffitt and dealt with by him in a manner similar to that deposed to by him in respect of the cheques contained in files numbered 1 to 27 . The files numbered 28 to 165 are
40 admitted without further proof, such differences or variations in the transactions as may be relevant being apparent from the face of the documents in each file . I order that the evidence already given by W.R.Moffitt shall be deemed to describe the whole of the transactions to which such cheques refer and shall be prima facie proof of all such transactions . That puts you in the position that either party can add to or detract from it .

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MR. NEWTON: Mr. Moffitt, as a result of what has happened we will not have to go through each cheque now with you. I just mention that so that you will understand the position. But I want to ask you in relation to these cheques just one or two questions in relation to the name of the payee. We have dealt with J. Bruce. The file numbered 51 refers to a cheque in favor of T. R. Green. Who was T. R. Green? A. A fictitious person.

10 Q. Not a dealer? A. Not a dealer.

Q. Then we go back to J. Bruce again and then we come to an N. Byatt in file No. 100. Was there an N. Byatt?
A. Yes, N. Byatt was the proprietor of a service station at Beverly Hills trading under the name of Derwent Service Station.

Q. Had the company done business with Byatt? A. Yes.

20 Q. Under the name of Byatt. A. No, under the name of Derwent Service Station.

Q. Then we go back to J. Bruce and N. Byatt again. Noel Byatt - that would be the same, would it? A. Yes.

Q. Each of those transactions was in fact a fictitious transaction? A. Yes.

30 Q. And the person fictitious or otherwise named in the cheques never got the money? A. No.

Q. You got it? A. Yes.

MR. NEWTON: There are two that are strictly included in my friend's admission, Your Honour, where the original cheques are missing and there is no photostat of them. I think I should deal with those just to see how I can take it.

40 Q. Would you look at file 102, first of all. Can you tell us by looking at that file whether it was a fictitious transaction or not? A. Yes, it was fictitious.

Q. First of all, you prepared some documents, did you?
A. Yes, the hire purchase agreement.

Q. And you prepared a cheque authority? A. The cheque

authority was not prepared by me, but there was a cheque authority.

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Q. Is the cheque authority in that file? A. Yes, and the copy.

Q. Does that show to whom the cheque was payable?

A. Yes.

10 Q. To whom was it payable? A. N.Byatt.

Q. What is the amount of the cheque? A. £450.

Q. Can you tell us the number of the cheque from that?

A. The cheque number is supposed to be 20811.

Q. And the date? A. The 22nd June 1959.

Q. And that has Mr .Sorbie's initials on the cheque auth-
20 ority, has it? A. Yes.

Q. And you dealt with the cheque in the same way as the other cheques you have told us about? A. Yes.

MR.NEWTON: I tender that file 102, Your Honour.

HIS HONOUR: I order that the company file numbered 102 now tendered, be incorporated in Exhibit B102.

30 I take it, Gentlemen, the admission made is to be taken to extend to an admission that such a cheque was in fact drawn, was endorsed by the witness in the name of the payee, the endorsement was certified by him on behalf of the company and he paid the cheque back into the company's account?

MR.NEWTON: Yes, Your Honour.

40 MR.STREET: That is so, Your Honour, and in the case of the other file the same again: we make the same admission in respect of file 103.

MR.NEWTON: Q. You have got file 103 before you. Having looked at that file can you tell us whether you prepared fictitious documents? A. Yes.

Q. Did you obtain a company cheque? A. Yes.

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Q. Can you tell us in whose favor it was? A. J. Bruce.

Q. What was the amount of the cheque? A. £460.

Q. And the cheque number? A. 20885 dated 29th June 1959.

MR. NEWTON: I tender that file 103, Your Honour.

HIS HONOUR: I order that that file be attached to and form
10 part of Exhibit B103.

MR. NEWTON: Q. In file 102, the document that is there,
what is that document? A. That is the accounting copy of
the purchase schedule.

Q. Do you see "mis." something? A. "c". That means
it went into the miscellaneous ledger. All Byatt's accounts
went into a separate ledger account called a miscellaneous
account.

20

Q. I show you Exhibit B50. That concerns a cheque for
£230. A. £235.

Q. £235, is it? A. Yes.

Q. You see the original deposit slip there and I want you to
take this document, the copy of the deposit slip, and first of
all in whose writing is the original? A. Do you mean the
whole document?

30

Q. Yes, the whole document? A. I don't know.

Q. Who made the deposit, do you know? A. Yes a Mr.
Van Kersterean I think he spells his name.

Q. Also on the original deposit slip Universal Guarantee,
the first entry on the right-hand side. A. Yes, that was
written by me.

40 Q. That was written by you and it does not appear in the dup-
licate: is that so? A. No, it is not on the duplicate.

Q. That I take it was written in before you went to the bank?
A. That is right, Yes.

MR. NEWTON: I tender the duplicate deposit slip in respect
of that.

HIS HONOUR: I will order that the duplicate deposit slip form part of Exhibit B50.

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Without embarrassing you, Mr. Newton, what appears to have happened is that the total has been computed; is it the correct total if you include the £235?

MR. NEWTON: Yes that is the correct total.

- 10 HIS HONOUR: In other words, the duplicate received by the company, if the additions had been checked, would have been apparently erroneous?

MR. NEWTON: No. It would have been correct. By examining the duplicate they would not have known that a cheque for Universal Guarantee for £235 would have been included in the deposits that day.

- 20 HIS HONOUR: But they would have known that the slip shows a total for cheques of £1581. 5.10. and if any check had been made of those additions it would be correct, would it not, that the correct total would be approximately £1350?

MR. NEWTON: That would be so.

HIS HONOUR: It might be interesting to enquire who prepared the pay-in slip.

- 30 MR. NEWTON: I think the witness said he could not say whose writing that is in.

Q. Can you tell us whose writing the total or summary is in? A. I think the total could be a Mrs. Prowse.

Q. Are you referring to the original or the duplicate, or both? A. The duplicate.

- 40 HIS HONOUR: Q. So in actual fact I think you will find one is a carbon copy of the other in all respects, but the witness I gather is speaking now of the total figure £1581. 5.10. at the end of the schedule of cheques. Is that right? A. Yes.

HIS HONOUR: Q. Who wrote the summary? A. I do not recall the writing. There were two or three young junior girls worked in the cashier's box and it would be one

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of their handwriting. I am not familiar with 1956.

MR. NEWTON: I tender the duplicate deposit slip.

HIS HONOUR: I order that the relevant duplicate deposit slip in that book is to be part of Exhibit B50.

MR. NEWTON: Would you have a look at the file, Exhibit B51? That is a cheque for £525. Whose writing is the
10 deposit slip made out in, do you know? A. Mine.

HIS HONOUR: Q. The whole of it? A. All bar the paid in: I did not pay it in, but the rest of it is all mine.

MR. NEWTON: Q. And the cheque for £520 is at the foot of a page on the right-hand side of the original, but is not shown in the carbon copy, is that so? A. That is right.

Q. Did you total it up and do the summaries in those? A.
20 The totalling up would have been done by the cashier, I should imagine, but whether it was necessary to alter the totals she gave me I cannot tell by this one.

HIS HONOUR: Q. You mean the cashier would calculate the totals on a machine? A. Yes.

Q. But who wrote the totals in? A. I wrote the totals in.

MR. NEWTON: I tender that deposit slip.
30

HIS HONOUR: The duplicate deposit slip in question which relates to the documents contained in Exhibit B51 can be incorporated in that exhibit.

MR. NEWTON: The entry in the original is on a sheet headed on the right-hand column "W. Shepherd, £26. 9. 3." The duplicate goes backwards.

40 HIS HONOUR: May I take it, Gentlemen, that the total of this deposit shown in the summary as being £3,800. 5.10 overstates the sum total of the money orders, postal notes, cheques and so on by £525?

MR. NEWTON: Yes.

HIS HONOUR: Or, I should say, overstates the total of the items shown in the duplicate by £525?

MR.STREET: Yes Your Honour.

MR.NEWTON: Q. Would you look at B52, a cheque for £525?
A. £220.

Q. I beg your pardon, £200. Who filled in the deposit slip?
A. I did.

Q. Both the original and the carbon? A. Yes.

10 Q. Mr. Van Kersterean did the banking? A. Yes.

Q. Did you complete the summary? A. Yes.

Q. And the cheque for £200 is shown in the original but not
in the duplicate? A. That is right.

Q. Would you leave those two pages open at the appropriate
page? A. Yes.

20 MR.NEWTON: While Your Honour is looking at that, Your
Honour may notice that the teller's stamp on the cheque and the
deposit slip is not the usual teller's stamp and does not
contain the teller's number or the deposit number.

HIS HONOUR: So once again I can take it that the total
appearing on the summary indicating the total of the cheques
banked, namely £837.17. 9. in fact overstates the amount
of the cheques included in the duplicate deposit slip by £200?

30 MR.NEWTON: That is so.

MR.STREET: Before leaving that, my friend has adverted
to this rectangular stamp. If he is adverting to that as
being relevant in some way on the negligence point, it is
not covered in the particulars and I would ask my friend
whether he is relying on it.

HIS HONOUR: Do you place any significance on this at all?

40 MR.NEWTON: I do not think so Your Honour.

Q. File B54 is the next one, a cheque for £525. Will you
have a look at that file. I think they are only photostats
of the original deposit slips in that file. Can you pick
the photostat of the original. A. Yes.

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Q. First of all, you made that deposit, did you? A. Yes, I prepared it and made it. It is all my writing.

Q. And the cheque for £525 appears in the original but not in the duplicate. Would you leave both those open at the appropriate page? A. Yes.

MR. NEWTON: On the original it is at the foot of the left-hand page, Your Honour. The first entry on the page
10 that looks like K.Mild, £2.18. 3.

HIS HONOUR: May I take it, Gentlemen, here again it is agreed that the total of the cheques at the foot of the list of cheques and in the summaries overstates the two totals of the amount of such cheques by the £525 in question; in other words, the additions on the original are correct and the additions on the duplicate are incorrect?

MR. STREET: That is so.
20

MR. NEWTON: Yes. The next one is 55.

HIS HONOUR: Need we go through these?

MR. STREET: I can make a general assent to the proposition, Your Honour.

HIS HONOUR: May I suggest, Mr. Newton, if you tender and indicate the numbers of the files in which you desire
30 to add the deposit slips - do you follow what I mean? How many of these cases are there?

MR. NEWTON: Yes, I do, Your Honour. These will be all the ones in paragraph 25.

HIS HONOUR: But 55 has not been dealt with yet.

MR. NEWTON: I am coming to 55 but before I tender that
40 may I go back to 54 for the moment. I withdraw that, Your Honour. There is a cheque of Mofitt's there but it is shown in the original and the duplicate. I tender 55 now.

HIS HONOUR: I order that the duplicate deposit slip in respect of the deposit made and evidenced by the documents in Exhibit B55 be deemed to be included in the exhibit. I would have thought it might be open to infer

that the carbon copy had been withdrawn while that original entry was made.

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MR. NEWTON: It appears it was so because there is a blank space.

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HIS HONOUR: I gather Mr. Street will concede that in this and any other matters to be drawn to attention by Mr. Newton, the position is the same as has been stated in
10 respect of the prior proceedings?

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MR. STREET: Yes, Your Honour.

MR. NEWTON: B56 is the next and they are all marked, Your Honour.

HIS HONOUR: That is one where the carbon paper was not wholly drawn away

20 MR. NEWTON: B57 is a cheque for £495 and it is in that book.

HIS HONOUR: Yes. There is something wrong here. All that is different is that some quite indecipherable amount appears in the duplicate in respect of the amount.

MR. NEWTON: May that not be the amount of the cheque that is C. Prowse, or whatever it is, of something and
4/6d?

30

HIS HONOUR: The something pounds 4/6d appears in the duplicate in ink, not in carbon. There is some ink and there may be some carbon.

MR. NEWTON: It does appear it was £80 - - -

HIS HONOUR: I would not be sure of that But the point is that the £495 is not there?

40 MR. NEWTON: Yes. Then B58.

HIS HONOUR: The £421 might be anything at all. It is probably intended to be Universal's. The next one looks like N. Rowe and there is 500 written in and the 7 over the first 50 or the 50 over it.

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Examination
(Continued)

MR. NEWTON: Perhaps I should ask the witness if he can throw any light on it.

Q. The B58 file I am showing you, Mr. Moffitt - do you see the original deposit slip is what appears to be Universal, National Sydney, £420, is it? A. £470.

Q. And do you know what the entry below that is? A. Yes, it is a dealer they dealt with, W. Rowe, Bank of N.S.W.
10 document, a cheque for £500.

HIS HONOUR: What is the overwriting on the 50? A. I do not think it is meant to be an overwriting; I think it is probably the way the ball point may have written, Your Honour.

MR. NEWTON: Q. Was that cheque paid in, the £500?
A. Yes.

20 Q. That was a genuine transaction, was it? A. It may have been a payout cheque.

MR. NEWTON: Besides these, of course, there are others: this is a payout on a car, and perhaps I should get this evidence from the witness.

Q. In addition to the cheques we have been talking about, there were other cheques that came in from dealers or people paying off the balance in respect of various motor
30 vehicles? A. That is right.

Q. Or goods on hire? A. Yes.

Q. And in some cases did you take those cheques yourself?

MR. STREET: I object to this. I understood my friend to say when he opened, and indeed, his particulars are, that there is no question of these payout cheques and we
40 have directed no attention to them.

HIS HONOUR: This is intended to be some sort of explanation.

MR. STREET: If it is not sought to be brought in as part of the claim I do not object.

MR. NEWTON: We make no claim in respect of it. I bind myself, Your Honour, that even if we could we have no intention of making any claim.

HIS HONOUR: I do not know how you could have any claim if this witness stole a Bank of N.S.W cheque.

MR. NEWTON: Q. In these payout cheques what did you do? A cheque would come in, for instance, if we use this
 10 one as an example, from Rowe for £500. What did you do?
 A. I suppressed the cheque and subsequently destroyed any papers relative to that payout figure, and then I just supplemented the cash again through the banking. That is definitely a cheque I have taken of Rowe's; whether I paid it back next day or not on one of their own cheques I do not know.

MR. STREET: There is a cheque there for Moffitt, too, in the bottom left-hand column.

20 MR. NEWTON: Moffitt, £18.17. 5.

HIS HONOUR: But the point there is that here he is paying one of his own cheques in and how this affects the additions might be very interesting to know. I wonder what the true addition of it all is.

MR. NEWTON: We have never added up the duplicate ones, Your Honour.

30 HIS HONOUR: What I meant is what is the effect of all this? Were the £420 the £500, and the £18 being his own cheque, all included in the total? I suppose they must have been.

MR. NEWTON: Yes.

HIS HONOUR: That means that the total on the duplicate is deficient by the sum total of the £470 the £500 plus the £18?

MR. NEWTON: Yes, Your Honour.
 40

HIS HONOUR: It is probably not my business to enquire further.

MR. NEWTON: File No. 59. There are two cheques there.

HIS HONOUR: There appear to be two cheques drawn by the

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Examination
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Examination
(Continued)

plaintiff on Universal Guarantee added to the original deposit slip for £450 and another for £41.12. 2.

MR. NEWTON: That is so. The next one is No. 60, a straightforward one I think, for £480. There is a space left for it on the duplicate. File 61 brings in a different story, Your Honour. Has Your Honour the deposit?

HIS HONOUR: Yes.

10

MR. NEWTON: There is a cheque for £400.

HIS HONOUR: I suppose it is the same one. It is £475.

MR. NEWTON: Does Your Honour see the alteration that has been made to the summary. The £450 has been changed to £50.

HIS HONOUR: And the total of the cheques increased by
20 £400?

MR. NEWTON: Yes.

HIS HONOUR: Why does he take a cheque for £475?

MR. NEWTON: There probably was not sufficient money and ---

HIS HONOUR: But assuming he took out £400 in cash he
30 would want to pay in a total of £400 by cheque to square it, and if he paid in £475 he is overdoing it, isn't he?

MR. NEWTON: Yes. In some of these circumstances he withdrew other cheques and put them in next day, and in other cases used his own cheque to make adjustments.

HIS HONOUR: Here he would have to withdraw £75 worth of cheques if that is so, wouldn't he?

40 MR. NEWTON: Yes. Perhaps I should get it on the record as to when and how that alteration was made, Your Honour.

HIS HONOUR: Yes.

MR. NEWTON: (Deposit book shown to witness). Whose writing is the original figures in the summary? A. Mrs. Prowse.

Q. Mrs.Prowse was what? A cashier there? A. A cashier.

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Q. She had made up the banking, had she, and filled in details of it? A. Yes.

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HIS HONOUR: I would not lead on this, if you want to rely on it later.

Examination
(Continued)

MR.NEWTON: Q. Having got it from Mrs.Prowse, what
10 did you do? A. I included a cheque for £475, a Universal
Guarantee cheque, the one in question made to J.Bruce,
and as I only suppressed £400 in cash, I would have taken
sufficient cheques out, as you have said earlier, to adjust
that. There is one here for £53. 4.11. I have taken out
and I have included one of my own to make up the round
figure, of £8. 4.11., but there must be another one for
this to show ---

HIS HONOUR: I do not understand this. At the moment
20 the explanation he has given does not make sense to me.

MR.NEWTON: Q. Go over it. A. I had a cheque for
£475 that I wanted £475 cash for. As Universal Guarantee
were banking only £450 that day I was able to put that
cheque for £475 into the bank and compensate myself for
that amount by the value of £400 in cash and cheques that
were meant for that day's banking equivalent to £75, and
I adjusted a slight difference of £8. 4.11. by putting my
own cheque in. So in actual fact I put in £493. 4.11, that
30 is the cheque for £475 and my £8. 4.11 and I took out
£483. The cheque for Pengelly for it looks as if it was
£53. 4.11. - you would have another summary sheet
somewhere: no there is no other sheet.

Q. Do you mean another deposit slip? A. No, it is app-
arently all here. I also supplemented further cheques.

Q. Your cheque for £8 something is shown there, is it?
A. Yes, it is shown here. It is not shown on the duplicate.

40

HIS HONOUR: Pass those documents back to me, officer.

WITNESS: That cheque for Pengelly is £83. 4.11, I think,
Your Honour, and not £53, and that is the difference.

HIS HONOUR: Q. What then happened to Pengelly's cheque?

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Examination
(Continued)

A. I cashed it the next day through their own bank account. I suppressed the cash on the next day's banking and gave them a cheque for £83. You will find it has been banked the next day, Your Honour. Pengelly's cheque would have been banked through Universal's bank account within the next day's banking, but you might only find it on the original and not on the duplicate, because I would not show it on the duplicate because it should normally have been on the day before.

10

MR. NEWTON: May I see those documents, Your Honour? They do not appear in my copies.

HIS HONOUR: This is not very simple, although at first glance it may appear to be so. You see, on the first day his deposit slip showed that Pengelly's cheque had been paid in. It is crossed out in the original but left in the carbon and the next day he has in his hands on this story a cheque for £83 which on the records has already been
20 lodged for collection.

MR. NEWTON: But Your Honour appreciates he has stolen a cheque for £475. He can only get £400 out of that day's takings so he puts in his own cheque for £8 making it £480 - odd.

HIS HONOUR: No, he first of all takes out the £83 and puts in his own cheque for £8 to square the £75.

30 MR. NEWTON: So then he has £400 in cash and a cheque ---

HIS HONOUR: He has £475 in cash. No, you are quite right.

MR. NEWTON: Yes, he has £400 in cash and he pays in his own cheque for £8.

HIS HONOUR: You cannot sue for that, can you? Your
40 claim is for £475. I am not interested to know how he gets the other £75.

MR. NEWTON: From Pengelly's.

HIS HONOUR: No, from the bank. What advantage would he get by paying Pengelly's cheque in the next day, including it in the original but not in the copy and having the totals misstated.

MR. NEWTON: It would not be necessary for him to get any advantage except this: he has got £400 in cash one day and he gets £83 in cash the next day.

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Examination
(Continued)

HIS HONOUR: Why does he get £83 in cash the next day? How does he manage to get that? By withdrawing from the cash and paying in the £83?

MR. NEWTON: Yes, by paying in the cheque for £83.

10

HIS HONOUR: Is it right for you to claim from the National Bank for that?

MR. NEWTON: Not on this count, Your Honour.

HIS HONOUR: On any count?

MR. NEWTON: I think this cheque for £400, Universal Guarantee, is a mistake, but we are debited with £475.

20

HIS HONOUR: That depends. If he pays in the cheque the next day of Pengelly and assuming as he says, although it is very difficult to believe him, that he then drew out £83 from the cash box, and puts in Pengelly's cheque ---

MR. NEWTON: We would seek to argue that the company is £475 worse off.

HIS HONOUR: But by reason of which transaction?

30

MR. NEWTON: By reason of the transaction of paying a cheque for £475 and debiting it against our account on 13th June 1957.

HIS HONOUR: It might be unreasonable of me to interrupt you at this stage. I am just trying to see where we are going. Thank you very much.

MR. NEWTON: I have not asked him yet about the summary.

40

Q. Would you look at Exhibit B61 again and can you tell us whose figures appear in the original figures in the summary? A. Mrs. Prowse's figures all bar the alteration of that "8". I altered that. That is the cheque 2816 (?)

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Examination
(Continued)

Q. That is in the original? A. In the original.

Q. That is your signature opposite that, is it? A. Yes, that is my signature of the alteration.

Q. And the signature of yours up the top? A. Yes, in the alteration from £450 to the £50.

10 Q. What did you do to the £450? A. That is where I suppressed the £400 and banked only £50 in cash.

Q. But what did you do to the figures 450? A. I crossed out the "4" and initialled the alteration.

Q. Were those alterations done before or after you went to the bank? A. Before I went to the bank.

MR. NEWTON: 62 is the next one. There is a cheque for £400 in the original but not in the duplicate.

20

HIS HONOUR: I wonder if this can be done enbloc. Mr. Street, do you concede that the following items in the list included at the foot of clause 25 of the points of claim from 62 onwards correctly describe what in fact happened to the deposits thereafter described?

30 MR. STREET: Yes, Your Honour, I think I would. When I say I think, the only reason for my reservation is that I have not checked this through against my own schedule, but what I can do is to work backwards through it. Your Honour appreciates I only got this in Court this morning from my friend and I am not certain that I should make a blanket admission without checking it. But there is no issue between us as to any of these matters of fact and perhaps I might make a blanket admission with liberty only to myself to confirm overnight: I would be prepared to do that.

40 HIS HONOUR: What do you say as to that, Mr. Newton?

Mr. Street is offering at this stage to concede that in the schedule or the list of items, files Nos. from 62 onwards as set out in clause 25 of your points of claim, the detail there stated correctly describes what happened in each case, with this one reservation, that Mr. Street says you have only just given him your list in its present order and he wants to have an opportunity overnight

of checking the actual figures .

MR.NEWTON: I would welcome that, but I think it is a little unfair to my friend. There are certain cases where alterations were made after the banking and there are variations in respect of some of these.

HIS HONOUR: I was thinking it might be shortened, but, however, you go ahead.

10

MR.NEWTON: In file 62 Your Honour will see there is a cheque for £400 of Universal Guarantee.

HIS HONOUR: Yes. It is obviously written in afterwards and in different handwriting.

MR.NEWTON: Your Honour will notice the summaries?

HIS HONOUR: Yes.

20

MR.NEWTON: Q. (File Exhibit B62 handed to witness)
First of all, in whose handwriting is that deposit?

A. Mrs.Prowse's handwriting.

HIS HONOUR: When you say "that deposit", do you mean the whole of the pay-in slip? From memory, it did not look to me as if the cheques listed on the page where the alteration was made were written in the same handwriting as that of the person that wrote the previous one who it was said was

30 Mrs.Prowse.

MR.NEWTON: Q. Is it in Mrs.Prowse's writing? A. No.

Q. In whose writing is the summary as originally prepared?

A. The summary originally was prepared by Mrs.Prowse.

MR.NEWTON: Q. You were physically handed the money and cheques by Mrs.Prowse. Would that be so? A. Or her assistant.

40

Q. And what did you do with the deposit slips then? A. I had a cheque for £400. I included it in the original and not in the duplicate. I altered the original to show £137 in cash and £2359. 4. 3. in cheques. I did not alter the duplicate.

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Examination
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Evidence
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Examination
(Continued)

Q. And was that done before you went to the bank or afterwards? A. Before I went to the bank.

Q. Have you got the duplicate deposit slip there? A. Yes.

Q. The £537, there appears to be a stroke through that.
A. Yes.

Q. Do you know how that comes about? A. No idea.

10

MR. NEWTON: No. 63 is much the same pattern. Cheque for £445 on the original, not in the duplicate, but the summary has been altered, too, Your Honour will see.

Q. (Showing B63) You did the banking, apparently, Mr. Moffitt? A. Yes.

Q. Who wrote out the summary in its original form? A. Mrs. Prowse.

20

Q. And did you make any alterations to the deposit slips?
A. Yes, On the original I altered the cash banked from £599 to £154 and the cheques from £1804. 4. 3. to £2249. 4. 3. and did not alter the duplicate.

Q. That was before or after banking? A. Before banking.

Q. And you also wrote in a cheque for £445 in the original deposit slip but not in the duplicate; is that so? A. Yes.

30

MR. NEWTON: And 64, Your Honour, there is a cheque for £400 and there is also an alteration to the summary, Your Honour. In the middle of the page under a cheque of the Universal Guarantee on the top left-hand column an entry of R.A. Tighe, or some such similar name, has been crossed out.

Q. I show you Exhibit B64. That is a deposit made by you; is that so? A. Yes.

40

Q. And the summary, whose handwriting is that? A. Mrs. Prowse.

Q. And after you got the deposit did you do something to the deposit slips? A. Yes. I altered the summary to show cash £161.10. 0. and not £371.10. 0., cheques to read £23025.11. 0. and not £20925.11. 0. and I did not

alter the duplicate.

Q. And you wrote in a cheque for £400 in the copy of the original deposit slip? A. Yes.

Q. But not in the duplicate? A. No.

Q. Was that done before or after banking? A. Before.

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William
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Examination
(Continued)

10 HIS HONOUR: He has crossed out other cheques. There have been adjustments.

WITNESS: Yes, I adjusted the cheques again.

MR. NEWTON: (Showing B65). The cheque for £420 and some alteration to the summary, Your Honour. £420 appears on a sheet which commences with a cheque for £48.14.10. on the left-hand column, a cheque of the Universal Guarantee for £48.14.10. A cheque has been
20 inserted for £420 underneath it, Your Honour. Looking at the summary Your Honour will see that the summary appears to have some ticks on the duplicate. They do not appear to have come through merely as a tick from the carbon to the copy.

HIS HONOUR: Yes, but they do not appear on the original. In actual fact there are some ticks on the original that do appear on the carbon copy but the ones that appear here on the carbon copy I should have thought were put there other
30 than by the bank.

MR. NEWTON: We would put to Your Honour, that that is the bank checking of the duplicate.

HIS HONOUR: But the bank checking is on the original. These are their ticks. That is always the case. The ticks here appear to be made through carbon paper on to the carbon copy. The bank, I am sure, did not take away the original and tick these off through the carbon
40 paper to mislead people like you and myself.

MR. NEWTON: I would not suggest that, Your Honour, but it did appear to us as if the copy had been ticked by a bank officer.

HIS HONOUR: No. The ticks in the right-hand margin -

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Examination
(Continued)

some of them, not all of them - have come through the carbon. One has not and two have. But I suppose if he had to make some adjustments he reduced the cash by about £300. He paid in £420 so he had to get £120 out to square it. He paid in £16. 2. 0. himself, took out £136. 2. 0.

MR.STREET: I query whether they are the carbon marks of the ticks, Your Honour. They do not look the same.

10 HIS HONOUR: They might not be, either. He took out a cheque for H.W.Wheeler, drawn on the Bank of New South Wales, Bowral, for £136. 2. 0. He paid in his own cheque for £16. 2. 0., thus adjusting, so to speak, correctly on the figure appearing in the original deposit.

MR.NEWTON: I have not got a copy of all the sheets. May I ask whether his cheque is shown on the copy?

HIS HONOUR: No, it would not show on the copy, I am sure.
20 No, it is not.

MR.STREET: I think I can indicate that subject to the question as to whether some of these alterations were made before or after banking - and that is, of course, the main point, and two alterations made by the bank itself of an addition and so on, we would be prepared to admit that all absences of correspondence are due to the witness's activities.

30 MR.NEWTON: I do not necessarily accept that, but we will talk about it, Your Honour. These are ones I will deal with now and I will not deal with ones which I think can be dealt with in some sort of general admission.

Q. In relation to Exhibit B65, who prepared the summary of the banking? A. Mrs.Prowse.

Q. You did the banking? A. I did the banking. I suppressed £300 and showed the cash as £173.10. 0. instead
40 of £473.10. 0. Cheques £2052.10. 1. instead of
£17521.10. 1. I did not alter the carbon copy. I included the cheque for Universal Guarantee for £420 and suppressed a cheque of £136. 2. 0. of Wheeler and included a cheque of my own for £16. 2. 0. None of that shows on the duplicate.

MR.STREET: No.66, subject only to this argument of one

day, is the point where we cross the Rubicon into the six-year period. I think the writ was served in September. . . .

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Evidence
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MR. NEWTON: Q. I show you B66. You did the banking on that day? A. Yes.

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Q. Whose writing is in the original summary, as it were?
A. Mrs. Prowse'.

Examination
(Continued)

10 Q. And some alteration were made to it? A. Yes. I altered the cash from £516.10. 0. to £116.10. 0., adjusted the cheques from £2986.12. 4. to £2386.12. 4. on the original and not on the duplicate and included a Universal Guarantee cheque for £400 on the original and not on the duplicate.

Q. By the way, those alterations to the summary, were they made before or after the banking? A. Before banking.

20

MR. NEWTON: File 67 I think is one where the duplicate was apparently blank at the time the banking was done. It is not a carbon copy, I think, Your Honour.

HIS HONOUR: It certainly purports to be a carbon copy.

MR. NEWTON: I may be thinking of the wrong one.

30 HIS HONOUR: There might be some doubt as to when this was all done.

MR. NEWTON: Q. I show you Exhibit B67. First of all, the original deposit slip, the summary, in whose writing is that? A. My own.

Q. And what about the duplicate? A. My own.

Q. Were they both written at the same time? A. No.

40 Q. Was one a carbon? How does it come about, Mr. Moffitt? A. It appears that the -

HIS HONOUR: Q. We do not want to know what it appears. We can see what appears from the documents. What is your memory of what you did? A. -

MR. NEWTON: What did you do? A. I produced the book

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William
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Examination
(Continued)

and the original to the teller without the full notes shown as what they were, the silver showing as 9/-, the pence showing as 2d., the money orders as £432.19. 2., the cheques shown only on the original and not on the duplicate and the total £3455.13. 9. shown as both the copy and the original, and then after the banking I have included then the figures of £491. 0. 0. as cash and £2531. 5. 5. as cheques.

10 Q. In the duplicate? A. On the duplicate, yes.

Q. When the banking was done, what did the original contain - £61? A. £61.

Q. In notes? A. Yes.

Q. It was as it appears now? A. Yes.

20 Q. But the duplicate did not have the notes in it or the cheques? A. No. The writing of the notes and the cheques were at a later date.

Q. And you also included in the banking a cheque for £430 which you have shown in the original but not in the duplicate? A. Yes.

(Further hearing adjourned until 10.00 a.m. on
Tuesday, 9th June, 1964.)

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Examination

30 SECOND DAY : TUESDAY, 9th JUNE, 1964.

(By consent, following witness interposed.)

JAMES STANLEY JUPP,
Sworn, examined, deposed :

TO MR. NEWTON: My name is James Stanley Jupp. I reside at 32 Inverallan Avenue, Pymble. I am the manager of the St. Peters branch of the Bank of New South Wales.

40

Q. How long have you held that position? A. Since 1955, early 1955.

Q. And how long have you been in the banking industry?
A. I am in my 41st year. .

Q. With the Bank of New South Wales all that time? A. Yes.

Q. And, without going into detail, you have acted as a teller on occasions? A. Yes.

Plaintiff's
Evidence
No. 3(2)

Q. And, although you have never held actual appointment, you have acted as accountant on occasions? A. Several occasions.

James
Stanley
Jupp

Examination
(Continued)

Q. And you were in Fiji at one stage, were you? A. That is correct, yes.

10

Q. And you have been with the Overseas Division of the bank? A. Yes. 30 years in the Overseas Division.

Q. I want to ask you first of all about the practice in your branch at the present time with regard to the depositing of moneys to the credit of customers' accounts. Somebody comes in with a deposit book or deposit slip made out in duplicate. You are familiar with this type of book, I take it? (Shown) A. Yes, quite.

20

Q. And that is presented to the receiving teller? A. Yes, Oh well, he could be receiving and paying but usually in larger branches it is receiving or paying.

Q. And what are his duties in relation to a particular receipt?

30

MR.STREET: I do not object to this but, so it may be precise, my friend did preface this by saying "I want to ask you about the practice at your branch". He might make it clear whether he is asking the witness what is the practice or what is the prescribed routine. I do not object to the evidence being given.

HIS HONOUR: I think I will allow Mr.Newton to proceed. You can elucidate it later on, Mr.Street.

MR.NEWTON: Q. What is the practice at your branch, the teller receiving a deposit with a number of cheques and money orders and cash and notes? A. Firstly, he gives a cursory glance at the name of the account to be credited and then, of course, he would take the notes and count them, and the silver and so on and the cheques, and he would check the addition.

40

Q. Check the addition where? A. On the summary of the credit slip.

-

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Examination
(Continued)

Q. Is the carbon paper still in at this stage? A. Oh yes.
Yes, it would be, yes.

Q. On the summary sheet? A. Yes.

HIS HONOUR: Just to make it clear to me, you say he checks the additions on the summary. Does he check the additions of the amounts of the cheques set out in the portion of the slip devoted to the listing of cheques?

10

MR. NEWTON: Your Honour means the details of all the cheques?

HIS HONOUR: Yes.

MR. NEWTON: Q. You know besides the summary there is set out particulars of all the cheques? A. Yes.

Q. His Honour is asking is it the teller's duty to check the
20 total of that addition. A. In our particular branch, no,
at the present time. In past year, before the advent of
batch machinery the answer is definitely Yes, or if the
branch has not got a batch machine, but in these days, to
facilitate service, the only check on the cheques them-
selves are for duty stamps and if a cheque would attract
interstate Stamp Duty he would collect that. Otherwise
he would not check the additions necessarily because
that is performed later by the batch machine, assuming
the branch has one, and it is balanced off there. That
30 takes the place of the old position of teller's clerk.
He used to do that manually.

Q. Is this right: At the present time - and I am dealing with what happens in your bank, in your branch - the teller checks the summary? A. He checks the summary and he sees that the final addition, or he should see that the final addition is brought up on to the space allotted for cheques.

40 Q. In other words, that the total of the cheques as added up in the details corresponds with the amount in the summary? A. That is correct, yes.

Q. He has checked the account to which it has to go, he has checked the amount of cash he has received, he has checked the totals of the cheques with the total in the summary? A. Yes.

Q. What does he do next? A. He stamps and signs, but before he does that actually he checks the duplicate with the original to see if they agree, otherwise the bank is (objected to).

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Examination
(Continued)

Q. You cannot tell us the reason for it. You say it is his duty to check the original with the duplicate? A. Yes.

Q. At what stage is the original torn out? A. Well, that
10 varies with the individual, but I mean normally before the
checking of the duplicate, although quite a few tellers will
sign over the carbon and then tear out and stamp the
duplicate. But I think that would probably be the more
general practice.

Q. What is the practice in your bank, though? Is it the
duty of the teller to check the original summary with the
duplicate - ? A. Yes, you do not tell him how he has got
to do it, whether he has got to tear the original out first.
20 That is up to the individual. The more general practice
is to stamp.

HIS HONOUR: Q. Stamp the original, you mean? A.
Stamp the original and then tear it out and check it with
the duplicate and stamp the duplicate.

MR. NEWTON: Q. Then stamp the duplicate? A. That
is the more general thing.

30 Q. What about the details of the cheques set out? From
what you have said it is not the present practice at this
stage for the receiving teller to go through and check
that each entry is recorded both on the original and on
the duplicate? A. Not in our branch, because we have
a batch machine which does that for us, but in a branch
where there is no machine it would be done manually.

HIS HONOUR: By whom? A. By the teller, Your
Honour.

40 MR. NEWTON: Q. By the - ? A. By the teller. He
has no machine to rely on.

Q. The teller has received it, extracted the original,
stamped the duplicate and handed the duplicate back.
What is the next procedure in your bank? A. Well,
he writes out what we call a cash-in docket which takes

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(Continued)

the place of the cash and the entry in the deposit and that goes to the batch machine where it is machined and balanced with the credit.

Q. Do you mean by that the total, the calculations in the deposit slip are checked? A. Yes.

Q. On this machine? A. Yes.

10 Q. What is done about checking the cheques at any stage, and who does it, if anybody? A. When you mean the cheques, what do you mean?

Q. The deposit includes, say, 20 or 30 cheques. A. Yes. Well, after the deposit has been balanced the cheques are then sorted into other banks, our own branch and so on and so on.

Q. Who does that? A. The examiner. The batch operator first and then it goes to the examiner.

Q. The batch operators' duty in regard to the cheques, what is their job - as far as the cheques are concerned? A. To balance the credit and to sort the cheques into other banks, or our own branches, or our own branch, and, of course, remittances where a certain bank is not represented.

Q. They are now before the examiner; is that right?
A. Yes.

30

Q. Sorted into bundles? A. That is correct. In ledger order.

Q. What does the examiner do? What are his duties in relation to those? A. The examiner does what we call "read the cheques". In other words, he checks the date for stale cheques. He checks the amount in words against the amount in figures and he checks the signature. If it is an order cheque, he checks the endorsement or a
40 cheque requiring endorsement, he checks the endorsement.

Q. When you say he checks the endorsement, what does that involve? A. Well, we have authorities for each account and that sets out the signatories and the powers delegated thereto and whether they can sign jointly or severally and also, apart from delegating the authority, it also mentions the authority for endorsement. It might

be one, two, three, or any one of the two, three or more.

Q. Then what happens to them? Supposing there is some query about the endorsement? Is that dealt with by the examiner or is it referred? A. No, he is not qualified. He only reads the cheques and refers any irregular ones, either for funds or endorsement or signature.

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Q. To whom does he refer in your branch? A. In my
10 particular branch, being larger than some, all endorse-
ments of cheques to the accountant, although in his absence
they are referred to me. I normally only see cheques for
funds, fund difficulties, but in certain cases if the account-
ant is not available they will be referred to me.

Q. That is where there is a query about an endorsement?

A. Yes.

Q. Then I suppose they are ultimately taken to the ledger-
20 keeper, even in relation to your own cheques, cheques
drawn on your own bank? A. Yes.

Q. And your own branch? A. Yes.

Q. They are taken to the ledgers and entered into the
appropriate ledger sheets? A. That is correct, yes, after
any irregularity, either for funds or endorsement or any-
thing like that, has been satisfied.

30 Q. That is the present procedure. Has that varied since
you first went there in 1950? A. No except with the
addition of the batch machines.

Q. The batch machine? A. Yes.

Q. Before the batch machine, the receiving teller checked
the details of the cheques set out in the pay-in slip? A.
That is correct.

40 Q. I show you file No.B1. I am only directing your attent-
ion to the cheque that is in file No.B1 and in a moment I
will ask you to make certain assumptions. I want you to
assume first of all that the signatures on the front of the
cheque are authorised signatories for the company, for
the drawer of the cheque, in other words, that the cheque
is properly drawn in the sense that the signatures are
correct? A. Yes.

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(Continued)

Q. You will observe it is payable to somebody called
K.R.Henry? A. Yes.

Q. And I want you to look at the back of the cheque and
I want you to assume that the signature W.R.Moffitt on the
back of the cheque is the signature of one of the people who
was able to sign cheques and in fact he was one of the sig-
natories to the front of the cheque. If that came before
you, assume a cheque drawn on your bank in similar
10 terms, on your branch, and was being deposited to the
credit of the customer, that is Universal Guarantee -

HIS HONOUR: The drawer.

MR.NEWTON: Q. - the drawer, would you accept it in that
form? A. No, I would not.

Q. Why not? A. Well, in the first place, the endorsement.
It is very indistinct here but it says something about - I
20 know the phrasing "not negotiable, credit account payee".
K.R.Henry is the payee and it is being paid into the drawer's
account, which indicates that it has been negotiated and it
is a non-negotiable cheque in the first instance. Secondly
it says "Endorsement guaranteed", even the accountant
would refer that cheque to me and he would say "Will
we accept this endorsement?" and if necessary, if that
answer was not satisfactory - but even so I would be
very much - in fact I would refer to the company, some-
one in authority, It would not be either of the signatories
30 of the cheque, or the endorsement, and I would refer to
them and ask them if it was in order. If so, I would
get the transaction concerned -

HIS HONOUR: Q. You say you would refer to one of the
signatories? A. No. I said I would refer to someone
who was neither of the signatories nor the person guarantee-
ing the endorsement, because an endorsement in that manner
is not correct. He is not entitled to guarantee the endorse-
ment.

40 MR.NEWTON: Q. You would make some enquiry before
you accepted it? A. Oh, undoubtedly.

Q. I show you the cheque in Exhibit B80. I think you will
find it is in the same terms as the last cheque with the except-
ion it is signed by Mr.Sorby and Mr.Tyack and you can
assume that both of those are authorised signing officers.

"J.Bruce" is written on the back and "Endorsement guaranteed" and signed by Moffitt and the endorsement on that one is - A. "Not negotiable. Account Payee Only".

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(Continued)

Q. Do the remarks you made with relation to the last cheque in Exhibit B1 apply equally to that cheque? A. Yes, except that I would be more on my guard here because I assume this cheque is paid into the company again - ?

10 Q. Yes, that is so. A. - and the endorsement is guaranteed by a separate signatory.

Q. By "separate" you mean one of the officers who has not signed the front of the cheque? A. Yes.

HIS HONOUR: Although an authorised signatory. Although a person authorised to sign cheques on the company's behalf.

20 MR. NEWTON: Yes.

HIS HONOUR: Moffitt at that stage was still a person authorised, among others, to sign cheques?

MR. NEWTON: Yes, but what the witness, as I understand him to say, says is that because the signatures on the front -

HIS HONOUR: But you had better make clear to him that that is the position.

30

MR. NEWTON: Q. You will assume, of course, Mr. Jupp, that Moffitt's signature on the back is the signature of one of the officers who was authorised to sign cheques with another signatory. A. Yes, but with another. But the mere fact that his signature appears on the back - may I be informed, or may I ask whether Mr. Moffitt was entitled to endorse on his own?

40 Q. I think you may assume that Mr. Moffitt was entitled to endorse cheques payable to Universal Guarantee for deposit to the credit of Universal Guarantee. A. I would still regard the transaction with some doubt and I would refer it, particularly if it was a large amount. Small amounts we do not worry about really. We do not worry very much about endorsements of cheques I should say under £20.

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(Continued)

Q. That is your practice now, is it? A. Now. It has not always been so.

Q. When did that become your practice? A. In very recent years. I would say, hazarding a guess, I would say in the last two or three years. It might even be less than that.

Q. Do you know the reason for not worrying about the endorsement of cheques under £20? A. Simply because of
10 the volume, the increased volume of cheques passing through, the time involved in checking and we do take, shall I say, a calculated risk on cheques under £20, but for large amounts we are extremely alert. We are instructed to that extent.

Q. I show you first of all the original deposit slip in Exhibit B61 and I show you the duplicate slip in B61 and I direct your attention to the summary and I want you to assume that the alterations in the original were made prior to the
20 banking being done. Would you have issued a duplicate deposit slip in that form? A. Most definitely not.

Q. Why not? A. Well, the notes of £450, well, it was 450. The 4 has been crossed out and initialled, admittedly, leaving the note deposit as £50. On the duplicate it is distinctly unaltered. We come down here, that is right and that is right (indicating), we come down here and I notice a discrepancy that has not been altered either. That is in the original, and there is an alter-
30 ation here. The duplicate shows quite clearly £2466.15. 8.

Q. That is for the total of the cheques? A. Yes.

Q. And the original shows? A. £2866.15. 8. No teller should accept anything so evidently different.

Q. You will see in the original there is a cheque written in or a cheque shown of Universal Guarantee for £475
40 just at the end of the deposit? A. Yes.

Q. And if you look at the duplicate you will see it is not shown? A. That is correct.

Q. Would you accept that in that form? A. That is difficult to know whether a teller would notice that but if he was alert enough he certainly would and, naturally, if he

was aware of it he would not, but it should turn up. I mean it all depends whether he is doing this manually or not. Doing it manually he would notice it but otherwise he would rely on the machine.

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Q. First of all, I ask you to look at those two receipts and I invite your attention first of all - and do not say anything about it until I put some evidence to you - to the two summaries there. -

10

HIS HONOUR: You are now showing him the original of the deposit slips contained in that exhibit, are you?

MR. NEWTON: Yes, Your Honour.

Q. You will see Universal Guarantee cheque shown in the original for £430 and it is not shown in the duplicate, do you see? A. Yes.

20 Q. This is the evidence that has been given about this summary: "I produced the book and the original to the teller without the full notes shown as what they were, the silver showing as 9/-, the pence showing as 2d., the money orders as £432.19. 2., the cheques shown only on the original and not on the duplicate and the total £3455.13. 9. shown on both the copy and the original, and then after the banking I have included then the figures of £491." in the duplicate and £2531. 5. 5. as cheques. A. Yes.

30 Q. I want you to make an assumption that the duplicate is in that condition; in other words, the £491 is not shown there and the £2531. 5. 5. is not shown there at the time of banking. Would you have issued a duplicate in that form, having regard to the form in which the original was? A. That was not in (indicating)?

Q. There was no figure there for the £491. A. And there was no figure here (indicating)?

40 Q. No figure for the total of the cheques. A. No, most definitely not. It was the duty of the teller before he proceeded on behalf of the bank to see that the slip he was given was the equivalent of the amount he was supposed to receive, functionally.

Q. What about the cheque not being shown on the duplicate? A. Well, the same thing applies. If he was checking this

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manually, he would check it.

Q. You were saying that a teller, if he were checking it manually, should notice that the cheque was not in the duplicate? A. Yes.

Q. If it was being done by a batch machine, you would not expect him to find it? A. No. That is right. That is again altered these days by the revised scale of charges,
10 wherein now we count the number of cheques and we put the number of cheques.

Q. Instead of adding up the exchange? A. Yes.

Cross-
Examination

CROSS-EXAMINATION.

MR. STREET: Q. Mr. Jupp, I suppose you would agree, would you not, that a great deal turns upon the stature of the customer when he comes in to make a deposit containing
20 some documents which might appear to be a little out of the ordinary? A. Well, quite frankly, no, because unless a customer has an absolutely undoubted reputation, no matter whether he is big or small, we are so prone to various attempts that we now regard almost everyone with suspicion.

Q. You understood my question? You do not then pay any regard to the stature of your customer if he wants to present, as part of his deposit, an item which may look a little irregular on its face? A. No.
30

Q. Equal reluctance and suspicion in the case of a well-known, well-established, large account as for a new, little-known account? A. Repeat please?

Q. Would you say that you would display equal reluctance in the case of a well-known, well-established account as in the case of a new, little-known account? (Objected to ; allowed)

40 HIS HONOUR: Q. You understand that, Mr. Jupp, do you? A. Yes.

Q. You have a deposit presented to you and there is one or perhaps two or three items which on their face appear to a degree irregular. The question is would you show the same reluctance to pass a deposit so presented to you with those irregularities in the case of a large, reputable and

well-known customer as you would in the case of a small customer who has only recently opened his account? A. Yes, we would. We would accept the deposit but we also have a printed form -

Q. Would you show the same reluctance, is the question?
A. Yes.

MR. STREET: Q. You have outlined to Mr. Newton the
10 practice which you say is followed in your bank by a receiving teller in your branch? A. Yes.

HIS HONOUR: It may be noted that Mr. Newton passes two deposit books, taken at random, to Mr. Street.

MR. STREET: And they are 71 and 72. Might I have the exhibits B71 and 72? (Produced).

Q. (Approaching witness) I am showing you, Mr. Jupp,
20 Exhibit B71 which contains within it a cheque for £460 together with the original of a deposit slip. A. Yes.

Q. Which contains three sheets. Now I also show you a book containing what appears to be the carbon copy of that deposit slip. A. Yes.

Q. You will see that that deposit contains three sheets?
A. Yes.

30 Q. And is for a total of £1914.11. 4.? A. Yes.

Q. And it contains altogether something in the vicinity of 70 cheques? A. Yes.

Q. Something like that? A. Yes.

Q. I want you to assume that your receiving teller is on the counter when this customer comes in to make a deposit of this sort. Right? A. Yes.

40 Q. I also want you to assume that this is a customer who has had daily bankings virtually every day since, we will say, 1950. A. Yes.

Q. This one is dated 1958. At all events, he has had daily bankings for four or more years. A. Yes.

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Q. Of the order of that which is shown in this exhibit B71, £2,000 or thereabouts with a large number of cheques. Right? A. Yes.

Q. And the book is handed across the counter to your teller in your branch. A. Yes.

Q. With some amount of cash? A. Yes.

10 Q. And with a bundle of cheques and with some money orders, or a money order. A. Yes.

Q. A number of money orders, by the look of it? A. Yes.

Q. Would you tell me, first of all, the book comes in to you like this with the originals still in the book, not torn out? A. Yes.

20 Q. Would you tell me what your receiving teller's practice would be when he gets that book handed across the counter to him with the bundle of 70 or more cheques and with cash and the original sheets still in the book. A. Well, he would first of all check the notes, as I have said. He would then run through the cheques for Stamp Duty, etc.etc.

Q. First of all, I take it he would open the book? A. He would open the book, yes.

30 Q. And he would turn, would he, to the last of the three sheets on which there is the summary? A. No, he would not.

Q. Would not, A. No. Why? Because this is the first sheet, isn't it?

40 Q. You have got Exhibit B71 and you point to that part of B71 which contains the completed cash and cheque summary? You point to the sheet containing the completed cash and cheque summary? A. Yes, but do I understand that that sheet corresponds to that and this one?

Q. Just a moment. I put to you that the book comes in to you with the original pages still in place and it is handed over to you with the cash and the cheques inside it. Will you tell me, first of all, to which page would the teller turn to open the book? A. He would open this one (indicating)

Q. He would open it to the page containing the cash-cheque summary? A. That is correct.

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Q. Then what would he do? A. He would check the notes, naturally; he would also check the cheques.

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Q. He would check the notes? A. Yes.

Cross-
Examination
(Continued)

Q. Yes. A. He would check the money orders.

10

Q. When you say check the money orders, what would he do in relation to checking the money orders? A. He would have to see that they were correctly directed.

Q. So he takes the bundle of money orders that is part of the cheques? A. Yes.

Q. And he would look through those to see the name of the payee of the money order? A. Yes, that is right. We do
20 that with money orders because they have to go to the post office and that is why we make the distinction between money orders and cheques.

Q. He has checked through the money orders to see the names of the payees? A. Yes.

Q. He satisfies himself as to the regularity of the names of the payees? A. Yes.

30 Q. What does he do then? A. He just looks through the cheques for stamp duty, interstate or any endorsement cheques that require stamping.

Q. He still has the book open in front of him at the page with the cash-cheque summary on it, does he? A. Presumably he would.

Q. He checks them through for endorsement? A. Yes.

40 HIS HONOUR: Q. He turns every cheque over, does he? A. Where the endorsement is necessary.

Q. Would he turn every cheque over? A. He just flips through them. He does not necessarily examine them as such. He is looking for cheques which require duty stamping either for receipt purposes or interstate stamp duty.

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(Continued)

MR. STREET: Q. He riffles through the bundle and takes a quick check for interstate stamp duty; right? A. Yes.

HIS HONOUR: And duty and receipts.

MR. STREET: Q. And duty and receipts? A. That is right.

Q. Leaving the book open at that stage with the completed cash-cheque summary on it? A. Then he would tear out
10 this sheet.

Q. That is the sheet containing the completed summary?
A. Yes, which is that (indicating). First of all, I am sorry, he stamps it and receipts that.

Q. First of all, he stamps the original sheet containing the cash-cheque summary and initials, does he? A. And initials it, but the stamp does not come through the duplicate. Only the signature.

20

Q. If you assume it is carbon paper between the original and the carbon there, first of all he puts his initial on it?
A. Yes.

Q. And that comes through the carbon on to the copy? A. Yes.

Q. He then puts a rubber stamp on? A. Yes.

30 Q. But that does not come through the carbon? A. Yes. If there was no carbon there, he would stamp and initial them.

Q. Both? A. Yes.

Q. Does he tear out the original page before he stamps the carbon? A. No.

40 Q. He just turns it back, does he? A. If there is carbon in the book they usually take the carbon out. He stamps that and signs it.

Q. He stamps the original and signs it? A. Yes.

Q. He stamps the original and signs it? A. Yes.

Q. On the sheet containing the completed cash-cheque

summary? A. Yes.

Q. Yes. A. And then he turns over and if his signature appears there through the carbon - (indicating).

Q. If his signature appears on the duplicate through the carbon. Yes. A. He stamps it again.

10 Q. He stamps the carbon. Yes. A. Then he takes the carbon out but he should be looking for a corresponding imprint from the original sheet, from the first sheet. That should arouse his suspicion.

Q. You say then he takes the carbon out from there? A. Yes, and puts it in the next one.

Q. He lifts the sheet of carbon paper out? A. And puts it in between the second.

20 Q. Puts it further down the book? A. Yes, and does the same thing.

Q. I do not quite follow. You say he lifts the carbon out and puts it underneath where? A. Between the second page of the deposit and the second duplicate, and he does the same thing. Then he does the same with the third.

HIS HONOUR: Q. When you say he does the same thing, you mean he stamps and signs it again? A. Yes.

30 Q. Each sheet is separately stamped and separately signed? A. He should do so, yes, Your Honour.

Q. That is your practice? A. That is our practice, but it should become immediately apparent or it should arouse his interest when he stamps his first sheet, when the summary is not on the first sheet. He must go looking for it. It would be most strange for it to appear on the third sheet.

40 MR. STREET: Q. So what you say then is that he stamps and initials? We will stick, for the moment, to the first sheet. A. Yes.

Q. We have got to the point now where he has lifted up the carbon, lifted up the original, he has removed the carbon and put it under the next following sheet? A. That is correct.

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Examination
(Continued)

Q. And he then initials the carbon, does he, or stamps the carbon? A. That is correct.

Q. Initialling or not depending on whether the carbon was there when he initialled the original? A. Yes.

Q. So then he stamps the carbon? A. Yes.

Q. Then what does he do? We have now got to the stage
10 where he stamped the duplicate of the first sheet? A. Then he takes the carbon out from between the first sheet and the duplicate and places it between the second sheet.

Q. The second pair of sheets? A. The second pair of sheets. He does the same thing, and then he takes the carbon out again and does it again over there (indicating).

Q. He goes through the same process with the second pair of sheets? A. Yes.

20

Q. And he goes through the same process with the third pair of sheets? A. That is correct.

Q. And then what? A. Well, I mean he tears each one out, at the same time puts the cheques in and tallies it up with his cash-in docket.

Q. All three originals at the same time? A. Yes.

30 Q. At the end? A. Yes.

Q. He does this turning page by page, but when he has stamped and initialled the last carbon he goes back and tears out the three originals? A. Not necessarily. He probably did it as he went through.

Q. He probably tears out each ensuing page as he finishes it? A. When he finishes stamping and signing it.

40 Q. And then what? A. He would hand the book back and put the cash-in docket in and checks up with the batch.

Q. Then it goes into the internal processes of the bank? A. Yes. But this is most extraordinary that he should not notice the summary was not on the first sheet. He would immediately say "What has happened to the summary? Where is it?" and when he found it on the third sheet -

Q. You say this is most extraordinary, and by that you indicate the three completed deposit slips for the 19th April, 1958. On the first one the summary is blank?

A. Yes.

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Q. On the second one the summary is blank but on the third one it is filled in? A. Yes, but as for the sheets not detached I would immediately wonder how on earth he got the carbon copy into the third sheet when there were two

10 others preceding it both in blank.

Cross-
Examination
(Continued)

Q. Are you happy, Mr. Jupp, that you have described to me in detail the process that you say would be followed in your branch if a deposit of that sort came in? A. Yes, with the exception that different individuals might - I mean that is a standard procedure, shall we put it that way. Some individuals -

HIS HONOUR: Q. Some individuals what? A. Well, some
20 people write with their left hand and some with their right, but the standard procedure would be to stamp each sheet, tear it out, replace the carbon, stamp it, tear it out and so on.

Q. And what would these what you call left-handed people do - the ones who do not follow the standard procedure?

A. I am trying to explain that each person approaches a job or a problem in a different manner and you cannot lay down and say that everyone that has ever been in my branch
30 would do it by the same method, but generally speaking that would be the normal practice.

MR. STREET: Q. Just to make sure that I have got this precisely correct, I should like just to go through the same process with you on just one other deposit -

MR. NEWTON: Before my friend does that, I had a question to ask, really.

40 HIS HONOUR: I do not think you should interrupt the cross-examination I think you ought to wait.

MR. STREET: Q. I now want to show you Exhibit B72, which contains a cheque, the five sheets which are apparently originals, and a deposit slip? A. Yes.

Q. And it contains some adding-machine slip which I need

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(Continued)

not trouble you with. A. Yes.

Q. And I will also show you a book of duplicates, carbons, opened at a page which appears to be the carbon copy of this original deposit slip in Exhibit B72. A. Yes.

Q. It is dated 13th May, 1958; right? A. Yes.

Q. I want you to assume, Mr. Jupp, that the same customer
10 who has had an account - and I will repeat the assumption
to you - involving daily bankings in the order of £2,000,
£3,000, established with your branch we will say for some
four years or more and the customer comes in, or the
customer's representative comes in with his deposit book,
with the original in place and still affixed in the original
deposit book and with some money in cash, that is notes,
silver, copper, some money orders and some £2728 in
cheques, and it appears that there would be about some-
thing up near 100 cheques in that deposit, doesn't it?
20 A. Yes.

Q. Is that right? A. Yes.

Q. You are a teller and, omitting for the moment that there
is a cheque pinned on to this deposit slip which is part of
Exhibit B72, and there is handed across your counter to you
this duplicate deposit book with the original sheets still in
place and the bundle of cheques and the sum of money in
notes and silver, copper and the money orders. A. Yes.
30

Q. Do you understand what I am putting to you? A. Yes.

Q. Now tell me in precise detail, step by step, what you
would do as the receiving teller. A. I would take the
cheques out and place them there.

Q. Place them down beside you? A. Yes. I would check
the notes, the silver, and in turn the money orders and tick
them.
40

Q. You would check the notes and silver and tick them.
That is to say you would check them, you would turn the
deposit slip - ? A. No, not necessarily. If the money
orders were on the bottom of the deposit on the last sheet,
that would be done last.

Q. You would open your book to where there was a completed

cash summary? A. Yes, which should be the first sheet.

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Q. Which should be the first sheet, you say? A. Yes.

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Q. You would open it there and count the notes and the copper and the silver? A. Yes.

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(Continued)

Q. What do you do when you find the amount is correct?

A. You tick it.

10

Q. You tick it on the original? A. Yes. And then, according to whether the money orders were listed first or last, you would check them as I have said.

Q. You would check your money orders. By that what do you mean? A. Check them for regularity and, as I say, we treat them as cash.

Q. You treat them as cash? A. Yes.

20

Q. Let us assume that there look to be about 25 money orders, something like that. You have got a bundle of 25 money orders? A. Yes.

Q. How do you check them? Explain what you do, if you would, please. A. Well, "payee".

Q. You have got a number there? A. Yes. You flip through them. I mean, they should be payable at your
30 local post office.

Q. I only want to know the physical acts you are going to do. You have got your bundle of money orders. Now what do you do with them? A. You just check that they are properly receipted and issued on the local post office, unless, of course, it happens to be one that becomes a remittance, I mean in the nature of a remittance, but that does not worry you unduly, and you check the amounts and you tick them off on your credit slip.

40

Q. You go through, do you, with your money orders? There are about 25? A. Yes.

Q. I have not got the precise physical sequence you have told me your teller does in regard to that. I want the physical practice. You have got a batch of 25 money orders and a deposit slip, and you have it in front of you

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on No.B72. Tell me what would you do with this bundle?

A. Well, just to see that they are properly receipted.

Q. I take it, first of all, you take them into your hand, do you? A. Yes.

Q. And put them on the table in front of you? A. Yes.

Q. Then what do you do then? A. You just check them to
10 see that they are payable correctly and receipted and also,
if necessary, whether they are payable at the local post
office or otherwise, and then you tick them. Being cash,
you should really check the additions of those, but, as I
say, that often comes later.

Q. I just want to get the practice. If you had these 25
money orders coming over to you with this deposit, you
would thumb through them to check the payees' names?

A. Yes.

20

Q. And the appearance of each document? A. Yes.

Q. But you would not actually add them up, you say? A.
Correctly speaking, they should be added.

Q. I want to know the practice, what you should do in
practice. You are on the teller's cage. A. In my day
I would have most certainly added them up.

30 HIS HONOUR: Q. What is the usual practice in your
branch in current times? A. Well, I cannot answer
that question precisely, Your Honour, because I do not
know what the individual tellers do.

MR.STREET: Q. Just so I may be clear about this, when
you say you do not know what the individual tellers do, am
I to understand that you do not claim to have a detailed
knowledge of the precise processes in fact followed by
your tellers? I am not asking you about bank rules.

40 A. Currently?

Q. Yes. A. Current practices. No, my job does not
descend that far.

HIS HONOUR: Q. You got past that long ago, I suppose,
A. Yes, indeed.

MR.STREET: Q. How long have you been at your present branch in your present position? A. Since early 1955.

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Q. That is manager of the Burwood Branch? A. St.Peters.

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Q. And before that where were you? A. Fiji, Queensland twice, Victoria, South Australia, New Zealand.

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(Continued)

10 Q. How long since you have mounted a teller's cage, or whatever one does physically in relation to it? A. Well, in actual practise it would be nearly twenty years.

Q. Just coming back again to this particular deposit, I have directed your mind to, you have got a bundle of money orders? A. Yes.

20 Q. Would you, even in your day when you were last on the teller's cage yourself, would you have checked each individual money order against the list on the duplicate deposit slip? A. In those days yes, it was necessary practice.

Q. And that practice has long since been discontinued, has it not? A. Not in its entirety, as I tried to explain before. In small branches, where the action is physical or manual, yes you would check each one, but in these days of machines and the need to process work quickly it goes to the batch where each deposit is balanced before it is sent out for sorting, Q. And that is done, of course, long after the customer has left the bank? A. Yes.

30 Q. And similarly, if you have a teller's clerk behind you, if you have not got your machine but you have got your teller's clerk behind you to do the additions, he does that after the customer has left the bank? A. Yes, because you cannot keep up with the rush. I mean at the same time any discrepancy would be immediately queried, or queried in the very -

40 Q. Very shortly after? A. Very shortly after.

Q. That is queried very shortly after the customer has left the bank? A. Yes.

Q. But whether it is a machine process of the various items and cheques and so on going up to a machinist, or whether it is what you would call the manual process of the teller's clerk doing it, it is done, you would say, shortly

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after the customer has left the bank? A. Yes, shortly after.

Q. Not whilst he is there? A. Not unless there is no one else present.

Q. But the ordinary practice? A. If you had a queue naturally it would be some time after.

10 Q. That is quite normal practice? A. Yes.

Q. Going back to this question of the items going to make up the money orders on this deposit, you have told me now what you would have done in your day? A. Yes.

Q. I think you have agreed with me that the modern practice, since you have given up telling, has relaxed to some extent? A. Yes. The principle remains the same; it is only the modus operandi.

20

Q. What I am asking you about in particular is not the principle. I want to get the practice, and you have said very fairly that you are not in touch with the close practice at the moment. A. No.

Q. Because you have risen above that field? A. Yes.

Q. But, as best you do understand it, you have given the Court the benefit of your belief of it? A. Yes.

30

Q. That is a fair way to put it, isn't it? A. Yes.

Q. We will go ahead then to the next item. You have done your money orders. What do you do in relation to the cheques? A. As I said, duty stamps, etc. etc.

Q. You would ripple through them to make sure they are duty stamped? A. Yes.

40 Q. Yes. A. Then you just put with your cash-in docket the cheques and they are sent up to the batch, except that in very recent times -

Q. I do not want to worry about very recent times. You are going to tell me about some machine listing? A. Yes counting the cheques.

Q. I am sorry, let us have it. In very recent times, what do you say? A. Since the exchange on cheques is done away with and the scale of charges came in, we are now counting the number of cheques on the deposit.

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Q. You just count the number of cheques? A. Yes.

Q. You do not trouble with looking at what is on them in the way that you used to before exchange was abolished? A.

10 No, not as far as additions. I am confused there. Do you mind repeating it?

Q. You tell me what you do in relation to that again. We will start from the beginning again with your cheques. A. We check them for duty stamps.

Q. You have got a bundle of cheques, you thumb through them, do you? A. Yes.

20 Q. To make sure each one has a duty stamp? A. Yes.

HIS HONOUR: May I have one thing clear. We have now had in this three different persons concerned with this operation; the teller, the teller's clerk and the machine operator. Who in fact thumbs through the cheques to make sure that the duty stamp is put on?

Q. The teller? A. Yes, the teller.

30 Q. The teller's clerk? A. No. The teller, Your Honour.

Q. The teller personally? A. Yes. He has duty stamps which he holds in his cash.

Q. Even if there is a long queue he still has to go through? A. Yes, he still does it.

MR. STREET: Q. Even if there is 100 cheques or there is a number in the order of 100, as there are in the deposit
40 you have in front of you, he goes through it and makes sure that the duty stamp is correct on each cheque? A. Yes, before he takes the next deposit.

Q. Before he takes the next customer? A. Yes.

Q. And before, I suppose, he gives the book back to the customer? A. Yes.

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Q. He goes through the cheques and looks for the duty stamps. And then what? A. Then having satisfied himself they are, he goes through the procedure of stamping and initialling or signing the deposit slips. Having done that and checked the summary with the - it should be the first duplicate - then he puts his cash- in docket to make up the amount so they can balance the entry when it goes up to the batch.

10 Q. And that is all he does? You have now covered the whole lot of what he does? A. Yes, that is the teller.

Q. He stamps and initials the duplicate copy? A. Yes.

Q. Tears out the original? A. Yes.

Q. And gives the book back to the customer? A. Yes.

Q. That covers the whole lot, does it, of the operations?
20 Do you say, in your understanding, which you have qualified in the way in which you have to His Honour, that is the operation that has been done after you have risen above telling yourself, A. Yes, that is quite so, except that he must be alert. I mean he is relied upon to a very large extent and he must make certain that the duplicate is the same as the original and that it should be in the same position as the original. For instance, to tear out the original, he naturally would start to check it on the duplicate, carbon or no carbon, and when he finds that the
30 first page the original is written on is summarised and the second one is not and then again the third one and it appears on the last one, I mean he would not be worthy of his salary if it had not raised some doubt or suspicion in his mind.

HIS HONOUR: I have not got these documents before me, and I do not know what this is all about.

MR .STREET: I am just going to clear it up :
40

Q. What you have got in front of you is a carbon copy which contains altogether five completed sheets, doesn't it? A. Yes.

Q. You also have an original which contains five sheets, doesn't it? A. Yes.

Q. And you will see, I think, that the sheets in the original are not necessarily of the same order as the sheets in the duplicate book? A. No. But the point is this

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Q. Just make sure you understand. You understand that the sheets as they are pinned together in the original that is part of the exhibit 72 are not in the same order as the sequence in the carbon? A. That is not what you asked me. You said to me that these originals were
10 fixed when they were handed to the teller. Now, the teller having checked everything and started to initial the first originals, he turns over and he checks also the summary on the second page, but as soon as he tears the first page out, the original, he notices the summary is on the original but it is not on the duplicate.

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Q. Just make sure you understand what has happened in the preparation of this document

20 HIS HONOUR: I think that Mr. Jupp really does not quite follow what has happened. Some people when they are putting documents away in a file like to put the most recent document towards the back and some people like to put the most recent document towards the top. You realise there are different filing systems?

WITNESS: Yes, Your Honour, but that was not the -

30 HIS HONOUR: Just a minute. There is no reason why, if a customer wants to, he cannot begin off by listing his cheques on the first sheet of his book and work up to the end, so to speak, on the last page and there fill in the summary? There is nothing wrong with that, is there? I myself have seen it before and it does not seem very odd to me.

WITNESS: Yes, it has been done that way, but it would be most unusual.

40 HIS HONOUR: Q. Why? A. It would be most unusual because -

Q. Never mind whether it is unusual or not. Maybe you are right in saying that but if in fact the customer does this there is no reason to take exception to it, is there? A. No, there is not, actually.

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HIS HONOUR: This is what is done. The customer does it in what you think is an unusual way. It does not make very much difference, does it? Let us start off on the basis that this is what the customer did, whether unusual or usual. I think it is getting a bit confused.

MR. STREET: Q. We will go through sheet by sheet so we can see what has happened in the pinning together of the green originals. Here is the first sheet in the carbon book
10 and you will see that that in fact is the fourth sheet in the bundle of originals. So when this came into the teller in its original form, say four in the original file, as pinned together at the moment there on top on the first sheet of the deposit do you understand? A. Yes.

Q. The next sheet in the duplicate book is in fact his third sheet in the bundle of the originals that you have? A. Yes.

Q. You follow that the originals have been just mixed up
20 in the correct sequence after tearing out, obviously?
A. Yes.

Q. And the third sheet in the duplicate book is in fact the last sheet in duplicate? A. Yes.

Q. I am sorry -- it is the last sheet in the bundle of originals: right? A. Yes.

Q. The fourth sheet in the carbon book is in fact the sec-
30 ond sheet in the bundle of originals? A. Yes.

Q. And the last sheet in the duplicate book is in fact the first sheet in the bundle of originals? A. Yes.

Q. You now understand the form in which the bound book was when it came across the counter to the teller? A. Yes. I must say in all my experience I have never seen it done in that way in my life.

40 Q. May I take it that the practice as you have described it in your branch could not be applied to deposits presented in that particular form? The practice as you have described it to me and to Mr. Newton could not be applied to a deposit which has been prepared in the way that you see that one there. A. Well, except it would have to be in reverse. Can it be truly said that that is the way it was done, because there are no totals here anywhere along the line?

- Q. You say there are no totals on sheets 1 to 4? A. Or carry/forwards.
- Q. There are no carried/forwards on sheets Nos. 1 to 4?
A. To indicate that, that is the way they were added and unless we can really accept that this sheet was the last one-
- Q. Unless you can really accept that the sheet with the completed summary was the last one ? A. Yes.
- 10 Q. go on. A. Well, I do not know.
- Q. Would it be fair to say that the practice as you have described it in your branch would not be applied if a deposit in that form was presented to you? A. It would, except as I say it would be slightly in reverse.
- Q. What would be in reverse? A. Well, the fact that instead of stamping the top sheet first you would stamp it
20 last and just reverse the procedure I have previously outlined.
- Q. You would stamp the top sheet last, would you? A. Yes, I would, if it was blank. I certainly would stamp it last because you would have to make up your cash and I must say that I have never seen it presented like that before, not ever.
- Q. It is difficult, isn't it, really to relate your practice on
30 to a deposit presented in that form? A. Yes.
- Q. I want to just ask you about this practice of having a teller's clerk? A. Yes.
- Q. The teller's clerk occupies a position physically behind or beside the teller's cage, doesn't he? A. Yes.
- Q. And his job in a branch is to do what the machine does in the larger or better-equipped branch? A. Yes.
- 40 Q. That is the mechanics of addition and checking?. A. Yes, sorting and everything.
- Q. Sorting and balancing? A. And balancing.
- Q. And if errors of addition are picked up by the teller's clerk the customer is informed of those as soon as possible after the deposit has been made; is that right? A. Yes.

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HIS HONOUR: I do not want to interrupt, but are we concerned with this? You might perhaps ascertain whether the deferred posting system was instituted before this period began. I gather we are concerned with Wentworth Avenue, which is quite a large branch and St. Peters is a large branch, but are we concerned with small branches where there is not a counting machine? How long has deferred posting been introduced?

10 MR. STREET: Q. Deferred posting has been in operation in this community, in regular use in this community for many years, hasn't it? A. Only in certain areas.

Q. Well, in the metropolitan area. A. And then only in certain branches.

Q. We will say in what might be described as in the city area? A. Yes. Deferred posting, I could not give an exact date when it came in or when it was first instituted.

20

Q. It was associated with staff shortages in the wartime, wasn't it? A. No, shortly afterwards, I would imagine.

Q. At all events, something before 1950? A. Yes, and then it would only be in the experimental stages.

Q. What - about 1950? A. Yes. When I say experimental, it was being tried out at the various branches but as the volume of bank clearances increased it was extended.

30 Even now it does not apply to all metropolitan branches.

Q. It does not apply to all metropolitan branches. A. Not to those on the outer fringe.

HIS HONOUR: Q. We are only concerned with the city area? A. The city ones, yes.

Q. How long has it been universal in the city proper?

A. If I might hazard a guess, about 15 years to my
40 knowledge.

MR. STREET: Q. You did give Mr. Newton a brief outline of your experience. For how many years of these 41 years in a bank have you discharged the duties of a teller other than in foreign exchange? The ordinary teller in a trading bank? A. I was never actually appointed as a teller, but I had -

Q. You have never been a teller, have you? A. I have been a teller but not as an appointed teller.

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HIS HONOUR: I think I know what Mr. Jupp means. He has never actually held the appointment of teller but he has from time to time carried out the functions of such on a temporary basis.

WITNESS: That is correct, Your Honour.

10

MR. STREET: Filled in? A. Yes.

Q. And your last fill-in was 20 or more years ago?

A. No Actually, there have been occasions since when I have on odd occasions.

Q. Are you familiar with the branch instructions of your bank in relation to the duties of the receiving tellers? A. Reasonably so.

20

Q. Would you agree with me that there is nothing whatever in the printed instructions of your bank requiring receiving tellers to verify the correctness of the particulars of cheques on the duplicate of the deposit slip? Would you agree with that? A. Without reference, I could not answer the question.

Q. And I put to you further there is nothing whatever in your bank's published instructions to its receiving tellers requiring them to check the particulars of the cheques in the original of the deposit slip? What do you say to that? A. No.

HIS HONOUR: Q. What do you mean by that? There is or there is not? A. No, I do not think there is anything to that effect. I can only, what shall I say, speculate on those answers.

MR. STREET: Q. The basic document is one which might be described by me as a deposit and we will take, for example, one of the National Bank's deposits. The basic document, or the ones which the banks themselves provide for their customers on their public counters are individual slips that have a counterfoil for them, haven't they? A. That is so.

Q. The banks also, I suppose you would agree as a

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matter of common practice, make available free to customers bound books of those slips? A. The small ones are free; the others they pay for.

Q. The ones with the counter foil are free? The ones with the counterfoil butt are free? A. The small size, yes.

10 Q. It is also common banking practice in this community, is it not, for bankers to make available to customers, at some charge, larger bound books? A. Yes.

Q. Instead of having a counterfoil or a butt, they have provision for a carbon or a duplicate? A. That is correct.

Q. For the convenience of the customers? A. That is correct.

20 Q. If you go back to the documents that the banks themselves provide free of charge, the document that has the butt or the counterfoil and the larger part which is attached beside the perforation - the pay-in slip - the only information contained on the butt or the counterfoil regarding the deposit is the date, the customer's name, the total amount of the deposit in words and in figures? A. That is correct, and the space for the teller's signature.

30 Q. The space for the teller's signature? A. Yes.

Q. And when the bank authenticates one of these what we will call counterfoil pay-in documents, the bank's stamp goes partly over on to the counterfoil? A. That is right.

Q. Which contains these three elements - the date, the customer's name, the total amount of the deposit? A. Yes, that is correct.

40 Q. And it is correct to say, is it not, that the only items that your tellers are required to check in the ordinary custom of their receiving deposits, the only items they are required to check in cases where a customer has obtained and is using a large bound book, the only items they are required to check on the carbon or duplicate are the date, the customer's name and the total amount of the deposit? I am talking about the duplicate at the moment. I am not talking about the original.

A. The date, the amount, and the customer's -?

Q. The date, the customer's name and the total amount of the deposit. A. Yes, that is on the original?

Q. I will put it to you again. The only items or entries on the duplicate, the customer's duplicate, which a receiving teller is obliged to verify when he accepts a deposit made by the use of one of the large bound books, the only
 10 items that the practice requires him to identify on the customer's carbon are the date, the customer's name and the total amount of the deposit? A. Yes.

MR. STREET: Q. And, Mr. Jupp your mechanical process of leaving, as you have described it, of leaving the original of these deposit slips in the book until you have completed your checking is, I put it, quite out of step with the laid down practice, with the current practice. What do you say to that? A. Leaving them in the book.

20

Q. Yes. A. Again I say that is a matter of individual practice.

Q. Has it not happened on quite frequent occasions to your knowledge that receiving tellers under the pressure of business sometimes forget to tear out the original of a deposit slip and give the bound book back to the customer with the original still in it? A. It could not happen because it would immediately - if it did happen it would be discovered.

30

Q. Have you known it happen? A. I have never known it happen.

Q. You have never known it happen? A. Not in my experience.

Q. You have never known it ever happen? A. Well, I am just trying to think exactly. There could undoubtedly at some time or other have been the exception to the rule,
 40 but I mean it would not be by any means - -

Q. Let me put this to you, Mr. Jupp: By reason of the possibility or likelihood of a teller doing that under the pressure of business the practice of a receiving teller is always to tear out the original sheet as the first thing he does when he gets the deposit across the counter. What do you say as to that? Do you know of such a

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practice or don't you know? A. No, I do not know one way or the other.

Q. Mr. Newton asked you some questions about some individual cheques and you remember that he showed you in Exhibit B1 a cheque for £195 drawn on an account, Universal Guarantee Pty. Limited. A. Yes.

Q. Payable in favour of K. something Henry and asked you
10 to assume that the cheque was being deposited, was presented amongst the deposits or items for deposit to the account of that same drawer company? A. Yes.

Q. With your branch of the bank? A. Yes.

Q. It is drawn on the same branch as that to which it is presented for deposit? A. Yes.

Q. Properly signed by two authorized signatories? A. Yes.
20

Q. And crossed in the manner in which you see it crossed? A. Yes.

Q. I think you referred to the crossing as an endorsement, did you not? A. No, I should have. It was just a natural but I should have referred to it as the crossing, if I did. I thought I was referring to the endorsement on the back.

Q. We will pass over that for the moment, but signed by
30 two authorized signatories? A. Yes.

Q. Bearing on the back the name of the payee? A. Yes.

Q. In the precise form in which it appears on the face of the cheque? A. Yes.

Q. That underneath it the notation "Endorsement guaranteed" appeared with the customer's printed stamp? A. Yes.

40 Q. Signed underneath by one of the authorised signatories on the company's account? A. Yes.

Q. And by a person who is authorized solely to endorse on behalf of the company - do you remember that? A. Yes.

Q. You said that if you were in the teller's cage that would occasion you some concern, a cheque of that sort coming in among deposits on behalf of the customer? A. No, I did not say that at all.

Q. What did you say? A. When it got to the examiner it would cause some concern.

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Q. That is after the customer had left the receiving teller's cage? A. Yes. When it gets to the examiner he has to receive this cheque back and front and anything that is not - I mean he is au fait with all the authorities and anything that is not regular or even does not appear to be regular is referred to a higher officer - it could be the accountant or it
10 could be me.

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Q. We will start at the bottom for the moment. You do not see anything wrong with the teller actually accepting the document such as this amongst the other items on a deposit? A. No, because he knows he has a backstop - two or three in fact.

Q. Mr. Newton having shown you that cheque, you say now, do you that when that gets through to an examiner or someone on that level that would occasion him some concern? A. I do not
20 know whether concern is the right word, but he just does not pass it, that is all. If there is a doubt in his mind he pulls it out. That is called a "held out".

Q. We will say that this comes to the examiner. Right? A. Yes.

Q. Would that raise a doubt in your mind requiring it to be pulled out, as examiner? A. As examiner in the case of a large amount, yes, I would refer it, unless I knew it to be
30 thoroughly correct because it is not credited to the account of the payee, for a start - it is credited back into the company and the endorsement is guaranteed which is not the usual practice for a company to guarantee an endorsement : they can certify to the correctness of the signature : only a bank can guarantee the endorsement.

Q. Would you not as examiner understand a notation "endorsement guaranteed" signed in the way it appears on this cheque which is part of Exhibit B1 as being intended as a certification
40 of the correctness of the payee's endorsement? A. No.

Q. What would you understand it to mean? A. Well, for a start you have to get over the fact it is not credited to the account of the payee only. That is the first thing.

Q. But what do you understand that notation to mean? You tell me you would not understand it as a certification that the endorsement is correct? A. No.

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Q. Now, what would you understand it to mean if anything?

A. They were trying to do something to the cheque, in other words to alter the effect of the drawing, but by the wrong method.

HIS HONOUR: Q. But what you understand the word "endorsement guaranteed" to mean - that is the question?

A. They would not mean anything to me. When I say they would not mean anything I mean they would not convince
10 me of anything.

MR. STREET: Q. Those words were put on and signed by an officer who has the company's authority to endorse cheques and so on or to deposit them to its accounts, and I am asking you to assume that for the moment, that those words were put on by an officer who has authority solely to endorse cheques for collection or deposit them to that customer's account. Right? A. Yes.

20 Q. Would you understand those words to be an authentication from the customer that that cheque was to be corrected for the credit of its account? A. No, because it has nothing to do with endorsement; they have to open the cheque.

HIS HONOUR: Q. What do you mean by that? A. There is a direction here to the paying banker, Your Honour, or receiving banker rather, that the cheque is to be received for credit of the payee only.

30 Q. What does that mean? A. It is a not negotiable cheque and if a not negotiable cheque it must be open; I mean the mere effect of guaranteed endorsement means nothing.

MR. STREET: Q. You have observed that this is a cheque drawn by Universal Guarantee and you have recollected that I have put to you the assumption as Mr. Newton did, that it is being deposited by Universal Guarantee to the credit of its own account? A. Yes.

40 Q. At the same branch as that on which it is drawn? A. Yes.

Q. And indeed being deposited to the credit of the same account as that on which it is drawn. You understand that assumption you are being asked to make? A. Yes. Well, the mere fact that there is a different endorser to the - no, I am sorry, it is not in this case. In this particular case it is not as I was about to say, that there are two

different signatories - or this is a signature on the front that is different, I was about to say. But I would still raise some doubt and seek higher opinion, either the accountant or the manager and he would then decide whether he would accept it or refer it to the company, and if it was me I would refer it to the company.

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Cross-
Examination
(Continued)

Q. In what way are you conceivably risking your customer's funds by accepting that cheque amongst a deposit from your
10 customer and making a dual credit-debit entry which it purports to authorize when deposited in the way you have been asked to assume? A. Because we have a responsibility for treating the cheque in the way it is drawn and the mere fact of guaranteeing the endorsement does not alter the purpose of the drawing.

Q. Let me ask you again: in what way are you risking your customer's funds by accepting that cheque for deposit and passing the debit and credit entry in the account? A. It
20 was risked here apparently. I mean in the same manner, I will say.

Q. I do not understand what you mean by that? A. You say in what way are we risking.

Q. In what way are you risking your customer's funds?
A. By not carrying out the purpose of the instruction of the Bill of Exchange, which is exactly what it is, and I remarked that it was risked here quite obviously.

30 HIS HONOUR: Q. But why do you say that, Mr. Jupp? We have not decided whether it is risked here yet. I am here to determine that very question? A. I thought that was the purpose of the question. I am trying to explain. It is very difficult to explain in legal terms.

MR. STREET: Q. Is this what you say, that on the assumption that this company is entitled to recover from the bank in these proceedings, that that is the way in which the customer's funds were risked? A. The bank's funds are being
40 risked also.

Q. How? I do not understand you. How do you say that you are exposing your customer to any risk by accepting that deposit and making the credit to the customer's account in the circumstances in which I have asked you to assume it came about? Can you tell me how you are risking your

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Cross-
Examination
(Continued)

customer's credit? A. By not satisfying ourselves that the purpose for which the cheque has been drawn has been satisfied, and secondly because we have a risk as far as the bank's funds are concerned in any later event.

Q. A risk at the hands of your customer? A. Yes, if we do not carry out the purpose of the drawing and the crossing.

10 Q. Mr. Jupp, if a customer comes along to make a deposit to his account with your bank - right? A. Yes.

Q. And included in that account or deposit is a cheque to which your customer has no title - Right? A. Yes.

Q. And you accept that cheque from that customer right? A. Yes.

20 Q. You are exposing your bank to some claim by the true owner of the cheque, are you not? A. Yes.

Q. Let me ask you to assume that at all times this particular cheque you have got in front of you and others like it did belong to your customer - right? A. Yes.

Q. On that additional assumption can you see anything which would require you to communicate with the customer before you put that cheque through for the credit and debit account? A. Only our actual practice.

30

Q. When did you last communicate with one of your customers on a transaction involving the credit to that customer's account of a cheque drawn by him on that same account? A. On several occasions, quite frequently.

40 Q. Let me put all the assumptions. How long is it since you last communicated with a customer with a query on a cheque drawn by that customer on his account at your branch, payable to a third party, account payee only endorsed in the name of that third party? A. It would be last week or the week before. It happens almost weekly - if not - almost weekly.

Q. In other words it is quite a regular thing in your experience, is it, to find in customers deposits cheques drawn by them on their own account? A. Drawn by them on their own account, yes.

Q. I mean it happens quite frequently, does it? A. Yes, only in certain types of businesses though.

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Cross-
Examination
(Continued)

Q. That of itself is not something which would in practice, as you understand it, involve you making any reference to the customer? A. No, because we know the circumstances. A small business man will pay out cash for his c.o.d. deliveries by panel van or something like that to the travelling salesman. We understand that he cashes a cheque to
10 pay himself to keep his books right.

Q. To keep an accounting record for his accountant, is that right? A. Yes, and knowing the circumstances we do not take any objection to it unless the amount becomes extremely large or there appears some irregularity attached to the particular cheque.

Q. I suppose similarly if he wants to get some acknowledgement, if this trader you have spoken of wants to get some
20 acknowledgement from the recipients of the cash you would again agree, would you not, that you would find him drawing a cheque in favour of that particular creditor? A. Yes.

Q. And getting the creditor to endorse that cheque and the customer including it in his own next banking? A. No, the practice is for him to pay either by cheque or by cash.

Q. You have not followed me. It is quite a recognised part of the practice of that nature, is it not, that at times instead
30 of drawing the cheque in favour of cash and giving it to the creditor he may draw it in the name of that creditor, give it to the creditor and get the creditor to endorse it, and then the customer takes it straight back and gives the creditor cash? A. No. I do not know of any transaction quite like that or practice quite like that.

Q. You cannot recall any occasion when you have had a customer draw a cheque on his own account in favour of a third party and get the third party to endorse it? Right?
40 A. Yes.

Q. You understand the question? A. I understand the question.

Q. You cannot recall any instance that has come to your notice of a customer drawing a cheque in favour of a third party and the third party endorsing it? A. No.

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Cross-
Examination
(Continued)

no, I cannot recall.

Q. Did you not tell me a few minutes ago that you had occasion to refer cheques conforming to that description to customers in the last fortnight? A. No, I did not, not in that sense or in that particular construction you have placed upon it. I said that customers paying in cheques which arouse suspicion, we have frequently rung them up and said "Is this all right"? And, furthermore, we have another type of printed form for similar irregularities where we accept the deposit, post out the printed form nominating the irregularity and asking them to return it on the bottom signed in confirmation.

Q. Do I understand you to mean when you said a few minutes ago that you had referred to customers within the last few weeks that it was entirely by reference to some irregularities coming to your notice? A. Not entirely confined to irregularities, but we have them every day and, as I say, they become so numerous that we have a printed form which we ask them to sign and return in confirmation.

HIS HONOUR: Q. Do you send that form out when you are acting as the collecting bank or the paying bank? A. The paying bank.

Q. But here you would be the collecting bank, would you not? A. Not in this particular instance, we were the paying and collecting bank.

Q. So if you as paying bank receive a cheque which is irregular you do not dishonour it but you refer it back to the customer? A. Depending on the importance of the irregularity.

Q. But in some cases you do that? A. In quite a few cases we send this printed form out and ask them to return it confirming our action. It may be for lack of signature or it may be for endorsement or it may be for error in deposit, or it could be different in amounts in the cheque, or it could be for anything.

MR. STREET: Q. You say, I understand, Mr. Jupp, that when this cheque you have before you, which I asked you to assume has been included in a deposit, that is the cheque in Exhibit B1, when that got to the level of the examiner you said you would expect the examiner then to make some particular mental observation of that cheque? A. Yes.

Q. And for what reason? A. Because the purpose of

the drawing has not been satisfied in that the crossing says "Not Negotiable, Account Payee only". It has not gone to the account of the payee at all; it has gone back into the drawer's account.

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Cross-
Examination
(Continued)

Q. How does the examiner know that, Mr. Jupp? A. Well, he would be checking the endorsements and he would I don't know exactly how he would find that out, but he would know about it.

10

Q. How? A. He would have to know it was in favour of K. R. Henry and he had no account K. R. Henry for a start, and it was not being credited there but being credited to the drawer's own account, and he would seek higher opinion on the matter.

Q. Does the examiner look at cheques that come in for deposit to a customer's account ever? A. Yes, he looks at every cheque that comes in that is debited to an account in the branch.

20

Q. Just listen to my question again : if cheques are deposited to the credit of a customer's account they do not, do they, ever come before the examiner in their character as cheques deposited to the credit of an account? A. No, not as deposit to the credit of an account, but when it comes to a matter of him checking the endorsement it is a different matter altogether.

30 HIS HONOUR: Q. I think Mr. Jupp may misunderstand you, Mr. Street. What Mr. Street is putting to you really, I think, is this, that when your branch in its capacity of a collecting bank receives cheques for collection, those cheques do not go into the hands of the examiner at all? A. No, these do not.

Q. They are sent straight away to the bank on which they drawn? A. Yes.

40 Q. The function performed by the examiner is a function performed solely in the interests of your branch and solely when your branch is in fact the paying branch? A. That is correct.

HIS HONOUR: That is what Mr. Street put to you really.

MR. STREET: Q. May I take it then that you see nothing wrong with the acceptance of that cheque for credit to the

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Cross-
Examination
(Continued)

account of the customer? I am leaving aside for the moment the debiting of it to his account? A. Yes, there would be because although K. R. Henry has endorsed the cheque it has not been paid in his account and it says distinctly here "Credit account payee only".

10 Q. You have agreed with me you would not expect the teller to query this included as part of the deposit. At what level or whereabouts in the office structure of a collecting bank would you expect the practice to involve a query being raised as to the inclusion of that cheque in the amounts deposited for collection on behalf of the customer? A. It would not occur as far as the collecting bank was concerned because they are not concerned: it goes to the paying bank and it is up to the paying bank to pay, but where the paying bank is also the collecting bank -

20 Q. Let us then look at the character of this bank as a collecting bank. Right? A. Yes.

Q. This cheque you say would come before the examiner?

HIS HONOUR: No.

MR. STREET: Q. I am sorry, let us look at the position of your bank now as a paying bank and not as a collecting bank - right? A. Yes.

30 Q. It would come you say before the examiner along with other drawings on your customer's account? A. Yes.

Q. I suppose mixed up with drawings that have come through from all sorts of different sources back home, so to speak, to your branch on which they are drawn? A. Yes.

Q. And they come to the examiner, do they not, for the purpose of his seeing whether they are authorised drawings on your customer's account? A. Yes.

40 Q. How would the examiner know when that cheque comes to him that it is not being collected on behalf of the payee? A. On behalf of the payee how would he know?

Q. Yes. A. He would not know. He could only surmise but he would have a strong suspicion that it was not being so collected.

Q. Based on what? What would raise that suspicion?

A. Assume that K. R. Henry did not have a banking account --

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Cross-
Examination
(Continued)

HIS HONOUR: Q. Why do you assume that? A. This is just an illustration, Your Honour. Assuming that K. R. Henry did not have a banking account he would have to take it along to someone who was a bank customer who knew his signature and have his signature certified. Now, that person in turn if they happen to be a customer of the paying banker, it would be accepted, but if it was not it would have to be certified by that customer's bank, or guaranteed rather by the customer's bank, assuming - well, by that customer's bank because it would be another bank. So, therefore he would know that if K. R. Henry had an account it would have been credited there and if he did not, about the only way it could come back to the drawer would be by those means or some similar means.

MR. STREET: Q. When you had that cheque before you and Mr. Newton first showed it to you, and again at some stage while I was questioning you, you placed some emphasis upon the fact that of the two authorized signatories one of them had signed on the back of the cheque under this notation "Endorsement guaranteed"? A. Yes.

Q. When you were shown the cheque in Exhibit B80 which has two authorized signatories and a third person, a different one has signed the "Endorsement Guaranteed", you volunteered the observation that the cheque in Exhibit B80 A. That is that one?

Q. Yes, that the cheque in the ordinary practice would attract a greater degree of attention than the cheque in Exhibit B1? A. Well, it would to a slightly greater degree.

HIS HONOUR: Q. What you said, Mr. Jupp, was that you would be more on your guard in respect of the second cheque? A. Yes.

MR. STREET: Q. How would you be more on your guard with the B80 cheque than with the B1 one? A. Because the guarantee endorsement, although it still would not affect what I said in answer to your last question, it would not affect that in any way at all - but I would be more on my guard because the person who guaranteed or purported to guarantee the endorsement was entirely a different signatory to the two on the front of the cheque.

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Cross-
Examination
(Continued)

Q. Would not that indicate that if there is any irregularity in that cheque then three people rather than two have been involved in it? A. No, I would not say so at all because the cheque could be drawn quite legitimately by the two people authorized so to do, but the mere fact that a third party comes into it and takes some part in a transaction would immediately cause - I mean that is one instance where I would definitely get on to the telephone as fast as I could.

10 Q. You have taken, I assume, in answering that this person who authenticated the note on the back "Endorsement Guaranteed" was one of the group of people any two of whom could draw on the company's account? A. Yes.

Q. And any one of whom could endorse on the company's account? A. Yes.

20 Q. Someone, in other words, who had been put forward by the customer as being the person in their organisation who could participate to some degree in banking transactions, is that right? A. Yes.

Q. Even making that assumption you say that Exhibit B80 would put you more on your guard than B1? A. Most definitely, because I would want to know why one of the signatories had endorsed it. I am not admitting that endorsement guaranteed is correct, leaving that question on the side I would want to know why one of the two signatories to the cheques had not altered its purpose.

30 Q. All of that is directed of course to the consideration you would give in your character as a paying bank, is that right? A. Yes.

Q. Do you regard the practice as involving any reference being made to a payee of a cheque such as that? A. Can I have that again?

40 Q. Do you regard the practice as involving any reference having to be made or it being desirable to make any reference to the payee of a cheque such as that before passing it to the debit of your customer's account? A. No, I do not see any point in it.

Q. You are concerned solely with the protection of your own customer's funds in this practice you have referred to which you apply? A. Not as the payee. Are you

putting forward that the payee is also a customer?

Q. No, leaving the payee right out of account; we say he is not a customer at all? A. We have no interest in that regard because we are the paying bank and not the collecting bank.

Q. So you would say, as you understand the practice, in your capacity as a paying bank you are not concerned at all
10 with the payee before you pass a cheque such as that for debit to your own customer's account? A. No, only to see that the endorsement is correct.

Q. That the endorsement matches the wording on the face of the cheque? A. Yes, that is correct.

Q. So your concern then is only a concern for the protection of your own customer - that is, as you understand the practice? A. Yes, your own customer and at the same
20 time the protection of the bank also.

Q. If that cheque which you have before you, either one of them, B1 or B80, on being debited to your customer's account is going at the same time to be credited to your customer's account. Are you with me? A. Yes.

Q. That transaction of debit and credit is not going to alter the customer's balance with your bank at all, is it? A. No, but we also have a duty to our customer to
30 refer any irregularity to him or any doubts we might have concerning payment of one of his instruments, and we also have a duty to the bank itself as officers of the bank.

Q. You are familiar or have some understanding as to the practice which was followed by Moffitt in relation to the Universal Guarantee Account with the defendant bank, are you not? A. I am not completely conversant with it at all. A lot of it is my own imagination, I suppose :
40 I mean I have not been fully informed of what went on by any means.

Q. You have what you believe to be a general understanding of it? A. Yes.

Q. Would you think it fair for me to suggest to you that you may be being wise after the event in saying that the

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Cross-
Examination
(Continued)

Plaintiff's
Evidence
No. 3(2)

James
Stanley
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Cross-
Examination
(Continued)

acceptance by you of a debit of this nature to your customer's account such as involved in those two cheques you have before you, B1 and B80, is being wise after the event?

A. No, it would happen irrespective of this case or any other case. I mean it is standard practice.

Q. What is standard practice? A. Just what I have outlined to you.

10 Q. What? A. The whole thing. You are saying aren't I being wise after the event, but it is not that at all. We are supposed to be alert at all times.

(By leave further cross-examination of Mr. Jupp by Mr. Street deferred until 2 p. m.)

HIS HONOUR: Q. In discussing the two cheques that were put before you, Mr. Jupp, you drew attention more than once to the fact that the drawer's instructions had not been carried out and in that regard you referred to the crossing?

20 A. Yes.

Q. The cheque was crossed to the account of the payee only? A. Yes.

Q. What concern would that fact have given you, that the cheque was not being collected for the account of the payee?

A. You mean as a paying banker?

30 Q. No, you said one thing that would put you on guard, so to speak, was that it was not being received to the credit of the payee? A. The crossing is an instruction to the paying banker to observe certain conditions under which the cheque is drawn. There are several different types of crossings.

Q. I understand about crossings. I was wondering why you emphasized that in particular? A. Because of this particular crossing, "Credit account payee only". Had 40 it been credit account of John Smith with the E. S. A. Bank or something like that that would have been even more serious - well, it would have been totally disregarding.

Q. Have you heard of one of those crossings in this century, Mr. Jupp? A. Yes, I have.

Q. Have you really? A. Yes.

Q. Put on by the drawer? A. By the company customer drawer, most definitely.

Q. Do you regard "Account payee only" as one which requires you to inquire? A. Yes.

Q. In every case? A. Yes, not exactly to inquire but to satisfy yourself that the instruction has been carried out.

10 Q. Which instruction has been carried out? A. Regarding the payee's account being credited or that the negotiability is quite satisfactory.

Q. But when it is obvious, as you say it was that the instruction was not being carried out what do you think about the position then? A. We have to satisfy ourselves.

Q. Of what? A. Well, either what has happened to the cheque and the funds is acceptable to the drawer.

20

Q. And the fact that the funds are going back to the drawer's own account would not be sufficient for you? A. Not exactly. Not from that point of view, but from the point of view of is there an irregularity, and that is what we are always cognisant of in the case of this and the special crossing.

30 Q. You have agreed, I gather, that the examiner attending to your interests as the paying bank would have no information before him as to whether the cheque was going to the account of the payee, the drawer or anyone else? A. That is so, Your Honour but he would know it was not going - he would surmise immediately if the customer, or rather the payee was not the customer, he would expect the cheque to be guaranteed in a different manner than just by the endorsement of the drawer. You see, Your Honour, the examiner when he was reading the cheque even though it is payable back into the account of the drawer - -

40

Q. But is it though? When you say payable back into the account of the drawer, he would not know that, would he? A. He would not know that but he would also know - he would check the endorsement and he would see K. R. Henry and he would say "We have not an account K. R. Henry".

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Cross-
Examination
(Continued)

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Cross-
Examination
(Continued)

Q. How would he know that? A. We know our accounts.

Q. Each examiner? A. Yes, that is all they do. And if it got past the examiner there is still the ledger operator and the statement operator, and so even if the name is similar or the names have similar initials, it would not go past the three of them.

10 Q. The examiner does not know whether it has come in from an outside bank or through your bank, does he?

A. Yes, he does because it has the bank stamp on it.

Q. You mean the teller's stamp on it? A. Yes.

20 Q. He looks at that to see it, does he? A. Yes. And not knowing (sic) that he has not got an account K. R. Henry he would expect an endorsement with certification that this is the signature of K. R. Henry "who is personally known to me" and then, as I say, if the person signing that happened to be our own customer we would accept it.

Q. In other words, the real position is this to you : the words "endorsement guarantee" are not satisfactory to you and if it had been "We certify that this is the endorsement of the payee" and similarly sign it that would be sufficient? A. Yes.

30 Q. On a different subject now, Mr. Jupp : you told us that the deferred posting system had been operating in the city area for something like 15 years? A. Yes.

40 Q. Would I be correct in thinking that this system was introduced to relieve the teller of the duties he used to perform in the old days of examining these documents presented for collection with any particular care? A. I could not say with certainty, Your Honour, that that would be the real reason. I think it was rather that that could have been partly the cause, but we found that transits - it was really done to give better effect to clearance of cheques rather than relieving any teller's duties, although that possibly did come into consideration at the time, but I am not qualified to answer that question.

Q. The fact is that whereas tellers used to do these additions of cheques and have clerks to do it, that is no longer the case with the deferred posting system, is it?

A. That is so.

(Re-examination of Mr. Jupp deferred by
leave until 2 p. m.)

No. 3
Proceedings
before
His Honour
Mr. Justice
Manning
(Continued)
9th June, 1964.

Witness stood down)

MR. NEWTON: My learned friend and I have been through
the remaining particulars in paragraph 25. I think we
had dealt with 67 yesterday afternoon, and I hand Your
Honour the words and figures which have been prepared
10 by my learned friend and which I accept.

HIS HONOUR: This document is in effect an agreement on
certain facts, Mr. Newton?

MR. NEWTON: Yes.

HIS HONOUR: Paragraph A in effect says that the deposit
slips numbered therein contain these differences to which
we have made reference?
20

MR. NEWTON: Which are set out in the paragraph.

HIS HONOUR: And in paragraph B the same again except
that they are in respect of the deposit slips whose numbers
are given, and the difference being brought about by an
alteration to the duplicate deposit slip after the banking
took place?

MR. NEWTON: Yes. That is in relation to the summary
30 so restricted.

HIS HONOUR: I gather that the number of files in para-
graphs A, B and C in all total between 68 and 165?

MR. NEWTON: Yes.

HIS HONOUR: We have this document regarded as an ex-
hibit and that means you have only five cases to give spec-
ific evidence on?
40

MR. NEWTON: In order that we might be clear on it - it
just occurs to me from something Your Honour said a
moment ago - that as far as B is concerned I would like
it to be quite clear, and I think it is my friend's and my
understanding of it, that it is only the summary which has
been altered after the fact.

No. 3
 Proceedings
 before
 His Honour
 Mr. Justice
 Manning
 (Continued)
 9th June, 1964.

MR. STREET: If the fifth line could begin with the words "In the summary".

HIS HONOUR: I will insert those words with your authority in the fifth line of B.

(Memorandum containing admissions marked Exhibit C)

10 HIS HONOUR: Before you go on to deal with the instances listed in C, there is no need to look at the files listed in A, obviously?

MR. NEWTON: No.

MR. STREET: I do not want Your Honour to look at them now, but before going past them I would like to draw attention to the fact that these do not have alterations in the summary such as the Court had before it before the
 20 adjournment yesterday.

HIS HONOUR: I take it the whole of the cases where the summary has been altered are those contained in B and from now on - -

MR. STREET: Such alterations as there were are after the deposit except the five, which are sui generis.

Plaintiff's
 Evidence
 No. 3(i)

 William
 Raymond
 Moffitt

 Recalled,
 Further
 Examination

30 WILLIAM RAYMOND MOFFITT
 Recalled :

MR. NEWTON: I should tender the whole of these deposit books, Your Honour. Perhaps it might be convenient to leave them in the transfer cases.

HIS HONOUR: The duplicates of deposit slips relating to the transactions detailed in Exhibits B68 to B165 inclusive are tendered and each such duplicate slip shall be deemed to have been included in the appropriate exhibit.

40 MR. NEWTON: Q. I show you first of all Exhibit B132, the original deposit slip, and I also show you the duplicate deposit slip, and I direct your attention to the summary. First of all, you paid the money into the bank? You did the banking that day, apparently?
 A. That is right.

Q. That was on the 23rd December 1959. In whose writing is the summary? A. Mine.

Plaintiff's
Evidence
No. 3(i)

Q. In both cases? A. Yes.

William
Raymond
Moffitt

Q. When you did the banking were both the summary and the duplicate as they are now? A. No.

Recalled,
Further
Examination
(Continued)

10 Q. In what way did they vary at the time you presented them to the teller? A. The notes, silver, copper and money columns were identical.

Q. First of all they were shown as what? A. £59.

20 Q. £59 in notes? A. Yes, and 6/6d. in silver and 2d. in copper, and money orders £416/11/8d. In the original cheques it was £4474/17/9d. and on the copy it was 4 blank 74/17/9d. and the totals were the same at £4950/16/1d.

Q. After the banking was completed what did you do? A. I altered the copy to show the notes we had as £359 and not £59, and where there was a blank between the 4 and the 7 I wrote the 1 in in ink.

Q. So as to make the total cheques in the duplicate deposit slip £4174/17/9d.? A. That is correct.

30 Q. I show you now Exhibit B151 and direct your attention to the original deposit slip which shows a cheque on the summary sheet, Universal Guarantee, for £300. Is that so? A. Yes.

Q. In the duplicate there is only an amount of £300 shown. When was that put in? A. I could not say. I could not possibly give you that.

40 HIS HONOUR: I am not quite sure Mr. Newton ; I did not have the document before me that you were directing attention to.

MR. NEWTON: Only the fact that the name does not appear in the duplicate deposit slip for the cheque for £300 on the summary, although the amount is there. The last item is a Universal Guarantee cheque for £300 and it has been written in in the original.

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Recalled,
Further
Examination
(Continued)

HIS HONOUR: And the amount is written in in the copy.
Is there any significance to it?

MR. NEWTON: No, it fell into a different class.

HIS HONOUR: I can understand what you are driving at in
the rest, but can you tell me briefly what you are relying
on here?

10 MR. NEWTON: I do not think it is of any importance,
Your Honour.

Q. I show you Exhibit B156 and I direct your attention to the
summary both in the original and the copy, the duplicate
deposit slip. First of all, you did the banking that day?
A. Yes.

Q. In whose writing is the summary? A. The summary
all bar the date and the words Wentworth Avenue is my
20 writing.

Q. Were the duplicate and the original in the same condition
as they are now when they were presented to the teller?
A. No. The notes appeared the same as £29, the silver
1/9d. and the pence a penny, and the money orders
£504/11/4d., but on the original the cheques show
£2142/15/11d., and on the cheques it was 2 blank 42/15/11d.

Q. That was before you did the banking? A. That is before
30 I did the banking, and the total £2676/9/1d.

Q. Did you say it was £29 in both the original and the dup-
licate? A. I would say so, yes.

Q. Did you do something after the banking? A. Yes. I alt-
ered the notes to read £129 and in the blank I put a O to make
the cheques read £2042/15/11d.

Q. That is in the duplicate? A. Yes.
40

HIS HONOUR: I do not quite understand what it is all about,
because apparently the alteration was made to give the wit-
ness the sum of £100.

MR. NEWTON: Yes, Your Honour.

HIS HONOUR: Accepting what he says, he increased the

amount shown on the office copy, the duplicate copy of the deposit slip, in notes from 29 to 129 and made a corresponding reduction in the cheques, but he paid in a cheque which is not on the duplicate for £450. How did the mathematics work out? There is no striking out here of either sums.

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Recalled,
Further
Examination
(Continued)

MR. NEWTON: I do not know, Your Honour. I will ask the witness.

10

Q. Do you appreciate what His Honour has just said? A. Yes.

Q. Can you offer any explanation? A. It is quite a lengthy explanation, Your Honour. All these went over a number of months and time and there were certain elements internally that I was protecting my - how will I put it? - my crime, by, one, I could not allow the firm - I knew the deposit books were not looked at really when
20 I got back, but in case they were I could not have the finance company banking only £29 for a day's total.

HIS HONOUR: You mistake me.

WITNESS: The figure could quite easily have been £400, Your Honour.

HIS HONOUR: Q. You paid in a cheque for £450 for the purpose of extracting £100 in cash? A. On that particular day I may have taken out £300 and they may have
30 only been banking £129 for the day and I might have overstated as I did in others £300 of cheques.

Q. There are no cheques crossed out? A. No but did I write the bank? I might not have taken it out before I wrote the bank.

HIS HONOUR: You did not write it at all.

40 MR. NEWTON: I did not ask him about that.

WITNESS: But I had the opportunity before the bank was written up to take the cheques if I wanted them, they were in my possession when I needed them, so the girl may not have had that £300 worth of cheques in the first place.

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Recalled,
Further
Examination
(Continued)

HIS HONOUR: It seems to be a little odd because it is obvious after the cheques had been written out one alteration has been made and a cheque for £48 has been altered.

What was the correct total for this deposit? Do we know that?

MR. NEWTON: It would be the sum in the original, Your Honour. That would be checked in the bank afterwards.

10 HIS HONOUR: You say that.

MR. NEWTON: Q. You know there are 165 cheques here?
A. Yes.

Q. That we are concerned with, and each of them I think you have already said was in respect of a fictitious transaction. Now, did you take from the company's funds the full amount of each of those cheques? A. Yes. Not necessarily on the particular day that that cheque was pre-
20 sented to the bank but within a matter of a day or two I had the complete funds of those cheques.

HIS HONOUR: All I want you to understand, Mr. Newton, if that is so is that there could not have been any book-keeping done at all in your client's company, if you carry forward from period to period excess sums of credit, so to speak, because the effect of this last transaction, as I understand, is that he puts in £450 which is one of these fictitious transactions, and he takes out £100 and
30 with the balance he is either making good a deficiency he has been responsible for earlier, or carrying forward a credit to his next deficiency.

MR. NEWTON: I think the latter, Your Honour.

HIS HONOUR: Didn't they keep any books?

MR. NEWTON: Your Honour will no doubt have an opportunity of examining the system.

40 HIS HONOUR: Yes.

MR. NEWTON: Q. During this time you were there you never acted as cashier, is that the position? A. I had been cashier at one stage and I was 18 years of age.

Q. But after that there was always a woman in charge?

A. Yes. I was never cashier after about the age of 19.

Plaintiff's
Evidence
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William
Raymond
Moffitt

Recalled,
Further
Examination
(Continued)

Q. After the female staff took over the cash, what happened as regards the banking each day? How did it go? A. The usual practice was that the girls balanced their daily takings and then they handed me the complete bank and in most cases the summary on top had not been completed by them. They would only give me a little tape setting out what the figures were and from then on I had full access
10 to the cheques, money orders and the cash.

Q. You would finalize the details? A. Of the summary, yes.

Q. I show you Exhibit B158 and direct your attention to the original and duplicate deposit slip. First of all, the deposit was made by you, the banking was done by you, is that so? A. Yes.

20 Q. And the summary whose writing is that in? A. That is mine apart from the date and the Wentworth Avenue.

Q. Was the original and duplicate in the same condition when you presented them to the bank? A. No.

Q. Was the original as it appears now? A. The original was as it appears now and the copy blank.

Q. The copy was blank? A. Yes.

30 Q. What? Nothing in the summary at all? A. No, nothing.

Q. How was that achieved? What were the mechanics of it? A. I don't recall how it was; I mean it is not up to me to say why the teller missed doing it, but I was able to present the bank in that form.

40 Q. I was rather asking you how you did it. Did you withdraw the carbon paper? A. There would be no carbon paper under that summary. The carbon was under the summary for the total of the bank which shows in words, but you can see by the carbon there that there were no figures there prior even to represent the original.

Q. Why do you say that? A. There is no alteration to

Plaintiff's
Evidence
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William
Raymond
Moffitt

Recalled,
Further
Examination
(Continued)

the notes to agree with any of the original and the figures in the carbon do not correspond anywhere in line; they are completely out of line with the whole figure. The 16 is written differently and the 3's are written differently.

Q. That appears as if there was a carbon above the duplicate when you wrote the duplicate in? A. That is right.

10 Q. You would put a piece of paper, then a carbon and then the duplicate and write on it? A. Yes.

HIS HONOUR: He says that was done after the banking or before?

WITNESS: After the banking, Your Honour.

MR. NEWTON: Q. I show you Exhibit B161 and the duplicate and original deposit slips. First of all, the bank-
20 ing was done by you? A. Yes.

Q. Was the summary in the original completed by you?
A. Yes, all bar again the date and the words Wentworth Avenue.

Q. What about the duplicate? Is that in your handwriting except for those two, the date and the Wentworth Avenue?
A. Yes.

30 Q. Was the summary in the original as it appears now when you presented it to the bank? A. Yes.

Q. Was the duplicate in the form it is in now when you presented it to the bank? A. No.

Q. What was the difference? A. The notes on the original £270/10/- appeared on the copy as £70/10/-d., and I would have to say that everything else was identical.

40 Q. After the banking you altered the £270/10/- for notes to £770/10/- in the duplicate? A. And altered the cheques.

Q. And you altered the cheques from? A. From 3538 to 3038.

Q. You told us yesterday I think that in addition to this

type of operation in relation to cheques payable to Bruce & Byatt and so forth, there were what you describe as pay out cheques? A. Yes.

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Evidence
No. 3(i)

William
Raymond
Moffitt

Recalled,
Further
Examination
(Continued)

Q. I want to direct your attention first of all to the period the last six months, or the last period from the 30th June 1960 until you left the company. Now, would you tell us first of all whether there were one or more of the pay out transactions?

10

MR. STREET: I object to this.

MR. NEWTON: It is relevant on the question of the assessment of general damage, Your Honour.

HIS HONOUR: I will let it in subject to objection, Mr. Street. I will let it be asked now rather than argue it now and in due course you can both argue what the position is.

20 MR. STREET: Yes, Your Honour. I understand my friend then to be claiming as part of his damage what was lost on the pay outs?

MR. NEWTON: No. I can establish the position between June and November.

HIS HONOUR: You go ahead, Mr. Newton.

30 MR. NEWTON: From the end of June until the time you left the company do you recall how many transactions there were? A. I have no idea, Mr. Newton. There was probably many, but as I have not access to what I have been charged with at the criminal proceedings, I don't even know whether Universal Guarantee have found all the cheques I did in the manner I have already discussed or given evidence on. I would be just guessing. There was a number, but as I say whether it was 150 - -

40 Q. You know of course that Mr. Brock carried out an investigation into the whole of your activities during that period?

A. I know Mr. Brock has apparently done a lot of work attached to it, but I also know that you have produced only about half the amount the accounts are out, so I do not know how far his investigation has gone.

HIS HONOUR: Q. What you mean is that your belief is that you succeeded in misappropriating a sum far in excess

Plaintiff's
Evidence
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William
Raymond
Moffitt

Recalled,
Further
Examination
(Continued)

of that Mr. Brock believes? A. Approximately twice as much, Your Honour.

HIS HONOUR: Q. And Mr. Brock never found half of it?

A. At the time I was on bail I was arrested for £440 on one charge and I was on bail for about four months and before I was committed for sentence I had no idea what the company was going to charge me with, and I was eventually charged with £53,000 odd and that is what I have been
10 lodged with the Bankruptcy Court with, ~~but the company knows quite well and I know quite well~~ - - (objected to by Mr. Street)

HIS HONOUR: I will direct that the words "the company knows quite well and I know quite well" be struck out and nothing further be added.

MR. STREET: May I ask that the amount he was charged with be struck out.
20

HIS HONOUR: There is no need to worry about that. It is not the language we speak.

MR. NEWTON: Q. Do you recall being shown a list of the payout transactions that Mr. Brock had been able to find?

A. I have not seen any pay out cheques by Mr. Brock except one for P. & R. Williams which was in my charge at the Quarter Sessions and at the Bankruptcy Court. I have no idea what others he has estimated.
30

Q. That was a fairly late one? A. I have no idea. I cannot recall. I know it was for about £450.

Q. During the period we are concerned with from the beginning of December 1954 - it is file No. 1 of 2nd December 1954, I think, Your Honour - from the beginning of December 1954 up to the time you left the company you were the acceptance officer or acceptance manager, is that the position?
A. Yes.

40 Q. Did anybody else have authority in the company to accept transactions? A. Most definitely.

Q. Who? A. The Manager of course and I don't ever recall the accountant accepting any without ever first referring it to myself. I would safely say the manager would be the one authorized to accept other than myself.

Q. You also had authority to sign cheques with another signatory as from 1952? A. Yes, approximately that date.

Plaintiff's
Evidence
No. 3(i)

Q. You are inclined to think it was earlier than that? A. I thought it was when I turned 21 which was 1950, but it is quite possibly 1952.

William
Raymond
Moffitt

Q. And you used to take an active part in balancing the ledgers from time to time, did you not? A. Yes, over
10 the last few years I have.

Recalled,
Further
Examination
(Continued)

(Luncheon adjournment)

MR. STREET: I do not want to ask Mr. Jupp anything further, Your Honour.

MR. NEWTON: I have some questions.

20 JAMES STANLEY JUPP
Recalled :

Plaintiff's
Evidence
No. 3(2)

MR. NEWTON: Q. (By leave) Do you know a book called Questions On Banking Practice? A. Yes.

James
Stanley
Jupp

Q. Is that as far as your bank is concerned one of the text books that is kept in the branch? A. Yes. We have several in what is termed a branch library. They number about 30 in all in a small branch.

Recalled,
Re-
examination

30 Q. You were asked some questions by my learned friend about cheques drawn by a customer on the customer's account at your branch, I want to take it, first of all drawn by the customer on your branch and being paid by the customer into its account with your branch - that is not infrequent? A. No, depending on the type of business. I mean that is readily acceptable and we understand -

Q. I appreciate that, but first of all to whom are those cheques generally payable? A. Either cash or to the
40 customer himself.

Q. Do you ever get cheques drawn by a customer on its own account with you payable to a third party unknown to your branch and being deposited by the customer in its own account? A. There are occasions when that happens, but in such instances we would require a certified endorsement by a bank.

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Recalled,
Re-
examination
(Continued)

HIS HONOUR: Q. By a bank, would you? A. Or some person certifying the endorsement acceptable to the bank. If I understand the question correctly - -

HIS HONOUR: For what it is worth I have been concerned with this recently and there is a tremendous volume of cheques, for instance, Social Service cheques which are marked Not Negotiable and Account Payee Only . . .

10 WITNESS: And invariably has to refund them in our area.

HIS HONOUR: Q. What was that again? A. I said invariably has to refund particularly in our area, because you would be amazed, Your Honour, at the number of Social Service cheques that are received in letter boxes, through change of address or something like that, or dropped in the street or stolen, and they are cashed up and down the street and that is why we are so particular too, because invariably we receive a demand which we naturally pass on
20 to the last holder for value, and pass it on that way.

MR. NEWTON: If I may take that as an example, you get pension cheques, for instance? A. Yes.

Q. The pension cheque which has been cashed at the local grocer payable to Bill Smith and marked "Not Negotiable, account payee only" - - -

30 HIS HONOUR: Pension cheques are not so crossed. Taxation Refunds from memory I think are one.

MR. NEWTON: Q. Taxation refunds - do you get those cheques? A. Yes, we get them.

Q. Assume one of your customers has cashed one, the local grocer, when it comes to you what has it got on the back of it? It is paid into the local grocer's account with you - what has it got on the back of it? A. It would have just the payee's endorsement and then the customer's end-
40 orsement.

Q. If anything goes wrong you debit the customer's account? A. We debit the customer.

Q. I want to take you to a position where you have seen those particular cheques in file 1 and file 80 - you have the type of cheque in mind? A. Yes.

Q. I want you to imagine that one of those was paid in let us take the first one - was paid into the credit of an account K. R. Henry in your bank, you having an account in the name of K. R. Henry. What happens to it after it is passed over the counter? A. If K. R. Henry has an account we credit it, and is the cheque to be drawn on us?

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Recalled,
Re-
examination
(Continued)

Q. No, assume it is drawn on the National Bank as that cheque is? A. Then it is paid into the customer's account.

10 It then goes out to the collecting --

Q. But does your branch do anything to it so far as stamps are concerned before it leaves your branch? A. Only by placing a branch stamp on it, I mean the teller's stamp, and I presume you mean duty stamps and so on?

Q. No, there is what, the Bank of N. S. W. stamp on the front of it, is there? A. You are getting around to endorsement now?

20

Q. Are there any endorsements? A. If K. R. Henry has an account with us and we see that the endorsement is not correct the teller or someone following him would certify to it.

Q. If it is correct or not correct? A. Yes, if it is incorrect or it had a slight discrepancy we could quite easily stamp it "Endorsement Guarantee".

30 Q. I want you to take a cheque which comes in regularly, you see. Assume it is quite regular and it is a cheque drawn on the National Bank account payee only, payable to K. R. Henry, and you have an account for K. R. Henry and it is paid into his account? A. Yes.

Q. You will ultimately send that to the National for collection, will you not? A. Yes.

40 Q. Do you do anything before it leaves your branch about the endorsement? A. No.

Q. You do not certify it in any way? A. No, it will come back from the collecting bank "Endorsement requires certification" or "Endorsement irregular" or something like that and we will then correct the irregularity and represent it.

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Recalled,
Re-
examination
(Continued)

Q. Why would it come back from the paying bank? A. We are the collecting bank, is that what I understand? I am not just exactly sure what you are getting at here.

Q. I am asking you what you do with a cheque that is paid into a customer's account, that is crossed Not Negotiable, Account Payee Only, before you send it out to some other bank for collection? A. We would not actually do a great deal. If the endorsement was subsequently incorrect or
10 proved to be incorrect or required certification or guarantee it would be sent back to us for correction.

HIS HONOUR: What I think Mr. Jupp means is this, is it not, if endorsement is on its face regular for reasons we need not go into you do not bother to certify it these days?
A. Not unless it comes to our particular notice, but I mean it will sooner or later come to our notice.

MR. NEWTON: Q. What His Honour is asking is if it is
20 regular on the face of it you do not certify? A. No.

Q. But if there is anything unusual about it you do certify the endorsement? A. Yes.

Q. I want you to take the other picture. Suppose you have not a K.R. Henry with an account with you and some other customer seeks to pay this into his account, would you accept it? A. No, not without - this is an account payee only, is it not?
30

Q. Yes, A. Well, no, we would require some identification of the endorsement by a person who in fact says "This is the signature of so-and-so and so-and-so who is personally known to me". If it was our customer we would accept the thing, otherwise we would want it certified by a bank.

Q. Then I want to put to you the position of assuming that you are the paying bank, do you see? A. Yes.

40 Q. A cheque has been drawn by a customer on your branch payable, if you like, to K.R. Henry with a not negotiable account payee only crossing and it comes back to you for payment from, say, the E.S. & A. Bank - do you follow?
A. Yes.

Q. Now, what do you look to as the paying bank before you pay that? A. Prior endorsement and/or certificat-

ion and/or guarantee as the case may be.

Q. Take them one by one. A prior endorsement would be what?

HIS HONOUR: Isn't this a question of law, Mr. Newton?

MR. NEWTON: It may be but I wanted to get the practical point of view of the practising banker.

10

Q. If it is endorsed K. R. Henry simpliciter, what do you do with that? A. And it comes back, that would be acceptable: coming from a collecting bank to us as paying bank.

Q. And you would pay it? A. Yes.

Q. Supposing sometime later your customer claims that you paid it wrongly, what do you do then? A. He paid it in: he is supposed to satisfy himself that Henry was the person and he negotiated on Henry's behalf.

20

Q. And you would debit his account with it, I suppose?
A. Yes.

Q. In what circumstances do you require as a paying banker certification of the endorsement? A. Certification: when a signature is not of a customer or is irregular.

Q. Whose certification do you require? A. Usually - is this in respect to the cheque that is drawn on us in favour of another?

30

Q. In favour of a third party, crossed Account Payee Only and Not Negotiable, to a payee that you do not know? A. We would require the certification of the other bank, the customer's bank.

Q. I think you were asked a question by His Honour this morning and you said, as I understood it, that you thought because these cheques were endorsed "Endorsement
Guaranteed" they would have aroused your suspicion, but if there had been endorsed "I certify that the endorsement is that of the payee" you would have accepted them? A. No, not exactly. I think what I said this morning was where the endorsement was guaranteed by a person, particularly if it was a person other than the signatories on the face of the cheque, that that would have aroused

40

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Recalled,
Re-
examination
(Continued)

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Recalled,
Re-
examination
(Continued)

suspicion, but had the cheques been presented otherwise with an endorsement certified either directly by a customer or through the agency of another bank customer and the bank then I would have paid it.

Q. I want to be quite clear about this : supposing the back of the cheque in this particular file B1 had been endorsed on the back of it, "We certify that this is the endorsement of the payee" and the rubber stamp put on and signed
10 W.R. Moffitt and only W.R. Moffitt would you have accepted that? A. No, not without question.

Q. In relation to that cheque in B1 if that had been passed through another bank would there be some indication on the cheque that it had been? Would there be the stamp of another bank on it? A. There would be a stamp - a teller's stamp on it.

Q. If that had come through your branch before going to
20 the National? A. Yes, it would have our teller's stamp on it.

Q. Assuming that particular cheque had been negotiated through your branch, would that then go to head office for clearing? A. Just for clearing, yes.

Q. Do any other stamps - I do not know whether you know this - go on to it when it goes into the clearing? A.
30 No, there would not be any other stamps.

Q. There is only your own branch stamp on it? A. Yes.

Q. There is only one other matter I wanted to ask you about and that was in relation to some question my learned friend Mr. Street asked you about exchange. Can you tell me approximately when exchange was done away with?

HIS HONOUR: Altered.

40 WITNESS: I think it occurred about 1962 about September.

MR. NEWTON: Certainly since the end of 1960? A. Yes.

Q. Prior to the system being altered from the old system of exchange did the receiving teller go through the cheques to see what exchange was payable? A. Normally he would, but there were quite occasions on which, as I have said, the individual approach differed and in large accounts they

might already assess the exchange which the teller would accept.

Q. It may be filled in when it comes in? A. It could be, yes, but the teller would label the cheque and any adjustment made. I mean it was just a working arrangement.

Q. If I remember rightly, in these original deposit slips there is the amount of the exchange written up in the summary? A. That is correct.

Q. Does the teller normally do that? A. He normally does it, yes. As I say, there are exceptions and some customers do write it in and there is a daily adjustment.

CROSS-EXAMINATION :

MR. STREET: Q. (By leave) You have mentioned a number of times, Mr. Jupp, this possibility of your requiring certification of an endorsement by the collecting bank if you are the paying bank, is that right? A. Yes.

Q. I want to suggest to you that there has been in existence for about 10 or more years an agreement between the banks doing away with any certification of endorsements and providing for full indemnity between the banks in respect of instruments passed through for collection? A. I know of the existence of that arrangement. I could not quote it in detail.

Q. For the last 10 or more years requests for certification of endorsement just have not been seen in banking practice, have they? A. Yes.

Q. Requests from one bank to another? A. Oh yes they have been seen.

Q. Have they, notwithstanding this agreement? A. Yes, quite so. I mean there is an arrangement between banks and I mean it is still our prerogative to refuse to pay if there are any doubtful circumstances.

Q. I am only concerned with this practice of requesting endorsements from another bank? A. We can always apply for it if we wish.

Q. I suggest to you that no such requisitions have been

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Recalled,
Re-
examination
(Continued)

Cross-
Examination

Plaintiff's
Evidence
No. 3(2)

James
Stanley
Jupp

Cross-
Examination
(Continued)

made or responded to for 10 or more years in your branch?
A. I have made several requests.

Q. Have you been asked by other banks? A. I do not see that part of it. The accountant runs the office, I run the accounts, but I have on occasions asked for certification or clarification.

(Witness retired)

10

HIS HONOUR: On the basis that Mr. Jupp remains at call and can be brought back to Court within an hour he need not wait, but arrangements must be made first, though.

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Recalled,
Further
Examination

WILLIAM RAYMOND MOFFITT
Recalled :

20 MR. NEWTON: Q. In relation to the times when you did the banking for Universal Guarantee what happened about the exchange? Did you fill it in before you went to the bank? A. Yes. The clerk or whoever listed the cheques in the deposit book worked the exchange out as they went. If a young girl was doing it and was not familiar with it I would run through it, or whoever was going to the bank would do it. They accepted our figure, but whether they altered it after I do not know.

CROSS-EXAMINATION

Cross-
Examination

30 MR. STREET: Q. Was what you have said about the exchange done before the banking? A. We prepared our own exchange form and the teller accepted that figure at that time.

Q. In 1954 I think in the personnel of the Universal Guarantee office there was the Manager and that was Mr. Tyack?
A. That is right.

40 Q. From the end of 1954 right on to the end? A. Until I resigned, yes.

Q. An accountant, is that right? A. Yes, at the end of 1954 there was an accountant. You do not want their names, do you? There was an accountant, yes.

Q. I am not troubling about names. There was yourself as the acceptance manager? A. That is right.

- Q. There was a collection officer there who was Heffernan?
 A. No, at the end of 1954 that was Smith. Heffernan left in October.
- Q. There was a collection officer? A. Yes.
- Q. And I think two boys and 18 girls or thereabouts? A. There was round about that figure. There was a staff of about 24.
- 10 Q. The business of that company from 1954 until you left was the financing principally of motor vehicles being purchased on hire purchase? A. No, it was principally of goods supplied by the main company of the group Electronic Industries, the Astor products. The motor business was only a small part of the business that the particular manager at particular times indulged in.
- 20 Q. The size of the office staff I think crept up over the years from 1954 through to 1960 until it was at the latter part about 38 to 40 people? A. Somewhere like that, yes.
- Q. Just to get your position in the hierarchy, in the latter part when you left in 1960 there was a manager? A. Yes.
- Q. With his private secretary? A. That is right.
- Q. An accountant? A. Yes.
- 30 Q. Three cashiers? A. Yes.
- Q. Four bookkeeping machinists? A. Including the private ledger girl yes. There were three on the Burroughs and one on the Remington - that is four.
- Q. Six junior girls? A. It would be about that number. Six or seven or five. There were quite a few junior girls in the office.
- 40 Q. There was yourself as acceptance manager? A. Yes.
- Q. A position you had held continuously from 1954 through to 1960? A. Yes, I had it prior to 1954, but I had it in that period.
- Q. And the collection manager? A. Yes.

Plaintiff's
 Evidence
 No. 3(i)

 William
 Raymond
 Moffitt

 Cross-
 Examination
 (Continued)

Plaintiff's
Evidence
No. 3(i)

William
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Cross-
Examination
(Continued)

Q. With his private secretary? A. Yes.

Q. There were four collection clerks or thereabouts. A.
About four, I think, there were collection clerks.

Q. About six girls on the collection side of the office? A.
Something like that, yes.

Q. And about four outside representatives on the collect-
10 ion staff? A. Yes.

Q. And the collection manager and his clerks, outside
representatives and girls were concerned with getting
in the payments from the purchasers under the hire pur-
chase agreements? A. That is right, yes.

Q. And in addition I think you as acceptance manager had
your own private secretary at the end? A. Yes.

20 Q. With two male clerks and three typists under you?
A. That is right.

Q. The Court has been told that you were one of a number
of persons authorized together with one other officer of
the company to sign cheques on the account from some
time before 1954? A. That is right, yes.

Q. And you remained one of the group of signatories
30 from 1954 right through to 1960? A. That is right.

Q. You and one other? A. Any two of the three.

Q. Throughout that period from 1954 to 1960 you were
authorized to endorse cheques? A. I do not think there
was any written endorsement but it was an accepted
procedure in the office that I do endorse. Occasionally
even the junior boy there endorsed, but there was no-
thing official other than it was an accepted thing.

40 Q. That was the practice then right through from 1954 to
1960?

A. Yes.

Q. It is apparent from a number of documents that have
been tendered in evidence that you did take part in
certain of the banking activities involved in those 165
transactions? A. Yes.

Q. But over the years from 1954 to 1960 did you play any regular part in the company's banking transactions? A. It was my duty to go to the bank, is that what you mean?

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Q. Yes. A. It was an accepted thing that I did the bank whenever I wanted to do the bank, which was quite regular.

Cross-
Examination
(Continued)

Q. Did you actually go to the bank and effect the deposits and withdrawals? A. Yes.

10

Q. Did you do that more frequently than anybody else?

A. Yes, most definitely. There might have been different times when a junior boy might have done it, for one or two months in the year, but I would say most effectively I looked after the bank, in the last three years anyway.

Q. Would it be correct to say that invariably it would be you who attended the bank to make deposits? A. That
20 is right.

Q. Those deposits were made daily? A. Yes. In this particular period, like Saturday mornings we used to some years ago, but five days a week.

Q. Deposits running up to the order of £2000 more or perhaps a little less throughout the period? A. There have been deposits up to probably £100,000 when particularly large cheques have come in.

30

Q. I want to get the general pattern? A. Yes, the deposits varied from four figures all the time; £2000 would be a small figure.

Q. Between 2000 and 5000 would be the sort of margin? A. That is right, that would have been the sort of daily margin.

Q. Comprising roughly what number of cheques? A. In
40 the last 3 years when they shifted down to Woolloomooloo cheques and money orders increased in volume. Before that we had a lot of cash come in because we were in the heart of the city, but in the last 3 years - I think in 1957 we moved to Woolloomooloo - I would say there would be at least an average of 100 cheques a day and at least 100 money orders.

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Cross-
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(Continued)

Q. What about the period before that? A. It would not be much less I mean it might have been 70, the average of cheques and money orders.

Q. That then was the pattern of the banking deposits right throughout those years? A. Yes.

10 Q. Did the accountant or any of the accounting staff play any part in the actual preparation of the deposit slips for the banking? A. There was the cashier's duties to compile - first of all to balance the daily takings and to prepare the banking. It was only on odd occasions when they were snowed under with work that I would do the banking or unless I had my ultimate motive to do it on those occasions when I had a cheque.

Q. I want the general pattern? A. The general pattern was that the cashiers had to compile their own banking.

20 Q. In other words, they had to fill in the deposit slips?
A. Yes.

Q. I want the general practice : in general practice did the deposit books when they had been filled in by the cashier come to your desk? A. Yes.

Q. Together with the cheques and cash involved? A. Yes, all in the money bag, the whole issue.

30 Q. When they came through to you were those cheques which required endorsement before they could be credited to your company's account or collected by your banker already endorsed? A. No, mostly like two or three of the young chaps used to endorse the cheques as well.

HIS HONOUR: Q. You were not asked that.

WITNESS: I generally endorsed them.

40 HIS HONOUR: Listen to the question.

MR. STREET: Q. When these cheques came through to you together with the deposit book in what you call the money bag to be taken to the bank for deposit, was it your practice to make any necessary endorsements on those cheques? A. Yes, if the endorsement had not been made I made it.

Q. Was it quite frequently the normal thing for you to endorse cheques for the credit of your company's account?

A. It was more frequent that I did it than I did not do it.

Q. Was your room near Mr. Tyack's room in the office?

A. What period.

Q. We will take first of all 1957 to 1960? A. 1957 to 1960 was when we were at Woolloomooloo : my office - we
10 had glass partitions down there and my doorway would be no more than 15 feet away from Mr. Tyack's door.

Q. Would it be correct to say that on frequent occasions while at Woolloomooloo you were filling in deposit slips and handling the cheques, endorsing the cheques involved in them, in Mr. Tyack's own presence? A. Many times, yes.

Q. And I suppose that would be so before and after
20 Woolloomooloo? A. Yes, at all times he has been there; he has sat on my desk while I have actually been doing it.

Q. While you have been filling in the deposit slips?

A. Either way, filling in or endorsing.

Q. When the book would come through to you from the cashier's department with the details of cheques filled in, if it was an occasion when the cashier had filled in the particulars of the cheques was it the practice more often
30 than not that you would then fill in the top of the deposit slip in so far as it recorded the sum being banked?

A. The girls mostly left me to do that figure. They gave me everything bar the summary completed.

Q. They would give you the particulars of cheques filled in? A. Yes.

Q. And an adding machine slip showing the total of those cheques? A. No, just the total of the cheques,
40 the total of the cash, the total of money orders, the total of silver and copper.

Q. They would give you that on separate piece of paper?

A. An adding machine slip.

Q. Then you would fill in what might be called the top part of the deposit slip with the customer's name?

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Cross-
Examination
(Continued)

A. That was already usually on the stamp.

Q. You would fill in the date? A. Sometimes the girl would already have filled the date in as they did the writing up.

Q. So you would fill in the sum in words? A. Yes, more often than not it was my writing.

10 Q. And sign it? A. Yes, if I was going to the bank I would sign it.

Q. Almost invariably it was you who went to the bank?

A. In the last three years at Woolloomooloo, yes.

Q. And you went very frequently in the city? A. Yes.

Q. And more often than not you would fill in the details of the summary at the right of the deposit slip? A. Yes.

20

Q. And all of those operations you say you did frequently in the presence of Mr. Tyack? A. Yes, quite often.

Q. When you reached the bank with one of these deposits to be made, did you hand the book across? You would go up with the deposit book and your cheques and money in a bag? A. Yes.

30 Q. This was a bag kept regularly in the office? A. A canvas money bag and we carried it down in a brief case or a school bag.

Q. You would go to the bank and go to the teller with the deposit book and with the cheques and cash to be covered by that deposit? A. Yes.

Q. With the original sheets still in the book? A. Not necessarily attached to the book.

40 Q. Sometimes in and sometimes out? A. Sometimes I had taken all the copies out myself and folded them for him.

Q. During this six year period from 1954 through to 1960 there were quite a number of different tellers up at the Wentworth Avenue branch? A. Quite a different number, yes.

Q. It was a branch, was it not, where there was a teller on duty both receiving and paying? A. Yes; like there were two tellers operating sometimes, but it was his duty to receive and pay.

Q. More often than not just one cage working there? A. That is right.

Q. And the personnel did change quite a lot during those
10 six years? A. A number of times, I would say.

Q. When you passed your deposit book and cash and cheques across to the teller was there anything unusual or special about what happened or was it just an ordinary deposit? A. Usually the same pattern but every teller handled the deposit differently so far as inspecting the cheques.

Q. Some might have different mechanical processes?
20 A. Yes.

Q. I suppose you took pains to ensure that it appeared on the surface to be quite an ordinary normal deposit transaction every time? A. Naturally, yes.

Q. Whether there was what we will call a fraudulent cheque in it or not? A. Yes, it made no difference.

Q. I suppose you did take pains, did you, to conceal
30 any suggestion of any irregularity? A. No pain whatever. The cheque was inclusive in the cheques and whether he commented or not was entirely up to him.

HIS HONOUR: Q. It would not be likely that you would disclose it, would you? A. Well - -

Q. You would not go to a bank and indicate anything about it? A. I would not tell them, Your Honour, but the cheque was in the bank.
40

MR. STREET: Q. The deposit having been effected by you at the bank, you would then put your duplicate book back into your bag and go to the office? A. Yes.

Q. What happened to the duplicate deposit book and the bag it was in? A. It remained in the cashier's box until the next day's banking was compiled.

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Q. These books did not last very long with the volume of banking going through; when a book was exhausted with no more original sheets in it, what became of these books?

A. They went out to the filing room at the back of the office where we had our filing room and left out there.

Q. They were put in a cabinet? A. An open cabinet.

Q. During the years while these defalcations were going
10 on you paid some particular attention to what checks
were made in the company's office into the duplicate de-
posit books? A. I was quite familiar with what went on
with them.

Q. Would it be correct to say that the only occasion
when any one in the office ever referred to the duplicate
deposit book was once a year when it was necessary to
assess the amount of cash involved in the deposits for
the purpose of making your return for the insurance of
20 the cash in transit policy? A. I would say that was the
only time it was referred to.

Q. The company had a policy insuring cash in transit?
A. I believe they did.

Q. With a premium determinable in the light of the
actual cash in money and silver which had been in trans-
it in the previous 12 months? A. That is right.

30 Q. And that necessitated adding up the amount of notes
and silver which had been in transit and it was done
once a year? A. It was done once a year, yes; about
24th March we did it.

Q. That addition was done by making reference to the
used or completed duplicate deposit books? A. That
is right, yes.

Q. And apart from the extraction of the total amount
40 of cash which had been involved in transit in the last
12 months no one either in the office or on behalf of the
company ever looked at the duplicate deposit book?
A. I do not recall ever seeing an officer of the comp-
any use the old deposit books at any time.

Q. Or check them in any way? A. Or check them at
any time.

Q. An officer of the company or any one on behalf of the company? A. That is right, yes.

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Q. When you say you do not recall them checking the old books at any time, I take it you do not recall anyone checking the book after it had come back from the day's banking?

A. Of course it was checked if at any time the bank rang that same day to say there was an error in our totals, which did occur - a bad figure in the money order we
10 might accept as 4 and it was 7, but that would be done that afternoon and that was the only time it was referred to.

Q. And that would involve altering only that one particular item in the company's carbon copy? A. Yes. We held our receipts up for 24 hours waiting for our clearance, and if there was no word from the bank the receipts were posted.

Q. Apart from such reference to the deposit books in current use, no one ever looked at them except for this insurance
20 point once a year? A. That is right.

Q. On occasions when the bank did ring through to make a correction either on exchange or on a figure or something of that sort, to whom did this telephone call come?

A. Mostly to myself.

Q. You on behalf of the company dealt with any such inquiries or corrections from the bank? A. Yes, I would refer
30 to the accountant but I would normally find the correction out myself.

Q. You would refer it to the accountant? A. I always let him know that there was an error in the bank because anyway the next day they notified in writing - like, the next day we had the official confirmation.

Q. Was Mr. Tyack ever in your office when you dealt with an inquiry of that kind from the bank? A. I cannot
40 recall any particular time, but Mr. Tyack was quite aware of any error that came through from the bank, when it was referred through to myself mostly or the accountant, and confirmation came in writing the next day.

Q. You of course had a particular reason for keeping checks on what did happen to the duplicate books when they came back, the company's own duplicate deposit books? A. It is something that never occurred to me

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to worry about. I knew they were not looked at; it was not disturbing.

Q. You have told Mr. Newton of the mechanics of one of these fraudulent transactions of yours. I want to go to what was the normal legitimate transaction, a normal legitimate piece of business coming through to the company. May I take it in the first instance you would as acceptance officer receive an application for hire purchase finance from a
10 dealer? A. That is right.

Q. With the customer's name and other information completed on it? A. Yes.

Q. It was then your province, was it, to consider that and make such inquiries as you thought and then recommend it or otherwise to the company? A. That is right, yes.

Q. Did you have the authority to say "Yes, we will accept
20 this request"? A. That authority altered over the period because at various times I was blamed, I suppose you could put it, for a bad element of paper coming into our office, and then Mr. Tyack initialled all my acceptances, but sometimes I had the authority to accept and sometimes he double checked my authority.

Q. He of course did have ultimate responsibility over you? A. It was his final say on the paper, but he never
30 objected to any that I refused. He never saw any of those unless it was a large account.

Q. You had ultimate authority to reject but if one was going to be accepted he saw it? A. At various times he saw them all, yes.

Q. At some time or another he saw them all, is that what you mean? A. Yes.

Q. This application for hire purchase finance having
40 come into you as acceptance manager you would then complete this routing slip? A. Either myself or the staff I had, depending on what staff I had at the particular time.

Q. And you processed the application on through the office, the steps being as I understand them - correct me if I am wrong - that the application for finance would be recommended by you? A. Yes.

Q. It would go to Mr. Tyack and be approved by him? A. Yes.

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Q. It would then go out into the accounts department? A. No, back to my own department.

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Q. Back to your own department for the preparation of what? A. A cheque.

Cross-
Examination
(Continued)

10 Q. And a routing slip? A. No, the routing slip was the document that Mr. Tyack initialled over my authority to accept or reject.

Q. Your department would prepare the cheque, is that right? A. Yes, my department would prepare all documents that would go with the cheques and out to our accounting department and at the same time prepare the cheque authority and the cheque.

20 Q. That goes out to the accounting department then? A. No, the cheque is then signed before that happens. Cheques normally went out every day. The whole bundle of our hire purchase agreements and cheques went to the first party of the two signatories. Usually they came direct into my office and if I was not going to sign the cheques that day I would pass them all on to the accountant to sign and he would return them either for my signature or Mr. Tyack's signature.

30 Q. Then the documents would go out to the accounts department at some point of time and a ledger card opened? A. The ledger card was opened under the system. It went through the Fordograph machine, the master copy, and it threw out seven or eight copies. The carbon was already prepared at the time the cheque was sent, but the accounting documents including the raised hire purchase ledger card would go to the accounts section. The ledger card is already open.

40 Q. Which they would then put into their ledger? A. Yes. The girl would enter this up on, I think, her hire purchase journal.

Q. What would happen to the cheque and the intimation to the dealer that the transaction had been accepted?

A. Where we were paying by cheques, like a lot of accounts or inter-office accounts with our sister comp-

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anies, the cheques always came back to my desk at the end of the day and I would pass them to my staff and they would sort the cheques to the dealer, acceptance letters to the customer and the accounting papers to the accounts girl.

Q. The extent of your interference with that procedure when you manipulated a fraudulent cheque being drawn was to extract the cheque and the intimation to the dealer from the documents when they came back on to your table? A. That
10 is right.

Q. Everything else remained in its ordinary place in the company? A. No, not everything else. The acceptance letter of course did not go out.

Q. You destroyed the acceptance letter? A. I destroyed the acceptance letter.

Q. The ledger card was left by you in the ledger, was it,
20 to start with? A. Yes.

Q. For how long was that left in the ledger? A. A period of a month, two months or three months. It was not longer than three months. But mainly generally it was after that first balance or when the auditors were due in.

Q. The company did do a monthly balance of its ledgers, did it? A. Yes, at the end of each month they closed the balance.
30

Q. You used to leave the ledger sheet of a fraudulent transaction in the ledgers until the first monthly balance was done after you had perpetrated the transaction? A. Yes, usually it would be at the end of the first month.

Q. Then you would extract that ledger sheet after a month or so? A. Yes.

Q. And record the amount outstanding in favour of
40 the company from that sheet on some document you kept?
A. That is right, yes.

Q. When the next monthly balance came around did you participate in the procedure of that monthly balance?
A. Yes.

Q. Was that a regular part of the office routine for you

to assist in the monthly balancing? A. It was a habit that became regular.

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Q. Again Mr. Tyack saw you doing that frequently? A. Yes.

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Q. And the part you played in the balancing, which I will come to in a moment, was carried out by you in the ordinary outer office part? A. You mean did I work out there?

Cross-
Examination
(Continued)

10

Q. Yes. A. Sometimes I could bring the adding machine into my own office and bring the ledger up and work from there.

Q. But it was done in office hours? A. It was done in office hours.

Q. And in the sight of everyone else in the office? A. It was never done by myself alone.

20

Q. It was done in the presence of Mr. Tyack? A. Yes.

Q. Mr. Tyack was the manager for N.S.W. of the company?
A. Yes.

Q. The company being a Victorian company? A. Yes.

Q. When you did participate in the balancing of these ledgers there were, were there not, to start with from 1954
30 onwards five ledgers altogether? A. Five or six.

Q. Then as the years went by they were sub-divided? A. It was when we shifted to Woolloomooloo - it was either 1957 or 1958, I would not be sure - they altered the five ledgers into 21 or 22 ledgers.

Q. And fraudulent transactions were entered or were to be found indiscriminately in all of those ledgers? A. Not all of them, but quite a number of them.

40

Q. The monthly balancing process consisted, did it not, of going through each ledger with the adding machine and recording on the adding machine the outstanding balance on each ledger card in that ledger? A. That is right.

Q. So at the end of that balance one would know how much money was due to the company under that group of ledger

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(Continued)

cards? A. Yes. The total of the ledgers agreed with the control in the private ledger.

Q. I am looking for the moment at what was done with the ledgers? A. Yes. It was listed to get the total amount of money in that ledger.

Q. That was then matched against the control account in the private ledger? A. That is right.

10

Q. And if there was a deficiency that had to be looked for? A. That had to be checked, yes.

Q. Your method or what you did when you participated in the balancing of the ledgers was, was it not, to record on the adding machine what one might call the non-existent figure, the phantom figure, being the total of the money you had taken out of that ledger? A. Only on five, I think it was, of the particular 16 ledgers I had.

20

Q. Of the five? A. Yes.

Q. You got to the adding machine and recorded this? A. Discrepancy.

Q. The figure to be concealed which was the discrepancy, wound the paper on and you would tear that off? A. Yes.

Q. You wound the paper back? A. Yes.

30

Q. And went ahead and totalled those cards that did remain there? A. That is right.

Q. So ultimately the adding machine total recorded everything that was in the ledger together with this suppressed amount? A. That is right.

Q. I should have said before you began by putting your false figure into that adding machine, you pressed the
40 star, indicating commencement of adding? A. Indicating a clear machine.

Q. That records on the tape somewhere? A. Yes, that is correct. I would do that twice.

Q. So that physically so far as the appearance of the adding machine slip went, after you had finished there

would be the star or clear machine mark at the top? A.
That is right.

Q. Followed immediately by the first of the genuine cards
which was there and so on through? A. That is right.

Q. Was it by that means that you were able to conceal the
amount of the deficiency in each of those five ledgers
during this period of six years? A. Yes, throughout
10 the whole period.

Q. Well, throughout the whole period? A. Yes.

Q. Were this company's books ever audited? A. I am not
sure whether they did a complete audit on the hirers' accounts
twice a year, but most assuredly they did at the end of each
financial year and in one year prior to leaving they were
doing it every quarter.

20 Q. And these adding machine records which you were run-
ning up by yourself each month when the ledgers were being
balanced were left for the next month? A. I do not know
what the girls did with them. They should have kept them
no doubt. They have the ledger roll.

Q. And the auditors relied on that same roll which you used
yourself? A. I have not seen them doing anything other than
check the roll with the ledger balances.

30 Q. The roll as it existed from your last operation that you
had done with the ledger? A. That is right.

Q. So nobody else either inside the company or the auditors
ever did any independent adding up process on these ledger
cards? A. Not once they had been balanced, no.

Q. That means the ledgers balanced? A. There was an
occasion which you mentioned when the ledgers did not
balance. Once I completed them that did not say the
40 figures were going to be right for the girls, and some
girls over the period started to add separately again to
see if there was a fault in the machine, but I had been
able to do something about it at the time.

Q. You took over? A. I more or less made an excuse
to take over.

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Q. And that was always openly done in the office? A. Yes.

Q. To Mr. Tyack's knowledge? A. Yes.

Q. This was part of your ordinary office services? A. It was accepted as part of my services.

10 Q. The auditors that you have described to me were carried by some outside auditors of the company? A. Yes, a firm of chartered accountants.

Q. And they did not participate in those monthly balances themselves. A. None at all, only to check them whenever they wanted to.

Q. And indeed when the time came in 1960 and you left the company you were sent on holidays? A. No I took my annual leave on the 4th November.

20 Q. And you came back from your leave? A. Yes.

Q. And you were dismissed then I think not any basis involved in those defalcations or frauds? A. No, none at all. I mean it is only for my own consumption, but it was nothing to do with the state of the accounts.

Q. So these defalcations were not discovered until after you had been dismissed and left the company? A. Not until the first balance after I had left.

30 Q. Just going back again to what you did with the ledgers, when you extracted the ledger cards from the ledger what did you do with them? A. Destroyed them. That is after I took a note of the balance.

Q. But there still remained among the company's documents in its files in respect of these fraudulent transactions the hire purchase agreements? A. Yes, we have them in Court here.

40 Q. The fraudulent hire purchase agreements - A. I do not recall ever destroying any of those, or not over that period anyway.

Q. I take it you did not bother to destroy those because you knew they were never checked in the office? A. The auditors job was to check them but I knew how many they checked and the risk.

Q. And the credit rating of the non-existent fictitious customer remained in the company's records? A. Yes.

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Q. The routing slip remained in the company's records?
A. Yes.

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Q. The accounting copy of the hire purchase schedule was left by you in the company's records? A. Yes.

Cross-
Examination
(Continued)

10 Q. And there was a copy I think of some section of the Hire Purchase Agreement Act which has to be sent out?

A. That was in the latest Act, the 1957 Act.

Q. Never mind about the Act. That was left in the company's records also? A. Yes.

Q. I take it you did not trouble to remove and destroy any of those documents because you knew they were never checked in the office? A. I knew they were checked many times
20 by the auditors but it was no part of the balance, and I just did not get around to doing anything about them.

Q. I think the office system was for a manilla folder to be kept for each particular transaction the company was engaged in? A. Yes, every account had its own particular manilla folder.

Q. I think Mr. Newton showed you some yesterday and in what has been called a bank spiral that had a number of
30 different documents in it? A. That is right, yes.

Q. You never troubled to take them out and destroy them in respect of the fraudulent transactions? A. Not the ones you have in Court, no. I do not remember ever destroying any others, not in this period anyway.

Q. You had no personal association with any of the tellers of the respondent bank, did you? A. I did not know them at all.

40 Q. In fact the manager of the Wentworth Avenue Branch during some period of your operations was called Moffatt, spelled M-o-f-f-a-t-t? A. I believe there was a man a similar name.

Q. Did you ever meet him? A. I have never had any dealings with him.

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(Continued)

Q. It would be fair to say, would it not, that you had no personal association with anyone at all from the bank?

A. Only the time the wife and I bought our house in 1960. I forget who the manager was there. That is the only personal business I did with the bank.

Q. You were a customer of the bank yourself? A. At the time I bought the house in 1960 in Beverly Hills.

10 MR. STREET: Q. And in that capacity as a customer you have borrowed money for your house? A. That is right.

Q. But you had no relationship with anybody in the bank? A. No, none at all.

Q. Other than insofar as you came up to make deposits, or draw cheques for your company and insofar as you were yourself a customer of the branch? A. There is
20 one point I would clear up: I did have a fishing trip with one chap, a teller, one particular Sunday. I do not even know what time it was - probably about 1957. That is the only relationship I have had outside.

Q. Who was that? A. I do not even know the name. I cannot even recall him. He was a very tall teller down there but he left the bank just after that and I think he went to a newsagent's business in the Mosman area but,
30 as I said, he only asked me one day down the bank would I make up a fishing trip. They hired a Mick Simmons' boat, I think it was.

Q. Did you ever give him any reason to suspect there was anything irregular in your activities? A. No, none at all.

Q. Was it your experience as an acceptance officer that quite often dealers to whom your company might owe a payment, to whom there might be due a pay-
40 ment from your company, might prefer to have cash rather than a cheque? A. I cannot recall any actual wanting of cash. I recall where they might have drawn a cheque and paid it back into our own account to clear moneys he owed us, but I cannot recall any individual name.

Q. I am not asking you whether you can recall any

individual name, but didn't it occur from time to time that dealers preferred to receive cash rather than a cheque from your company? A. Not in that period I cannot recall any happening.

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Evidence
No. 3(i)

William
Raymond
Moffitt

Cross-
Examination
(Continued)

Q. I want to show you one or two of the files that Mr. Newton showed you, Mr. Moffitt, do you recollect his showing you one this morning just before lunch, and it is B158. Would you take B158. I want to ask you whether it is not the fact
10 that at the time you put this deposit into the bank the total shown under the addition of cash and cheques did appear on the carbon although it was not a carbon copy of the total which is written on the original? A. I would have to say it was not there at the time.

HIS HONOUR: Q. Why would you have to say it? A. Because the writing, Your Honour, of this one, of the original, is not similar at all to this one here.

20 MR. STREET: Q. To the carbon? A. Yes, and the writing of the carbon looks like as if the total was in, the whole lot was in.

HIS HONOUR: Q. What you really mean is you are reconstructing what must have happened from what you see in front of you? A. Yes.

Q. You have no independent recollection of this at all, I presume? A. No, not as an individual thing, no.
30

MR. STREET: Q. And you took considerable pains, did you not, to conceal the wrongful nature of your activities? A. Not as far as the bank was concerned, I was not.

Q. I suppose so far as the bank was concerned you knew, did you, that the details of the cheques on the duplicate deposit slip were not checked off against the details on the original deposit slip? A. I knew the tellers knew -

40 Q. You knew, did you not, that the details of the cheques listed on the original deposit slip were not checked against the details of the cheques listed on the duplicate of the deposit slip? A. Oh yes, I knew that.

Q. But at some point of time on B158 in a duplicate deposit slip, that is the carbon, you have written on another piece of paper over a piece of carbon paper certain

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William
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Moffitt
--
Cross-
Examination
(Continued)

figures? A. Right, yes.

Q. Throwing up a total and which in fact corresponds to the total of the banking which was effected on that day? A. Yes.

Q. And what I am putting to you is that this total figure of £4959. 9. 6., even though it is not a carbon transcription of that which is on the original - do you follow me? A. Yes.

10 Q. was on that duplicate before you took it up to the bank? If you cannot say one way or the other - ? A. I would prefer not to.

Q. You cannot say one way or the other? A. No, I would only be giving my views.

Q. I just want to come back to this point that I asked you about - the dealers requiring cash. I want to ask you whether you recollect being asked these questions in the
20 Bankruptcy Court and giving these answers : "What about the form of the certificates you gave ? The endorsement on the back of the cheque? Did you discuss that with an officer of the bank?" A. Yes, I have discussed it -

Q. I am reading, I am suggesting, some evidence that you gave. A. Yes.

Q. And your answer was "No, I do not know if I had seen
30 it go through earlier or I had done that form before any legitimate deals a dealer cashed his cheque over the counter ... that was the normal thing to do and I followed the pattern." And then you were asked "Come back to the first method of transaction where you drew a cheque in favour of Universal Guarantee and you opened it" and you answered "Oh yes, in the original that was the practice which had been followed some time before", answer "That is right".

40 This is the question in particular I want to read to you: "There was no difficulty about that. Do you also say where cheques had been made out in favour of dealers occasionally the dealer would request that he get cash for the cheque?" Answer "That has been done many times at Universal Guarantee". Question: "So that this system of yours merely involved following a practice which had sometimes occurred in the past", answer: "That is right".

Do you remember being asked those questions and making those answers in the Bankruptcy Court? A. Yes, I vaguely remember those questions being asked.

Q. Was it the fact that dealers occasionally would request they get cash for the cheque after a cheque had been drawn in their favour? A. I said in my early statement here not since 1954. Prior to 1954.

10 Q. I am not interested in prior to 1954. A. Well, that is when that period was referring to.

Q. What you say here is "So this system of yours merely involved following a practice which had sometimes occurred in the past?" and your answer was "That is right.". A. Yes, but the "past" was prior to 1954.

Q. This system of yours, as you practised it from 1954 on through to 1960, involved your following a practice which
20 had sometimes occurred before 1954? A. Yes.

Q. That is you were following a practice which had occurred in the ordinary, honest conduct of your company's business? A. I can honestly say that the idea of endorsing a cheque as I did followed on from the legitimate cheques at one time.

Q. All I am concerned with is this particular question :
The system which you practised from 1954 through to 1960
30 was a system which merely involved your employing,
your fraudulently employing, a practice which had legitimately occurred in the conduct of the company's business before 1954? A. From my recollection, I would have to say Yes.

RE-EXAMINATION

MR. NEWTON: Q. With regard to that last matter my learned friend was asking you about - a practice which
40 you say existed some time before 1954 of dealers asking for cash - can you tell us in what way the cash was obtained and in what way the cheque was dealt with? A. The cheques in the time that it was done, it was cash through the cashiers for the amount of money that they had in the cash box. The cheque in those days - I am not sure whether they had the same wording on the face of the cheque but they certainly were not an order cheque

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Cross-
Examination
(Continued)

Re-
examination

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Re-
examination
(Continued)

in those days and they were their own printed form and I think you will find cheques in the 1945 - 1950 period were bearer cheques. Whether a dealer needed to even endorse a cheque to get the cash in those days, I would have to look at the cheque drawn in those periods, but I do recall quite vividly that dealers often paid settlement cheques in cash, especially when I first started there, as pegged prices of motor vehicles was on and I think that is where it really originated from.

10

Q. These cheques we are dealing with are crossed in a certain way and made payable to a payee or order. Did you ever negotiate a genuine transaction for any dealer in the same way as you did these? A. I cannot recall any individual one. I thought I had, but I would have to see a legitimate cheque to confirm that.

Q. You were asked about becoming a customer of the National Bank. When did you first become a customer there? A. I think the wife and I put the deposit on the home in Beverley Hills around about March, 1960, and it was in that period that they agreed to advance me, I think, £ 3, 900 loan on the home.

Q. And you were asked about what you did with the documents that you prepared in relation to these fictitious transactions and I think you told my learned friend that you left them in the files or left them in the records. Were they all kept together, all the documents in relation to a particular transaction? A. All the documents that were the office copies, like the hire purchase agreements and the rounding slip, and the credit rating, and cheque authority of the pay were kept in two separate parts.

Q. The cheque authority and the what? A. The original and the copy of the cheque authority were kept in two separate parts.

Q. One was kept in what might be called the file? A. Neither of them was kept in the hirer's file. One was kept in a bound book for a certain period and the other was kept in a monthly bound statement with the receipts for the cheques attached to it.

Q. Take 1960, for instance. Can you give us, say, the first six months up to 30th June - how many transactions? First of all, how many new transactions would

have been put through the office? A. What - like the legitimate ones?

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William
Raymond
Moffitt

Re-
examination
(Continued)

Q. Yes. A. Well, I did the statistician's monthly figures myself personally each month but throughout the whole period of the company we dealt in around about 1,000 contracts a month. I do not think it varied very much over the past five years prior to my leaving. Perhaps we might have done a hundred or two more when we started to do the
10 small bicycle accounts, but I would say in round figures around a thousand a month would be what we did.

Q. I suppose in that business somebody has to watch carefully to see that payments are kept up? A. That is right, yes.

Q. Where does that information come from? A. That information comes from the ledger card.

20 Q. Once the transactions are entered into the ledger card should go into the appropriate ledger, is that right? A. That is right, yes.

Q. And should indicate from time to time the state of the account? A. That is right. The ledger cards in the last few years raised their monthly instalment in one operation which made a reducing balance for the number of months the contract was in operation.

30 Q. I do not follow that. A. You have your account, a 24-monthly account at £10 a month. You would have a balance of £240. The cards would immediately raise reducing that balance by £10 each month until subsequently it reflects a nil balance.

Q. You mean an entry is made on the card? A. On the card, down the memo. column, and the collection clerks by referring to that particular month and the balance outstanding would know whether the account was up to date.

40 HIS HONOUR: Q. What about if these entries were both placed on, in the first place, at the one time? A. That is impossible.

HIS HONOUR: I thought he said that the card was raised and then in the memo. column at the same time as the card was raised there was shown in successive months

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Re-
examination
(Continued)

what the balance would be month by month if the amount of the instalment was paid.

WITNESS: But that is a second operation done within a matter of a day of each other. The machine rolls out the card showing the outstanding balance and then the book-keeping machine would pick up that balance and reflect what the balance should be at each month over the period in the future.

10

MR. NEWTON: Q. How does somebody know, whoever is responsible for it, at the beginning of the next month what accounts are overdue? A. By looking at the balance shown on the ledger card and then looking at the balance that was due for that month. The raising would show, for instance, that in July of this particular year, for instance, the balance, say at this particular time the balance should be £180 and if the hirer's card shows a balance of £188 the clerk would then know the account

20 is £8 in arrears.

Q. And that card is left, or should be left, in the ledgers, is this the position, until the account is paid out? A. Until the account shows a nil balance.

Q. And were in fact those ledger cards gone through for the purpose of ascertaining the arrears from time to time? A. The ones that I - ?

30 Q. No, the ones in the ledgers, the cards in the ledgers, the legitimate ones? A. The collection staff was responsible. They worked around the clock with the ledgers. I mean some ledgers may be looked at three times a month, some may be looked at once a month, depending on what speed the collection clerks worked at.

Q. The collection clerks were looking at the cards all the time? A. That was their job, and apart from when the ledgers were closed for balancing purposes it was
40 their duty to go through the ledgers as often as physically possible in the time.

Q. When an account has been paid out, the ledger card is removed; is that the position? A. Yes, that is right.

Q. And filed away somewhere? A. Filed away in their closed records.

Q. What is done with the documents themselves after the account has been paid out - the document file? A. The document file is then taken out of the current filing cabinet and filed away. I think they keep them for a period of six years. They would be filed then with the closed account files in the same alphabetical, numerical order.

Plaintiff's
Evidence
No. 3(i)

William
Raymond
Moffitt

Re-
examination
(Continued)

Q. There was a file for all current accounts, was there?
A. Yes.

10

Q. And how many did they run into? A. I would not be sure of the exact figure. I think around about fifteen or sixteen thousand would be the average amount of cards we had in the ledger, but it fluctuated over the last few years.

Q. And theoretically you should have a current file for every card in the ledger? A. That is right, yes.

Q. And I think you said to my learned friend that there
20 were several changes of the ledger system during the time that these manipulations were going on. When they were split up into the last first of all, I will go back. First of all, there was a general ledger; is that the position? A. Do you want to go back right to 1945?

Q. Yes. I only want the changes in the ledger system.
A. In 1945 I think it was all under one control and one ledger. The war had only just finished and there were not that many accounts in operation.

30

Q. Then there was a split-up? A. Then there was a split-up into dealers' ledgers, up till they discontinued that. It was some years. It might have been still only the one control. Eventually, I suppose it must have been around about 1950 there were five or six ledgers in dealer order or district order. We did a lot of business at that particular time in Wollongong, for instance, and Newcastle, and they had their own separate ledger. We had the domestic ledger and I think they had a motor-car
40 ledger and they each had their own individual control.

HIS HONOUR: Q. This is in fact, I take it, a debtors' ledger? A. A debtors' ledger.

MR. NEWTON: Q. When were they split up into 22?
A. The final split-up was somewhere about 1957, within 12 months of the shifting to Woolloomooloo.

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William
Raymond
Moffitt

Re-
examination
(Continued)

I think it was 1956 or 1957.

Q. And the amounts that you had taken, I think you told my learned friend, did not involve all those ledgers? A. Before the final split-up in 1957, I had the complete balance that I had out in one ledger, in our miscellaneous ledger.

Q. You did mention five ledgers? A. Five ledgers, that
10 I had to personally add myself.

Q. And that was the position up till 30th June 1960? A. That was the position up to 30th November, 1960.

Q. For instance, the miscellaneous ledger was one that you always had taken a great deal of money from; is that right? A. Yes, because that is where -

HIS HONOUR: What he said is that at one stage until the
20 split-up the whole of his defalcations were all concealed in the miscellaneous register or ledger in the sense that all the cards had gone into it, all, I assume, had been extracted from it and the only false entry required each month was the opening entry for that ledger.

MR. NEWTON: Q. And you did know, in effect, did you, at 30th April, 1960, exactly what amount you were short in, say, the miscellaneous ledger? A. Yes.

30 HIS HONOUR: Q. As I understand it, the miscellaneous ledger ceased to exist after the move to Woolloomooloo and that is when you had 21 - odd ledgers in lieu of five? A. There was still a miscellaneous ledger .

Q. Only the one then? A. Only the one but it was a smaller ledger than what it was originally.

Q. It did not contain the same information? A. No. At
40 the time of the split-up I reduced that by quite a number of thousand pounds.

Q. What happened to your false accounts? Did they all remain in the miscellaneous ledger? A. No. When it was split up I transposed it to three other ledgers, two others and the miscellaneous. The three ledgers.

(Witness retired)

LESLIE TYACK,
Sworn, examined, deposed :

Plaintiff's
Evidence
No. 3(3)

Leslie
Tyack

Examination

TO MR. NEWTON: My full name is Leslie Tyack. I live at "Longlands" 128 Pitt Town Road, Kenthurst. I am by occupation a chartered accountant.

Q. And you are now retired, I think, are you not? A. I am not a chartered accountant. I am not now with Universal Guarantee. I left there last year.

Q. You left Universal Guarantee in 1963? A. That is right.

Q. And you were the manager of Universal Guarantee from October, 1954, until last year? A. That is right.

Q. And, of course, you know about the moneys that Moffitt took from the funds of the company over a period of years?

A. Yes.

20

Q. First of all, I want to ask you when you first went there what was the size of the company, approximately? A. There were about 14 or 15 on the staff.

Q. And did you examine the system of book keeping when you first went there? A. Yes.

Q. And did you inaugurate some changes? A. Yes.

30 Q. At this stage I do not propose to ask you what they are. Then these frauds were discovered at the end of 1960, approximately? A. That is right.

MR. NEWTON: I do not want to ask Mr. Tyack anything further, Your Honour, at this stage. I called him in pursuance of an undertaking I gave.

CROSS-EXAMINATION

Cross-
Examination

40 MR. STREET: Q. Mr. Tyack, you have said that you are a chartered accountant? A. I beg your pardon?

Q. You are a chartered accountant, are you? A. I am now, yes.

Q. May I take it that you were a qualified accountant whilst you were in control of the management of

Plaintiff's
Evidence
No. 3(3)

Leslie
Tyack

Cross-
Examination
(Continued)

Universal's office from 1954 through to 1960? A. Yes.

Q. And it is correct, is it not, that Moffitt was directly under your control, you being the manager in Sydney of that Company? A. Yes.

Q. And you were the senior officer in this State? A. Yes.

Q. Of Universal Guarantee? A. Yes.

10

Q. It is a Victorian company? A. Yes.

Q. And you had complete control of the Sydney office, or New South Wales' activities, subject I suppose to your head office in Melbourne? A. That is correct.

Q. You had sole local control? A. Yes.

Q. Moffitt was dismissed from the company's employ-
20 ment in November 1960? A. Yes.

Q. Dismissed for reasons unconnected with his thefts from the company? A. Yes.

Q. And those thefts were not discovered until a week or so after he had left the company's employment? A. A few days after.

Q. Whilst he was with the company whilst you were manager,
30 his position, his title, was acceptance manager; is that correct? A. Yes.

Q. And as such his duties are related to the consideration of applications for hire purchase finance? A. Yes.

Q. And in addition to performing functions in that connection he did also, did he not, assist in the office work generally? A. Yes.

40 Q. And, for example, he assisted at the end of the month when the debtors' ledgers were balanced, did he not? A. Yes.

Q. And, indeed, often balanced some of the ledgers himself? A. Yes.

Q. And he attended, did he not, to the great bulk of the

depositing at the company's bankers? A. Not all of it but some of it.

Q. Let us put it the majority of it? A. I cannot say exactly, but a fair amount of it he did.

Q. And that was a regular part of his employment? A. Yes.

10 Q. And he did it, whether he did the majority of it or whether he did a fair amount of it and it was within the scope of his duties? A. With my approval.

Q. With your approval? A. Yes.

Q. I suppose you were manager and he had your authority to attend at the bank and make deposits to the company's account? A. Yes.

20 Q. And also to complete any necessary documents, such as deposit slips, which were associated with the making of deposits? A. He had an authority. He was a signatory and usually endorsed cheques as a signatory, the ordinary endorsement.

Q. Let us take it; He was one of the group of people any two of whom could sign a cheque? A. Yes, that is right.

30 Q. And he was one of the group of people any one of whom could endorse on behalf of the company? A. Yes.

Q. And throughout the period from 1954 to 1960 he did quite frequently exercise his authority as one of the two joint signatories? A. My practice was the accountant and myself to endorse all cheques.

Q. You are talking of endorsing or drawing? A. Drawing cheques, and it was only in the absence of myself
40 or the accountant that I permitted the third signatory to sign cheques. Normally it was the accountant and myself for signing cheques. Moffitt usually did the endorsements.

Q. He usually did the endorsements? A. Yes.

Q. That is, of course, in his own name but on behalf of

Plaintiff's
Evidence
No. 3(3)

Leslie
Tyack

Cross-
Examination
(Continued)

Plaintiff's
Evidence
No. 3(3)

Leslie
Tyack

Cross-
Examination
(Continued)

the company? A. Yes, that is right.

Q. And that was within the scope of his duties? A. Yes, that is correct.

Q. When there was to be a deposit made to the bank, Mr. Tyack, if Moffitt were going up there to make the deposit, actually going to physically attend at the bank on one of the occasions when he did, it would be within the
10 scope of his authority to sign the pay-in slip, may I take it? A. Yes.

Q. And to sign or initial any alternations on it or attend to any other matters that might arise at the bank when he was effecting the deposit up at the bank? A. There should not be alterations on them.

HIS HONOUR: That was not the question. If an alteration did become necessary, was he authorised to make and
20 initial the alterations?

WITNESS: When he went to the bank he went to pay in. I would not suggest he was entitled to make an alteration.

HIS HONOUR: Can't you answer the question? If an alteration to the deposit slip became necessary, was Moffitt authorised to make an alteration and initial it?

WITNESS: Your Honour, when the bank deposit -
30

HIS HONOUR: Yes or No? Can't you answer that Yes or No? If not, say so, of course.

WITNESS: I do not think I can answer it the way it is put, sir.

MR. STREET: Q. Let us take the case where Moffitt is up at the bank to make a deposit, and we will start at the bottom: Some exchange has been missed off one
40 cheque. The entry of the exchange has been omitted. Right? You understand the assumption I am putting to you? A. Yes.

Q. Would it be within Moffitt's authority to initial such alteration as may be necessary on the deposit slip to record the inclusion of that amount of exchange? A. Yes, I think so.

Q. And I suppose if the name of the company were not on the top of the deposit slip and he was up there to make the deposit, it would be within the scope of his authority to fill in the name of the company? A. I think so.

Plaintiff's
Evidence
No. 3(3)

Leslie
Tyack

Q. Or the date on the deposit slip? A. You are suggesting to me, sir, that none of these things should have been done in the cash office before it went up there?

Cross-
Examination
(Continued)

10 Q. No. I am suggesting to you that something arose up at the bank when he went up to make the deposit which necessitated some alteration on the deposit slip and necessitated a signature authenticating that alteration? A. A legitimate signature for a legitimate alteration, yes.

Q. May I take it you prefer to put it this way - that it was within the scope of his authority to initial or sign any legitimate alterations to the deposit slip? A. Yes.

20 Q. I am reminded by Mr. Deane that would extend, I take it, to the making of any legitimate alteration? A. Yes.

Q. As the manager of this branch in Sydney did you have any concern with the office procedures in terms of inter-office control. A. Yes.

Q. Intra-office control, I am sorry. A. Yes.

30 Q. Would you agree with the proposition that an elementary requirement of any internal control system is that there is complete separation between the personnel who do the banking and the personnel who balance the ledgers? A. As far as possible, yes.

40 Q. I am putting that to you as an essential elementary requirement of any internal control system - that you ensure that nobody who is concerned with the banking or the cash receipts, with handling cash receipts or cheques, can physically participate in balancing of ledgers? A. That is not always practical to do it that way, sir. It is desirable but not always practical.

Q. It is, I suppose you could say, one of the very first precepts of an effective internal control, is it not?

A. It is one of them, yes.

Q. And would you agree with my suggestion to you that

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Leslie
Tyack

Cross-
Examination
(Continued)

the only time within your office procedures that the duplicate bank deposit books were ever checked or sought to be verified in any way by the company was on the annual occasion when it became necessary to work out the cash in transit for the assessment of the insurance premium? A. No. The auditors occasionally came in and counted the cash in the cash box.

HIS HONOUR: What Mr. Street is asking you about the
10 duplicate deposit books is after the banking has been done and the bank have put their stamp upon the duplicate that is retained for your records, were those deposit books ever looked up thereafter by anyone on the company's behalf or the auditor or anybody else, except to ascertain this premium?

WITNESS: Well, so far as I know, they were in the accountant's control. They were part of his department and they were certainly there for the auditors, your Honour.

20 HIS HONOUR: Q. Did the auditors ever look at them?
A. I do not know what the auditors did.

MR. STREET: Q. Is this the position, that you do not know whether your accountant ever looked at them or not? You personally do not know? A. I looked at them myself on occasions.

Q. You looked at them. A. At times.

30 Q. So far as you are concerned, you do not know personally whether your accountant ever looked at them - the company's accountant? A. I think he will have to answer for himself on that one.

HIS HONOUR: You answer for yourself. If you do not know, say so. You must answer.

40 WITNESS: I cannot say whether the accountant looked at them specifically, Your Honour. I think he did. I think he did. (Mr. Street asked the last two sentences of this answer be struck out; answer allowed to stand.)

MR. STREET: Q. May I take it that also you do not know of your own knowledge whether the auditors ever looked at the bank deposit books? A. No, I do not.

Q. You say that you did look at them yourself? A. On occasions, yes.

Plaintiff's
Evidence
No. 3(3)

Q. On what occasions did you look at them? A. On occasions when there might have been some error, mistake in banking, or some small error or something of that nature and I might have got hold of the deposit book to check it and to ascertain whether the error could be located.

Leslie
Tyack

Cross-
Examination
(Continued)

10 Q. By that may I take it that you are referring to the deposit book currently in use? A. Yes.

Q. As to which a query might have come through or a correction might have come through from the bank. A. From the bank.

Q. Relating to a deposit made the day before, or a day or two before? A. That is right.

20 Q. But you never did any over-all checking of the contents of the duplicate deposit books yourself? A. No.

Q. You remember, do you not, that when Moffitt was dismissed there was a considerable amount of research done into the documents, both of your own and of the bank? A. Yes.

Q. And a great many documents were made available to the Criminal Investigation Branch? A. Yes.

30

Q. And is it within your knowledge that quite a lot of them were lost, or some documents, at all events, were lost at this time? A. Not to my knowledge.

Q. Not to your knowledge? A. Not to my knowledge.

Q. (Approaching witness) I want to get clear from you, if you can assist me on it, the history of the authorities to operate on your account.

40

HIS HONOUR: That is on the plaintiff company's account?

MR. STREET: Yes, on the plaintiff company's account.

Q. You became manager in 1954? A. October, 1954.

Q. Not having been concerned with the company before that? A. In Sydney, no.

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Leslie
Tyack

Cross-
Examination
(Continued)

Q. It was in October, 1954? A. That is right.

Q. Would it be correct to say - can you confirm this from your understanding of it - that in October - (Objected to).

Q. Would it be correct to say that within a day or so of your becoming manager in October, 1954, the bank authority was adjusted so that you could be one of the signatories? A. Yes.

10

Q. And that at all times from then on either the Chairman of Directors alone could sign cheques on the company's account? A. Yes.

Q. Or any two of, amongst others, yourself, the accountant, and Moffitt? A. Yes.

Q. Any two of those three? A. Yes.

20 Q. And there were, I think, one or two others in the group? A. In Sydney there were only three. The others were in Melbourne.

Q. The others were in Melbourne, were they? A. Yes.

Q. And would it also be correct to say that any one of the directors - just confining it to Sydney - any one of yourself, the accountant, or Moffitt was authorised to endorse on behalf of the company? A. To endorse cheques being
30 paid into the account, yes.

Q. And that was effected within a matter of a few days after you became manager in 1954? A. Yes.

Q. Would you agree with this proposition that if one of your customers, one of your dealers to whom your company owed money, came into you to collect the money owing to him and informed you or one of your subordinates that he would prefer to have cash rather than
40 the cheque which had been written out for him it would be quite normal for him to be asked to endorse the cheque, to put that cheque in with your company's cash and to give him cash in lieu of that cheque? A. No.

Q. Wouldn't it be normal? A. It was never my procedure. It was never my procedure in my time.

Q. Never your procedure? A. Never.

HIS HONOUR: Q. Why, what is wrong with it? A. Your Honour, I preferred to send all cheques to dealers out by mail. I felt I was protecting the company and, secondly, there were never any cashed cheques over the counter to my knowledge. It was a strong rule in the office.

Plaintiff's
Evidence
No. 3(3)

Leslie
Tyack

Cross-
Examination
(Continued)

10 (Further hearing adjourned until 10.00 a. m.
on Wednesday, 10th June, 1964.)

IN COMMERCIAL CAUSES

CORAM: MANNING, J.

UNIVERSAL GUARANTEE PTY. LIMITED v. NATIONAL
BANK OF AUSTRALASIA LIMITED.

20 THIRD DAY: WEDNESDAY, 10TH JUNE, 1964.

(By consent defendant granted leave to interpose
a witness for the defendant at this stage.)

ALLAN RALPH ALLINGHAM
Sworn, examined, deposed:

Defendant's
Evidence
No. 3(i)

Allan
Ralph
Allingham

Examination

30 TO MR. STREET: My name is Allan Ralph Allingham.
I live at 95 Carrington Road, Box Hill, Victoria.

Q. I think you are, and have been since 1955, the Secretary
of the Australian Bankers' Association? A. That is correct.

Q. Prior to that having been, I think, a bank officer with the
National Bank in various parts since 1920 up to 1955? A. Yes.

Q. Your last appointment being as Manager of the Mitchum
Branch of the National Bank? A. Yes.

40 Q. In your capacity as secretary of the Association, would
you tell His Honour what that Association is. First of all,
you are the executive officer, a full time executive officer
of that Association A. Yes.

Q. Would you tell His Honour what that Association is? A.
The Association, Your Honour, was formed in 1954 by the
seven public company trading banks of Australia. It in effect

Defendant's
Evidence
No. 3(i)

Allan
Ralph
Allingham

Examination
(Continued)

took over the old role of the Associated Banks of Victoria, but bringing in the three interstate banks of the non-Victorian banks into the Association for general discussion on banking practices and for the helping of each bank to know what was going on and to assist with new systems and keep in touch with developments of commerce as they may be effected in banking spheres. The main meeting is that of general managers, who discuss policies. The next meeting is the deputy general managers, who meet usually one week before
10 the general managers, and then there are technical committees such as the chief accountants, who deal with banking " matters, clearance of cheques and new systems, uniform forms and that type of thing, and there is also a meeting of exchange officers who handle overseas transactions, and other lesser committees from time to time.

Q. Special purpose committees? A. Currency committees and such like.

20 Q. The committee of the chief accountants, does that meet regularly? A. Yes, practically each month.

Q. And the assistant general managers' committee meets how often? A. They meet monthly and general managers monthly, with exceptions sometimes at Christmas time or Easter intervening, when the meetings might be spaced six weeks or two months apart.

Q. Do you have with you the minutes of the meetings of
30 the chief accountants covering the period in July 1959?
A. Yes I do.

Q. And was there a meeting of the chief accountants' committee on 16th July 1959 at which there was some discussion on some correspondence with the Institute of Chartered Accountants in Australia relating inter alia to deposit slips, to the contents of deposit slips? A. Yes.

Q. Would you identify that minute for me in the book?
40 (Witness indicates)

Q. You have opened it at folio 557, which is the folio at which commences the minutes of the meeting of the chief accountants from 16th July 1959 and on that folio and the immediately following folio the minutes deal with the correspondence I have referred to from the Institute of Chartered Accountants? A. That is correct.

Q. That is pp. 1 and 2 of the minutes. Page 3 of the minutes deals with other internal matters? A. Yes.

Defendant's
Evidence
No. 3(i)

Q. Page 4 of the minutes deals with some other matters also? A. Yes.

Allan
Ralph
Allingham

MR. STREET: For the purpose of identification I have had "Xeros" copies made of pages 1 and 2.

Examination
(Continued)

10 Q. These are Xeros copies of pages 1 and 2? A. Yes.

(Copies as above of pages 1 and 2 of the minutes referred to tendered; objected to)

HIS HONOUR: I will note your objection to the minutes. I will admit them subject to objection, reserving to you the right to argue later that they have no probative value but I think that perhaps the question might well be left at this stage, because at the moment I do not know what further
20 evidence is going to be given. I will admit the copies on that basis as Exhibit 1 and I order by consent that the photographic copy of the relevant portions of the minute be substituted for the book and the book be returned to the witness.

MR. STREET: Q. These copies of the minutes are a true record of the meeting and/or what took place at it? A. Yes. These are the signed minutes, which are bound in that form.

30 Q. And you were present at the meeting? A. Yes I was.

Q. And this matter was, as recorded, a unanimous agreement of the chief accountant? A. Yes. It is my duty to record the minutes, which are conserved or checked by the Chairman of the meeting and later approved by the general committee, or the general manager. Part I of the minutes is the unanimous opinion or recommendation or agreement of the chief accountants.

40 Q. You did tell me of the personnel of this Association. It is the seven trading banks. I notice in the persons present at this meeting there is a Mr. L. G. Hall of the Commonwealth Trading Bank? A. Yes.

Q. Is the Commonwealth Trading Bank a member of the Association? A. No, the Commonwealth Trading Bank is not a member of the Association, being a Government bank, but on technical matters they are invited to attend. The chief accountants and exchange officers and at some other levels

Defendant's
Evidence
No. 3(i)

Allan
Ralph
Allingham

Examination
(Continued)

do attend general committee meetings because of the necessity to keep in touch with Commonwealth banking procedures and to keep them informed of what the Association is thinking. But they were at the meeting by invitation and subsequently, of course, accepted these minutes.

10 Q. There is reference in these minutes to the correspondence with Mr. Gray. Would you look for me at this bundle of documents and tell me whether the last two sheets there are a copy of the memorandum from Mr. Gray and the sheets next above them up to and including the top sheet are Mr. Gray's letter referred to in the minutes? A. Yes. They bear -

Q. Just identify them? A. Yes, I can identify them.

20 Q. That is the Gray memorandum copy letter which was sent out to the various representatives at this meeting on 16th July 1959? A. Yes, that is correct.

Q. That is not the original Gray letter but that is the document which was before the individuals which were present at the meeting? A. Yes.

(Correspondence as above M. F. I. 1)

Cross-
Examination

CROSS-EXAMINATION:

30 MR. NEWTON: Q. Mr. Allingham, you were manager of Mitchum Branch, is that so, of the National Bank? A. Yes.

Q. And how long were you manager of that bank? A. Approximately six months.

Q. And were you manager of other banks before that? A. The Caulfield East Branch for 18 months, approximately.

40 Q. And how long were you manager of branches in all? A. Only for two years. In my previous experience, for eight years after the war it was in staff department, as assistant staff officer.

Q. How long were you with the bank? A. 44 years.

Q. I suppose during that time you carried out most of the functions of the officers of a branch of a bank? A. Yes.

Q. Such as teller? A. A very short time, Sir. I was never a regular teller.

Q. A ledger keeper? A. Yes

Q. Examiner of cheques? A. As a ledger keeper.

Q. I think your experience goes up to 1956, doesn't it?
A. Yes.

10

Q. You left the bank in 1956? A. Yes.

Q. Have you been informed of the problem that we are concerned with here in relation to crossed cheques? A. Briefly, Sir. I do not know very much of the background.

Q. As an ordinary bank manager fulfilling the functions of a practising bank manager in charge of the branch, I want you to have a look at this cheque which I show you
20 from file No. 1 and you will see it is a cheque drawn by Universal Guarantee. It is signed by a man named Follett and Moffitt, and you may assume that the cheque is properly signed, they are both authorized to sign cheques. It may be hard to read, but you can assume it is payable to K.R.Henry, to the order of K.R.Henry, and you will note the crossing, and do you see the endorsement on the back of the cheque? First of all I want to ask you if that cheque came to you as manager and it was being paid into the account of Universal
30 Guarantee would you accept it without query?

HIS HONOUR: Perhaps you should also put to Mr.Allingham that the officer endorsing the cheque on behalf of Universal Guarantee is a person duly authorised so to endorse.

MR.NEWTON: Not "so to endorse", to endorse cheques.

40 HIS HONOUR: The officer who signed the back of the cheque on behalf of the company was authorised to endorse.

MR.NEWTON: To endorse cheques.

Q. Would you have accepted it without query? A. Yes, I would if it was paid into the account of the office which drew the cheque. I would feel they had the right.

Defendant's
Evidence
No. 3(i)

Allan
Ralph
Allingham

Cross-
Examination
(Continued)

Defendant's
Evidence
No. 3(i)

Allan
Ralph
Allingham

Cross-
Examination
(Continued)

The cheque is endorsed correctly and I would feel they had the right to pay it into their own account. I do not think I would query that.

Q. Mr. Moffitt has endorsed it and signed it on the front. If he had sought to pay it into his account with you, would you have accepted it? A. Oh, not without question.

Q. Not without question? A. No.

10

Q. Or if it was being paid into any other customer's account with you, would you have accepted it without question?

A. No, not if it was paid into another customer's account.

Q. Might this be the position, that if it was paid into a customer's account who was beyond reproach - for instance, B.H.P. - would you query it then? A. No, I do not think I would if it was paid into a very substantial account, knowing the officer paying in would be paying

20 it to the credit of the company.

Q. And you would have this safeguard, wouldn't you, that if anything went wrong you would be able to debit it against the customer's account? A. Yes, that would be the normal process, I would think.

Q. And of course, that is a cheque for £195. If the customer was a customer that you did not regard as worth the risk of £195, you would not accept it, would you? A. No.

30

Q. With regard to the cheque in file B67, you see the cheque? It is in similar terms to the cheque No. 1. You may make the same assumptions, and I suppose you would make the same observations that you made with regard to the cheque in Exhibit B1? A. Yes, Sir, I think so.

Q. I want to ask you about the deposit. Do you see the deposit slip there in B67? You will see the duplicate of
40 B67. Just the summary itself, you see. I want you to assume this - that the original deposit slip was in the form in which it is now and that at the time it was presented to the teller the duplicate had in it the 9/-, the 2d., the £432/19/2d., money orders as £432/19/2d. I want you to assume that this evidence has been given about this, too -

HIS HONOUR: Given by the man who signed the deposit slip.

Defendant's
Evidence
No. 3(i)

Allan
Ralph
Allingham

Cross-
Examination
(Continued)

MR. NEWTON: Q. By Moffitt. "I produced the book and the original to the teller without the full notes shown as they were, the silver shown as 9/-, the pence shown as 2d., the money orders as £432/19/2., the cheques shown only on the original and not on the duplicate and the total £3455/13/9d. shown on both the copy and the original".

10 So that the amount of the notes was not shown in the duplicate nor the amount of the cheques in the summary in the duplicate.

If that had been presented to you, would you have stamped this duplicate receipt in that form without the notes or the cheques being shown in the duplicate? A. From my limited experience of telling, which was not very much, I would have checked the original which comes to the bank, as has been done apparently, the notes,
20 the silver and the cheques and probably with a big pay in slip like that you would not have time to go through and check off each one. It is usually left to the person machining, but I would have satisfied myself only with the total in each case. I would not check off the amounts of cash unless my eye wandered that way; as long as the total was the same as the original I would not have checked it.

Q. But, of course, this is the document you are giving
30 back to the customer, isn't it? This is the receipt that you are giving to the customer?

HIS HONOUR: By "this" you refer to the duplicate?

MR. NEWTON: Yes.

WITNESS: The duplicate going back. The total - I would always understand that the total on this duplicate should agree with the total paid in. It is most essential.
40

MR. NEWTON: Q. You would not worry at all about the summary on it? A. Not on the duplicate.

Q. If it was blank you would not worry about it? A. If there was nothing shown at all and no total, I would.

Defendant's
Evidence
No. 3(i)

Allan
Ralph
Allingham

Cross-
Examination
(Continued)

Q. As long as the total is there that is all you are concerned with; is that what you say? A. Having checked off the original.

Q. You are not concerned with any other detail in the duplicate? A. Providing the duplicate total looks the same as the original total. Any discrepancy found afterwards is usually picked up in the cash book.

10 Q. But what you say is that you are not concerned, you would not be concerned as receiving teller with anything except the total figure in the duplicate? A. That would be so, Sir, from my -

Q. Supposing you happened to notice that there were no notes shown there; would you do anything about it? A. I would query it if I noticed it, but the teller would have checked the additions on the original slip for notes, coin, on the slip. That cheque had been slipped in afterwards,
20 from the grand total I notice. They would add those to make sure the total was right and if the total agreed.

Q. But if you noticed there were no notes shown in the duplicate, you would query it. What do you mean by "query it"? A. I would check more carefully, I would think then, if there were no notes shown. I would ask the person paying it in why it was not the same but, having received the £61 in cash and the cheques, which can always be verified later, provided
30 the total added up I would not worry about the duplicate.

Q. That is the only thing you look to?

HIS HONOUR: I do not think he quite said that. I think in substance he said he would not regard himself as under any obligation to do more than check the totals He said if his eye happened to light on the omission from the duplicate, then he would ask the question but this is, as I understand it, purely a
40 matter of chance.

MR. NEWTON: Q. I show you now B66 and you see that is a National Bank form of cheque as opposed to the company cheque and it is crossed "Not Negotiable" to Mr. J. Bruce or Order. The crossing is slightly different apparently, and the endorsement is the same.

Would the remarks you made about the other two cheques apply equally to that? A. Yes. It is not drawn on the company's ordinary cheque form but it is drawn on the same bank.

Defendant's
Evidence
No. 3(i)

Allan
Ralph
Allingham

Cross-
Examination
(Continued)

Q. You can assume it is a properly drawn cheque on the company's account. There is nothing hidden. There is no trick there? A. No.

10 Q. And you would make the same observations? A. Yes.

Q. I would like you to look at the deposit slips, the duplicate and the original, and this is the evidence given by the man who did the banking: he said he altered the cash from £516 to £116, adjusted the cheques from £2986/12/4d. to £2386/12/4d. on the original but not on the duplicate and included a Universal Guarantee cheque for £400 - you need not worry about that for the moment - but he said before he did the banking he altered the cash in the duplicate
20 icate

HIS HONOUR: He altered the cash on the original but not on the duplicate.

MR. NEWTON: Q. He altered the cash on the original to £116 and he altered the total of the cheques on the original. You need not worry about this cheque at the moment. If you received that, if that was presented to you -

30 HIS HONOUR: You are pointing to the original deposit?

MR. NEWTON: Yes.

Q. If the original was presented to you in that form and the duplicate in that form, would you have issued a receipt in the form the duplicate is? A. I would think my remarks as previously would be correct, Sir. I notice that on the original it has been altered. That would stand out in any teller's vision but it has been
40 signed in full by the person paying in.

Q. Wouldn't you be inclined, seeing that alteration, to have a quick look at the duplicate to see if it was also altered in the same way? A. Probably, but that would probably depend on the pressure.

Q. Pressure of work? A. Yes. But, having been signed,

Defendant's
Evidence
No. 3(i)

Allan
Ralph
Allingham

Cross-
Examination
(Continued)

the position would be I would think that if the duplicate was presented and it appeared to be a mistake you would ask the person paying in to sign the duplicate as well if you noticed it.

Q. Just going back for the moment, I want you to assume that when this cheque comes to you with this authority that you hold from the company -

10 HIS HONOUR: The cheque you are directing the witness' attention to is the one from Exhibit B1?

MR. NEWTON: Yes, Your Honour, and I am directing the witness' attention to the authority set out in paragraph 7 of the points of claim.

Q. You probably do not recognise it in this form but it is the usual form of bank authority to operate and you will see that the authority is given to the Chairman of Directors
20 solely or any two of the following: Stead, Follett - there is a name missing there - Heffernan or Moffitt to do all or any of the following acts and things in the name of and on behalf of the company, namely - and you would take this to mean any two of them - to sign, draw, accept or endorse, discount, or make arrangements with you regarding cheques, bills of exchange, promissory notes and other instruments, to overdraw the account and (b)
30 to endorse and sign or give you security over bills of lading, warehouse certificates and other documents and
so forth; (c) to place money on fixed deposit; (d) to sign and execute guarantees or indemnities protecting you in relation to missing bills of lading. You will notice that it is any two of them that are entitled to give guarantees or to endorse the bills of exchange, cheques, promissory notes. And, over the page, that any one of the directors or the secretary, treasurer, manager, accountant, sub-accountant, cashier of the company from time to time has also been authorized to endorse cheques and other instruments pay-
40 able to or to the order of the company.

So you will see the authority you hold is to accept the signature of one for cheques payable to the order of the company? A. Yes.

Q. You follow that? A. Yes.

Q. I am going to put to you wouldn't you, under those circumstances, query a cheque which had a name written on it, the name of the payee, with "Endorsement Guaranteed" and signed by one only of the signatories? Would not that raise a doubt in your mind? A. Not, I think, if the officer is the usual officer endorsing cheques. The bank would know his signature very well. That signature would not require certification or guarantee of the endorsement. It was being paid into the company's
 10 own account. I appreciate that that is "Endorsement Guaranteed" but -

Defendant's
 Evidence
 No. 3(i)

 Allan
 Ralph
 Allingham

 Cross-
 Examination
 (Continued)

Q. Would not that put you on notice that it was a matter that you should perhaps communicate with the manager of the company about and see if it was all right? A. Probably it would be the prudent thing to do, Sir, but I doubt that I would have done it.

HIS HONOUR: You are putting it really on the basis that
 20 you are asking him to assume Moffitt is not a person authorised to endorse?

MR. NEWTON: Not to endorse in that form.

HIS HONOUR: To endorse at all?

MR. NEWTON: No Your Honour.

HIS HONOUR: Then make it clear, because it is not
 30 clear to me at the moment. You have read him this authority. What are you asking him to read into this now?

MR. NEWTON: I am asking him to assume, Your Honour, that Moffitt was entitled to endorse cheques payable to or to the order of the company and not otherwise.

Q. What I am putting to you is that the authority held authorizes any two officers to do a number of things,
 40 draw cheques and give guarantees and so forth, but as far as endorsements are concerned the persons signing this "Endorsement Guaranteed" on the back is one of the officers who is authorized under that paragraph of the authority to endorse cheques and other instruments payable to or to the order of the company. Do you follow that? A. Yes.

Defendant's
Evidence
No. 3(i)

Allan
Ralph
Allingham

Cross-
Examination
(Continued)

Q. You have got a cheque there that is not payable to the company -

HIS HONOUR: You must not say that. Any cheque payable to order when signed by the payee then becomes a bearer cheque

MR. NEWTON: Q. You have got an authority there that authorizes the persons signing the back of it to endorse
10 cheques or other instruments payable to or to the order of the company. You follow that? A. Yes.

Q. And you have a cheque in your hand. I want you to assume that you have got the cheque in Exhibit B51 in your hand. It has got the name of the payee on the back of the cheque and "Endorsement Guaranteed" signed by one of the signing officers. I am putting to you again, I suggest to you that that would raise some doubts in your mind? A. No, Sir, I do not think it would. As
20 I see it, the authority is for one officer to endorse cheques, two officers to guarantee and various things, but I do not think, just from a quick reading of that, it says anything about the officers to guarantee an endorsement. When that cheque came to the bank the payee had correctly endorsed it. There was nothing to query and I would say that the only reason that the guarantee had been put on by the officer was to satisfy the mind of the banker taking it that the company was dealing with the cheque and he had the right to pay it in that way. I would
30 not say that the word "Guaranteed" there was in the term of the ordinary use of "Guaranteed" I would think it was identifying the endorsement, not guaranteeing the endorsement so much as identifying the identity of the payee and that he had a right to pay it back to the company.

Q. As a practising banker you would not expect to see all the cheques being paid into a customer's account requiring endorsement with the words "Endorsement
40 Guaranteed" on the back of it, would you? (objected to : allowed)

Q. I will re-phrase it. That is a most unusual form of endorsement is it not, in your experience? A. Well, Sir, I have not had a great deal of experience in this type of thing. My banking career has been otherwise but I would think, I would say that if an endorsement

like that was guaranteed it was more in the way of identifying the payee when you are paying it into the company's own account.

Q. But you say as a practising banker you would not require the words "Endorsement Guaranteed" on the back of that cheque, would you? A. No, I do not think I would, because it was correctly endorsed.1

Defendant's
Evidence
No. 3(i)

Allan
Ralph
Allingham

Cross-
Examination
(Continued)

- 10 Q. Would not the very fact of the words "Endorsement Guaranteed" being written there be unusual in itself?
A. Probably not very usual but I would think that it was only the officer paying in wishing to give to the bank - to indicate to the bank that he had identified the payee.

MR. NEWTON: He had certainly done that.

- HIS HONOUR: I do not think you should comment, Mr. Newton, and indeed I agree entirely so far with
20 what the witness has said

MR. NEWTON: Q. That is in fact a form of guarantee that is used internally in the banks, is it not - "Endorsement Guaranteed"? A. Sometimes when an endorsement is illegible or does not appear to be quite the same as written on the front, the word is used by bank officers "Guaranteed Endorsement".

- Q. When it is going to another bank for collection, or
30 for payment? A. Yes.

Q. In all your experience I do not suppose you can recollect a case where a customer has endorsed a cheque with those words? A. I do not remember. It is a long while since I was on the counter and, being manager, unless a matter like that was referred to me I would not see it and coming as a payee to the banker it would be, of course, acceptable -

- 40 Q. If you cannot recollect any occasion I will not pursue it any further.

I show you file No. 158 and invite your attention to the original and duplicate deposit slips. I want you first of all to assume that when that was presented to the teller the summary was in its present form and the duplicate was entirely blank - the summary.

Defendant's
Evidence
No. 3(i)

Allan
Ralph
Allingham

Cross-
Examination
(Continued)

Would you have stamped the duplicate and handed it back to the officer doing the banking with the summary entirely blank? (objected to; allowed) In the first case, assume that the summary in the duplicate was entirely blank. Would you have stamped it and handed it back to the customer? A. With no total, no.

Q. First of all, I will put it to you in another way later, but assuming there was no total in at all -

10

HIS HONOUR: That is not quite right. The assumption you are required to make is that the total was written in words in the body of the summary but did not appear in the column of figures on the right hand side.

MR. NEWTON: I perhaps had been erroneously referring to the summary as the additions. The words were written in there but the summary was blank.

20 HIS HONOUR: The column on the right hand side was blank.

WITNESS: With no total?

MR. NEWTON: Q. No total? A. It would be unusual to have done it.

Q. You would not have done it? A. No, not if I had noticed.

30

Q. You would have noticed it, wouldn't you? You would look? You have told me that is one of the things you look for? A. No. The total - yes, you do look for the total.

Q. If the total had been in you say you may have, from what you have already said I think it follows you may have stamped it and initialled it but if you had noticed the rest was blank you would have queried it? A. If I
40 had noticed it, yes.

(Witness retired and excused)

Plaintiff's
Evidence
No. 3(3)

Leslie
Tyack
Recalled,
Further
Examination

LESLIE TYACK

MR. NEWTON: There was one matter I could leave to re-examination and ask Your Honour's permission then

but Mr. Tyack did have a conversation with Mr. Moffatt, the manager of the Wentworth Avenue branch, and I thought it might suit my friend better if I asked him about it now.

HIS HONOUR: I will leave it to you gentlemen to arrange.

(By leave, Mr. Newton, before the cross-examination proceeded further, examined the witness as under)

10 MR. NEWTON: Q. Before Mr. Street resumes his cross-examination I did want to ask you whether or not after Moffitt's fraud had been detected you had a conversation with the manager of the bank at Wentworth Avenue? A. Yes.

Q. He was also a Mr. Moffatt, was he? A. That is right. Mr. Jack Moffatt.

Q. To the best of your recollection I want you to try and
20 put it in what you said and what he said - "He said to me" and "I said to him" (objected to. Ruling deferred to allow Mr. Newton to study authority; leave reserved to renew the question).

CROSS-EXAMINATION :

MR. STREET: Q. Do you remember yesterday I asked you some questions about the absence in the office, whilst it was under your management, of any strict sep-
30 aration between the persons balancing the ledgers and the persons handling the cash? A. Yes.

Q. I suggested to you that that was one of the fundamental ingredients of any system of effective internal control? A. Yes.

Q. And your answer was in relation to that type of question that it is not always practical to do it that way. It is desirable but not always practical? A. Yes.
40

Q. Practicable, I think you meant? A. Yes.

Q. In your office as it existed right at the latter part you had ample staff, did you not, to ensure a complete separation between to start with, the cashiers, the people balancing the ledgers and, to introduce the third element, the person doing the banking? A. Yes.

Plaintiff's
Evidence
No. 3(3)

Leslie
Tyack

Recalled,
Further
Examination
(Continued)

Further
Cross-
Examination

Plaintiff's
Evidence
No. 3(3)

Leslie
Tyack

Further
Cross-
Examination
(Continued)

Q. So your business was not similar to a business which has one employee who does everything? A. No. Of course, Moffitt did not normally do the banking.

Q. Moffitt did not? A. Normally do the banking. He did it occasionally.

Q. He frequently did it, did he not? A. He often did it, yes, but not always consistently. His job was not to do
10 the banking every day.

Q. But if you are going to have an effective system of internal control you must ensure, must you not, that you invariably divorce between the people handling the cash and the people who balance the ledgers? A. As far as possible with other controls as well.

Q. You have agreed with me that this could be described as the most important ingredient in any effective system
20 of internal control? A. It is an important one, yes.

Q. Can you think of any other ingredient more important than that? A. Yes.

Q. What? A. A proper system of audit.

HIS HONOUR: Q. But audit has got nothing to do with internal control, has it? Audit is separate and in addition to that? A. I had not finished, Your Honour, if I
30 may - and also the proper writing and preparing and issuing of cheques is also another ingredient if I may suggest it.

MR. STREET: Q. I asked you could you think of any ingredient more important in your system of internal control than procuring of a separation between the people who handle the cash and the people who balance the ledgers? A. No. As far as possible it should be done.

40 Q. And it is the most important ingredient, is it not? A. One of the most.

Q. Let me ask you again before I leave it: can you suggest to me any more important ingredient in the system of internal control than the ingredient of separating the people who handle the cash and the people who balance the ledgers? A. No. It is important.

Q. It was not, as I understand it, any shortage of staff which resulted in an absence of such separation in your office? A. No. The staff were all fully employed but we did have ample staff.

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Leslie
Tyack

Further
Cross-
Examination
(Continued)

Q. Ample staff to have a divorce between the people handling the cash and the balancing of the ledgers, had you wished to have that? A. Yes.

10 Q. So that in your office from 1954 onwards, at all events, it was practicable to have a separation between people handling the cash and people balancing the ledgers? A. Yes. We endeavoured to have it.

Q. What? A. We endeavoured to have it.

Q. You endeavoured to have it? A. We endeavoured to have it.

20 Q. But you knew Moffitt was assisting in balancing the ledgers, didn't you? A. Moffitt was a top executive, too. A trusted servant.

Q. Do you say that by reason of the position he occupied in the company that you felt that the system of internal control could be relaxed in his case? A. I believed that he was helping to protect the system of internal control.

Q. To protect it? A. Yes.

30

Q. But is not the philosophy of the system of internal control to ensure that there must be as many people as possible involved in each operation? A. Yes.

Q. So that if there is going to be any defrauding of the company it has got to be one involving a large number of people? A. Yes.

Q. And no matter what position of seniority an individual occupies, as soon as you allow one person to, so to speak, have a foot in both camps, that is in the cash camp and the ledger camp, the system of internal control is not operating so far as he is concerned at all? A. Any system of internal control can always fall down if trusted people let you down.

40

Q. Would you agree then with your system of internal

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Tyack

Further
Cross-
Examination
(Continued)

control you did not have first of all a system of internal control which was sufficient to prevent Moffitt's operations?

A. I know that now, yes.

Q. You would agree also, would you not, that the only reason why you did not have a system which would have prevented his operations was because you permitted him to have a foot in the cash camp and the ledger camp? A. I appreciate that, yes.

10

Q. And that was a risky thing to do, was it not? A. It turned out to be, yes.

Q. Just to get one or two more details of this internal system, if I may, before leaving it, the ordinary system was, was it not, one which involved cheques going out to dealers who had presented applications for finance, cheques coming back to Moffitt's office before they went out? A. No. They went to the girl at the mail desk.

20

Q. Does not the file - let me see if I am correct in the system - go back to the acceptance officer who then passes it out to the office staff to despatch the acceptance letter to the hirer and the dealer schedule and the cheque to the dealer? A. Yes.

Q. So that the dealer's cheque and his dealer's schedule does come back to the acceptance officer so that he can then pass it out to the office? A. It did at that time, yes.

30

Q. It did while Moffitt was operating? A. Yes.

Q. So far as concerns the system in the office regarding receipts of moneys, there were a number of different receipt books kept, weren't there? A. Yes.

Q. According to the number of girls or clerks who were receiving money? A. We had a counter receipt book for over the counter money. We had a mail receipt book
40 for money coming in by mail. Then I think that was all. We had dealers' receipt books, where dealers took money for us and sent that into the office with the remittance sheet.

Q. You also had, did you not, another receipt book, or other receipt books in which receipts were issued by, for example, Moffitt on occasions? A. We had a spare

receipt book in case someone came in after the office had closed and the girls had gone. A sort of emergency receipt book which whoever happened to be on the premises would use.

Q. That is for people coming in before 9 a.m. or after 5 p.m.? A. Yes. I may write one out myself.

Q. And Moffitt did write quite a large number of receipts
10 out of this out-of-hours receipt book, did he not? A. I do not know.

Q. It was within your knowledge, was it not, that Moffitt did on quite a number of occasions receive money on behalf of the company either before 9 a.m. or after 5 p.m.?
A. No, I do not know that.

Q. Would you say it never happened? A. It could have happened. I do not know of it happening, as you are
20 suggesting, as an ordinary thing or as routine.

Q. Not as an ordinary thing but it did from time to time happen, didn't it, that he received money before 9 or after 5? A. Well, any member of the staff may have done that from time to time.

Q. And when that was done the receipt would be written out, if it were Moffitt, by Moffitt himself and given to the buyer? A. Yes, but those would be extreme cases
30 They should have gone through the ordinary routine.

Q. They should have gone through the ordinary routine by paying between 9 and 5? A. That is right.

Q. But there was some demand when Moffitt was there for payments to be made out of hours? A. Yes.

Q. And this system was devised to meet that demand from customers? A. Yes. It was very rare. It
40 would not happen frequently.

Q. So far as the banking procedure, is it correct - and you correct me if I go wrong in this - that one of the cashiers would normally write the particulars of the cheques to be deposited in the bank deposit book with money orders and postal notes, running off the total on an adding machine? A. Yes, that is right.

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Leslie
Tyack

Further
Cross-
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(Continued)

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Leslie
Tyack

Further
Cross-
Examination
(Continued)

Q. And those cheques, together with the cash for the day's takings, would then be physically handed to the person who was going to do the banking at the bank that day? A. The correct procedure -

Q. I do not want the correct procedure. I want the practice? A. The practice was that the cashiers would make up the banking and then -

10 Q. When you say "make up the banking"? A. That would be to make up everything, to do everything.

Q. Do everything? A. They would write all the cheques into the deposit book, they would also write in the money orders and the other items that had to go in. They would show the cash on the deposit slip and have it completed. That was the cashier's job.

Q. Let me read this to you and see if you agree with it :
20 the procedure involved one of the cashiers writing on the bank deposit book details of all cheques from the money orders and postal notes received? A. Yes.

Q. Those were then added on an adding machine? A. Yes.

Q. The cheques together with the total of the cash takings were then handed to the person actually doing the banking, who counted the money, completed the deposit slip, checked the total of the deposit receipt against the adding machine total of the receipts, comprised in the banking? Is
30 that an accurate description of the banking procedure as it was followed during this period 1954 to 1960? A. Yes. The person who made the banking was supposed to check to see that the cashiers had given him the right sum of money for banking.

Q. But the important thing that I suggest to you in that was, or one ingredient in the proceeding was that the cheques together with the total of the cash takings were
40 handed to the person actually doing the banking, who counted the money, completed the deposit receipt and checked the total of the deposit receipt against the adding machine total. Is that a correct description of what happened? A. Yes. The cashier and the person banking should be satisfied that the figure was correct between them.

Q. So on the occasions when Moffitt did the banking he actually counted the money? It was his duty to count the money when he was doing the banking? A. As a check on the cashier, yes.

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Leslie
Tyack

Q. It was his duty to complete the deposit receipt? A. The cashier should have done that.

Further
Cross-
Examination
(Continued)

Q. But I am asking you to assume it is Moffitt who is doing the banking? A. The cashier should have completed the deposit slip. She should have made the banking complete.

Q. First of all, is that your signature on the foot of that page (showing document)? A. Yes.

Q. Would you just direct your attention to the middle of that page. Just glance at the paragraph in the middle of that page? A. "Normally all moneys" -

20

Q. Just a minute. A. That sums it up.

Q. Let me put it to you again, is it not correct that on the occasions when Moffitt was doing the banking the cheques, together with the total of the cash taking, would be handed to Moffitt, Moffitt would then count the money, it was then his duty to complete the deposit receipt and check the total of the deposit receipt against the adding machine total? A. Yes, and to put into the deposit slip the make-up of the various currencies and cheques that he was given as with -

30

Q. That was his duty when he did the banking? A. That was nobody's duty.

Q. But that was Moffitt's duty when he did the banking? A. Yes.

MR. STREET: Q. In addition to making deposits to the company account, Moffitt also cashed cheques, did he not, on occasions at the bank for wages, petty cash and so on? A. Yes, he cashed the wages cheque on occasions.

40

Q. Whoever was doing the banking on any particular day would cash any cheque which was required by the company for its cash resources, wouldn't he? A. Yes.

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Evidence
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Leslie
Tyack

Further
Cross-
Examination
(Continued)

Q. Now Mr. Tyack, this company, Universal Guarantee, had banked with the National Bank, Wentworth Avenue branch, since sometime in the late 40's? A. It was banking there when I went to it in 1954.

Q. As you understood it, in 1954 it was a well established account with the National Bank, Wentworth Avenue branch, is that correct? A. Yes.

10 Q. And Universal Guarantee is a company of high commercial repute? A. It is allied to a big limited company, yes.

HIS HONOUR: There are companies that conform to your description that are not of high repute. I think it would be better in your own interests if you answered the question.

WITNESS: I am sorry, I misunderstood.

20

MR. STREET: Q. The mere fact that it is allied to a big company does not mean you have a good reputation of itself? A. I am sorry, I thought it did. I am sorry.

Q. Universal Guarantee was a subsidiary of Electronic Industries? A. That is correct.

Q. The Electronic Industries Company is a company of undoubted financial integrity, is it not? A. I believe so.

30

Q. And Universal Guarantee likewise is a company of undoubted financial integrity? A. I think so.

Q. And of high repute in the business and commercial community? A. I think it is.

Q. Both the parent company and the Universal Guarantee Company - right? A. I think so.

40 Q. There were, were there not, whilst you were manager, movements of some quite large funds between Universal Guarantee and its parent in Melbourne? A. Yes, very large sums.

Q. And you had never had any trouble at all with the National Bank in relation to them creating difficulties with the banking procedures you wanted adopted? A. I got

on very well with the banking officers, very well with them.

Q. So far as you could see was your account regarded as a valued account at that branch? A. Yes, and I understood they were giving us very good service.

Q. To your knowledge did you know of any other customers of equal size to Universal Guarantee at the Wentworth Avenue branch of the National Bank? A. Other companies
10 of Electronic Industries banked there with big accounts, probably not as big as Universal. But I would not know of outside customers.

Q. When did you leave Universal yourself? A. At the end of March 1963.

Q. At the end of March 1963? A. That is right, 15 months ago.

20 HIS HONOUR: Q. Mr. Tyack, were any special instructions given to the company's auditors in regard to checking deposits of cash and cheques and the carrying out of the banking operations associated with the company's business? A. Your Honour, the auditors were appointed from Melbourne, primarily as a check on the manager, I would think.

Q. But do you know - - A. I do not know what instructions the directors gave the auditors, but I gave them full
30 support for anything they wanted done. I do not know what instructions were given them.

Q. The fact is that the auditors did not apparently, so far as could be seen, conduct any check or examination of the first entry records or the bank deposit records with the cash book? A. I have seen them in the cash box.

Q. No, the cash book I said? A. They worked on the cash book and they reconciled the cash book.

40 Q. But did they make any check from the cash book to the bank deposit slips? A. I would not know. They did go into the cash box and work there, but I am sorry I could not tell you what they did.

(Witness retired)

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Leslie
Tyack

Further
Cross-
Examination
(Continued)

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No. 3(4)

Alexander
Sorbie

Examination

ALEXANDER SORBIE
Sworn, examined as under :

MR. NEWTON: Q. What is your full name? A. Alexander Sorbie.

Q. You reside at 54 Iberia Street, Padstow? A. Yes.

Q. You are at present employed by Australian Guarantee 10 Corporation? A. Correct.

Q. I think you were associated with Radio Corporation away back in 1947 and you left then. You qualified as an accountant at approximately what time? A. About 1949. It was about 1948 or 1949 I was with Radio Corporation.

Q. You are a chartered accountant now? A. That is correct.

20

Q. From 1950 you were on the staff of Alex R. Colvin & Co., chartered accountants? A. It was approximately that date.

Q. They were the auditors of Universal Guarantee? A. Correct.

Q. From then until about 1955 when you joined the staff of Universal Guarantee did you carry out certain duties in relation to auditing the books of Universal Guarantee? A. 30 That is correct. I did leave Colvin for a few months with another firm, and then went back in about 1950 or 1951.

Q. Just to complete the history, you were the accountant at Universal Guarantee from when? Can you fix the exact time? It is March? A. From about February 1955 to the beginning of May 1960. February or March.

Q. First of all, I want to deal with the period when you were going there on behalf of Alex R. Colvin & Co. Did 40 you have certain instructions as to what you had to do, what checks you had to carry out? A. My recollection is that there was an audit programme book.

Q. An audit programme book which had been laid down by Mr. Colvin apparently, had it? A. Yes.

Q. Did you follow that programme? A. Yes, with one or

two of my own. That was the least you would do.

Q. Do you remember in detail exactly what you did whilst you were carrying out the duties of auditor? A. Not in detail. That would be 10 years ago now. It takes a bit of recollecting.

Q. Were there a number of internal checks? A. There were a number of checks that were made by following
10 through the programme.

Q. From your experience as a chartered accountant whilst you were doing that auditing work did you see any reason to make any changes in the system that was in operation then? A. No.

Q. Then you became accountant and you carried out the duties of the Accountant during that period that you have already described, and you were thoroughly familiar with
20 the internal workings of the company during that period?
A. That is correct.

Q. And during that period did you see any reason to make any major changes in the system employed by the company? A. No. One or two changes were slightly made during that time which I cannot recollect now, but there were no major changes.

Q. By and large in your view it was satisfactory? A.
30 Correct.

Q. While you were there what was the position regarding banking? There were cashiers, we understand, who received the money? A. Yes.

Q. Did they work from a cash desk or a cage? A. They worked from a cash cage.

Q. A cash cage, did they? A. Or office.
40

Q. And they wrote out receipts for all the money they received? A. Through the mail and over the counter.

Q. A lot of money came in through the mail, did it?
A. Not cash. Money orders and cheques.

Q. What happened to that when it was prepared for banking?

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Alexander
Sorbie

Examination
(Continued)

Plaintiff's
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No. 3(4)

Alexander
Sorbie

Examination
(Continued)

A. The cashier would balance her records daily, her receipts daily, and balance the cash to agree with that sum, taking into consideration what change she had, and then after that the cheques were given to one of the cashiers to write up the deposit book. The junior cashier wrote up the deposit.

Q. Was the banking closed at some particular time each day? A. Invariably yes, in the afternoon. I just can't
10 recollect the time.

Q. Did anything determine when? A. After completion of entering their morning mail, I think.

Q. That was the determining factor? A. Yes. Once they finished writing them up.

Q. Once the receipts had been made out? A. And it could be the cash the previous day over the counter. I
20 just can't remember.

Q. What happened after the junior cashier made some entries in the deposit book? A. She entered up the deposit book and it was handed to the person whoever took the money.

HIS HONOUR: Q. She entered up the deposit book? A. She entered up the deposit book, yes, and then handed it over to the person taking it to the bank.
30

MR. NEWTON: Q. She would hand over the deposit slip and a bundle of cheques, I suppose? A. And the cash.

Q. And cash? A. That is correct.

Q. Would she get any acknowledgement? A. No. The person taking it would normally count the cash and say "That is it" and take it away.

40 Q. Count it in her presence? A. Could. I would not say that would be at all times. She would probably rely on the chap or whoever it was doing it, and he would probably count it in his office.

Q. Was the banking left to one individual during your period? A. Invariably it was left to the one individual. There were others doing it especially when we went to

Palmer Street, but we had problems of taking the money to the bank in those days and there were only two with cars, a chap called Siddery who was not too happy about using his car ---

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Alexander
Sorbie

Examination
(Continued)

Q. You need not go into the details of it. One person who had a car used to do it? A. That is correct.

Q. And Moffitt had a car? A. Moffitt had a car.

10

Q. During the time that you were auditor can you say one way or the other whether you, from time to time inspected the duplicate deposit slips? A. I really can't recollect that. That would be in the audit department.

Q. After you were the accountant there did you have occasion did you have occasion to look at the duplicate deposit slips? A. Yes, I would look at them but not daily. If the bank rang up and said there was an odd error we would
20 go direct to the book and then ask the cashier, but that would only be a small or minor item.

Q. Now I want to ask you about two matters in particular. I first of all show you a cheque in exhibit B101. Are you familiar with the form of cheque? A. That is correct.

Q. That is the printed company form? A. Correct.

30 Q. Were they in large books of cheques or loose, or how?
A. They were in books. I feel they were in books.

Q. You are not too sure? A. No I am trying to think back.

HIS HONOUR: I will assume they were not loose. The banks always insist on them being bound, Mr. Newton.

MR. NEWTON: Q. Do you see the number of that
40 cheque and the significance of that cheque I want you to look at is the number 20749? A. Yes.

Q. I show you the documents in exhibit B102 and I show you a bank authority? A. Yes.

Q. Do you recognise that as a cheque authority? A. Yes.

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Alexander
Sorbie

Examination
(Continued)

Q. Are those your initials on it? A. That is right.

HIS HONOUR: This must be your copy of B102, not the exhibit.

MR. NEWTON: It is part of the exhibit.

HIS HONOUR: It was joined in this case, was it?

10 MR. NEWTON: Yes.

Q. That is your initial? A. Yes.

Q. Looking at that can you say whether a cheque was drawn in favour of a particular payee? A. A cheque was drawn for N. Byatt for £450 at that time.

Q. That is on 22nd June, 1956? A. Yes.

20 Q. And can you tell us the number of the cheque? A. 20811.

Q. Having regard to the cheque you looked at in exhibit B101, and comparing the sequence of numbers, are you able to say whether or not it would have been in the same form? A. It is in the same form as that 20749.

MR. STREET: There is no dispute about this if you want to lead on them. Your Honour, if my friend likes to formulate this in a statement I will agree. We have already agreed,
30 I think, that all of the cheques were in this particular form whether they are here or not, and I am prepared to agree that a similar cheque was drawn.

MR. NEWTON: A similar cheque was drawn for that amount. Well, there is no need to put that now.

HIS HONOUR: It has been noted, Mr. Newton.

CROSS-EXAMINATION

Cross-
Examination 40

MR. STREET: Q. Mr. Sorbie, you have given some evidence to Mr. Newton about this procedure in the completing of the deposit slips? A. Yes.

Q. The bank procedures? A. Yes.

Q. Would you just take this document from me and I would

like you to read the page that you have opened? A. Yes.

Q. Now, I want to ask you this: I want to direct your attention to the procedure adopted when this company was going to do the banking for the ordinary day's bankings. I want to ask you is it a correct summary to say that the procedure is that one of the cashiers writes out the deposit book? A. That is correct.

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Alexander
Sorbie

Cross-
Examination
(Continued)

10 Q. By filling in the particulars of the cheques on it?
A. That is correct.

Q. And the money orders and postal notes? A. True.

Q. And then the total of the cheques and so on were added on the adding machine? A. Well, they would be, yes.

Q. And that then the cheques together with the total of the
20 cash takings were handed to the person who was actually doing the banking, who was actually going to go to the bank?
A. But the details would be completed on the actual deposit before it would go.

Q. That is what I want to direct your attention to. Is it correct to say that the cheques together with the cash takings are handed to the person who is actually doing the banking who counts the money and then he completes the deposit receipt. Or would you like to look at some of the
30 documents before answering that? A. Yes. I am trying to recollect.

Q. Moffitt himself was the officer of the company who normally did the banking of the deposits, was he not?
A. Correct.

Q. Almost invariably? A. Yes.

Q. It would be very rare for anybody else to go up and
40 make the deposit? A. There was a short period, as I mentioned before, where somebody else did it, this Siddery chap.

Q. It was part of Moffitt's job to go up to the bank and make the deposit? A. Yes.

Q. And on occasions when he went up to the bank to make

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Alexander
Sorbie

Cross-
Examination
(Continued)

the deposit at some times he would fill in himself all the details of the deposit slips, that is the cheques as well as the tops, and let me show you as examples, exhibits B114 and B124. Those two you have there, B114 and B124, were filled in in their entirety by Moffitt, were they not?
A. It appears so. It looks like Moffitt's writing, yes, except that on one of them Moffitt has even completed some of the other information on it.

10 Q. I am not worried about that? A. It does appear.

Q. I am asking what was the procedure about making bank deposits? A. I tried to recollect back.

Q. I am going to show you some documents which may help you to be more explicit as to what the procedure was. I will show you the files which lie between the two you have just looked at. I am showing you exhibits B113 to B123. B113 there - to use a shorthand terminology we will talk
20 about the body of the deposit slip as being the top part of it with the cash columns at the right - o.k.? A. Yes.

Q. Moffitt has filled in and signed the body of that one, hasn't he? A. That is correct.

Q. That was 113? You have seen 114. B115 - Moffitt has filled in and signed the body of the deposit slip?
A. Yes.

30 Q. B116 - Moffitt has filled in and signed the body of the deposit slip? A. Yes.

Q. B117 - Moffitt has filled in and signed the body of the deposit slip? A. Yes.

Q. B118 - Moffitt has filled in and signed the body of the deposit slip? A. Yes.

Q. And I think I need not trouble you to go on? A. Yes,
40 it seems as though I might have erred.

Q. Casting your mind back will you agree now that the practice was for Moffitt when he did the banking to fill in and sign what I have described the body of the deposit slip? A. It appears that way.

Q. Your position with this company from February 1955

until early 1960 was that of Accountant? A. That is correct.

Q. As such I think you did yourself sign as one of the two drawers quite a lot of applications for hire purchase finance that have come through Moffitt? I am sorry, I mean cheques? A. Yes. There were only three signatories.

Q. In Sydney there were only three? A. That is correct.
10 There were others in Melbourne. There was Mr. Tyack, myself and Mr. Moffitt, but Mr. Moffitt was really only a signatory when either Mr. Tyack or myself was not there.

Q. But it is within your knowledge that he did sign quite a number of cheques? A. I agree.

Q. During the time you were there as Accountant, Moffitt had authority, did not he, to endorse cheques for credit to the company's account? A. That is correct.
20

Q. So of the Sydney staff there was Mr. Tyack, yourself and Moffitt, and any two of those three could draw a cheque, right? A. Right.

Q. Any one could endorse a cheque for deposit to the company's account? A. Correct.

Q. You told Mr. Newton about the occasions when you looked at the duplicate bank deposit books and the occasions
30 that I understand you to say you looked at them were if the bank rang up a day after or shortly after a deposit to make some amendment in the deposit? A. That is right, if it was a pound or 2/- or some slight adjustment.

Q. Some mathematical error in addition or perhaps the exchange or something of that sort? A. Correct.

Q. Those were the occasions and only the occasions that you recollect looking at the deposit books? A. It was in
40 the box at all times and I am trying to cast my mind back.

Q. And when the bank rang up with one of those enquiries you would get the duplicate deposit book, would you? A. Yes, and I would follow it right through.

Q. You would follow it right through. By that you mean you would amend that figure on the duplicate deposit book?

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Evidence
No. 3(4)

Alexander
Sorbie

Cross-
Examination
(Continued)

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Evidence
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Alexander
Sorbie

Cross-
Examination
(Continued)

A. No, I do not think I touched the deposit book at all. I just asked the girls, my assistant accountant, to make the necessary alteration and at times we got a letter confirming it.

Q. When you said you would follow it right through what you mean is the particular item which was wrong - you would see that that was adjusted on the appropriate ledger sheet or whatever other category there was within the
10 company? A. That is right.

Q. Of that particular item - right? A. Correct.

Q. Were you a chartered accountant during this period 1955 to 1960? A. Yes.

Q. Were you qualified? A. Yes.

Q. You told Mr. Newton that you saw no reason while you
20 were there to make any major changes in the system in operation? A. Correct.

Q. Now, Mr. Sorbie, did this office have any system of internal control at all during the period you were the accountant from February 1955 to May 1960? A. I considered the way we were handling it - Granted there were few staff or less staff than what we thought for that operation, but I thought there was sufficient internal checking.

30 Q. But there was no separation at all, was there, between the people handling the cash and the people balancing the ledgers? A. There was only one - that was Mr. Moffitt. Everyone else handling the cash were never near the balancing ledgers.

Q. But Moffitt whose job was that of Acceptance manager in the ordinary course of his duties both handled the cash when it was going to the bank, right? A. Yes.

40 Q. And assisted when the ledgers were being balanced? A. Correct.

Q. And that of course was a fundamental weakness in your system of internal control? A. I appreciate that, but Mr. Moffitt invariably at the month's end had time to assist and with machine book-keeping we all know it is all hands to the wheel to balance, so that each

collecting department can take their necessary action. So that was the reason. Mr. Moffitt had been there so many years and had assisted at all times to my knowledge in the department.

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Alexander
Sorbie

Cross-
Examination
(Continued)

Q. His participation both in handling the cash and in balancing the ledgers was an obvious weakness in the ordinary control, was it not? A. I agree with you, but he would not have been doing the banking as I explained before, but
10 he had the car.

Q. Whatever may be the reason for convenience, it did involve an obvious deficiency in the internal control?

A. I agree with you.

Q. And it was not a reasonably effective internal control for an office of that size with that volume of business, was it? A. Not really.

20

RE-EXAMINATION :

Re-
examination

MR. NEWTON: Q. I just want to get this clear, Mr. Sorbie. My learned friend showed you a number of deposit slips and you agreed with him that in those Moffitt had filled in what he described as the body of the deposit slip. I will show them to you again if necessary, but do you recollect that most of the particulars of the cheques were filled in by other people? A. They were at all times and even though I have seen those I still feel that the girl entered
30 the top portion. I am trying to recollect back some years, but the girls entered ---

HIS HONOUR: Q. I thought you said when you were asked about it earlier that apparently you had been in error in saying that in the first instance? A. From seeing this.

Q. And from seeing the statement presented to you. It does not matter much, but it is a matter of what you intend to convey? A. I agree that the girls entered the
40 cheques.

HIS HONOUR: Entered the particulars. From what I have seen it is perfectly obvious that other clerks entered the particulars of the cheques and money orders as a general rule, but Moffitt did it on odd occasions. However, it does look from what I have seen of the deposit slips that on many Moffitt did in his writing, fill

Plaintiff's
Evidence
No. 3(4)

Alexander
Sorbie

Re-
examination
(Continued)

in the summary portion at the top.

MR. NEWTON: I do not think there is any dispute about that, Your Honour. I think it varied over the years. I think in many cases he did and in many cases he did not.

(Witness retired)

Plaintiff's
Evidence
No. 3(5)

Keith
Eugene
Carrick

Examination

10

KEITH EUGENE CARRICK
Sworn, Examined, Deposed

MR. NEWTON: Q. Your name is Keith Eugene Carrick and you reside at 261 Lyons Road, Five Dock? A. Yes.

Q. You are the Accountant at the Sydney branch of Universal Guarantee Pty. Limited? A. That is correct.

Q. And you have held that position since 2nd May, 1960?
A. That is correct.

20

Q. First of all, when you went there and up to the time when Moffitt's fraud was detected, I suppose you as accountant examined the system that was in use by the company? A. Yes, it was necessary for me to do that to master the job of being the accountant.

Q. From your experience -

MR. STREET: Q. Perhaps my friend ought not to lead on
30 this, Your Honour.

MR. NEWTON: Q. Did you form any opinion about the system that was in operation at that time? A. In the main it seemed to me to be quite adequate, quite a good system.

Q. Did you in fact make any fundamental changes to it before Moffitt's fraud was discovered? A. No fundamental changes at all.

40

Q. We have been told that Moffitt went on leave on 4th November and the ledgers were balanced at the end of October? A. That is correct.

Q. At the end of October the ledgers balanced with the private ledger? A. That is right.

Q. And Moffitt resigned, left the company before the end of November is that right? A. No. Mr. Moffitt left the company on 30th November.

Plaintiff's
Evidence
No. 3(5)

Keith
Eugene
Carrick

Examination
(Continued)

Q. He had been on leave though, had he not? A. That is right.

Q. From early in November? A. That is correct.

10 Q. Were the ledgers balanced? A. Yes.

Q. You supervised this balancing? A. I supervised it, yes.

Q. Were the ledgers balanced at the end of November?
A. At the end of October prior to his going on leave.

Q. And they did balance then? A. They did balance then.

20

Q. Were they balanced at the end of November? A. They did not balance at the end of November.

HIS HONOUR: Q. An attempt was made to balance them?
A. An attempt was made to balance them, Your Honour.

MR. NEWTON: Q. And you found a deficiency of what?
(objected to).

30 Q. The total deficiency at the end of November was £134,592/4/3d.? A. That is correct.

Q. Then you went back and you balanced them at the end of October again, did you not? A. We re-listed or re-audited at the end of October.

Q. What did you find then? A. We found the same deficiencies existed at the end of October as we had since discovered at the end of November.

40

Q. Then you went back and re-listed your ledgers for 30th June, 1960, did you not? A. That is correct.

Q. And you were able to find a deficiency at that period when the ledgers were properly adjusted? A. That is correct.

Plaintiff's
Evidence
No. 3(5)

Keith
Eugene
Carrick

Examination
(Continued)

Q. And the deficiency then was £117,999/3/5d.? A. That is correct.

Q. From the records of the company, and I do not want to go into the details of it, but from the company's experience there is an interest content in those amounts, is there not? A. That is correct.

HIS HONOUR: In which amounts is there an interest content?
10

MR. NEWTON: In the £134,000.

HIS HONOUR: If that money was embezzled I would not have thought there was any interest content. What you mean was if there had been genuine transactions there would be an interest content?

MR. NEWTON: Yes.

20

HIS HONOUR: Perhaps you would re-frame your question, Mr. Newton; if they were genuine transactions there would be an interest content.

MR. NEWTON: Q. This £134,000 that was deficient at the end of November represented false debits that had been made to ledger accounts? A. That is correct.

HIS HONOUR: Is that right? Total false debits, not
30 also the omission of credits? I do not know what he did, you see.

WITNESS: It was made up of false debits, false contracts, and also monies he had appropriated for pay-outs on existing accounts that were in the ledger which were quite genuine accounts.

HIS HONOUR: Q. What did he do when he took the so-called pay-out monies? Did he make a false entry to
40 record that that money had been paid? A. He removed the card from the ledger.

Q. So the whole of the deficiencies were not due to false entries? It was the concealing of genuine entries or balances in that regard? A. They were only a very small part as far as we were able to tell.

MR. NEWTON: Q. The total amounts that you were able to trace, the pay-out cheques, represented can you give us some idea?

Plaintiff's
Evidence
No. 3(5)

Keith
Eugene
Carrick

Examination
(Continued)

MR. STREET: My friend has led evidence of the general figure and put it to the witness and I quite accept that this is the result of what the witness did at the time, but now there is to be some matter of deduction that the witness has done in trying to dissect it.

10

HIS HONOUR: You would have to go into it a little more thoroughly and explain the basis for what is being said and what was done, Mr. Newton. Mr. Carrick cannot come along and in effect merely give some estimate of what he thinks it would have been. If in fact he did certain investigations and located precisely what proportion of those two deficiencies was represented by pay-out cheques and what proportion was represented by false contracts, that of course is a different story; but you are asking at the moment only to give some approximation, and I do not know on what basis.

20

MR. NEWTON: Q. Mr. Brock carried out an investigation with your assistance, I think? A. That is right.

Q. And discovered a good deal about the methods that Moffitt had used, is that right? A. Yes.

Q. You know that we are concerned with 165 transactions in this case? A. That is right.

30

Q. And were there certain other specific pay-out transactions that were discovered? A. To my recollection there were some others, but I don't remember the actual number of them or the amount concerned.

Q. Insofar as debits are placed on ledger cards, and this does not apply necessarily to fictitious transactions but all transactions, are you able to tell us whether the interest charges bear a certain relationship to the total debit in respect of each transaction? A. We know what the figure is on each transaction depending on the length of the contract, but for calculation purposes we dealt with it in total.

40

Q. You used a certain percentage over all transactions? A. That is correct.

Plaintiff's
Evidence
No. 3(5)

Keith
Eugene
Carrick

Examination
(Continued)

Q. And what is that percentage?

MR. STREET: I object to that. Perhaps I can indicate that the basis of my real objection to this is the end from which my friend is starting. His claim for damages ought to start from the cheques, and he has proved a number of transactions and he ought, so to speak, add to that; but he is going to the ultimate loss and seeking to knock some matters of it, and unless he can do it with
10 precision I would not accept the basis.

HIS HONOUR: I am in substantial agreement with that, Mr. Street, offhand anyway. Subject to what Mr. Newton says I do not know how far he is going to get. I will note the objection and allow the evidence.

MR. NEWTON: I only want the figure for the purpose of founding an argument.

20 Q. What is that percentage? A. That varies from time to time, but as at 30th November 1960 17.5 percent.

Q. When you say it varies from time to time? A. Depending on the length of the contract.

Q. And whether it has been a good year?

HIS HONOUR: I am not quite with you on this, Mr. Newton. I do not see what the proportion of genuine
30 transactions which represent interest have anything to do with this if Moffitt stole £100,000.

MR. NEWTON: That is a calculation that includes interest that would be charged to those ledger accounts that was never payable because it was a fictitious transaction.

HIS HONOUR: What Moffitt got was the total, was it not?

MR. NEWTON: £134,000? No, it would be less than
40 that. It would be approximately $17\frac{1}{2}$ percent less.

HIS HONOUR: I do not understand that. I thought the deficiency was ascertained with certainty.

MR. NEWTON: It is ascertained with certainty in that that is the ledger deficiency, but included in that is the interest that has been added to the ledger cards.

HIS HONOUR : Frankly, I do not understand how that could possibly happen.

Plaintiff's
Evidence
No. 3(5)

Keith
Eugene
Carrick

Examination
(Continued)

MR. NEWTON : Q. You have heard what His Honour said. Can you explain that? A. I think I can, Your Honour. Fictitious contracts were written; there was a cash price, a deposit charge, and an amount of terms charges. That contract was put right through our system and included in that contract, the total debit to the hirer's account, was
10 a certain amount for interest on a fictitious contract.

HIS HONOUR : Q. So when you say the deficiency was so much, what you mean is that that is not the ascertained deficiency as a result of Moffitt's depredations at all"
A. No.

Q. It is merely the sum by which one side of the ledger is different to the other? A. That is correct.

20 MR. STREET : It has an interest content in the control account in the private ledger.

MR. NEWTON : Q. You have taken out, I think, and had roneoed the figures of the various ledgers at both the 30th June and 30th November? A. Yes, that is correct.

Q. I think at the present time there are something like 27 sections to the debtors ledger? A. At that time?

30 Q. At that time? A. Yes.

Q. Have you also made a calculation taking each of the cheques from 1 to 165 and calculated from the date of presentation to the bank or the date of the debiting by the bank to the company's account the interest on that amount at the rate of interest charged by the bank from time to time? A. Yes, I have.

Q. Is that the rate of interest charged by the bank to
40 the company? A. Those are the rates applicable to our company.

Q. Applicable to your company? A. That is right.

Q. Is this a photostat of your calculations? A. Yes. I have the original. Would you like that, Mr. Newton?
(produced)

Plaintiff's
Evidence
No. 3(5)

Keith
Eugene
Carrick

Examination
(Continued)

MR. NEWTON: I tender the original, Your Honour.

MR. STREET: I do not object to this as a mathematical computation.

(Interest calculations marked exhibit D).

MR. NEWTON: Q. You have calculated the interest right up to the issue of the writ, have you? A. That is correct.

10

Q. You have calculated the interest charged on all the cheques from the date that they were debited at the various rates of interest and that comes to £17,910, is that right? A. £17,992/16/1d.

Q. You have calculated the interest charged from 16th September 1957 on the then outstanding total in respect of the first 65 cheques. What did that amount to? A. The first 65 cheques - I can hardly read this here.

20

HIS HONOUR: What is the question you are asking?

MR. NEWTON: Q. On the first 65 cheques, I think to the 16th September, 1957, is that one of the calculations you made? A. I think it is £7,660/11/11d, but it has not photographed very well here.

Q. Which column is that? A. On the extreme right hand column on the bottom of the second page.

30

Q. £7,660/11/11d.? A. That is correct.

HIS HONOUR: Q. Is that right, that £7,660 is the total interest? The first 65 cheques occupy the first two pages. If you look at the bottom of the second page, that takes you as far as cheque no. 65? A. That is correct.

Q. Is the £7,660 the total interest in respect of the first 65 cheques for all these various periods commencing with the date of presentation and ending on 16th September, 1963? A. That is correct.

40

MR. NEWTON: I beg your pardon, I misread my proof. What was the next calculation?

HIS HONOUR: I do not think there was a net calculation, Mr. Newton.

MR.NEWTON: He made the same calculations in respect of each cheque and totalled them up at the end.

Plaintiff's
Evidence
No. 3(5)

HIS HONOUR: Q. I gather, Mr.Carrick, in respect of each cheque you have taken the period commencing with the date of presentation and ending with the 16th September 1963 and computed the interest at very various rates?

Keith
Eugene
Carrick

A. That is right.

Examination
(Continued)

Q. And the last column headed Total Interest does in fact show the total interest on each cheque? A. That is right.

MR.NEWTON: I do not suppose we will carry it beyond 16th September 1963.

CROSS-EXAMINATION :

Cross-
Examination

MR.STREET: Q. I suppose you would agree with me that during some part of the period from September 1957 onwards this company account with the bank was in credit? A. I was not with the company then, Mr.Street.

Q. Well, for the purpose of working any of these interest calculations and looking to the rate being charged by the bank to the company, have you not ascertained what period it was that the account was in credit? A. No. I obtained these rates from our head office in Melbourne - these appropriate rates as on the schedule I have in front of me.

HIS HONOUR: Q. What Mr.Street means is this : Your computations do not show really the interest that you claim the company has lost. It would have lost that much only if the account had been continuously over-drawn? A. That is correct.

Q. This is a computation which shows either what the company has lost or what it would have earned if it had invested its spare funds at bank rates? A. Yes.

MR.STREET: Q. And this would show what it had lost in interest if the account was continuously over-drawn by an amount of at least the total of the cheques up to each date? A. That is correct.

Q. So unless you get the account in credit for some

Plaintiff's
Evidence
No. 3(5)

Keith
Eugene
Carrick

Cross-
Examination
(Continued)

period we cannot use these computations as showing the interest the bank has in fact charged the company on the cheques? A. That would be a reasonable assumption.

Q. Mr. Newton asked you at the commencement of your evidence what your opinion was of the internal system in the office? A. Yes.

Q. And you said that in the main the system seemed to
10 you to be quite a good system? A. I said it seemed to be quite adequate.

Q. Are you familiar with Pitman's Book on the Principles and Practice of Audit, the Australian and New Zealand Edition? A. Yes.

Q. So that at the relevant period I want to read you something from the 1948 edition of that book to see whether you agree with it and it is dealing with the topic of Internal
20 Check in relation to cash receipts. Perhaps you might like to run your eye down the part headed Cash Receipts on p.341, and I am going to put to you the bit marked with pencil in the column? A. Yes.

Q. Do you agree with the proposition that the cashier should make up the necessary entries in the pay-in book and the deposit slip for the banking of the money which should again be checked by another person; the money should then be deposited with the bank by some-
30 one other than the cashier. Would you agree with that? A. In general principle, yes, I would agree with that.

Q. The general principle of any internal control system? A. Yes.

Q. And I suppose you would agree that the point being made by that proposition is that there should be a separation between the person handling the cash rec-
40 eipts coming in and the person handling that cash over into the bank, doing the banking? A. Doing the actual banking?

Q. Yes. A. Yes.

Q. That it should not be the same person doing both things? A. That is right.

Q. So that a system under which the same person can both receive the cash and attend to the physical act of the banking is a system which is deficient in internal control?

A. Yes, that is right.

Q. Would you agree, Mr. Carrick, that within standards ordinarily observed in commercial undertakings such as Universal Guarantee from, we will say, 1950 onwards, what we might call modern days from 1950 onwards,

10 ordinary standards of commercial practice demand that there shall be some system of internal control in a business such as Universal Guarantee had during those years? A. I am not just quite sure what your question is.

Q. I put it clumsily. During the years from 1954 onwards Universal Guarantee had a staff, an office staff of 20 or more persons - 18 to 20 or more persons - I put it to you, right? A. As far as I am able to tell. I was

20 not there.

Q. Comprising - I will ask you to make these series of assumptions - about 18 persons to start with in 1954, growing to something over 30 persons? A. Yes.

Q. With the structure of the company in 1954 consisting of a manager, an accountant, an acceptance officer, a collection officer and then office staff of about 20 persons?

A. This is in 1954?

30

Q. Yes? A. I do not know.

Q. I am asking you to assume that? A. Yes.

Q. Then over the years it crept up to having the office staff and administration which it had when you joined the company in early 1960? A. That is correct.

40 Q. And I want you to assume that during that period from 1954 to 1960 the company carried on business of providing finance for hire purchase transactions, principally for companies associated with it through its parent, Electronic Industries? A. That is right.

Q. That is a business with which you are familiar, that sort of hire purchase business? A. That is right.

Plaintiff's
Evidence
No. 3(5)

Keith
Eugene
Carrick

Cross-
Examination
(Continued)

Plaintiff's
Evidence
No. 3(5)

Keith
Eugene
Carrick

Cross-
Examination
(Continued)

Q. With a turnover involving it in daily bankings of the order of £2,000 or thereabouts or perhaps more - right?

A. That would be right.

Q. In a business of that sort from 1954 through to 1960 the ordinary commercial practice demanded that there should be some system of internal control in force in that office - does it not? A. Yes, it does.

10 Q. And one of the first ingredients of an effective system of internal control such as ordinary standards in your view would require for a business of this sort I have just put to you - one of the essential ingredients is a complete separation between the people who handle the cash on the one hand and the people who balance the ledgers on the other hand? A. That would be right.

Q. That is, so to speak, the first precept of internal control, is it not? A. That would be right, yes.

20

Q. Once the separation of those two functions breaks down there is an obvious risk of defalcation within that office, is there not? A. I would not say an obvious risk.

Q. There then arises the very risk of defalcation to which the internal control system is intended to be directed?

A. It would be vulnerable, yes.

30 Q. And it is vulnerable, I put to you, by reason of the possibility of cash being removed and that removal concealed by interference with the balancing of the ledgers? That is the sort of risk which you have in mind in bringing into force internal control? A. That is the normal procedure.

40 Q. The risk that you are guarding against with an internal control is a risk that somebody may extract cash from the company's funds or, I suppose, cheques from the company's funds and conceal that extraction by interfering with the balancing of the ledgers? A. That would be so.

Q. That is the risk you are seeking to guard against? A. That is the risk, yes.

(Witness retired).

MR. NEWTON: My friend apparently suggests that the

account was in credit at various times

HIS HONOUR : You are prepared to agree to leave being reserved to Mr. Newton to tender evidence as to the state of the company's account from time to time in its relationship to the alleged defalcations?

Proceedings
before
His Honour
Mr. Justice
Manning
(Continued)
10th June,
1964.

MR. STREET : Yes, with computations, Your Honour. I anticipate I would not want to put him to truth of the
10 computations, although there may be something I want to ask the witness.

MR. NEWTON : I will have that attended to.

(Admission of facts dated 9th June 1964 tendered and marked Exhibit E).

(Further hearing adjourned until 10 a.m. Thursday 11th June, 1964).

20

FOURTH DAY : THURSDAY, 11th JUNE 1964.

MR. NEWTON : There was an outstanding matter - the question of Mr. Tyack's evidence in relation to a conversation.

LESLIE TYACK, (By Leave)
Recalled :

Plaintiff's
Evidence
No. 3(3)

Leslie
Tyack

Recalled,
Further
Examination

30 MR. NEWTON : Q. Mr. Tyack, I asked you yesterday, and there was some argument about it and I am going to put it to you again did you have a conversation with Mr. Moffatt the manager of the Wentworth Avenue Branch after the frauds had been discovered? A. Yes.

Q. Do not answer this for a moment. I want you to tell us to the best of your recollection what was said at that conversation. (Objected to)

40 HIS HONOUR : Mr. Newton has asked the witness, Mr. Tyack, to recount a conversation which he had with the manager of the branch of the defendant company bank with whom the plaintiff transacted this business, such conversation being one which took place after the misappropriations were discovered. It may well be on the authority of what was said in Fraser-Henlines Pty. Limited v. Cody, particularly what was said by Mr. Justice Williams at pp. 133 and 134, that the evidence

Plaintiff's
Evidence
No. 3(3)

Leslie
Tyack

Recalled,
Further
Examination
(Continued)

is not admissible, but until I know precisely what was said it is difficult for me to determine whether I should allow the evidence or reject it. Accordingly I propose to adopt the course of permitting the question to be answered, reserving the question of its relevance until later.

MR. NEWTON: Q. Would you now proceed and tell us when was it? Can you place the occasion? A. It was within a day or two, sir, of the defalcations being discovered. Immediately after Mr. Newton, of Remington & Co. and Mr. Brock and I had gone to the bank to interview Mr. Jack Moffatt. Within that same week.

HIS HONOUR: Q. Moffitt was dismissed on 30th November? A. That is right.

Q. How long after that? A. The defalcations were discovered on 6th December, and I called at the bank -

20 Q. This would be, then, about the 7th or the 8th; is that right? A. Yes.

MR. NEWTON: Q. This was at the bank, was it? A. Yes, at the bank.

Q. Was anybody else there? A. No.

Q. And what did he say and what did you say? A. I said to Mr. Moffatt "It amazes me that this endorsement was used. In all my years in the commercial world I have never heard of an endorsement 'endorsement guaranteed' signed by one signatory at the back of a cheque". I said, "I have never heard of such a thing. How could this arise?" and Mr. Moffatt said that that is the type of endorsement used for inter-bank transactions - "we use the endorsement within the bank" and I said "Well, how would Moffitt get hold of that endorsement? How would he know it?" Mr. Moffatt said "Oh, he could have found it out from one of the clerks."

40 Q. Is that all? A. That is briefly what we said about it.

Further
Cross-
Examination

CROSS-EXAMINATION

MR. STREET: Q. Mr. Tyack, this notation "endorsement guaranteed" had in fact, had it not, been used by your company in respect of legitimate, honest transactions

before 1954? A. Not to my knowledge.

Q. Are you in the position to deny that it had been used?
A. It had never been used -

HIS HONOUR: Listen to the question, Mr. Tyack, please.
Do not make a speech.

MR. STREET: Q. Do you know sufficient to enable you
10 to deny that this notation "endorsement guaranteed" had
been affixed legitimately and honestly to transactions of
ordinary cheques going through in ordinary transactions
through your company's account before 1954? A. Never
heard of it.

Q. Can you deny that happened? A. I could not deny
anything before 1954.

(Witness retired)

20

JOHN TRUMAN BROCK,
Sworn, examined, deposed :

TO MR. NEWTON: My name is John Truman Brock. I
live at 116 Warrigal Road, Burwood, Victoria.

Q. And you are a barrister and solicitor of the Supreme
Court of Victoria, practising as a solicitor? A. I am.

30 Q. And you are the senior solicitor acting for Electronic
Industries? A. I am.

Q. And, although you carry on private practice, most of
your work is involved in looking after the affairs of
Electronic Industries and their subsidiaries? A. That
is correct.

Q. In fact, I think you are an alternate director of
Electronic Industries Ltd. are you not? A. I am.

40

Q. And that is the holding company of that group of
companies? A. That is so.

Q. Universal Guarantee is an almost wholly-owned sub-
sidiary? A. That is correct.

Q. Do you know whether or not any debenture has been

Plaintiff's
Evidence
No. 3(3)

Leslie
Tyack

Recalled,
Further
Cross-
Examination
(Continued)

Plaintiff's
Evidence
No. 3(6)

John
Truman
Brock,

Examination

Plaintiff's
Evidence
No. 3(6)

John
Truman
Brock

Examination
(Continued)

accepted by Universal Guarantee in favour of the National Bank? A. I have seen the original of such a debenture.

MR. NEWTON: I formally call on my friend to produce it. I do not think he has got it.

MR. STREET: Q. We have not had notice, Your Honour. I do not produce it.

10 MR. NEWTON: Q. Have you got a copy of the debenture?
A. I have.

Q. Do you produce that? A. I do.

(Copy debenture tendered; objected to as irrelevant.)

HIS HONOUR: I will admit this document, again subject to relevance.

20 (Copy debenture admitted and marked Exhibit F.)

MR. NEWTON: Q. The company giving the debenture was Radio Finance Pty. Limited and that later changed its name to Universal Guarantee? A. That is correct. It is the same company.

Q. And that debenture, has it ever been discharged? A. No.

30 Q. And have you ever received any indication that the moneys secured by it have been called up by demand?
A. No, there has been no demand made to my knowledge.

Q. And none of the other eventualities referred to in Condition 3 have ever occurred? A. Might I refer to Condition 3 before I answer that question?

HIS HONOUR: Q. Is the mortgage still a continuing mortgage and still binding on the parties? A. Yes,
40 that is the position. It is still registered on the Register.

Q. And still current? A. It is still current. It has not been discharged.

Q. The plaintiff company, I gather, still continues to maintain an account of overdraft secured by this document?
A. That is right.

MR.NEWTON: Q. After this shortage of funds was discovered in Universal Guarantee, did you carry out extensive investigations into the frauds that had been committed? A. I did.

Plaintiff's
Evidence
No. 3(6)

John
Truman
Brock

Examination
(Continued)

Q. And I think you in fact prepared the prosecution brief for the Police, did you not? A. I did.

Q. I want to ask you about pay-out cheques. You carried
10 out an investigation as to the number of pay-out cheques
that had been misappropriated? A. I did.

Q. And first of all, in the last period from June, 1960,
to the end of the year how many did you discover?
(Objected to)

Q. And can you tell us what sum was involved, from your
researches, in fraudulent agreements that were prepared
by Moffitt?

20

MR.STREET: Can my friend specify the period?

MR.NEWTON: Q. First of all, let us take it right from
the beginning. A. May I refresh my memory from some
notes I have with me? (Permission granted)

HIS HONOUR: I will have it noted that, although I am
prepared to allow the question to be answered by Mr.Brock,
I will reserve to you, Mr.Street, if Mr.Newton is able
30 to maintain the somewhat unusual claim for damages he
makes, all rights you may have to adduce evidence or
recall Moffitt or take any other course you may see fit
to elucidate any other factors. At the moment I think
as a matter of commercial convenience Mr.Brock
should be allowed to give the evidence in this form
rather than go through the somewhat arduous task of
proving each individual transaction separately.

MR.STREET: What I understand Your Honour to have
40 in mind is that the matter should go forward with this
type of evidence, be argued, and then Your Honour
adjudicate on possible liability and if this type of evi-
dence is going to be relevant then entertain an applic-
ation by the defendant to re-open and probe the quantif-
ication of it.

HIS HONOUR: That does not sound unreasonable?

Plaintiff's
Evidence
No. 3(6)

John
Truman
Brock

Examination
(Continued)

MR. NEWTON: No, Your Honour. I will certainly make all documents available to my learned friend.

HIS HONOUR: What Mr. Street means is this. If you get Mr. Brock to tell us the result of his investigations, there must be, I would have thought myself - at least, may well be - other factors to be taken into account into which investigations might be made. What Mr. Street is suggesting is this: Let us go ahead, let Mr. Brock tell us what
10 he knows of the matter and what he found out in the course of his investigations and, if necessary, I can make a special order under s.6 of the Commercial Causes Act that this be treated as prima facie evidence of these matters. If in the end I hold you are entitled to succeed in this rather unusual way upon which you seek to prove damage, I would not make a finding in a specific amount but would reserve to Mr. Street the right to re-open the matter to re-investigate from the defendant's point of view the amount you assert is the loss. Would you assent to that?

20

MR. NEWTON: Yes.

HIS HONOUR: Do you remember the question you were asked?

WITNESS: Yes. The total amount which I was able to detect in cheques in this type of contract was £59,747. Those are the 165 cheques which are in evidence. From the point of view of the argument put by learned counsel
30 for the defendant, sir, the actual amount of cash, after disregarding some of those items which I did not regard as having a criminal standard of proof, and also disregarding the case where Moffitt had not taken the full amount of cash in one day, the actual figure of cash taken was £51,303.

MR. NEWTON: Q. I do not quite follow that, Mr. Brock.
A. If I might explain, sir, I discarded certain of the cheques which are in evidence here because on the
40 charge against Moffitt I needed a criminal standard of proof of forgery as distinct from pure negotiation of a cheque, so I discarded those. I also discarded any amount of money which was not taken on the day on which he presented the cheque.

HIS HONOUR: Q. In other words, if he drew a cheque for £200, paid back £20 by his own cheque, you treated

that as £180? A. Yes, I treated that as £180. And the total figure of that cash taken directly was £51,303. In addition to that I located 22 other files for a total figure of £8,600 in which, because of missing portions of the records of the company, it was not possible to identify the cheques. It made a total cash loss of just over £68,000 which we detected. I do believe there were more but I would only be estimating.

Plaintiff's
Evidence
No. 3(6)

John
Truman
Brock

Examination
(Continued)

10 MR. NEWTON: Q. Does that include the pay-out cheques?
A. No.

Q. Were you able to detect a number of pay-out cheques that had been misappropriated? A. I was, yes. I detected six of those cheques.

HIS HONOUR: Q. The amount involved? A. The amount involved in respect of them, sir, was £2,113. 7. 0.

20 MR. NEWTON: Q. And perhaps you could give us the dates between the first of those pay-out cheques that you detected and the last of them. A. Between 6th May, 1960, and 2nd September, 1960. Those are the dates on which they were paid into the credit of the company's account.

Q. They were all in 1960? A. Yes, all in 1960.

HIS HONOUR: Q. When you say paid to the credit of
30 the company's account, he paid into the company? A. No, that is the date they were actually credited at the bank. They were paid into the bank account, these cheques. Those are cheques shown payable to the company.

MR. NEWTON: Q. We may go back to the first figures you gave us. You gave us three sets of figures. Can you draw a line, as it were, at 16th September, 1957, and give us the figures both before and after. A. There were 65 cheques before, sir, and I have not them added.
40 If I might be permitted, perhaps, to give the figure later on, I can give the figure.

Q. You can make that calculation? That is in relation to the £59,000? A. £59,747.

Q. And also in relation to the £51,000 His Honour will probably allow you to give that later on, too, after you

Plaintiff's
Evidence
No. 3(6)

John
Truman
Brock

Examination
(Continued)

have made the calculation. Can you do it? A. Yes, I think I can, but not from the notes I have here.

Q. And can you also do the other figure - which was the combination of those - the £8,000 you mentioned? A. No, I could not give any indication of that, because I have not got the dates.

Q. You cannot split that one up at all? A. No.

10

MR.NEWTON: Subject to Mr.Brock giving us those other figures -

WITNESS: As to £8,000, it is all after 1954 because there are no records existent at all before that date.

MR.STREET: If Mr.Brock does that and tells Mr.Newton, I do not mind my friend stating it from the bar table and that, I understand will be for cheques 66 onwards?

20

WITNESS: That is so.

CROSS-EXAMINATION

Cross-
Examination

MR.STREET: Q. This company Electronic Industries has an Australia-wide business, has it not? A. It has.

Q. And its bankers, I think in every State, are the National Bank? A. It is not the only bank. It is the
30 bank of the holding company and certain of the subsidiaries but it is not the only bank.

Q. At all events, a large proportion of the banking business for Electronic Industries and its associated companies is with the National Bank? A. Yes by far the major portion.

Q. I beg your pardon? A. The major portion.

40 Q. Electronic Industries itself, for the record, is a large public company? A. Yes.

HIS HONOUR: I accept the fact that Electronic Industries is a very large organisation, nation-wide and extremely wealthy and whose account with any bank I would assume would be one regarded as being one of first-class standing.

MR. NEWTON: I think we agree upon this, Your Honour, but Mr. Brock can give the evidence if necessary, but the company recovered approximately £1,000 from the Superannuation Fund and will recover approximately £3,000 from the bankruptcy of Moffitt.

Plaintiff's
Evidence
No. 3(6)

John
Truman
Brock

Cross-
Examination
(Continued)

HIS HONOUR: Are you content to accept that, Mr. Street?

MR. STREET: Yes, I accept that, Your Honour.

10

(Witness retired)

(Case for the Plaintiff Closed.)

MR. NEWTON: My friend has agreed that he would have available here, as if subpoenaed, and instruction book or rule book, or some form of instruction of the National Bank. I would ask that it be dealt with in the usual way of the documents being produced on subpoena; that it be handed to Your Honour's Associate and I would ask leave to look at it.

Proceedings
before
His Honour
Mr. Justice
Manning

11th June, 1964.

HIS HONOUR: I am not prepared to hand down books produced at large, but if there is some particular instruction that you want you can ascertain if it is there and I will allow you to see it if it is relevant.

MR. NEWTON: I do not know whether my friend objects, but if he wants it limited I would indicate the matters that I am concerned with. It is fairly obvious, I think, Your Honour, that the matters I am concerned with are the duties of officers in relation to crossed cheques and deposits.

HIS HONOUR: Do you mean all crossed cheques or cheques crossed in some particular way?

MR. NEWTON: All crossed cheques, Your Honour.

HIS HONOUR: Instructions to bank officers as to crossed cheques. Any others?

MR. NEWTON: No.

HIS HONOUR: Nothing about the instructions as to duplicate deposit slips?

40

Proceedings
before
His Honour
Mr. Justice
Manning
(Continued)

11th June, 1964.

MR. NEWTON: Yes, Your Honour, the deposit slips, too.

MR. STREET: I am instructed not to take objection to the plaintiff's counsel having the book and having access to it. I am specifically instructed not to object to anything at large.

(Staff instructions and regulations of the National Bank, dated 1st November, 1954, produced.)

10

HIS HONOUR: These, I gather, are the instructions which are circulated generally? There must be all sorts of instructions on various subjects on particular levels, but these are general instructions?

MR. STREET: Yes. I am instructed that no copies should be made of the book

HIS HONOUR: That is very reasonable, and the information
20 made available should be utilised only for the purpose of this case.

CASE FOR THE DEFENDANT RESUMED.

Defendant's
Evidence
No. 3(2)

NOEL EDWARD FARMER,
Sworn, examined, deposed :

Noel
Edward
Farmer

Examination

30 TO MR. STREET: My name is Noel Edward Farmer. I live at 57 Reynolds Street, Cremorne. I am an officer of the Commonwealth Banking Corporation. My present position is on the staff of the Inspectors Department at head office in the general administration section.

Q. And I think you commenced employment with the Commonwealth Banking Corporation in 1940 as a junior clerk at a Queensland Branch? A. Yes.

Q. And then you were away on war service until 1946?
A. That is correct.

40

Q. And from 1946 until 1950 you were at the Wollongabba branch of the Commonwealth Bank? A. Yes.

Q. That is in Queensland? A. Yes.

Q. And during that period of five years you performed the duties of teller and examiner? A. Yes.

Q. And then I think you went to the office in Brisbane, the main office in Brisbane of the Commonwealth Bank? A. Yes.

Defendant's
Evidence
No. 3(2)

Q. And then later in 1950 you were appointed as an instructor at the Bank Training School in Canberra? A. In Brisbane.

Noel
Edward
Farmer

Examination
(Continued)

Q. And your duties as an instructor consisted of training the male junior staff who were entering into the employment of the bank and instructing them on basic banking procedures? A. Yes.

10

Q. Including telling duties? A. Slightly more senior ones were taught telling duties.

Q. There were more senior men attending your instructions also? A. Yes, up to 21 years of age.

Q. And the more senior ones you gave instructions in telling duties to? A. Yes.

20

Q. And then in 1951 you went to the Bill and Overseas Department, again at the Brisbane branch? A. Yes.

Q. You were there for 12 months, you became second in charge of that department and remained as such until January, 1957, apart from overseas duties on trade promotion for some months during that period. A. That is correct.

30

Q. And in January, 1957, you went to the branch in Adelaide in charge of the Bills and Overseas Department? A. Yes.

Q. In February, 1962, you transferred to the head office of the bank in Sydney and joined the Inspectors Department? A. Yes.

Q. And your present position is in the general administration section of the Inspectors Department? A. Yes.

40

Q. And as such I think you are one of the officers of the bank who is concerned with the prescribing of bank routines and bank practices for banking operations? A. That is correct, yes.

Q. Your bank, I think, in connection with deposits made

Defendant's
Evidence
No. 3(2)

Noel
Edward
Farmer

Examination
(Continued)

to customer's accounts, uses forms? Firstly, there are the loose slips with a butt or counterfoil and a main deposit slip which are available on counters for customers?

A. Yes.

Q. That same form of loose slip with the butt and deposit slip is also bound up and made available free to customers? A. That is correct.

10 Q. In addition, your bank has various forms of various sizes of bound books which make provision for a carbon or duplicate of deposit slips? A. Yes.

Q. And they are sold to customers? A. The bound ones which provide for a copy are sold.

Q. Documents of that sort are common form with minor variations between the various trading banks in this community? (Shown) A. I understand that to be so, yes.

20

Q. Could you tell me what is the practice in the Commonwealth Bank when a customer comes in? Perhaps I ought to put certain assumptions to you first. I will withdraw that.

Q. I want you to assume a deposit is going to be made by a customer of the bank, a customer with an established account and of a high standard of reputation and integrity with the bank; a valued customer of the bank, I think is

30 the bankers' phrase, isn't it? A. Yes.

Q. And the particular account to which the deposit is going to be made is an account which has been operative in the sense of daily deposits over a period of a couple of more years prior to the occasion I am going to ask you about, the amount of the daily deposits being in the vicinity of £2,000 or upwards, £2,000 up to £5,000, something in that order, with cheques numbering about 75 to 100, or something in that order. Can you picture
40 the type of account I am asking you to assume? A. Yes.

Q. That customer comes in, or his servant comes in to make a deposit, one of the daily deposits, and hands across to the teller the deposit book with the cheques and the cash content of the day's deposit. Would you tell His Honour in detail the procedure customarily followed in your bank in respect of such a deposit?

A. Yes. The teller would accept the deposit book and open it, remove the cash, cheques and the original deposit slip.

Q. He tears it out, does he? A. Yes.

Q. Any reason for that? A. Yes, - to avoid giving back the book when the transaction is complete, with the original deposit slip still in it.

10

Q. I see. Yes? A. He will then count the cash content of the deposit and verify the original from the specification on the original deposit slip by ticking the amount of cash. He would then normally insert -

Q. By the specification you mean the details in the little summary at the right-hand side of the slip? A. On the right-hand side of the deposit. In the circumstances that you have given me, he would not normally
20 examine details of the cheques to the original deposit slip but would satisfy himself that he had an equivalent, or number of cheques that corresponded to the number recorded on the original deposit slip. He would scan these cheques for title and endorsement.

Q. When you say "for title" would you be more specific? What does he look at? A. To see the name of the party to whom the cheques are drawn and that, in the circumstances of his business, it would be reasonable for the
30 bank to accept such a cheque; that the endorsements are correct. He would then check the additions of the summary on the right-hand side upper portion, normally, of the deposit slip, of the cash and the cheque figure there, verify the total in words and figures on the original, check that the date on the deposit slip was in order and then initial the original.

Q. Stop there for the moment. Throughout this process as you have taken it thus far, does the custom
40 involve him making any reference at all to the duplicate slip? A. No.

Q. You have now got to the point, I think, where he has initialled the original? A. Initialled the original and possibly, or most likely in the same operation would pick up the deposit book again, verify that the total of the original deposit and that appearing on the duplicate

Defendant's
Evidence
No. 3(2)

Noel
Edward
Farmer

Examination
(Continued)

Defendant's
Evidence
No. 3(2)

Noel
Edward
Farmer

Examination
(Continued)

correspond and he would stamp and initial the duplicate deposit book and hand it back to his customer .

Q. (Showing file B1 and duplicate deposit book of Exhibit B50) I show you a deposit slip, just to get you to identify what you mean by the various parts without actually using one of the Commonwealth Bank ones . When you said at the point of time, perhaps while initialing the original, he took up the book at the same time with the
10 duplicate in it, what portion of the duplicate does he look at? Could you identify it for me please, on a sheet in B50? A. (Witness indicates).

MR.STREET : The witness put his finger at the space opposite to the £ at the foot of the rectangular box.

HIS HONOUR : In other words, the space for the insertion in figures of the grand total of the deposit.

20 MR.STREET : Q. Is that right, Mr.Farmer? A. Yes.

HIS HONOUR : In figures, not in words? A. Yes.

MR.STREET : Q. Does the custom involve the receiving teller first of all in ascertaining whether the cheques particularised in the duplicate correspond to the cheques particularised in the original? A. No.

Q. Does the custom involve the teller ascertaining
30 whether the specifications of cash and cheque, the break-up of specifications of cash and cheques in the rectangular box at the head of the deposit in the duplicate correspond to that in the original? A. No. Only the total.

Q. Can you tell me whether that custom has been current since at least 1954 onwards? A. Yes, it has.

(Sample of free deposit slips issued to customers tendered; admitted and marked Exhibit 2.)

40

Q. There is one other matter I wanted to ask you about. I want you to assume that in relation to the same sort of account I put to you, a customer of high repute, as I have suggested, and operative in the degree that I have mentioned, the customer comes in and when coming in to make his deposit includes within it - I am showing you the cheque from file B1 and the customer's name

is Universal Guarantee Pty.Limited - and it includes in the deposit, one of the daily deposits, a cheque on the printed form of Universal Guarantee with a printed crossing "Not Negotiable. Account Payee Only" drawn in favour of Henry, a stranger to the customer, properly signed by various signatories of the bank (sic) for credit to the same account as that on which it is drawn - that same customer's account. Do you understand the assumption I put? A. Yes.

10

Q. Bearing on the back of it the letters and word "K.R. Henry" being the same as the letters and words in space for "Payee" and in the form of it what appears to be the signature, and underneath that a rubber stamp "per pro Universal Guarantee Pty.Limited" with the ink words "endorsement guaranteed" and underneath that the signature of an officer of Universal Guarantee Pty.Limited; that is the customer who is one of the group of persons any two of whom may draw on the account and any one of whom may endorse for credit to the account. Do you understand? A. Yes.

20

Q. So far as concerns the actual mechanics within the bank, that is a cheque drawn on the same account as that to which it is being credited, so it would not leave the branch of the bank at all, physically, once it reached you. A. After it had been paid in?

Q. Yes. A. Yes, that is correct.

30

Q. It would come through the receiving teller's hands?
A. Yes.

Q. And then in due course would go on through to the examiner, may I take it? A. Yes.

Q. Before the entry being made to the debit of the ledger account? A. Yes.

40 Q. Would the examiner pass a cheque such as that for debit to the customer's account in the circumstances as I have asked you to assume them? A. Yes, I think he would so. He need hardly read beyond the endorsement of the words, which purports to be the endorsement of K.R.Henry.

Defendant's
Evidence
No. 3(2)

Noel
Edward
Farmer

Examination
(Continued)

CROSS-EXAMINATION

Defendant's
Evidence
No. 3(2)

Noel
Edward
Farmer

Cross-
Examination

MR. NEWTON: Q. Mr. Farmer, I suppose it is ever present in the minds of responsible officers of the bank that there is always a danger of forgeries? A. Yes.

Q. And I suppose it is always present in the minds of bankers that responsible officers of big customers sometimes embezzle moneys? A. I would not say it would be ever-present.

10 Q. Well, you know of many cases, don't you, where it has happened? A. Oh, some cases.

Q. Only some? I suggest to you many over the years? A. Might I say that I would relate this to the number of such customers conducting banking accounts.

Q. You mean it is a small percentage of the over-all number of customers? A. Yes.

20 Q. But they do occur from time to time, don't they? A. Yes.

Q. And in fact the banks themselves loose money from time to time through their own employees embezzling funds, don't they? A. Yes.

Q. So you would agree that there is need for great care to be exercised by bankers in watching and trying to detect any possible forgeries or frauds? A.

30 Yes. We must always try to protect forgeries.

Q. And with that in mind, in the case of companies, you watch very carefully the instructions that are given by the company, do you not? A. On the cheques as they come in?

Q. Yes. A. Yes.

40 Q. You see that all cheques are drawn in accordance with those instructions? A. Paid in accordance?

Q. Paid in accordance with the instructions? -

HIS HONOUR: I think you may be at cross-purposes. I do not think Mr. Farmer quite understands what you are seeking to put.

MR. NEWTON: Q. First of all, you pay careful attention to the instructions that the company has given as to the officers who can sign and endorse? A. Yes.

Q. And you would be very careful also to see that the customers' instructions in relation to the payment of cheques were observed? A. Yes.

Q. In fact, I want to put this to you as a practical bank-
 10 er and see whether you would agree with this proposition that if a cheque as drawn payable to a named payee or bearer and crossed "Not Negotiable" and if it goes astray the bank receiving that cheque to the credit of the account of somebody other than the named payee is put on inquiry. You would agree with that, wouldn't you? A. Yes.

Q. And I also want to put this to you as a general proposition that the practical ruling that where a bank is
 20 asked to collect the proceeds of a cheque for someone other than the named payee it must first scrutinise the face of the cheque to see whether the words "account of payee" have been inserted thereon by any prior party. If they do appear, then the cheque should not be collected for the third party customer unless his standing is undoubted and a satisfactory explanation is furnished? A. Generally, yes.

Q. In making inquiry due regard must, of course, be
 30 paid to all the surrounding circumstances, what particularly the possible connection between the customer presenting the cheque for collection and the payee or drawer of it. You would agree with that as a general proposition, wouldn't you? A. Yes.

Q. I suppose it is difficult these days to get - (withdrawn).

Q. Banking business has increased greatly over the last few years, has it not? A. Yes.

40 Q. And it is difficult to get competent staff; would you agree with that? A. Yes. I think you have the common problems in that respect.

Q. I want to put this proposition to you, first of all, Mr. Farmer. (Approaching witness) these are, as you see, made up cheques. They are not genuine cheques.

Defendant's
 Evidence
 No. 3(2)

Noel
 Edward
 Farmer

Cross-
 Examination
 (Continued)

Defendant's
Evidence
No. 3(2)

Noel
Edward
Farmer

Cross-
Examination
(Continued)

They are made up for the purpose of taking your opinion about them. Do you realise that? A. Yes.

Q. I want you to assume first of all that this cheque is genuinely drawn by Universal Guarantee, these officers are the proper signing officers, it is payable to J. Bruce, and bears the endorsement "J. Bruce". Would you accept that without any further endorsement for the credit of the account of Universal Guarantee? A. It
10 would depend upon what I knew of Universal Guarantee and their type of business and the practices they adopted in the normal course of that business; if it were their practice to negotiate cheques for outsiders, or if they would replace a cheque for a payee.

Q. If they had done the same thing before - what you are saying is this, is it not, if they had done the same thing before and you knew it was all right, you would accept it. A. That, to a point. This, I would like to
20 add, would be our normal attitude to what I would call a truly third party transaction but in this case where Universal Guarantee is the drawer of the cheque, I would be less inclined to be concerned in that if any reference were necessary. In my view, the best place to get it would be from one of the signatories to the company account.

Q. Let me put this assumption to you - that you are a new teller, first time on the desk, and you have a
30 cheque such as this presented for the credit of the account of Universal Guarantee. You would make some inquiries, would you not, before you accepted it? A. Most probably.

Q. You would go to the manager or the accountant and say "Is this all right?" A. Most probably.

HIS HONOUR : You have a specimen cheque there?

40 MR. NEWTON : Yes, a specimen cheque.

HIS HONOUR : I gather it is a cheque purporting to be drawn by Universal Guarantee?

MR. NEWTON : Yes.

HIS HONOUR : It is presented to the bank for collection on whose behalf?

MR. NEWTON : It is presented to the bank for the credit of Universal Guarantee.

Defendant's
Evidence
No. 3(2)

Q. Do you understand that in the answers that you gave that this was presented to the bank having the account of Universal Guarantee for the credit of the account of Universal Guarantee with that bank? A. Well, I do not think I fully appreciated it in the first part but I did before I completed my answer, Your Honour.

Noel
Edward
Farmer

Cross-
Examination
(Continued)

10

Q. And what you say is in those circumstances, if you saw this for the first time you would go and ask somebody about it?

MR. STREET : That is not what he said.

MR. NEWTON : Well, I am asking him now.

WITNESS : Would you mind repeating that?

20

MR. NEWTON : Q. If this came to you as a teller, you being the teller at the National Bank, Wentworth Avenue branch, and it was presented with the deposits for the credit of Universal Guarantee and you had never seen a similar cheque, you would refer it, I am suggesting to you, to the manager or accountant? A. Most likely.

(Specimen cheque tendered, by consent admitted and marked Exhibit G.)

30

Q. And one further question on Exhibit G, the document we have just been examining, Mr. Farmer: if you were the teller at the National Bank, Wentworth Avenue, and that was presented for the credit of any other account than Universal Guarantee

HIS HONOUR : Other than Universal Guarantee or the payee?

MR. NEWTON : Q. Or the payee you certainly would not accept it, would you? A. No I would refer it.

40

Q. I show you Exhibit B66, Mr. Farmer and, first of all, the cheque you see is Universal Guarantee Pty. Limited on the Wentworth Avenue branch. This is one on an ordinary bank form, crossed "Not Negotiable" and it is signed by two authorised officers, payable to J. Bruce. There is a signature "J. Bruce" on the bottom and "Endorsement guaranteed".

Defendant's
Evidence
No. 3(2)

Noel
Edward
Farmer

Cross-
Examination
(Continued)

Universal Guarantee stamp and "W.Moffitt". First of all, I want to ask you this : Have you ever seen that form of endorsement, "Endorsement guaranteed", in ordinary bank-customer relationship? A. Yes.

Q. In what circumstances? A. When used by the customer to vouch for the endorsement, the genuineness of the endorsement.

10 Q. And in your experience, in certain circumstances a bank would ask for that type of endorsement; would that be right? A. I have never asked for it. I have never asked for the "endorsement guaranteed" portion. I would ask for an endorsement.

Q. But you have never asked for "endorsement guaranteed"? A. No, but I have seen it used.

Q. Of course, in the cases where you have seen "endorsement guaranteed" on behalf - have you ever seen
20 it on behalf of a company. A. In a similar fashion to this?

Q. Yes. A. Yes.

Q. And in those circumstances it has always been signed by the same number of officers as require to sign the face of the cheque; is that not so? A. No.

30 Q. You have seen it with just one signature? A. I have seen it with one signatory. yes.

Q. Have you seen it more than once? A. Yes.

Q. It is not a frequent practice, is it? Not in my experience, no.

Q. And wouldn't you, having received a cheque such as that and getting that endorsement, assuming that
40 you did not have an account for "J.Bruce", wouldn't you agree that it would be such as to cause you to raise a query? (Objected to)

HIS HONOUR: Would you be good enough to reframe your question?

MR.NEWTON: Yes, I will start again.

Q. I want you to assume that you are the teller at the Wentworth Avenue Branch, that Commercial Guarantee is a good customer, that this cheque is properly signed and that you received it for the credit of the Universal account with this endorsement on it, and that you had never seen a similar cheque deposited to the account. I am suggesting to you it would from the endorsement itself cause you to make an inquiry? A. No.

Defendant's
Evidence
No. 3(2)

Noel
Edward
Farmer

Cross-
Examination
(Continued)

10 Q. You would not agree with that? A. No.

Q. Now I want to show you this, and this is the original and duplicate deposit slips in exhibit "B-66", and I want you to assume that when it was presented the original was in the form as you see it now? A. Yes.

Q. And that the duplicate had the £516.10. 0. in cash. I am suggesting to you that if that had come to you, first of all, you would have been likely to notice the
20 alteration on the original.

MR. STREET: I do not want to keep interrupting my friend, but he is asking the witness to assume that the duplicate had £516 in cash, and is that all my friend wants to assume on the duplicate, or does he want him to assume that there are other things on the duplicate?

MR. NEWTON: I am only asking about the £516 at the
30 moment.

HIS HONOUR: I think you ought to put to him that assuming this is the duplicate of which the original is before the witness, and then draw his attention to this particular item as one item in the whole. I think strictly Mr. Street might be correct and it might be as well to be careful in this case.

MR. NEWTON: Q. The original has in notes £116.10.0.
40 which you will agree is obviously altered? A. Yes.

Q. And I am putting to you that you would as the receiving teller probably notice that, would you not?
A. The alteration on the original?

Q. Yes. A. Yes.

Defendant's
Evidence
No. 3(2)

Noel
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Cross-
Examination
(Continued)

Q. Because amongst other things you would be adding it up, would you not? A. Yes.

Q. I suggest to you that when you came to stamp the duplicate it would strike you immediately that the amount of notes was different? A. I would not be looking at the amount of the notes on the duplicate; I would just be looking for the amount, the total.

10 Q. If you see an alteration in the original you do not look for an alteration in the duplicate as far as the summary is concerned? A. No. If I caused the alteration to be made because of some discrepancy that I found, I would see that alteration through to the duplicate; but if the alteration had already been made and initialled or signed by the party making the deposit I would assume that this had been done on both original and duplicate.

20 Q. If it had come to your attention that there was a different amount of notes shown in the original and the duplicate I suppose you would raise some query about it, would you not? A. If it came to my notice I would ask the party paying in to alter it on the duplicate and initial it.

Q. To initial it, and if any alteration was necessary to the total on the duplicate you would see that that was altered accordingly and initialled? A. Yes.

30

Q. I show you now Exhibit "B-67" and this you will see is a cheque on the printed form signed by two authorised officers with the same type of endorsement on the back of it. Now, I want you again to assume that you are the teller at the National Bank, Wentworth Avenue Branch, and that cheque properly drawn is presented with the deposits for Universal Guarantee and that you have never seen a similar cheque. I suggest to you that you would not have

40 accepted it without making an inquiry? A. No. I would accept it to the credit of the account of the drawer.

Q. You would have accepted it to the credit or would you have accepted it to the credit of any other account? A. The drawee?

Q. No, any other account? A. No, I would make

inquiry or have inquiries made.

Q. Even if it were of an account such as, to take an example, B.H.P.? A. That is a broad question. It would depend on what I knew from the banking side of B.H.P.'s practice of negotiating cheques.

Q. Of course you appreciate, Mr.Farmer, that this cheque is crossed Not negotiable, and it is payable to J.Bruce or
10 Order? That is so, is it not? A. Yes.

MR.STREET: In fact it is payable to the order of J.Bruce if my friend wants to put it specifically.

MR.NEWTON: Q. Very well, to the order of J.Bruce, and you are accepting it for an account other than J.Bruce, are you not? A. Yes.

Q. You would be taking a risk on it, wouldn't you? A. In
20 circumstances other than where it was going to the drawer's account.

Q. You would also be taking a risk where it was going to the drawer's account, too, would you not? A. Not in my view.

Q. But you are disobeying their instruction for a start, are you not? A. On the face of it --

30 HIS HONOUR: I am not clear what is meant, Mr.Newton. To what instruction are you referring? Would you put it specifically?

MR.NEWTON: The instruction to pay J.Bruce or order, or to the order of J.Bruce.

HIS HONOUR: No.

MR.NEWTON: As a matter of practice I am asking the
40 witness the view he takes of it.

HIS HONOUR: Ask him if you like.

MR.NEWTON: Q. You would not regard that as disobeying the customer's instructions?

HIS HONOUR: When you put the question, Mr.Newton, please

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Cross-
Examination
(Continued)

put it in a way that makes clear to me and to the witness which instruction you refer to. It may be the payee or it may be the crossing.

MR. NEWTON: Q. When you received this cheque you would have regarded it as an instruction by Universal Guarantee to pay out to the order of J. Bruce, would you not? A. Yes, with the added obligation of the crossing.

- 10 Q. Yes, with the added obligation of the crossing, and I again put to you receiving it in that form to the credit of even the drawer's own account, it would be a matter in which you would the first time you saw it go and say to the accountant or to somebody, "Is this all right?"
A. May I make something clear, please, Your Honour?

HIS HONOUR: Yes, certainly.

- 20 WITNESS: In this last series of questions you have assumed I have been the teller?

MR. NEWTON: Q. That is so, and you have never seen it before. A. No, I would not. I would take the view that Universal Guarantee's action of paying this cheque to their own account was their own indication of cancellation of prior instructions.

- 30 Q. You do not agree - you notice on this cheque that it is signed by two officers, Sorbie and Tyack? A. Yes.
Q. You will notice that it is signed by another authorised signing officer on the back? A. Yes.

Q. Would you agree it was strange that one of the officers signing the cheque itself had not signed the endorsement?
A. Not necessarily. The two signing functions would take place quite separately, one for drawing the cheque and one possibly later.

- 40 Q. You say that that would not cause you any concern at all? A. Not with the knowledge that the cheque was being credited to the account of the drawer company.

Q. It would not occur to you that there may be something fraudulent going on within the company's own office?
A. Not when the cheque was being credited to the company's account. If it were tendered to the credit of an officer of the company's account - (not completed).

Q. And if it had been tendered to Moffitt's account it would have been highly suspicious? A. Yes.

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Cross-
Examination
(Continued)

Q. I show you now the duplicate and the original deposit slips in Exhibit "B-67". I want to read to you the evidence that was given by Moffitt, the man who made the deposit, as to the condition of these two deposit slips when they were presented, that is the original and duplicate when they were presented to the teller. He
10 said this, "I produced the book and the original to the teller without the full notes shown as what they were, the silver showing as 9/-, the pence showing as twopence the money orders as £432.19.2. the cheques shown only on the original and not on the duplicate and the total £3455.13.9. shown as both the copy and the original, and then after the banking I have included then the figures of £491 as cash and" - He is referring to the duplicate - "£2531.5.5. as cheques." A. No mention of £61?

20 Q. Yes, £61 is there. The original was exactly as it is now. Now, when you came to look at the duplicate, having just counted £61.9.2. in cash would it not strike you immediately that there were no notes shown on the duplicate? A. If I noticed it I may, but I would not be concentrating on that point; I would be looking for the total at the bottom.

Q. And if you had noticed it you would have, as you said before, drawn the attention of the person paying it
30 in and had the appropriate alterations made to it?
A. Most likely, yes.

Q. I show you Exhibit "B-143" and again I show you the original and the duplicate deposit slips and you will see that in the original there is a cheque of Universal Guarantee of £450 and another one of £196 and some shillings and pence in the original but not in the duplicate. You will also observe that it is on the sheet which contains the summary of the deposit. That is so, is it not?

40 A. The second cheque you referred to is drawn by L. Newman or a similar name.

Q. That is right, but it is not on the duplicate, is it? Neither of the last two cheques? A. No.

Q. If you were the teller there don't you think you would be likely to notice that when you came to stamp the duplicate.
A. No.

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Farmer

Cross-
Examination
(Continued)

Q. If you did I suppose you would do something about it, would you not? A. If I did, yes.

Q. I was putting a lot of questions to you on the assumption that you were the teller receiving the deposit. Of course, I suppose the teller with the pressure of business has not got the time he used to spend a great deal of time checking endorsements on cheques? A. The teller must check the endorsements.

10

Q. They are checked again of course afterwards, are they not? A. Not by the collecting bank as such, in which function the teller is acting.

Q. But if the same bank is performing the functions both of collecting and paying the cheque would go from the teller to somebody else for reading, is that the term? A. Yes.

20

Q. Have you had any experience of reading cheques? A. Yes.

Q. And a great deal of care is exercised in the reading of cheques, is it not? A. Yes.

Q. And particularly as concerns endorsements? A. That is one of the important parts, yes.

30 Q. You were positively speaking as the teller of a collecting bank when I put those questions to you before. I want you to assume now that you are the examiner of the paying bank, the examiner of cheques at the paying bank. A. Yes.

Q. And that you had before you - I show you the cheque in Exhibit "B-142" - that you had before you a cheque in that form with the endorsement that you have already seen and crossed as it is there? A. Yes.

40

Q. Would you know at that stage whose account it was to be debited, as the examiner? A. To whose account it was to be debited?

Q. I beg your pardon, to whose account it was to be credited? A. No.

Q. As examiner would you not know that? A. No.

Q. And I suppose as examiner you would immediately raise a query with that endorsement, would you not? A. No.

Q. Why? A. The cheque purports to be correctly endorsed.

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Q. Even though it might be payable to Moffitt's own account?

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A. The examiner at the stage he read this cheque would be completely unaware to whose account the cheque had been credited.

Cross-
Examination
(Continued)

Q. I gathered from what you said before that the only occasion - I beg your pardon, I do not think you said that and I withdraw it. Mr. Farmer, I want you to assume that you were the manager of a branch and a cheque endorsed as the cheque we have just been looking at in Exhibit "B-142" came in and somebody raised a query and it came to you as the manager, you would get in touch straight away with Universal Guarantee, I suppose, wouldn't you?

A. No, not necessarily. If I had in those circumstances any grounds for suspicion I would possibly consider it necessary to refer to the drawer. If in the circumstances that have been put to me or as I understand them, that a signatory to the account was present in the office as a company officer, I would possibly if I decided to make inquiry make that inquiry of him.

Q. Would not that be the very dangerous thing to do? A. I cannot see this in circumstances where the cheque is being credited to the company's account.

Q. Your view is that as long as it is credited to the company's account it does not really matter.

HIS HONOUR: He did not say that.

MR. NEWTON: I am putting it to him, Your Honour.

Q. That is what you say? A. I think it matters, but these circumstances removed on the face of it what seems to me to be the prime need for inquiry when dealing with a third party cheque, when the drawer and when the party to whom the cheque is being credited are the same.

Q. You told me earlier that you did not think you would accept it without inquiry if it had no endorsement on it at all, is that right? I understand when we were looking at Exhibit "G" - do you remember the specimen cheque?

A. Yes.

Defendant's
Evidence
No. 3(2)

Noel
Edward
Farmer

Cross-
Examination
(Continued)

Q. I think that you told me then that if that had never come to you before and you had never seen a similar cheque and that had no endorsement other than J. Bruce on the front of it. A. But if I am correct you assumed me into the position where I was a new teller in that example.

Q. Yes, you had never seen it before; you would have raised a query? A. As a new teller, most likely.

10

Q. But where it has got the rubber stamp and one signatory as an endorsement you would raise no query, is that the position, under any circumstances? A. Am I the teller now?

Q. Yes. A. No, I would accept it for the credit of the account.

Q. Where it is going to the credit of the customer's account? A. The drawer's account, yes.

20

Q. Does that also apply so far as the examiner is concerned? A. I am afraid I cannot connect the examiner with this, in that he is unaware when he reads the cheque as to whose account it has been credited. He is more concerned with the genuineness of the signature and what purports to be the correct endorsement.

Q. As an examiner you would accept unhesitatingly that endorsement, the one we saw on "B-142"? A. I believe so: it purports to be that of the payee.

30

Re-
examination

RE-EXAMINATION

MR. STREET: Q. In the circumstances that Mr. Newton put to you with Exhibit "G" - do you remember Exhibit "G"? (Shown to witness). He asked you to assume that this was your first day as a teller and it came to you. Now, on the original assumptions I have put to you regarding the stature of the customer, the long-standing of the account and the size of the operations, daily deposits and so on, if this brand new first-time-up teller did refer this to you as the accountant or manager when being deposited to the credit of that customer's own account, what would you tell the teller? A. I think that this is a question of fact in my assessment as manager or accountant of the customers, but as a

40

general rule I think I would tell the teller in the circumstances as you have set them out to accept the cheque.

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Noel
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Re-
examination
(Continued)

Q. You said to Mr .Newton at one stage that if one of the authorised signatories and an authorised endorser of the customer were present in the office at a time that a deposit such as we have been discussing this morning were being made, that would be a factor which would once again relieve you of any worry which you might otherwise feel, if you did otherwise feel any? A. Yes.

(Witness retired)

WILLIAM IRVING,
Sworn and examined as under :

Defendant's
Evidence
No. 3(3)

William
Irving

Examination

MR .STREET: Q. Your name is William Irving, and you live at 7 Greengate Road, Killara? A. Yes.

20 Q. Mr .Irving, you are the head paying teller at the Martin Place and George Street Branch of the Australia and New Zealand Bank? A. That is correct.

Q. And the Martin Place and George Street Branch is the biggest I think Sydney Branch of that bank? A. That is so.

Q. It in fact is a Melbourne Bank: the head office is in Melbourne? A. Yes.

30 Q. As the head paying teller I think there are six other tellers under you at that branch? A. That is right.

Q. You have been with the A.N.Z. Bank, if I may so call it, for 32 years? A. Yes.

Q. You have worked up through various positions in the bank, as to the details of which I need not trouble you? A. That is correct.

40 Q. You have been the head paying teller at this Sydney Branch for the last two years? A. Yes.

Q. As such I think you are classified as a head of a department at that branch. Do your responsibilities include seeing that the tellers under you at that branch carry out proper banking procedures when

Defendant's
Evidence
No. 3(3)

William
Irving

Examination
(Continued)

discharging their functions? A. That is so.

Q. Do you yourself from time to time enter the teller's box, or whatever one does? A. Yes, one is supposed to go down and check and see that the procedures are being carried out correctly.

Q. Do you actually go out onto the counter? A. Not on the receiving; I am on the paying continuously.

10

Q. Your duties extend to supervising both the paying and the receiving, is that right? A. That is right.

Q. Your bank consistently with the practice of other banks does have a loose form of deposit slip in the banking chamber that has a counterfoil or butt on it? A. Yes.

Q. And it makes available free to customers those single slips bound up together in some small number? A. Yes.

20

Q. It also makes available at a nominal charge to the customer larger books of deposit slips bound that have provision for a duplicate being kept where a deposit is made; the customer keeps some duplicate, is that right? A. Yes.

Q. I want you to assume that you are a receiving teller and that a customer comes in to make a deposit to an account with your branch. This customer is of unim-
30 peachable business and financial repute - it is a comp-
any of unimpeachable repute with an account which has been established for some period of time with your branch, not a new account, but a well-established account, and the customer's business is resulting in daily bankings of the order of £2000 or thereabouts, sometimes up to £5000, with the size of the bankings extending from 75 to 100 cheques or something in that sort of order, with a cash content in the banking and a money order content. Now, can you picture the assumptions I am asking you to make?
40 A. Yes.

Q. That customer comes in to make a deposit, one of these daily deposits, using one of the bank's bound books with provision for the duplicate slip, and hands it across to the teller with the cash and the cheques and the money orders comprising the deposit. Now, would you tell His Honour what is the practice as it is followed in your

bank which that teller would then employ? A. He would, first of all, just check the date on the deposit and then count the cash and enumerate the denominations of each amount and put them on a cash docket which the bank provides.

Defendant's
Evidence
No. 3(3)

William
Irving

Examination
(Continued)

Q. That is some slip of paper that the teller has in his own custody? A. That is correct, yes. It is a separate thing altogether from the deposit slip. We enumerate
10 the denominations on this.

Q. At the moment he is not using the deposit book at all?
A. No, he would not be in that case.

Q. He is counting the cash and he writes down the denominations on his own slip, is that right? A. That is right, and then he checks the amount onto the original of the deposit slip. Then he would go through the cheques.

20 Q. Just a second; he then checks the amount, that is he checks what he has written down on his cash slip against what? A. Yes, against the total on the original of the deposit slip.

Q. That is the total of the notes and coin on the original of the deposit slip? A. That is right.

Q. I am sorry, I interrupted you? A. Then he would go through the cheques checking them for endorsement and
30 in our case he counts the number of cheques on the original deposit slip just on account of the bank charge because of course we have to specify the number of cheques on the top of the deposit slip.

Q. Could we go back to the period before that banking charge became operative? A. Yes.

Q. What was the practice regarding what he did with the cheques? A. He would just simply check the cheques
40 for endorsement and then he would check the additions on the original of the deposit slip and the box summary.

Q. That is to say the additions in the part which is in what one might call the body of the slip where the printing is? A. That is right.

Q. The addition of the notes, coins, and cheques?
A. That is right, that is the check.

Defendant's
Evidence
No. 3(3)

William
Irving

Examination
(Continued)

Q. That is the check on the original deposit slip, you say?

A. Yes. He would then tear that deposit slip out and compare the total of the original deposit slip with the total on the duplicate deposit slip, making sure that the name of course would appear on the duplicate, that is the name as it appeared on the original appeared on the duplicate.

Q. That is the name of the customer? A. The name of the
10 customer. He would also make sure that the original deposit was signed by the person paying it in, and that would be ---

Q. Having done that, to ascertain that the totals correspond and that the names correspond and that the original is signed, what does he then do? A. He just simply tears the deposit slip out and lays it with the cheques and then it would be passed through for proving.

20 Q. At some stage does he affix some stamp? A. Yes, I am sorry, he does. He puts a stamp on the original and on the duplicate - on the original after it is detached from the book, and then on the duplicate, and he just simply hands the duplicate book back to the customer.

Q. Does he at any stage look at the duplicate of the deposit slip to see whether the details of the cheques as written in in the columns provided for the particulars of cheques correspond to the details or particulars as
30 written in to the original? A. No, we accept them as being correct.

Q. Does he check the addition of the specification of notes, coins, and cheques in the duplicate? A. No, he does not.

Q. Does he look at what is written opposite to the notes, coins, or cheques in the duplicate? A. No. All he does is simply check the amount of the duplicate with the
40 amount of the original deposit.

Q. That is the sum total at the bottom? A. That is right, of the notes, coins, and cheques.

Q. The notes, coins, and cheques part of it? A. That is right.

Q. He does not check the items of that in the duplicate?
A. No.

Q. Perhaps I could lead you on this. In the free slip which your bank uses the butt or the customer's counter-foil of it contains provision on its face for the date, the customer's name and the total of the deposit? A. That is correct.

Defendant's
Evidence
No. 3(3)

William
Irving

Examination
(Continued)

- 10 Q. I want to show you Exhibit "B-120", and I want you to assume the same assumptions as I have put to you before - this company customer, and the name of the customer is Universal Guarantee Pty. Limited, a customer of the standing and repute I have given you, with banking operations of the nature that I have given you, which has its own printed cheque form with the printed crossing "Not negotiable, account payee only", and I am showing you the cheque out of Exhibit "B-120". That customer as part of one of these daily bankings
- 20 includes within the banking a cheque properly signed by two authorised signatories on the account, drawn on its own account at your branch of the bank, being sought to be credited to that very same account at your branch of the bank, drawn in the name in this instance of N.Byatt, bearing on its back in the form of a signature, N.Byatt, with underneath that, "Per Pro Universal Guarantee Pty.Limited" and the words "endorsement guaranteed" and signed by one of the officers of that company who is on the panel any two of whom
- 30 may draw on the account and any one of whom may endorse or credit to that account. This cheque is brought along with other bankings to your branch of the bank and you are the receiving teller and it is included within bankings to the credit of the same account as that on which it is drawn. Would you as receiving teller accept that cheque as part of the deposit? A. In the case of a customer such as this, I would have no hesitation in doing so.
- 40 Q. And, Mr.Irving, insofar as this cheque is drawn of course on an account in the same branch of the bank it will not only if it goes through in due course be included as part of a credit entry in that account but also appear as a debit entry in the account? A. That is right.

Q. In the process of that cheque through the channels

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William
Irving

Examination
(Continued)

Cross-
Examination

of the branch of the bank which it would follow from being included in the deposit right through until the debit goes into the ledger would you see any occasion to query it at any point? A. No, no. As a teller, no.

CROSS-EXAMINATION

MR .NEWTON: Q. But you would query it as an examiner, I take it, Mr .Irving. A. Not necessarily. I
10 have never been in the position to be an examiner and I could not answer for that.

Q. I see, so that you are only speaking purely from the point of view of the teller? A. Correct.

Q. You said you would accept it in the case of an undoubted account such as the one that has been put to you. You would not accept it in respect of any account where you had any doubt about the stability of the customer?
20 A. No. In that case I would refer it on.

Q. Supposing it was being deposited - it is a Universal Guarantee cheque, you see. A. Yes.

Q. And it is signed by the proper officers and it is endorsed by one of the authorised officers? A. Yes.

Q. If it were being deposited to that officer's account with the bank, what view would you take of that? A.
30 I think that I would refer that cheque in that case definitely for a ruling.

Q. Assuming that his account was beyond doubt?
A. If it was made payable to an officer of the company, you say, do you?

Q. No, I will put it more specifically. I will take this particular cheque which you still have. Take this particular cheque and assume you are the teller at the
40 Wentworth Avenue Branch of the National Bank, and it is a cheque properly drawn, crossed as you see, payable to N.Byatt or to the order of N.Byatt. First of all, you see it is endorsed or signed on the back by Moffitt, one of the signing officers? A. Yes.

Q. Moffitt was a person of undoubted and he presented that for payment into his own account - would you query him? A. The same cheque?

Q. Yes. A. No, I would not in that case.

Q. Even though it is payable to N.Byatt? A. Yes.

Q. Or to the order of? A. Yes.

Q. He is one of the signatories to the cheque. A. I would not accept the cheque in that case.

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Evidence
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William
Irving

Cross-
Examination
(Continued)

10 Q. You would not? A. No.

Q. Why? A. If I knew it was paid in by one of the company's signatories to his own credit and it was a particular party cheque.

Q. Why not? A. I would not probably know Moffitt to that extent, I presume. It would be a different matter to a company.

20 Q. But assuming that Moffitt's account was beyond question? A. If I knew that, if I was acquainted with that fact, definitely yes.

Q. You would take it, would you? A. Yes, if I was acquainted with that, yes, definitely.

Q. You would take that for credit of any account assuming that you did not have an account in the name of N.Byatt? Would you take that cheque for any account where the
30 customer was beyond doubt? A. If it was a case beyond doubt, yes, definitely.

Q. You tell us that you should check the original of the deposit slip? A. Yes.

Q. I suppose if you noticed anything in that duplicate that was irregular you would do something about it, wouldn't you? A. Well, I personally have never checked a duplicate to that extent. I have always accepted
40 it as a true copy of the original, and I have never checked a duplicate in any shape or form.

Q. You have never found a duplicate that did not correspond as far as you saw, with the original? A. No. All we do is to check this total of the amount and the name of the customer.

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Evidence
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William
Irving

Cross-
Examination
(Continued)

Q. For instance, you check the name of the customer, is that right? A. Yes.

Q. Your eye runs across onto the summary? A. Yes.

Q. And in the original you have counted the notes? A. Yes. That is under the present scheme where the bank charges. Of course, before that - the notes, of course, I am sorry ---

10

Q. You counted the notes? A. You counted the notes, yes.

Q. For instance, if you then came to the duplicate and there were no notes shown at all don't you think you would notice it? That would not get past you, would it? A. No, it possibly would not if there were no notes shown at all. That would be a glaring example probably, just looking at the amount.

20

Q. It would stand out very clearly? A. Yes, it might, but most tellers as I say accept that amount from the duplicate onto the original. That is all we are really concerned with.

Q. Assume you did notice that in one case the original had a certain amount of cash, notes, shown in it and you noticed in the duplicate that there was nothing shown there at all, you would do something about it, wouldn't you?

30

A. I have never struck that position: I am afraid I could not answer it.

Q. You would not strike it? A. As a matter of fact, the scheme would hardly be likely to be noticed since we only check the amount. I should say it would not be noticed really.

Q. But I am putting it to you that if you did notice there were no notes shown? A. We would draw the attention of the customer, the customer paying it in, definitely, and seek an explanation.

40

Q. You notice on this exhibit "B-120" on the very summary page there is a cheque for £450 and on the duplicate that cheque is not shown there at all? A. Yes.

Q. You would be likely to notice that, wouldn't you?

A. Not at all, no, because as I said before we never make a practice of checking this. That would not be noticed, definitely.

Defendant's
Evidence
No. 3(3)

William
Irving

Cross-
Examination
(Continued)

Q. On the original you would check the total of the cheques?

A. That is correct.

Q. And check it with the total where it is made up in the
10 particulars of cheques, would you not? A. We check
the total of the cheques: no, we only are concerned with
the total on the summary of notes and cheques. We do
not check the individual amount of cheques.

Q. Don't you? A. No.

Q. I suppose you would agree, Mr. Irving, as an exper-
ienced bank officer, you have got to be ever-watchful for
possible forgeries? A. That is so.

20

Q. And you are ever aware of the fact that even trusted
employees, hitherto trusted employees, sometimes
embezzle money from companies? A. Yes.

Q. You are always conscious of that factor, are you not?
A. Yes.

Q. I want to show you Exhibit "G" and I want you again
to assume that you are the teller at the Wentworth
30 Avenue Branch of the National Bank, the cheque is prop-
erly signed, and you see it is payable to the order of
J. Bruce and it purports to be endorsed by J. Bruce and
it is crossed not negotiable account payee only, and
there is nothing further on it and it is presented to you
with other deposits for the credit of Universal Guarantee?
A. Yes.

Q. You would raise a query about it, would you not?

A. No, if it was deposited with other cheques for the
40 credit of Universal Guarantee: knowing it to be a
reputable firm it would be acceptable.

Q. If you had never seen a cheque of Universal Guarantee
before payable to the order of somebody else, and purport-
ing to be signed, you still say - A. I would still accept
it: in the case of a customer of that standing, yes, we
would.

Defendant's
Evidence
No. 3(3)

William
Irving

Cross-
Examination
(Continued)

Q. Of course, it is not unusual for customers to draw cheques in favour of themselves, is it? A. Not particularly.

Q. And there is nothing unusual in that? A. No.

Q. But would you not agree that it is unusual for a customer to draw a cheque payable to the order of a third party and then deposit it to its own account? A. No,
10 customers have done it in our case because of big entries.

Q. It is not very frequent? A. It is in the case of some larger companies, yes.

Q. Depending a little on the nature of the business of the company, I suppose? A. It could be.

Q. I suppose if you had not experienced it in relation to
20 a particular company, the first time you saw it it would probably raise a query in your mind? A. It might just raise a query, but I think I would accept it even so.

Q. Perhaps accept it and then make an inquiry from the accountant or manager? A. No, once it was accepted that would not be possible; it would go through.

Q. You are thinking of course, are you not, of your duties as a teller in a collecting bank? A. That is
30 correct.

Q. But assume that the collecting bank is also the paying bank and you have got the account of Universal Guarantee and you have never seen a cheque made payable to the order of a third party deposited to the credit of the account; I am suggesting to you you might accept it, but then speak to the accountant or manager and say, "Is this all right?". A. No, I personally would not do it.

40 Q. Supposing a cheque such as the cheque I showed you in Exhibit "B-120" - you can have another look at it if you want to, but you remember it, don't you?
A. Yes, I remember it.

Q. Supposing that cheque is signed properly on the front of it but by two officers other than the officer

signing the endorsement guarantee on the back of it? A. Yes.

Q. That would raise a query in your mind, would it not?

A. No, to my way of thinking the endorsement guaranteed on the back carries no weight in the case of a cheque being deposited like that. It would not raise any question.

Q. You mean that the words "endorsement guaranteed"
10 carry no weight at all? A. Not with a not negotiable cheque being presented to the credit of an account. It does to a certain extent but not to a marked extent.

Q. In fact, that is a most unusual endorsement is it not, in your experience? A. How do you mean?

Q. "Endorsement guaranteed" and a rubber stamp? A. No, it is an accepted endorsement to guarantee an endorsement. The bank guarantees an endorsement.
20 Customers of ours do so also.

Q. But it is a frequent endorsement in inter-bank transactions? A. Quite so.

Q. But it is very rare in relation to customers, is it not? A. We have a customer who does it repeatedly.

Q. Only the one? A. There is more than one, but I have this one in mind because it is a large firm. For
30 some reason they always guarantee cheques or endorsements, I should say, paid in like this.

Q. And the endorsements by the requisite number of signing officers? A. In that case one would be sufficient.

Q. In the case of this particular customer that you have in mind two sign it. A. No, there is only one signatory to the cheque and he alone endorses it.
40

Q. So the endorsement guarantee is signed in the same manner as the front of the cheque itself? A. By the signatory, yes.

Q. Have you ever seen in all your experience the words "endorsement guaranteed" used by a company where two officers are required to sign the front of it to operate

Defendant's
Evidence
No. 3(3)

William
Irving

Cross-
Examination
(Continued)

Defendant's
Evidence
No. 3(3)

William
Irving

Cross-
Examination
(Continued)

on the account and only one on the endorsement? A. I have not personally seen that case.

Q. In fact that endorsement itself if you saw it for the first time would tend to make you curious, would it not?

A. I would not say so. As I said once before, being from a customer of the standing like ours I would not question it.

10 Q. Would it not arouse your curiosity if you noticed that the two officers signing the front of it were different to the man endorsing the back of it? A. No, as I said before, the fact it has "endorsement guaranteed", going to credit account, would not worry us to any extent. We would not worry who it was signed by actually because it does not carry any weight with us.

Q. Would it not occur to you that this would be a
20 very simple way for a dishonest employee to get some money from the company? A. No, that thought would not enter my head.

Q. I suppose the reason you would not query a cheque endorsed in that form and going into the drawer's account would be that you would appreciate that if anything wrong you would have recourse against the customer? A. Yes, I have in mind the standing of the customer right through: that would be the position,
30 the standing of the customer.

(Witness retired).

Defendant's
Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Examination

BERNARD JOSEPH GAUGHAN,
Sworn, examined as under :

MR. STREET: Q. Your name is Bernard Joseph Gaughan and you live at 194 Wentworth Road, Burwood. A. Yes.

40 Q. You are an officer of the Bank of New South Wales? A. Yes.

Q. Your present position being that of chief teller at the head office in Sydney? A. That is correct.

Q. A position which you have held from some six years past? A. Yes.

Q. And as such I think you have 20 tellers subordinate to you? A. Correct.

Q. What are your duties as chief teller? A. The administration of the tellers and/or the care of cash in the Sydney office, and to see that juniors are carrying out their duties.

Q. The observance by them of proper banking practice; would that be a fair way to put it? A. Yes.

Q. Do you yourself actually go into the teller's cage? A. Not physically now, no.

Q. What experience have you had? A. I have just recently finished five years as chief paying teller.

Q. And before that? A. No, nothing before that of any consequence.

20

Q. How long have you been in the Bank of New South Wales? A. 36 years.

Q. Without going to the various branches, just run through the various positions you have filled. You were a junior clerk, I suppose, and clerk? A. Junior clerk, yes. Mostly for the last 18 years as departmental head in the various departments of the Sydney office: the clearing house department, information department, one year as sub manager at the Wales House, seven months as sub-manager at King and George Street, and three months as relieving manager at Boggabri, and in the last six years as chief paying teller and now as chief teller.

30

Q. Those 20 tellers include paying and receiving tellers, do they? A. Yes.

Q. And your supervision extends to both paying and receiving tellers? A. Yes.

40

Q. Your bank in common with other banks provides for customers, does it not, in the banking chamber the ordinary bank form of deposit slip with a counter-foil or butt? A. A butt.

Q. A butt attached with a perforation to enable it to be torn off? A. Yes.

Defendant's
Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Examination
(Continued)

Defendant's
Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Examination
(Continued)

Q. It also provides free for customers small bound books of deposit slips of that nature? A. Yes.

Q. With provision being made in the counterfoil in both the loose ones and the small bound books for the date, the name of the customer, and the amount? A. Correct.

Q. In addition your bank provides at some charge to customers larger bound books of deposit slips? A. For 10 bulk transactions.

Q. Which have some provision for a carbon or duplicate receipt being kept by the customer if he chooses? A. Correct.

Q. I want you to assume and I want you to tell the Court what practice would be adopted by a receiving teller in your branch; I want you to assume that a deposit is going to be made to one of the receiving tellers by using one 20 of the large bound books, that is the book with the multiple transactions, and that the customer who is going to make this deposit is a company customer of undoubted financial and commercial integrity and repute with an account of some years or some period of standing - not just a brand new account? A. Yes.

Q. So that it is an established account for a highly reputable company customer. The volume of business going through the account I want you to assume involves daily 30 bankings in the order of sums of £2000 upwards - perhaps up to £5000, something in that pattern - and the number of items in the daily bankings include 75 to 100 or thereabouts in terms of cheques, with a cash content of notes, silver, and some money orders. Do you get the pattern of the customer I put to you? A. Yes.

Q. That customer comes in to make this daily deposit with his cash and cheques and his bound book and passes it across the counter to the receiving teller. Now, 40 just tell His Honour what physical processes the receiving teller customarily goes through? A. He should check the date and see that the creditee's name is therein.

Q. First of all, he opens the book up, does he? A. Yes, he opens the book up and then in most cases, depending on the teller, he should then check the cash

which is the most important thing, and having checked the cash he ticks it in the summary in the column provided.

Q. He counts it first, I take it? A. Yes.

Q. Notes first and then silver? A. Yes.

Q. And he ticks it? A. Yes, that is the custom or it should be. It is desirable to do that.

10

Q. What does he tick it on? A. On the original.

Q. Then what? I want you if you would - I should have said this before - to go back to the period before the days of charges being related to the number of cheques. Would you go back to say pre-1961? A. Well, to see that the cheques are there of course or some cheques.

Q. What does he do with the cheques? He has a bundle of
20 cheques? A. Yes, he has a bundle of cheques and he should go through and check for endorsement, although in the case of big transactions where the relationship between customer and banker has been established in a big company, it is taken for granted that they should with their office control be endorsed, and he does not always have the time to go through say, 100 cheques; but the main item being to check the ultimate total if one or two slips are involved.

Q. Take the case where he runs through the cheques?
30 A. Yes.

Q. He runs through the bundle of cheques for endorsement, does he? A. Yes.

Q. Having satisfied himself they are all endorsed, what does he do? A. He sees that the ultimate total is carried up to the summary provided on the original deposit slip. Say it is £1000, it is carried forward as £1000 and then he checks that into the ultimate total. Also to
40 see that the total is written in words on the deposit slip and then tear the deposit slip out, and check on the duplicate, the date again and the creditee and the ultimate total, say £1000.

Q. You check again on the duplicate the date and the creditee's name? A. Yes, and the total in the ultimate summary column, you see, and also you see that the amount is written in in words.

Defendant's
Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Examination
(Continued)

Defendant's
Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Examination
(Continued)

Q. At some stage does he stamp or initial it? A. It is stamped and given back to the customer.

Q. He stamps the carbon or the duplicate and gives it back to the customer? A. Yes.

Q. Does he at any stage check to see whether the itemised particulars of the cheques on the duplicate deposit slip correspond with the itemised particulars of cheques on the
10 original? A. No. He would be doing nothing else.

Q. You said he checks the addition of the cash and cheques specifications on the original? A. Yes.

Q. And you have said that he checks the total underneath those columns in the duplicate against the total shown in the original? A. That is correct. That follows the pattern of the ordinary little slip. That is all you can check on the butts, you see, if you do an ordinary slip.

20

Q. Does he check the addition in the duplicate of the items of notes, silver, copper and cheques? A. No, I would say no.

Q. Does he check to see whether the itemised notes, silver, copper, and cheques in the duplicate correspond to the itemised items in the original? A. I would say not in every case. Perhaps it is desirable. No, depending just on the number ---

30

Q. I just want to know the custom for the moment. A. Yes.

Q. Is it customary for him to check the item details? - Let me show you what I am talking about. Is there a manilla folder in front of you? A. No.

Q. (Exhibit "B-212" shown to witness): Does he check the items of the notes, silver, and copper and cheques, and I am distinguishing between the items and the total for the
40 moment. Does he check those items on the original against those same items on the carbon? A. No. Having established it on the original and ticked it, no. I would say no, Mr. Street.

Q. I want to put one other matter to you, that is that you have a customer such as I have described to you of that standing and repute I have told you who comes in to make

one of his daily deposits, and included in the daily deposit is a cheque. The customer's name is Universal Guarantee Pty.Limited and this customer having an account at your branch, Universal Guarantee, includes within its deposit a cheque drawn on its printed form, which has this printed crossing Not negotiable, account payee only, printed on it. A. Yes.

Defendant's
Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Examination
(Continued)

Q. A cheque I will ask you to assume that is properly
10 signed by two authorised signatories in favour of N.Byatt.
Do you see that? A. Yes.

Q. That is a cheque being deposited to the credit of the
same account on which it is drawn and it bears on its
back in the form of a signature, N.Byatt, and underneath
that the rubber stamp per pro Universal Guarantee Pty.
Limited with the words "Endorsement guaranteed" and
the signature of one of the persons who are in the group,
any two of whom may draw on the account and any one
20 of whom may endorse. Do you understand? A. Yes.

Q. What would be the custom or would it be customary
for a receiving teller to accept from this customer for
credit to its own account a cheque such as that before
you? A. A well established company and this is the
average amount?

Q. Yes, that is the amount of the cheque. A. In a
30 deposit of say, 20, 30 or 40 or 50 cheques?

Q. Yes, or more. A. Yes, he would accept that.
It is going back to the customer's own account, the
customer's own cheque.

Q. It is the company's own cheque going into the comp-
any customer's own account. A. Yes.

Q. You say the receiving teller would accept it? A.
Yes, that is so, he knows the company's background
40 and it is well within the resources of the company.
That is the case, is it not?

Q. I put to you the assumption that it is a reputable
company. A. I would say without any hesitation, Yes.

Q. I also put to you to make it clear that this is the
company cheque going to its own account. A. Going
to its own account, yes.

CROSS-EXAMINATION.

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Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Cross-
Examination

MR. NEWTON: Q. Mr. Gaughan, I suppose your bank has some book of rules or instructions regarding the duties of tellers, has it not? A. There is a rule, yes.

Q. I suppose you are familiar with the book, are you?
A. Well, yes; I am not familiar: I have read it many years ago.

10

Q. Is it a fairly big book? A. Yes, it is a fair size now.

HIS HONOUR: Q. An inch or two thick? A. About three or four inches thick, I would say, Your Honour.

MR. NEWTON: Q. And it would you remember deal with the duties of tellers? A. Correct.

20 Q. And duties in relation to not negotiable cheques?

A. Correct.

Q. And crossed cheques? A. Correct.

Q. I wonder if you could get a copy of that book for us during the luncheon adjournment? A. I think we could, yes.

Q. Would you be good enough to bring it up at 2 o'clock?

30 A. Yes.

HIS HONOUR: I do not think you can ask a witness like that, Mr. Newton; I do not think you can put an obligation on the witness who is not from the National Bank.

When a witness comes along as an individual it is somewhat unusual and not very desirable to ask him, he not being the principal executive or having a principal executive's permission, if he is prepared to produce
40 his bank's documents.

MR. NEWTON: I will have steps taken to have it here.

HIS HONOUR: I think you should.

MR. NEWTON: Q. Do you know what this book is called? A. The book of rules, the last occasion I saw it.

Q. Is there only the one? A. I think there is an internal inspector's book, what we call the State manager's rules also, or there was another book. But there was a book of rules.

Q. Do you know what those rules are relating to tellers and cheques? A. There is an index of course and you could quite readily look it up.

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Bernard
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Gaughan

Cross-
Examination
(Continued)

10 Q. But is it in the rule book? A. Yes.

Q. I think you said that your experience in relation to a receiving teller is that these big deposit books, a number of sheets - you check everything before you tear out the original? A. Yes.

Q. When you think in terms of how as the receiving teller you go through and tick off the various items, is the carbon copy still in between the original and the duplicate?
20 A. Yes.

Q. And if it is more than one sheet in the deposit do you take the carbon out and then put it in? A. Follow on, yes.

Q. And you put it in between each sheet as you do it? A. As you tick off, yes.

Q. In the days before you just counted the cheques for the purpose of bank charges being assessed it was the
30 rule, was it not, even though it may not have always been followed, that the teller went through and ticked each cheque as he went through the bundle - he ticked it off in the deposit slip? A. Not necessarily. We had the batching system then. Having checked the endorsements if there was a cheque missing it would be picked up in the batch; so it was not necessary to tick them off.

Q. That was after the batching system came in, was it?
A. Yes.

40 Q. When was that? A. To my knowledge it is 30 years or more ago. That is peculiar to head office anyhow. I take it it would go into the other smaller branches too.

Q. Now I want to show you, first of all, the deposit slips in Exhibit "B-66". Do you see first of all that the figure 61 is shown there in notes in the original and in the duplicate it is shown as £491? First of all, when

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Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Cross-
Examination
(Continued)

it comes to you as the receiving teller these would all be in?

HIS HONOUR: That is, indicating the loose sheets.

MR. NEWTON: Q. The loose sheets, yes, and you would take the cash out, count it, tick it off and put it in the till?

A. Yes, somewhere until such time ---

10 Q. You would keep it aside? A. You would keep it aside until you verified it and then put it in the till.

Q. When do you stamp the duplicate? Right at the end?

A. Yes, at the finish.

Q. At the end? A. Yes, when you have satisfied yourself as to all particulars on the front thereof.

Q. In this case of course there has been 40/- exchange
20 charged or payable? A. Yes.

Q. You wrote that in the original and it comes through on the carbon, is that the position? A. That is correct.

Q. So when you look across you check the name of the account? A. Yes.

Q. The words? A. Yes.

30 Q. Then you go straight over to the summary? A. That is correct.

Q. I suppose normally the ticks would come through?
A. They should.

Q. Onto the carbon? A. Yes.

Q. I suppose if you had just counted a bundle of notes, an amount of money, and you came to put the stamp on
40 the duplicate and there were no notes shown in it at all, it would probably strike you, would it not? A. It may or may not depending on the occasion. If there was a queue possibly in front of you; the assumption would always be that that amount agrees with that.

HIS HONOUR: Q. When you say that amount agrees with that, you are pointing to the totals on the summary?

A. Yes.

MR .NEWTON: Q. If it did strike you that there was anything left out of the duplicate you would do something about it? A. You could, yes. You would get the lad paying in or the customer's representative to fill it in as necessary.

Q. Not only could you do it, you would do it? A. You would do it, that is correct; although I do not know of any rule which suggests you have to do it on the duplic-
10 ate.

Q. I suppose if you noticed that a cheque had been included in the original and was not in the duplicate you would also do something about that, would you not? A. That is so, if you did, but in the case of bulk transactions it is doubtful if you would.

Q. I put this to you, that what you say is you do not think there is any duty on you to do it, but if you did
20 notice any irregularity - A. You would do something about it.

Q. You would certainly raise it? A. Yes.

Q. I show you Exhibit "B-66" and again you will see in the original deposit slip the amount of notes has been altered and the amount of the cheques has been altered? A. Yes.

30 Q. The duplicate deposit slip has not got those alterations and I will read to you the evidence that Moffitt gave in relation to this, "I altered the cash from £516.10. 0. to £116.10. 0. and adjusted the cheques from £2986.12. 4. to £2386.12. 4. on the original and not on the duplicate." So, you see the alterations were made to the original but not to the duplicate? A. They are initialled.

Q. That is so, but what I am putting to you is that
40 even though it might not have been your duty as you understood it, you would be very likely to notice that, would you not? A. There again, according to the circumstances as regards the actual ultimate totals they are very clear there they have been altered; depending on the circumstances, if you had nothing else to do you may notice that, but if you are busy having checked the original you would

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Bernard
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Cross-
Examination
(Continued)

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Cross-
Examination
(Continued)

probably slide the duplicate back to him.

Q. This is a deposit including a number of sheets, you see? A. Yes.

Q. You start with the one with the summary I suppose, do you? A. Correct, yes.

Q. And then in this particular way, the way the customer
10 did it here, it goes backwards; so you would track back-
wards through the book, is that so? A. In the case of
a bulk transaction there, all you need worry about is the
actual ultimate total of the cheques.

Q. You say you would only worry about the last sheet
of it? A. That is correct, to see that it agreed, bearing
in mind again of course it is an important customer.

Q. The book would be open at that sheet, you would
20 check your cash, and have you done anything about the
total of your cheques? Have you checked that with
anything? A. Check with the total of the cheques - this
is the original, isn't it?

Q. Yes. A. Where is the total? Is there a page missing?

Q. No, I think some of them were not totalled. A. That
again, where they are not totalled, and seeing it is an
important customer, I would say as we do it in bulk, or
30 the batch system, that would again show out if there
was a cheque missing or added ---

Q. So you would not worry much? A. No.

Q. Whether they added up to that figure or not? A. No.

Q. You would make no check to see that they did add up
to that figure? A. No. I suggest if that was the number
of cheques you could not, Mr. Newton.

40 Q. Then having got to that stage you tick off the notes,
the silver, and the copper, and there is not much point
in ticking off the money orders? A. Money orders, no.
Although there are quite a few there.

Q. You would tick off the total? A. Yes.

Q. And you would tear the original out? A. Yes.

Q. You would put in the total exchange, would you? A. Correct.

Q. And you would initial it? A. Yes.

Q. Before you took it out? A. Yes.

Defendant's
Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Cross-
Examination
(Continued)

10 (Luncheon adjournment).

MR. NEWTON: Q. You were looking at Exhibit "B-66".
Would you try and speak slowly and distinctly, Mr. Gaughan?
A. I shall.

Q. I think we were examining the original and the duplicate
deposit slips in Exhibit "B-66", and I think we had got to
the stage where you had ticked everything off on the summ-
ary sheet, assuming that you were the receiving teller,
20 you wrote in the exchange, you initialled the deposit slip,
and then you tore the original out. Would you just tear
the original out for a start, or would you tear all the
sheets out at the one time? A. I should imagine you
would tear all the sheets out at the one time and pin
them together as necessary.

Q. You would have the original on top of the sheets you
had taken out? A. Yes.

30 Q. And the duplicate deposit book open at the summary
sheet? A. Correct.

Q. In that one you will notice there is the alteration
from £516.10. 0. apparently to £116.10. 0., and some
alteration to the amount of the cheques in the original?
A. Correct.

Q. Having them both signed, having in mind that you
had ticked £116.10. 0. in notes, I am suggesting to you
40 in all probability you would notice that the notes in the
duplicate were different to the others? A. As I
mentioned before, Mr. Newton, only perhaps - well,
I would not like to mention how many times out of a
hundred; no, I don't think that is incumbent on a
teller or on me as the teller to look at the duplicate
having looked at the original or the ultimate amount
in the body of the original deposit slip and having

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Cross-
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(Continued)

ticked off the cash in the original deposit slip.

Q. Having regard to the pressure of business I think you indicated that there is really no time to go into any detailed examination of the duplicate. That is correct, is it not? A. Yes.

Q. I suppose you as an experienced banker if you had time would at least check the summary on the duplicate? A. It
10 is not incumbent on our tellers to do that, Mr. Newton.
No, that is not a definite instruction to do that.

Q. But you would yourself personally assuming you had time just cast your eye on the original and on the duplicate to satisfy yourself? A. As an experienced, perhaps, teller of my mature years, perhaps I could do that, but a young teller these days, perhaps you could not expect that of him, particularly as it is not instructed.

20 Q. I suppose it is difficult to get competent staff, is it?
A. I would not say that. Along with other businesses in the community I daresay you have your average.

Q. I want you to look at Exhibit "B-67". Now, would you open the duplicate deposit slip for the summary sheet of those deposits? A. Yes.

Q. You will see there in the original that the notes are shown as £61 and in the duplicate £491? A. Yes.
30

Q. Again having done all the checking, having just counted £61, if you came to the duplicate I am suggesting to you that it would stand out very clearly if there were no notes shown there at all? A. It could, depending if you were looking for it, Mr. Newton.

Q. It would strike you, would it not? A. It may. I say if you were looking for it, yes.

40 Q. And if it struck you? A. You would do something about it.

Q. I want to ask you now some questions about cheques, first of all. (Witness shown Exhibit "G"). That is a specimen cheque as you see, but I want you to make these assumptions: that the cheque is properly drawn on Universal Guarantee, you will see it is not negotiable,

account payee only, payable to the order of J. Bruce and it bears the signature J. Bruce, and there is nothing on the back of it. I want you to assume that you are the receiving teller at the Wentworth Avenue Branch of the National Bank, that that cheque is included amongst the deposits, being a deposit made to the account of Universal Guarantee which is a good customer and beyond doubt, you see, and I want you also to assume that this is the first time you have seen one of their
 10 cheques payable to a third party being paid into their account. I am going to ask you or suggest to you that that would immediately raise a query in your mind? A. How many cheques did you say were in the deposit?

Q. A number of cheques, 20 or 30? A. A deposit averaging about £200 to £300 or £400?

Q. Something like that, yes, but this is the first time
 20 there has ever been a cheque payable to a third party, being a cheque of Universal Guarantee being paid back into its own account, and I suggest to you, first of all, you would raise a query without any endorsement on it at all?

HIS HONOUR: With no endorsement other than the endorsement of the payee.

WITNESS: Yes, Your Honour.

30 MR. NEWTON: Q. Yes. That would raise a query in your mind immediately, would it not? A. No, again as mentioned, bearing in mind the enormity or the size of the company customer and the size of his deposits and the amount involved, £400 is, I suggest to Your Honour, commercially anyhow not of any great consequence. I would say that the average teller today would take that knowing the company personnel and so on. It is a
 40 cheque going back into the company's own account.

Q. You would do it of course, I take it, because your customer is of undoubted credit? A. Correct.

Q. And you have got resource against the customer if anything goes wrong? A. Correct.

Q. And you take the risk of it going through in what

Defendant's
 Evidence
 No. 3(4)

 Bernard
 Joseph
 Gaughan

 Cross-
 Examination
 (Continued)

Defendant's
Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Cross-
Examination
(Continued)

I suggest to you is an irregular way, is that right?

A. Yes, we do; we take that risk, yes.

Q. If the cheque had been properly drawn. (Cheque in Exhibit "B-142" shown to witness). First of all, I want you to assume that that cheque is properly drawn, the signatures on the front of it, those of Sorbie and Tyack being two authorised officers drawing it, and you will note that it is payable to the order of J.Bruce. You
10 will see the signature on the back "J.Bruce" and the words "Endorsement guaranteed, per pro Universal Guarantee Pty.Limited, W.Moffitt", and I want you to assume that Moffitt is also an authorised officer to sign cheques. First of all I ask you this: that is a most unusual form of endorsement, is it not, "Endorsement guaranteed"? A. Yes.

MR.STREET: It might be better to call it notation rather than endorsement.

20

MR.NEWTON: Very well.

HIS HONOUR: I think it is quite clear.

MR.NEWTON: Q. That notation on the back of the cheque "Endorsement guaranteed, per pro Universal Guarantee" - you have agreed with me that is most unusual? A. Most unusual.

30 Q. It is an endorsement that is used fairly frequently between banks, is it not? A. That is correct.

Q. Have you ever seen it used as between customer and bank? A. I cannot say that I have over the years. If I have, I have no recollection.

Q. From what you tell me you would not have required any such notation on the back of the cheque if it were being paid into the account of Universal Guarantee. A.
40 Correct.

Q. I suggest to you that the fact of that notation on the back of the cheque itself would raise a doubt in your mind? A. No. It would probably raise the assumption that the payee has had value from the company and as further evidence of good faith on the company's behalf one of their officers has guaranteed. It would immediately call to mind that assumption.

Q. Of course, you appreciate it is being vouched for in the notation by an officer who was not a signing officer to the cheque? A. No. I have said it is superfluous anyhow. I would think it is superfluous anyhow.

Defendant's
Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Cross-
Examination
(Continued)

Q. If you appreciate that it was put there by an officer who did not sign the cheque itself, it would occur to you, would it not, that he might be getting away with the money?
A. No.

10

Q. You would not have accepted a cheque such as that for the credit of Moffitt's own account, would you? A. Probably not. That is a different question.

Q. You would have accepted it for his account if he had been a man who was obviously worth £315? A. That would be a consideration, yes, if he is worth that or more we could, and again knowing the relationship between customer and banker.

20

Q. It would never occur to you that he might be stealing some of the company's money? A. I do not think that is within the province of a receiving teller, particularly in a big company. That is an internal matter, I think.

Q. Do you know anything about the examination or reading of cheques? A. I have been an examiner many -

Q. You have been an examiner? A. Many years ago of
30 course.

Q. After cheques are received to the credit of an account, cheques drawn on the branch receiving them, are examined by an officer? A. Correct.

Q. I think the term is that they are read by the officer?
A. Correct.

Q. I suggest to you, Mr. Gaughan, that if you had been
40 an examiner at the National Bank, Wentworth Avenue Branch, and you saw a cheque such as that with that endorsement and notation on the back and you had not seen one before, it would have raised a query in your mind? A. No.

Q. Supposing you were the accountant at that branch and somebody - the teller or the examiner - had put this

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Evidence
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Bernard
Joseph
Gaughan

Cross-
Examination
(Continued)

cheque aside to ask you whether it was all right or not to pay it, you would get in touch with the manager of the company, would you not? A. Maybe, again depending on the amount of the cheque and what I thought was a reasonable amount and what was thought of the company and their standing.

Q. It is quite common of course for customers to draw cheques in favour of themselves and deposit them to their
10 own account? A. Correct.

Q. But in your experience it is unusual, is it not, for customers to draw cheques in favour of third parties crossed as this is, and then pay them back into their own account? A. Would you repeat that, Mr. Newton?

Q. It is unusual in your experience for customers to draw cheques in favour of third parties and cross them as this cheque is crossed and then pay them back into
20 their own account? A. No.

Q. Do you say it is a common practice? A. I would say so, yes, in commercial circles, yes, banking circles.

Q. It may occur in some types of business; that is so, is it not? A. Yes, it does occur in quite a few, as you say, types of business, yes.

Q. But not by any means is it a universal practice? A.
30 No, I would not say universal, but certain types of businesses.

Q. I want you to be clear in your mind that I am putting to you cases where it is being paid back into the customer's account. A. That is true, their own cheque, yes.

Q. It is quite frequent of course for pension cheques and taxation refund cheques and this type of cheque to be cashed by grocers and tradesmen and paid into their
40 account? A. Yes.

Q. But that is a different proposition to paying them back into their own account, is it not? A. Yes, although possibly the fact of paying your own cheque back into your own account would be a better proposition than paying in a Department of Social Services cheque. I cannot see any great risk involved there, no.

Q. I take it as far as cheques that are for Social Service and Taxation refunds are concerned, of course you only take those to the credit of an account other than the payee where the customer was a customer of repute? A. That is correct.

Defendant's
Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Cross-
Examination
(Continued)

Q. It would be worth taking the risk? A. Yes.

Q. Because if it is a stolen cheque you debit the customer? A. That is correct.

(The Bank of New South Wales was called on subpoena duces tecum and reported as being not present.)

MR. NEWTON: Might I defer my cross-examination in respect of the book of rules until it has arrived, Your Honour?

20 HIS HONOUR: Yes.

(Witness stood down).

FRANCIS RAYMOND FIRTH,
Sworn, examined as under:

Defendant's
Evidence
No. 3(5)

Francis
Raymond
Firth

Examination

MR. STREET: Q. Your name is Francis Raymond Firth and you live at 5 Kelburn Road, Roseville? A. Yes.

30 Q. You are a chartered accountant? A. Yes.

Q. And a partner in the firm of Messrs. R.A. Irish & Mitchelmore? A. Yes.

Q. I think you first entered the employment of a chartered accountant in 1934 and apart from some 5½ years during the war, you have been in a chartered accountant's office ever since? A. Yes.

40 Q. You have been a member of the Chartered Accountants Institute since 1947 and a Fellow from 1953? A. Yes.

Q. I think you have been a partner in Messrs. R.A. Irish & Mitchelmore since 1950? A. That is correct.

Q. In the course of your practice and your firm's practice, do you undertake audits for commercial entities? A. Yes, we do.

Defendant's
Evidence
No. 3(5)

Francis
Raymond
Firth

Examination
(Continued)

Q. Do the concerns for whom your firm does auditing include finance houses? A. Yes.

Q. Are you personally, yourself, associated with the conduct of some of the audits in your firm's office? A. Yes.

Q. I think it is a firm with eight partners in Sydney? A. Yes.

Q. With associated firms in various other capitals of the
10 Commonwealth except Tasmania and Canberra? A. Yes.

HIS HONOUR: You may take it, Mr. Street, that I know of the firm quite well. I think we all do.

MR. STREET: Q. Just to complete it, I think you are one of the assistant editors of a work on auditing originally written by Mr. Irish and now in its second edition? A. Yes.

Q. And that is a work that is a prescribed text for the
20 Institute of Chartered Accountants, the Australian Institute of Accountants, and even the Public Accountants Registration Board! A. Yes.

Q. As an auditor have you from time to time concerned yourself with the ingredients and operations of internal office control systems? A. Yes, very much.

Q. What is the object of an internal control system? A.
30 The basic objects are to safeguard the assets of the particular company and to check the effectiveness and accuracy of its accounting data.

Q. As an auditor who has had some concern with systems of this sort, would you tell His Honour what you expect of a bank in relation to duplicate deposit slips? A. Currently, and when I say currently I mean for many years - (Objected to).

Q. Well, what do you mean by currently? A. I would
40 say since the late forties nearly a guarantee that the total of the deposit agrees with the total which has been actually physically handed in to the bank.

Q. Can you say what, if anything, you expect of the bank as regards the correctness of the particulars of cheques endorsed on the duplicate deposit slip? It is as regards the bank I am asking at the moment. Do you know what

I mean by particulars of cheques? A. On the duplicate?

Q. On the duplicate? A. Nothing.

Q. Just going for one moment to the original of the deposit slip, since late in the forties, can you tell me what you as an auditor expect of a bank in relation to the original deposit slips so far as they purport to contain particulars of cheques going to make up the deposit?

10 A. I would say only the total agrees with the total as shown in the box.

Q. Has this particular topic - I do not want to ask you about the contents for the moment - been the subject of some comment in accountancy and auditing books? This topic of the reliability for audit purposes of particulars of cheques on a deposit slip, both the original and the duplicate? A. Yes, it has.

20 Q. Would you tell His Honour what you say is the object of an internal control system. Can you tell His Honour whether for the purpose of the internal control system the auditor is concerned in any way with the duplicate deposit book? A. Yes.

Q. Would you just tell me what use, if any, the auditor makes of the duplicate deposit slip in relation to the internal control system? A. The checking of the duplicate bank deposit with the details in the receipts cash
30 book or in the duplicate themselves as part of the testing by an auditor of the effectiveness of the internal control of that particular concern.

Q. Would you tell His Honour in what way that tests the effectiveness of the internal control? A. If the internal control is accurate it should agree, but if it does not agree it could indicate that even though a control system may be laid down it is not being carried out.

40 Q. What effect on the internal control system or on an ordinary control system does this have if the person who has been concerned with the handling of the monies coming in has himself filled in the bank deposit slips? Does that have any effect at all on its efficiency or efficacy? A. No, not of itself.

Defendant's
Evidence
No. 3(5)

Francis
Raymond
Firth

Examination
(Continued)

Defendant's
Evidence
No. 3(5)

Francis
Raymond
Firth

Examination
(Continued)

Q. Let me take it to the next stage. What effect, if any, is there on the internal control system of the same individual who is concerned in handling the cash and the cheques either in receipts or banking participating in any degree with the balancing of the ledgers? A. That would produce a serious weakness. With internal control the more people involved in any transaction the better, but if the same person has access to cash, cheques, and banking, and the debtors' ledger, for example, then it does destroy
10 control.

Q. Do you have any opinion on the relative significance in an ordinary system of internal control - I am not seeking perfection but in an ordinary system of internal control, in an office of 20 or 30 people carrying on a finance business for electrical goods and some motor vehicles, with a turnover indicated by daily bankings of the order of £2000, or £3000, £4000, or £5000, or something like that? Can you picture that sort of business?
20 ess? A. Yes.

Q. With 20, 30 or 40 employees? A. Yes.

Q. With that sort of turnover, running that sort of finance business, without seeking perfection in any way, can you tell His Honour the importance in a business of that sort of separating the people handling cash and cheques, either as receiving them or as banking them, on the one hand, and balancing the ledgers, on the other
30 hand? It is a long question and I might have confused it? A. I think I might be able to answer it in saying that it is desirable in any internal control system to ensure that no one person is involved in any transaction from the beginning to the end. And, as I said earlier, the more people who can be intruded in the various phases of the recording of a particular item, then the stronger the control.

Q. Do you have any view as an auditor, Mr. Firth, as to the commonness or frequency in commercial undertakings of about the size which I have described to you, of internal control systems being in operation in such a business? A. I would say in every one.

Q. As a matter of commercial practice, I want to ask you a question about a cheque transaction just to get your view of commercial systems. I want you to assume

that this same organisation which I have mentioned, a thoroughly reputable organisation with a finance business such as I have described and with the size business I have put to you - (withdrawn).

Defendant's
Evidence
No. 3(5)

Francis
Raymond
Firth

Examination
(Continued)

CROSS-EXAMINATION.

MR. NEWTON: Q. I suppose it is necessary for some officers to have access to all parts of the company's business? A. That is so.

Cross-
Examination

Q. The manager, for instance, must have the right to take part in all the activities of the particular company; would you agree with that? A. Generally as a question, yes.

Q. When you talk about this division of functions and the desirability of it, you are referring to the ordinary staff as opposed to the executive staff, I suggest to you? A. Yes, because the executive would have supervision and I think access does include supervision.

HIS HONOUR: Mr. Newton, your question was of the company's activities, and what Mr. Firth has been speaking of is the recording and accounting activities rather than the company's activities.

MR. NEWTON: Q. I will rephrase that question, Mr. Firth. You were talking about internal controls, I think, were you not? A. Yes.

Q. And I put it to you that when you were referring to the desirability of separating those functions of internal control you were referring to the ordinary staff as opposed to the executive staff? A. No, the executive staff would still be involved in the overall plan or organisation comprising internal control.

Q. There would be nothing wrong, would there, in your view in the manager of an organisation doing banking, for instance? A. Of itself no.

Q. There would be nothing wrong with him having access to the ledgers, the debtors' ledgers? A. Would you mind clarifying your meaning of access to the debtors' ledgers?

Q. The right to go to the debtors ledgers? A. He would have that right.

Defendant's
Evidence
No. 3(5)

--
Francis
Raymond
Firth

Cross-
Examination
(Continued)

Q. And there would be nothing wrong in him assisting to balance the debtors' ledgers? A. It would be very unusual.

Q. Only because he is the manager, I suppose, and if he was so minded, you would see nothing wrong in it from a control point of view? A. I would venture that if it happened regularly it could from the audit point of view weaken the internal control. If it was a matter of
10 standing in in an emergency or during the absence, say of the accountant, then it would be quite acceptable.

Q. While I think of it, you have had experience of finance houses, you told us? A. Yes.

Q. That is of carrying out audits in finance houses, and you have had experience in balancing debtors' ledgers in finance houses? A. That is so.

20 Q. I suppose when you come to audit the debtors' ledger and it has apparently been balanced by a number of figures on an adding machine tape, you would check the individual items on the adding machine tape? A. That is so.

Q. But you would not normally re-add the figures, would you? A. Yes, we would, because we have found that both adding machine tapes and/or the proof produced by book-keeping machines can be wrong.

30 Q. You know of this case, do you, I suppose, that we are concerned with? Moffitt? A. Yes.

Q. Prior to Moffitt's frauds being discovered was that the normal practice of auditing, to re-add the adding machine tapes? A. It has been in our firm.

Q. Do you know whether it is general practice? A. No, I could not speak to that.

40 Q. I suppose you would agree with this, that one very rarely finds perfection in any commercial enterprise from the internal check point of view? A. Yes, to the extent that any system can break down at the individual level.

Q. So certain employees must be trusted I suppose? A. Yes.

Q. And if they fail to fulfil that trust then there is always a danger of systems breaking down? A. It could for a very short time, but if the system itself is solid then such an occurrence would show up very quickly.

Q. That is the object of the system, to bring to light any irregularity as early as possible? A. That is so.

Q. As far as the duplicate deposit books are concerned,
10 you told my learned friend that you as an auditor, or the practice of auditors as you understand it is to look at those; you make a spot check, I suppose? A. A test check.

Q. A test check from time to time - for what purpose?

A. For appraising the effectiveness of the internal control system primarily.

Q. What do you check the duplicate deposit slips against?

20 A. The duplicate receipts, cash register tapes for cash registers are in use, and the duplicate cash book.

Q. Do you only use the total of the deposit for that?

A. No.

Q. What other material in the duplicate deposit slip do you use for those checks? A. The detail of every cheque therein.

30 Q. This is a test check you say? A. Yes.

Q. And you will take a deposit book like this for a particular day and you will go through every cheque that is shown in the particulars, is that what you say? A. That is so.

Q. And you check that against what? A. The duplicate receipts, and further through to the cash book. But in many instances in large organisations there is only the
40 total appearing in the cash book itself.

Q. The total of the deposits for a particular day? A. Covering a certain number of receipts.

Q. Of course, you check those from your bank ledger sheets, too, don't you, the deposits for each day? A. The total, yes.

Defendant's
Evidence
No. 3(5)

Francis
Raymond
Firth

Cross-
Examination
(Continued)

Defendant's
Evidence
No. 3(5)

Francis
Raymond
Firth

Cross-
Examination
(Continued)

Q. Against the cash book? A. Against the cash book.

Q. Would you agree with this, that it is undesirable for a company to draw cheques in favour of third parties, crossed not negotiable, account payee only, and then pay them back into its own account? A. No, I do not think I would say that it is undesirable. It is fairly uncommon, except that you might find specific types of businesses which do it, but the general run of businesses would not.

10

Q. What internal check do you suggest could be instituted to see that those cheques were not misappropriated? Do you follow what I mean? A. Not specifically, no.

Q. I will put it to you more concretely with a particular example. Would you have a look at this cheque in Exhibit "B-141". Do you see it is a cheque drawn by Universal Guarantee on the National Bank, Wentworth Avenue Branch, payable to the order of N. Byatt for £440, and I want you
20 to assume that that cheque is correctly drawn - do you follow? A. Yes.

Q. And I want you to assume that the signature on the back of it is that of the man named Moffitt, one of the authorised officers to sign cheques and I want you to assume that he took the £440 from the company and this cheque was paid in in lieu of the cash. Do you follow?
A. Yes.

30 Q. What internal check can a company put in to the system to stop that happening? A. A very desirable part of any internal control over cash is that, for example, a responsible officer should sight the deposit after it has been made up by, say, the cashier; it should then go to the chief accountant or the secretary or some other responsible person who would have a quick look at it and impose what checks he thought necessary at the time on the original and the duplicate. The book should then be given to, say, the company's
40 messenger to take to the bank and not back to the cashier, and on return from the bank the messenger should give the duplicate back to the responsible officer who sent it out before it goes back to the cashier.

MR. NEWTON: Q. Of course, if the bank had not paid it, had not accepted it to the credit of the account, that would also be a method of stopping it?

HIS HONOUR: That is rather evident, Mr. Newton. You hardly need to ask that.

RE-EXAMINATION.

MR. STREET: Q. Mr. Newton asked you whether you saw anything wrong with the manager doing the banking for a business and you said, as I understand you, "Of itself, no"? A. That is correct.

10

Q. And he asked you then did you see anything wrong with the manager assisting with the balancing of the debtors' ledgers, and you recollect your answer to that? A. My answer was -

Q. Your answer was he - well, let us have it again.

A. In an emergency during the absence of some other employees.

20 Q. In a business such as I have asked you to assume in the present case, do you see anything wrong with the manager both doing the banking and assisting with the balance of the debtors' ledgers? A. Yes, definitely.

(Witness retired)

(Charles Robert Craigie, an officer of the Bank of New South Wales, head office, produced on subpoena duces tecum a book of rules.)

30

MR. NEWTON: May I have access to it, Your Honour?

HIS HONOUR: I do not know. You are not entitled to investigate other people's accounts and affairs. I think the position strictly is, from memory, I will not hand this down unless I am satisfied it is in some way relevant

BERNARD JOSEPH GAUGHAN,
Recalled and further cross-examined :

40

MR. NEWTON: Q. Mr. Gaughan, that, first of all, is the rule book to which you were referring this morning? A. Correct.

Q. And does it contain certain instructions in relation to the duties of tellers? A. Correct.

Defendant's
Evidence
No. 3(5)

Francis
Raymond
Firth

Re-
examination

Defendant's
Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Recalled,
Further
Cross-
Examination

Defendant's
Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Recalled,
Further
Cross-
Examination
(Continued)

Q. And does it also contain certain instructions relating to crossed cheques? A. Correct.

Q. And cheques that are drawn on companies? A. It does not say anything about companies, I do not think. "Crossed cheques and endorsement" it does not say specifically anything about companies. "Crossed cheques and endorsements".

10 Q. But isn't there something in relation to cheques drawn by a company or firm? A. For the purpose of encashment, yes, there is something there.

Q. You are only interested in the receiving? A. Yes, for the purpose of encashment it mentions something about companies but otherwise in the general rules, no.

MR. NEWTON: I make application to Your Honour to see the relevant paragraph.

20

HIS HONOUR: Yes. Paragraph 4, it is, from what I can see, s.885.

MR. NEWTON: Q. The instructions from the bank to you as an officer of the bank are that crossed cheques and those bearing P.P. endorsements must not be cashed or accepted for credit, collection or remittance without enquiry if there is reason to suspect from the nature thereof that they are out of the usual course of business?

30 A. That is correct.

Q. And I put to you again the cheques that I asked you about this morning, would not you agree that on their face they appeared to be otherwise than in the ordinary course of business? A. In all the circumstances, no.

Q. And it emphasises, doesn't it, in all cases where there is the slightest doubt, authority to cash or accept any such cheque must be obtained by reference to the
40 manager? A. Correct. Putting myself in the place of the manager, I would say there is no doubt at all in this transaction.

Q. Even though you had never seen one before similarly dealt with? A. Well, yes, again bearing in mind the enormity of the company or the size of the company.

MR .STREET : There is in s.2 of s.885 a paragraph dealing with deposits and the issue of duplicates. I do not know whether it does bear on what my friend is interested in or not, but I do not want to sit in silence.

Defendant's
Evidence
No. 3(4)

Bernard
Joseph
Gaughan

Recalled,
Further
Cross-
Examination
(Continued)

HIS HONOUR : I do not know that it might not be appropriate to have the whole of the first paragraph incorporated in the notes. Sometimes an impression may be given - not here but elsewhere - of the result. Would you be agreeable to
10 the paragraph on which you have cross-examined being incorporated in the notes? The first half of paragraph 4?

MR .NEWTON : Yes, Your Honour .

HIS HONOUR : Would you care to look at 2? Mr .Street tells me that it may possibly touch on the matter you have referred to. It is only fair that you should be at least able to see it. (Book handed down).

20 MR .NEWTON : I see that, Your Honour. I do not desire to make any use of it.

RE-EXAMINATION.

Re-
examination

MR .STREET : Q. The book of rules which you had before you and about which Mr .Newton has asked you questions on one part does also contain instructions regarding deposits? A. Correct.

30

(Witness retired)

(By consent the following portion of paragraph 4 relating to "Crossed Cheques and Endorsements" was incorporated in the transcript :

"Crossed cheques and those bearing p.p. endorsements, must not be cashed or accepted for credit, collection, or remittance, without inquiry if there is reason to suspect from the nature thereof that
40 they are out of the usual course of business and therefore likely to be viewed by a Court as making the Bank liable on account of negligence if passed as a matter of course. In all cases where there is the slightest doubt, authority to cash or accept any such cheque must be obtained by reference to the Manager (or Accountant) who will initial the relative cheque or credit slip in confirmation.

Defendant's
Evidence
No. 3(6)

Refer to Rule 610 (1) before accepting crossed
cheques when opening new accounts.")

Colin
Douglas
Rose

COLIN DOUGLAS ROSE,
Sworn, examined, deposed :

Examination

10 TO MR. STREET: My name is Colin Douglas Rose. I
reside at 25 Churchill Avenue, Wahroonga. I am a bank
manager and from February, 1953 until August, 1959. I
was the manager of the Wentworth Avenue branch of the
National Bank.

Q. You went to the bank, I think about 1923 as a junior
clerk and after some other junior appointments became
Security Clerk at the Brisbane Capital Office branch in
1936. You were away during the war on war service.
Then you became manager of a Queensland branch of the
bank until 1948, when you went as manager to the Moree
branch and, in 1953, manager Wentworth Avenue? A. Yes.
20

Q. And at the moment you are managing the Burwood
branch? A. Yes.

Q. During the period that you have been employed by
the bank you have, I think on a number of occasions,
performed the duties of receiving teller? A. I have.

Q. And are you familiar with the procedure and the
custom -? A. I am.
30

Q. - in force with your receiving tellers; in particular
I want you to direct your mind to the years when you
were at Wentworth Avenue? A. Yes.

Q. First of all, the Court knows that it is a common
banking practice for banks to have in the banking
chamber for use of customers small deposit slips
with a perforated butt? A. That is right.

40 Q. To make available free to customers bound copies
of slips of that sort? A. That is correct.

Q. And to make available, at some small charge to
customers, other bound books having provision for a
carbon or other form of duplicate. A. That is right.

Q. And you recollect, I take it, from your period at

Wentworth Avenue the Universal Guarantee account? A. I do.

Defendant's
Evidence
No. 3(6)

Q. It was, may I take it, one of the more important accounts at your branch? A. It was.

Colin
Douglas
Rose

Q. Do you also recollect the fact that there were daily deposits on this account and that they were in the vicinity of £2,000 or more? A. At least £2,000.

Examination
(Continued)

10

Q. With quite a number of sheets of the deposit book being involved in each deposit? A. That is correct.

Q. Will you tell His Honour what was the custom of your receiving teller during the years that you were there when a deposit was being made, we will say by Universal Guarantee on one of its ordinary daily deposits. First of all, he would get the book, I take it, with the cheques, the cash content, and the money orders? A. That is

20 correct.

Q. He would get those across his counter? A. That is correct.

Q. Would you take it from there and run through what was the practice in your branch at this time? (Objected to; question not pressed)

Q. So far as concerned this Universal Guarantee account at your branch, did you ever receive from any of the receiving tellers while you were manager there queries in respect of any deposits being effected to that account? A. No. At no period at all.

30

Q. Do you recollect at any point of time whilst you were manager any matters of irregularity in the operations of the Universal Guarantee account being brought before you? A. None brought to me at all.

40 Q. That is irregularities either in the deposits by that company or in its drawings? A. None whatsoever.

Q. I think you did from time to time have contact with Mr. Tyack, the manager of Universal Guarantee, on matters other than what we might call the mere mechanics of the banking operations? A. Only by telephone.

Defendant's
Evidence
No. 3(6)

Colin
Douglas
Rose

Examination
(Continued)

Q. And did you ever meet the man W.R.Moffitt yourself?

A. No, I have never met the man.

Q. Did you ever have any suspicion at all of any irregularity? A. None whatsoever.

Q. Or anything of that sort involved in his transactions on behalf of his employer or on his own behalf in his employer's name? A. None whatsoever.

10

Q. I want to show you Exhibit B141 and also show you the duplicate deposit book which forms part of that -

MR.NEWTON: He was not there then, Mr.Street. I invite my friend's attention to the fact that he has chosen a file at random -

MR.STREET: It does not matter for my purposes, Your Honour.

20

Q. And you will notice this cheque, Mr.Rose, is on the printed form of Universal Guarantee made out in favour of N.Byatt with the printed form of crossing on the cheque? A. Yes.

Q. Signed on the back "N.Byatt" with this notation signed by Moffitt underneath it? A. Yes.

30 Q. I want to ask you what do you say as to the custom in force while you were manager at this branch of accepting a cheque of that nature drawn by two authorised signatories with this notation on the bottom signed by Moffitt who, I ask you to assume, was authorised to endorse solely or be one of two joint signatories. What do you say as to the custom regarding the acceptance of this cheque from Universal Guarantee as part of its deposit for the credit of its own account with your bank? A. It was never referred to me but if it had been referred to me I would consider them to be a fairly large and responsible and
40 reliable company and I would consider it to be their own wish to credit the cheque to the account and I would not question the taking of it.

Q. Perhaps I can put specifically to you the question regarding the practice of receiving deposits, without going through it in chapter and verse. Can you tell me whether it was the custom of your receiving tellers while you were manager of the Wentworth Avenue branch

to check the details of cheques on a duplicate deposit slip against the details of cheques on the original of the deposit slip? A. No, it was not.

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Evidence
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Colin
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Rose

Examination
(Continued)

Q. Was it ever the custom while you were manager there to check the items above the total in the cash and cheque specification at the top of the duplicate deposit slip against those same items, that is to say the items above the total of the original? A. No, it was not.

10

Q. While you were manager at that branch, did your branch keep certain records of the current authorities to operate on and endorse in respect of accounts at your branch? A. It did.

Q. And were those records kept during May, 1953, to November, 1957 in this book which I show you? (Approaching witness). Is that what is called the Register of Authorities for that period I have put to you? A. It is.

20

Q. And have you been concerned yourself in any search that - (withdrawn)

Q. First of all, can you tell me whether or not there was some authority to draw cheques and to endorse given in respect to the Universal Guarantee account in October, 1954? A. There was.

Q. Have you been concerned in the search for the
30 bank's copy of that? A. Not personally.

Q. Do you yourself know where the original of that is at the moment? A. No, I do not.

MR. STREET: I do not know whether my friend wants me to go strictly through proving the search for this document.

HIS HONOUR: I will give you leave to lead this evidence
40 subject to your linking it up later . . . (Mr. Newton objected; argued)

MR. STREET: I am prepared to withdraw the evidence. I have got sufficient, I think, from Mr. Tyack for my purposes.

Q. During the time that you were there as manager,

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Evidence
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Colin
Douglas
Rose

Examination
(Continued)

there was one man who would normally do both the paying and the receiving telling? A. That is correct.

Q. With a second, a bill clerk teller? A. Exactly.

Q. Who would come on at lunch time and in the busy periods? A. That is correct.

Q. And this teller, when he was operating as receiving
10 teller, had behind him a teller's clerk, had he? A. That is correct.

Q. When he received the cheques going to make up a deposit, he would pass those through behind him to his teller's clerk? A. Yes.

Q. And those cheques would then be checked against the original deposit slip after the customer had left the branch.
A. They would be balanced against the amount.

20

Q. The totality of the cheques would be balanced against the total on the original deposit slip? That was after the customer had gone? A. That is correct.

Cross-
Examination

CROSS-EXAMINATION.

MR. NEWTON: Q. During your time there I suppose there was an accountant was there? A. There was.

30 Q. What did the staff consist of? A. There was manager, - myself - accountant, chief clerk, general clerk, bill clerk, teller, ledger-supervisor, ledger machine operator, statement-machine operator, typist, teller's clerk and one, two or three junior clerks.

Q. I suppose normally any queries about cheques would go to the accountant, would they? A. Normally.

Q. I do not suppose you concerned yourself with who were
40 the authorised signatories to cheques? A. It would come into my knowledge.

Q. But you would not be able, by looking at a cheque, to know whether it was properly signed without going to your register, I suppose, would you? A. That would be correct.

Q. And you would keep, would you, with the ledger the authority to operate on an account? A. Yes.

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Q. Where would that normally be? A. Both authorities would be indexed and filed in a separate filing cabinet which would be at call at the ledger department.

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Q. At call? A. At call or adjacent to it.

Cross-
Examination
(Continued)

10 Q. So if the ledgerkeeper has any query about a signature, he just turns it up? A. He turns it up.

Q. And that book would indicate whether two people were required to sign, or more, or who could sign? A. Indicate the people that had the power to operate on the account.

Q. And I suppose from your experience as a bank officer and branch manager you appreciate that you always have got to be very watchful for forgeries? A. Yes.

20

Q. And to see that frauds are not committed if it can be avoided? A. That is correct.

Q. And that is not only frauds against the bank but frauds against your customers? A. We are interested in frauds against the bank.

Q. Pardon? A. Against the bank.

30 Q. But are you not interested in any way about frauds that may be committed against your customers? A. We could not. We would have no way of being interested. There would be no way that we could know about them.

Q. Don't you take the view that you should be watchful and if there is anything at all suspicious in relation to a customer's account you should draw their attention to it? A. If I thought it was suspicious, I would.

40 Q. And if three people, any two of whom can operate on an account, a company account, and you found cheques being drawn by two officers and the third signatory paying the cheque into his own account, that would be a most suspicious circumstance, would it not? A. Yes, it would. It could be interpreted as suspicious. I won't say it is definitely suspicious.

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Rose

Cross-
Examination
(Continued)

Q. You would regard it as suspicious? A. The circumstances surrounding it would create the suspicion or eliminate it.

Q. Let us take a particular example. Have you still got that file in front of you? A. No.

Q. (Showing file 141) You see the cheque there, Mr. Rose?
A. Yes.

10

Q. Duly signed by Mr. Sorbie and Mr. Tyack? A. Yes.

Q. You appreciate it is paid to the order of N. Byatt for £440? A. Yes.

Q. And you see it is signed, or at least there is a notation on the back signed by Moffitt? A. Yes.

Q. If Moffitt had tried to pay that into his account, would
20 that have been a suspicious circumstance in your mind?

A. We would not have accepted the cheque to the credit of Moffitt's account.

Q. You would not? A. Definitely not.

Q. Why not? A. Because it is crossed "Not Negotiable". "Payee Only." and it would be going to the credit of Moffitt.

30 Q. You only accept it because it is going to the credit of Universal Guarantee, is that what you say? A. Exactly.

Q. You had other very good accounts down there - I will not name them, but of similar standing to the Universal Guarantee, didn't you? A. Yes, that is right.

Q. And if this cheque, this one we are looking at now, had been deposited with a deposit to another very reputable customer, would you have taken it?
40 than Universal Guarantee, definitely not.

Q. Pardon? A. Definitely not if it were any other account except Universal Guarantee.

Q. I do not know whether you had Anthony Hordern's down there, or had someone like that, but you would not take it to any other account except Universal Guarantee?

A. That is correct or, of course, the account of the named payee.

Q. You would regard it as instructions by Universal Guarantee to pay it to the order of N. Byatt? A. That is correct.

Q. And the only other person you would have accepted it for would be Universal Guarantee? A. That is right.

10

Q. As far as your own branch is concerned? A. Exactly.

Q. Of course, if it had come in from another bank, if it had come in from another bank, if it had been paid into an account at another bank and came to you for payment, that would be different proposition, would it not? A. Exactly.

Q. Because then you would have recourse against the
20 collecting bank? A. That is correct.

Q. And in this case you accepted it, or you would have accepted it for Universal Guarantee because you would regard yourself as having recourse against them if anything went wrong? A. I would regard them as having the right to deal with their own cheques in any way they wished.

Q. Wouldn't it have occurred to you that it would have
30 been a much simpler method of doing it, if that was what they wanted, to pay it into their own account, to cross out "N. Byatt" and make it "Pay Universal Guarantee" or "Cash" and have it initialled? A. If they had so wished, if they wished to do it in that fashion, yes, but not as far as we are concerned.

Q. It would never have occurred to you to wonder why they had not done that? A. Not at all.

40 Q. It would never have occurred to you to wonder why the signatories on the front of the cheque - why neither of them had signed the notation on the back? A. No bearing on it.

Q. And you would have known, of course, that Mr. Sorbie was the accountant and Mr. Tyack the manager? A. Yes, that is so.

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Cross-
Examination
(Continued)

Defendant's
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Cross-
Examination
(Continued)

Q. And you would have known that Mr. Moffitt - what his position was? A. He was designated as a clerk.

Q. Wouldn't it have occurred to you to be suspicious of a cheque signed by the accountant and the manager being notated for endorsement by a clerk? A. I would have regarded the cheque as the company's property to deal with in any way they felt so inclined, and by paying it into their account there is no loss of funds.

10

Q. Just come to the duplicate deposit slips for the moment: in your long experience of banking was it at one time the custom to check the details of, first of all, the deposit? A. On the original of the deposit?

Q. Yes. A. Exactly.

Q. It used to be? A. Yes. It still is.

20 Q. What? A. We still check the details on the original deposit.

Q. Beyond the summary? A. The cheques that are paid in are ticked off as to amount; no further.

Q. In fact, you are familiar with your own staff instructions and regulations, I suppose? A. Exactly.

30 Q. And I suppose you have looked at them recently, have you? A. Not recently.

Q. And would you agree with me that on p.49, it says, under "Receiving", "The Receiving teller (a) should tick off all cheques, cash etc. on paid in slips, draft requisitions, etc."? A. That is right.

Q. You see under "Receiving" it says "The teller must tick off all cheques, cash, etc. on paid in slips, draft requisitions, etc."? A. Yes.

40

Q. And that is a practice that is followed to this day? A. Yes.

Q. And he must also, under (b) "Have all alterations in such slips initialled at the time when paid in"? A. That is correct.

Q. And if any alteration is made afterwards, or the person actually paying in has no authority to initial alterations on behalf of the customer, the teller is promptly to advise the manager, who will communicate with the customer by first post or telephone and follow up until satisfactorily settled? A. Yes, that is right.

Defendant's
Evidence
No. 3(6)

Colin
Douglas
Rose

Cross-
Examination
(Continued)

Q. And that is the practice to this day? A. It is the practice.

10

Q. And he is also, under (c) to see that full particulars are detailed of all credit and requisition slips with the depositor or applicant must sign? A. That is correct.

Q. And, just to conclude it, (d) check all endorsements on cheques, etc. A. That is correct.

Q. And he has got to see that the oval stamp with the words "Lodged as per slip therewith" are endorsed
20 on the duplicate? A. That is correct.

Q. While we have got it open here, there are instructions about not negotiable cheques? A. That is right.

Q. And they ask you to be particularly careful with regard to not negotiable cheques? A. That is correct.

Q. And you can deal with them if they are not presented by the person named on them, providing your customer
30 is a good risk? A. That is correct.

Q. In other words, you take the risk on the customer?
A. The risk is on the customer.

Q. On p.45, under the heading "Manager" under Duty No.1 it says "Overlooking of the daily vouchers with a view to keeping a close touch with the doings of customers, special attention being given to altered vouchers, even if some are apparently initialled by
40 the customer"? A. That is correct.

Q. And, in other words, it is your duty to keep in close contact with a customer's account? A. It is.

(By consent defendant company's instructions in relation to, duties of tellers and in particular in handling "Not Negotiable Cheques" incorporated in the transcript as under :

Defendant's
Evidence
No. 3(6)

Colin
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Rose

Cross-
Examination
(Continued)

"Receiving .

The teller must -

(a) tick off all cheques, cash, etc. on paid-in slips, draft requisitions, etc.

10

(b) Have any alterations in such slips initialled at the time when paid in. If any alteration is made afterwards, or the person actually paying in has no authority to initial alterations on behalf of the customer, the Teller is promptly to advise the Manager, who will communicate with the customer by first post or telephone, and follow up until satisfactorily settled.

20

(c) See that full particulars are detailed on all credit and requisition slips, which depositor or applicant must sign.

(d) Check all endorsements on cheques, etc.

30

When a receipt book is used instead of the Bank's counterfoil of paid-in slips, the phrase 'Lodged as per slip therewith' must be inserted, as is done in counterfoils of paid-in slips.

Not Negotiable Cheques .

40

These should not be received for credit and/or paid against (except for the payee and where the payee is well known to the Bank), unless for customers of known and approved standing and responsibility. They should not be accepted by the Teller from strangers seeking to open an account, but all such cases should be promptly referred to the Manager .

There is no objection to accepting 'Not Negotiable' cheques from customers well known to the Bank and good for the amount, but no such cheque payable to

another person should be accepted from any client without reference to the Manager .

10 It should always be borne in mind that anyone, including a bank, negotiating a 'not negotiable' cheque obtains no better title than has been acquired by the persons negotiating it, and that should it be proved later that the cheque has been stolen or wrongly negotiated by any person other than the payee, the Bank, storekeeper, or other person dealing with it can be compelled to refund the amount to the true owner. It is obvious, therefore, that under these conditions 'not negotiable' cheques should receive special notice on presentation and dealings with same should be restricted to customers of approved means and reliability.

20

In the event of our being called upon to account to the true owner of a 'not negotiable' cheque wrongly dealt with, we have the right to make payment on the facts being proved, and debit our customer's account with the amount refunded, under notice to him. Refund should not be made until the claim of the true owner has been clearly proved - State Administration being referred to in every case.

30

(See also Bills of Exchange Act - Sections 82 to 88A.)")

MR .NEWTON: Q. Having regard to what we have just had a look at, Mr .Rose, I want to ask you some questions about cheques that we are concerned with in this case. First of all, during the period from 1st January, 1960 - you were not there then, were you? A. No.

40

Q. I will put it to you this way : If you found cheques being paid in made payable to third parties, like the one I showed you, you see, for hundreds of pounds with regularity into the account of Universal Guarantee, would that not perhaps have aroused your suspicion?

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Evidence
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Colin
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Rose

Cross-
Examination
(Continued)

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No. 3(6)

Colin
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Cross-
Examination
(Continued)

A. No. I regard them as a reliable and worthwhile company with a responsible directorate and the cheque is their property and they can deal with it as they wish. It makes no effect on the funds in their account.

Q. But, of course, you would know from your knowledge of the world that even the best-run businesses sometimes have dishonest employees? A. Exactly.

10 Q. And sometimes have employees who have been trusted for many years, who turn out to be dishonest? A. That is correct.

Q. And do you say that if you had found that these cheques, all being endorsed or noted on the back - I will use the word "notation" on the back - as these were, occurring frequently, it would not have occurred to you to ring up Mr. Tyack and say "Is this alright?"? A. No, it would not.

20

Q. Of course, that is a most unusual notation, is it not, on the back of a cheque - "Endorsement guaranteed"? A. Endorsement guaranteed in between the banks is a common notation.

Q. But this is a cheque being paid by the company into its own account? A. Well, it meant nothing, so it would not register on anyone.

30 Q. You would not have required any endorsement on the cheque at all, I suppose? (Objected to).

Q. In view of what you said, Mr. Rose, I take it that in that cheque that I showed you in Exhibit 141, that was a cheque payable to N. Byatt - A. That is correct.

Q. If it were being paid into the account of Universal Guarantee you would not have required anything on the back of it at all? A. I would have required the end-
40 orsement, or what purported to be the endorsement of the named payee.

Q. You would not have required "N. Byatt" to be written on the back of it? A. I just said I would.

Q. You would have? A. I just said that.

HIS HONOUR : He said he would have required the endorsement or the purported endorsement of the named payee .

MR. NEWTON : Q . But you would not have required anything from Universal Guarantee ? A . Nothing at all . It was not necessary .

Q . And the fact that this "endorsement guaranteed" was written there and signed by an officer of the company
10 would not have aroused your suspicion in any way, you say ? A . Not at all .

Q . You remember I was asking you about the bank's instructions which exhorted officers to watch for alterations to documents ? A . Yes .

Q . And even where they appeared to be properly initialled ?
A . That is right .

20 Q . It might be fair to put it to be suspicious of them ; is that so ? A . Not to be suspicious , but to be alert .

Q . And that would apply to the original of pay-in slips , I suppose , would it not ? A . Definitely .

Q . I show you first of all Exhibit B66 and you will see that the original deposit slip, the cash has been altered and the total of the cheques appears to be altered ; is that so ? A . Yes .

30

Q . If that had come under your notice I suggest to you that you might have thought it worthwhile giving the company a ring ? A . The alteration is not only initialled , it is signed by the person paying in against the alteration of the cash and there would be nothing to arouse my suspicion .

Q . That would not arouse your suspicion ? A . Not with the signature there .

40

Q . Supposing you had been the receiving teller , you would have seen , of course , the alteration to the notes , wouldn't you ? A . Well , I do not know , but I should imagine that that signature was put there at the request of the teller .

Q . But it must have been there before the teller signed ?

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Cross-
Examination
(Continued)

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No. 3(6)

Colin
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Cross-
Examination
(Continued)

A. Definitely.

Q. And when he came to stamp the duplicate, if you had been the receiving teller, I suggest to you that it would have struck you immediately that the duplicate was not the same as the original? A. It would not - actually I would not have seen it because the teller's duty contains the checking of the named payee and the total of the summary on the deposit slip. He would not look at it.

10

Q. You look at all these things on the original. You had the original you have taken £116.10. 0. in notes and you put it on one side while you complete the receipt? A. Yes, that is right.

Q. That is the receipt of the deposit? A. Yes.

Q. And then when you turn to the duplicate I suggest to you while you are checking Universal Guarantee and that amount you could not fail to see it? A. Well, you would not look for it.

Q. If you did notice it, would you do anything about it? A. If you did notice it you would certainly bring it to the notice of the person paying in.

Q. And have it altered? A. We were only concerned as far as the bank's receipt is concerned. It is only concerned with that and the name and the date.

30

Q. If you did notice it, you would bring it to his attention? A. If I was the teller on the counter I personally would. I would bring it to his attention.

Q. And you would get it altered, wouldn't you? A. I should imagine so. I would have to see it first to make a decision.

Q. But assuming that you saw it? A. I would point it out to him.

Q. And then you would also point out to him that it did not add up, I suppose, wouldn't you? A. Exactly.

Q. In Exhibit B67 you see the cash is shown as £61 in the original? A. Yes.

Q. And in the duplicate it is now £491? A. Yes.

Q. It could not have been £61 at the time the deposit was made? A. No.

Q. So again if you had seen it you would have drawn attention to it, I suppose? A. If it was noticed, yes.

(Witness retired)

10

BERTRAM JOHN MOFFATT,
Sworn, examined, deposed :

TO MR .STREET : My name is Bertram John Moffatt. I live at 76 Austin Street, Lane Cove. I am the senior relieving manager for New South Wales of the National Bank.

Q. And I think you were the manager of the Wentworth
20 Avenue branch of the bank who succeeded Mr .Rose; is that right? A. Yes.

Q. And you were there at the time Moffitt's defalcations were discovered? A. Yes.

Q. And you have been in the bank over 31 years? A. Yes.

Q. Firstly, as a junior and a ledgerkeeper and a tell-
30 er's clerk in Brisbane and a ledgerkeeper in Brisbane and then I think some six years in the Army? A. Yes.

Q. And then you were the head ledgerkeeper at North George Street, general clerk at Burwood, accountant at Narrabeen, Chief clerk at the York & King Street branch, accountant at the York & King Street branch and then manager Bondi Junction, manager Granville and manager Wentworth Avenue? A. Yes.

40 Q. And the branch at Wentworth Avenue, Mr .Moffatt, had this account for Universal Guarantee? A. Yes.

Q. Which was one of the more important accounts at your branch? A. Yes.

Q. And during the time of your managership before Moffitt's defalcations were discovered, did you ever

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Cross-
Examination
(Continued)

Defendant's
Evidence
No. 3(7)

Bertram
John
Moffatt

Examination

Defendant's
Evidence
No. 3(7)

Bertram
John
Moffatt

Examination
(Continued)

have any queries or concern as to the propriety or regularity of any deposits being made to the Universal Guarantee account? A. No.

Q. Or did you have any queries from any one or any concern as to the propriety or regularity of any cheques presented for debit against the company's account? A. No.

Q. Including particularly what we will call the Moffitt
10 cheques? A. Absolutely no concern at all.

Q. And you are familiar with the form of the Moffitt cheques, "Not negotiable, account payee only"? A. Yes.

Q. Signed by two authorised signatories? A. Yes.

Q. Drawn in the name of a third party, bearing what appeared to be the signature of that third party on the back with the company's stamp and the words "endorse-
20 ment guaranteed" signed by Moffitt? A. I am familiar with them now.

Q. If any of those had been referred to you as manager would you have queried, firstly, their acceptance amongst one of the company's daily deposits? A. I would not have queried it.

Q. Or would you have queried their being passed through
30 for debiting to the company's account? A. No, I would not have queried it.

Q. Was the deferred posting system in progress at that branch while you were there? A. It was introduced while I was there.

Q. Prior to that you had a teller's clerk who stood behind or near the teller's cage and did the mechanical job of handling the cheques; would that be right? A.
40 Yes, in effect that is right. There has always been a teller's clerk with the batch system or when -

HIS HONOUR: The postage was done by machine before the deferred system?

WITNESS: We are speaking of the batching of the teller's work, aren't we?

MR .STREET : Q . No, we are talking about deferred posting. A . I am sorry. Was that your original question?

Q . Yes . A . Deferred posting was definitely in force when I got there.

CROSS-EXAMINATION .

10 MR .NEWTON : Q . Mr .Moffatt, you were not sitting in Court while Mr .Rose was in the box? A . I have not been in this Court at all until when I was called .

Q . I do not know whether you were present when I put to Mr .Rose certain instructions?

HIS HONOUR : No, he was not .

MR .NEWTON : I only wanted to know whether I had to put
20 them again .

HIS HONOUR : Do you have to? You have them in the transcript now .

MR .NEWTON : I want to put them in this form :

Q . You get certain instructions which are contained in an instruction book; that is so, is it not? A . Instructions to various officers?

30

Q . Yes . A . Yes, we have an instruction book .

Q . Staff instructions and regulations? A . Yes .

Q . And would you agree with me that that exhorts managers to be in close touch with their customers' accounts?
A . Without looking it up, I would not be able to say that, but it quite possibly does . That is the general thought .

40 Q . Was that your practice - to keep in close touch with their accounts? A . Yes, wherever possible .

Q . First of all, you know the form of endorsement that was used, or the form of notation that was used by Moffitt on the back of these cheques, that is "Endorsement guaranteed" and the rubber stamp and signed by him?
A . Yes .

Defendant's
Evidence
No. 3(7)

Bertram
John
Moffatt

Examination
(Continued)

Cross-
Examination

Defendant's
Evidence
No. 3(7)

Bertram
John
Moffatt

Cross-
Examination
(Continued)

Q. First of all, I want to put to you would you have accepted a cheque, one of the cheques that we are concerned with here, for the credit of Moffitt's own account? A.

No.

Q. Why not? A. Well, in the first place it would be a third party, or at least it would be part of the third party and as far as I am concerned I do not think Moffitt's account would have warranted the taking of a cheque for, 10 perhaps, £450.

Q. But if he had been worth that sum, would you have taken it? A. If I had known his - put it this way - his standing, if I had been satisfied in my own mind that Moffitt had the standing to stand up to £400 and - well, actually, that is the test for mine. His worth and his -

Q. Is this the position, you would have taken it for any of your customers with an endorsement "J. Bruce" or 20 "N. Byatt" whatever it was on the back and nothing more, providing the customer was a good customer? A. Well, if I was quite sure in my own mind that the customer was undoubted for the amount and I had no other reservations about the customer, I would. Put it this way: My knowledge of the customer would be the guide; my own personal knowledge of him.

Q. You would regard it as taking a risk on the customer? A. I would regard myself as having recourse on 30 that customer.

Q. Because you would regard the instructions of your customer to pay that cheque to the order of J. Bruce, would you not? (Objected to).

(Further hearing adjourned until 10.00 a.m.
on Friday, 12th June, 1964.)

FIFTH DAY : FRIDAY, 12th JUNE, 1964.

40

BERTRAM JOHN MOFFATT,
Further cross-examined :

MR. NEWTON: Q. You would agree with me, I suppose, that it is your duty as a banker to be alert at all times to detect any irregularities in banking procedure? A. Yes. It is one duty as a banker.

Q. And to detect any irregularities in the drawing of cheques by customers? A. If they were brought to my notice, yes.

Q. And to detect irregularities in the banking of deposits? A. Again, if they were within my awareness.

Q. And to detect irregularities in the operation of any customer's account? A. The same answer - if it was with-
10 in my awareness.

Q. And to detect forgeries? A. Are we talking on a practical basis or a technical basis?

Q. I will ask you on the technical basis first. Would you agree with me that all those things are technically your duty? A. I think you would agree with me that it would be a physical impossibility for a manager of any branch of any size to know the signatures of his customers.

20

Q. But technically you would agree that those matters that I have put to you that that is what you should be trying to achieve? A. Broadly, I would endeavour to achieve that.

Q. You should be trying to detect forgeries? A. I do not agree with that one.

Q. You would not agree with it? A. No.

30 Q. You think you have got no duty at all to try and detect forgeries? A. As a branch manager?

Q. Yes. A. Absolutely no.

Q. None at all? A. To try, you said?

Q. Yes. A. No, none at all.

Q. To be alert to detect them? A. Oh, to be alert, yes.
40 If it came within my ken, yes.

Q. And to be alert to detect frauds which may be committed against the bank? A. Yes. Generally speaking, of course.

Q. And to be alert to detect frauds that may be committed against your customers? A. Yes, within the scope of my awareness, or capability of awareness of it.

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Cross-
Examination
(Continued)

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Cross-
Examination
(Continued)

Q. And what you are saying is that that is a counsel of perfection? A. It would be.

Q. And you are limited in your ability to do those things by the pressure of business? A. Well, I do not think any man could physically achieve all that in one day. He would have to stay there from morning until night without doing anything else.

10 Q. But all those duties also apply to the accountant, don't they? A. All those duties?

Q. Yes, duties to be alert to detect irregularities? A. Well, any person in a fiduciary capacity or employed by a company or a firm should be alert from the junior up to detect what he can of the irregularities of any description. That, broadly, cannot be gainsaid.

Q. You will agree with me that that is the duty of the
20 branch accountant? A. The branch accountant has certain duties which are laid down in our rule book, and the rest of the staff have their duties to do. Obviously, no one person can perform the duties of the whole staff.

Q. Quite so, but I will put to you that you would agree with me that it is the duty of the accountant to be alert to detect any irregularities? A. Which come within his awareness, yes.

30 HIS HONOUR: Mr. Newton, without wishing to stop you, is Mr. Moffatt's view of the law going to help me much?

MR. NEWTON: I am not asking him his view of the law.

HIS HONOUR: I thought you were, because you expressly qualified your questions by asking him his duties technically. His technical duty is a matter of law.

40 MR. NEWTON: I was not intentionally putting it that way. I will perhaps clear it up.

HIS HONOUR: His technical duty is a matter of law for me.

MR. NEWTON: Quite, By "technical" I did not really mean it that way.

Q. As from a practical banker's point of view, you would have agreed that you have got to be alert to detect irregularities? A. It is certainly preferable to be alert.

Q. Well, you are looking for them all the time, are you not? A. You said that the ultimate was that the person is completely alert. One can be as alert as one can.

Q. But you would agree, would you not, that you are at
10 all times to be alert to detect irregularities? A. Yes.

Q. And your accountant should be also alert at all times to detect irregularities? A. Yes.

Q. And in fact every officer in the branch should be alert to detect irregularities? A. Yes.

Q. First of all, have you got any printed forms for sending out to customers where some irregularity is detected
20 to ask them if it is all right and, if you do not hear from them, you assume that it is? A. That would cover a multitude.

HIS HONOUR : I think you would have to define the irregularity you have in mind

MR .NEWTON: Q. Have you any standard forms for sending out to customers in relation to irregularities?

A. We are back to the same point, I think, sir.

30

Q. Have you any standard forms for the purpose of sending out to customers? A. Have I any standard forms for the purpose of sending out to customers?

Q. Yes. A. Is that a question, sir?

HIS HONOUR : If Mr .Newton wants to ask it, you must do your best.

40 WITNESS : For the purpose of sending it out to customers?

MR .NEWTON: Yes. A. In other words, any standard form which is designed to be sent out to a customer?

Q. Yes. A. Well, of course, yes.

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Cross-
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(Continued)

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Cross-
Examination
(Continued)

Q. And any standard form in relation to irregularities in relation to a customer's account? A. There is a standard form which is sent out to point out to a customer that he is irregularly overdrawn.

Q. Any others?

HIS HONOUR: Q. Notice of dishonour, I suppose?

A. Irregularities? Would they be irregularities?

10

Q. An irregular endorsement, maybe? A. Yes a notice of dishonour form to advise to the effect that a cheque had been dishonoured, with the answer "X".

Q. MR. NEWTON: Any form in relation to endorsements?

A. Any form in relation to endorsement?

Q. Yes. A. Not to my knowledge.

20 HIS HONOUR: Q. You mean not otherwise? You have a standard form, you have said, for sending out to customers to advise them that a cheque, for instance, has been dishonoured by reason of an irregular endorsement? A. Yes, a cheque paid in. I cannot recollect another one.

MR. NEWTON: Q. I want to take you to the practice in your banking chamber of the Wentworth Avenue branch whilst you were there. A customer comes in with a deposit book and a number of cheques and cash and notes,
30 and the deposit book is made out in the form of an original and a carbon copy. Do you know the type? A. Yes.

Q. And the receiving teller receives the book and the cheques and money and postal notes; is that right?

A. Yes.

Q. We have been told - I do not know whether by you or not - that he counts the cash and puts it on one side. A. Or in his drawer, yes.

40

Q. And then he goes through the original and checks the cheques with the cheques shown on the original; is that right? A. On small deposits, yes.

Q. On small deposits? A. Yes.

Q. Not on large ones? A. Not on what we would term large deposits.

Q. And you would regard Universal Guarantee as a large depositor? A. Yes.

Q. And you did in fact so regard it? A. That is right. That is the bulk of their deposits; their main deposit.

Q. So it was not the practice while you were there, as far as you know, for the receiving teller to check through the entries on the original deposit slip with the cheques that
10 purported to be there? A. When you say "check" do you mean check them on to the original deposit slip?

Q. He has got a bundle of cheques? A. Yes. Are you checking through the cheques or are you checking them on to the deposit?

Q. Take it bit by bit. Does he check through the cheques?
A. He would normally run through the cheques.

20 Q. Not necessarily so, though? A. He would normally run through the cheques.

Q. When you say "normally" do you suggest that there are times when he would not do so? A. Well, I am rather handicapped there because I am in a room and I could scarcely be in a position to say just what any particular teller did.

Q. You in fact do not know whether in fact the tellers
30 did check through the cheques? A. It would be physically impossible for me to say Yes to that one.

Q. If you do not know, the answer is you do not know.
A. Yes. Well, I have said that he normally would check through those cheques for endorsement.

Q. But you do not know whether the teller in fact did or not? A. That is right. I do not know.

40 Q. And you do not know whether he ticked off the cheques on the original deposit slip? A. I do not know in every instance. I could not know. I do not know.

Q. There is a teller's stamp, isn't there? A. Yes.

Q. And that contains the teller's number; is that right? A. In larger branches; I am not certain whether

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Cross-
Examination
(Continued)

Wentworth Avenue had one but I think we did.

Q. And that also contains a number which is changed in relation to each deposit? A. No, not the teller's stamp, not the one that he uses to receive it.

Q. Doesn't it? A. No. That only has the date on it.

Q. You see the original deposit slip there (shows file 111),
10 you see the rectangular stamp "N.B.A.Limited. 1" then
"139, 1st September, 1959" and a "1" after it? A. Yes.
That is the teller's clerk's stamp. In other words, the
stamp which the teller's clerk uses after he has received
the deposit.

Q. That is put on by the teller's clerk, is it? A. After-
wards, yes.

Q. The deposit is handed back to the clerk immediately
20 behind the teller and he goes through that and puts the
stamp on the original deposit slip; is that it? A. Yes.

Q. And on each of the cheques? A. That is right.

Q. And the money orders? A. And the money orders.

Q. And then what other things does the teller's clerk do?
A. He sorts the cheques into other bank cheques, into
cheques drawn on our own branches, into cheques drawn
30 on our own branch, into money orders and postal notes.
Do you want me to go on?

Q. No. Does he check the additions in the deposit slip?
A. No. He machines those four groups on to the slip,
takes the grand total of the four totals and compares it
with the total of the money orders and the cheques on the
original deposit.

Q. Does he check through the cheques with the deposit
40 slip? As he puts the stamp on each of the cheques, does
he then verify that that cheque appears in the particulars?
A. No.

Q. Then, after they are sorted, what happens to the
cheques? A. They have been machined, they have been
to the credit, to the original credit, and they are then
written into a teller's book in those columns.

Q. Under the banks? A. Under the other banks' remittances and so on, and in each column. Then they are put on to a spike in each group.

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Cross-
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(Continued)

Q. What happens to your own cheques after that, cheques drawn on your own branch? A. Any one of the ledger-keepers or anybody at all that happened to be going around to the ledgers, or the ledger supervisors just come around and clear that spike and bring them down and put them down
10 on his table to be later read.

Q. And in Wentworth Avenue whose duty was it to read the cheques? A. It would be the ledger supervisor's.

Q. I was asking you yesterday about the endorsement on the back of the cheques that we are concerned with - the notation on the back of the "Endorsement guaranteed" and the rubber stamp and "Moffitt". Do you regard that of any importance at all on the cheques we are concerned
20 with? A. On these cheques, no.

Q. No importance at all? A. No importance.

Q. In fact, when it comes to the ledger keeper who examines the cheque, who reads it, he would not know, would he, into whose account it had been credited? A. No.

Q. Unless he goes to the original deposit slip? A. Unless he traced it through, yes.
30

Q. What happens to the original deposit slip? A. It would be on the current account credit spike and would be probably cleared along with the others. As a matter of fact, I am a little bit wrong there. Any current account credit or debit is placed on the one spike, so whoever picks it up off the spike is likely to pick up a mixture of credits and debits drawn on our own bank.

Q. (Shown Exhibit G.) I want you to assume - it is a
40 specimen cheque but I want you to assume that it is properly drawn and it comes to your examiner with only those markings on it, in other words, payable to "J. Bruce" I think -

HIS HONOUR: Who do you mean by "examiner"? The ledger supervisor who reads it?

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Cross-
Examination
(Continued)

MR. NEWTON: Well, whoever is reading it.

HIS HONOUR: He says the ledger supervisor.

MR. NEWTON: Q. It comes to the ledger supervisor in that form. A. Yes.

Q. If you were the ledger supervisor would you pass that as a properly endorsed cheque? A. Endorsed? "J. Bruce".
10 "J. Bruce"? Yes.

Q. You would pass it as a properly endorsed cheque? A. As a properly endorsed cheque only.

Q. And I want you also to assume that you did not have an account for J. Bruce there? A. It is still to him a properly endorsed cheque.

Q. You would accept it? A. It purports to be correct.
20 Are you asking me to accept the cheque or the endorsement?

Q. No. You, as ledger supervisor, reading the cheque would accept it as a properly endorsed cheque, would you? A. Properly endorsed, yes.

Q. You would, of course, know that it had not been negotiated through any other bank, would'nt you? A. The fact that there was no bank stamp on it would be apparent
30 to him.

Q. So you would know that it had not come in from some other bank? A. We get cheques from other banks with no stamps on them quite regularly.

Q. I suppose you do something about it, though, do you? A. Well, at present, in a recent period - I forget when it came in but cheques up to £50 with no bank stamp on them are normally paid if they are regular. Cheques
40 above £50 are likely to be returned with the answer "Bank stamp required" but it is very common to get cheques with no bank stamp on them from other banks.

Q. But if you were a ledger supervisor reading that cheque, one of the things you would look for, I suppose, would be to see whether it had come through another bank? A. No. He would look for a bank stamp.

Q. For that purpose? A. A bank stamp?

Q. Yes. A. Yes.

Q. You determine whether or not it had come through another bank? A. Whether it had come through a bank?

Q. A bank? A. Yes.

10 Q. But not your own bank? A. Not necessarily. A bank stamp is a bank stamp. His duty is merely to see that there is a bank stamp on the cheque.

Q. He is not concerned to see whether it has been negotiated through another bank or another branch? A. Not in the slightest.

Q. You say two checks take place, first of all the teller checks the endorsement? A. Yes. He would normally
20 check the endorsement.

Q. And the supervisor, the ledger supervisor reads the cheques? A. He reads the cheques.

Q. So would you agree with this, that it is the receiving teller who makes the decision as to whether or not to accept it for the credit of the particular account to which it is being paid? A. Yes.

30 Q. I do not suppose you ever saw cheques of the Universal Guarantee? A. Ever saw cheques of theirs?

Q. Yes. A. I could not help but see them.

Q. When would they come to you? When did they come to you? A. Well, the day vouchers came to me as a matter of course to be overlooked for my own information as to what people are doing.

40 Q. The daily vouchers, do they? A. All of them, probably 1,500 of them in a group like that (demonstrating).

Q. Made up in customers? A. No, just in alphabetical order. As a matter of fact, not always in alphabetical order because sometimes they have three runs through on the machine posting.

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(Continued)

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Cross-
Examination
(Continued)

Q. When you say "daily postings" they are what? A. Credits and debits to the account.

Q. And as far as the deposit slips are concerned, do you see those? A. I see those.

Q. They come with the daily vouchers? A. The whole lot is brought in and left with me, possibly two days later, or after they have been stamped and paid.

10

Q. And I suppose you only have time to have a glance at them? A. My purpose in getting those vouchers is to try and keep me in touch with clients' movements and customers' activities. That is the whole purpose of them being given to the manager - the daily vouchers - to be overlooked for interesting things that might occur and which he would like to know.

20 Q. Did you ever, in those days, look at the form in which the deposit slips were made out? A. My purpose in looking at them, of course - you have got 1,500, say, and you run through them and mainly concentrate on amounts of any significance, but as far as the regularity of the things is concerned it has got nothing to do with me whatsoever unless I just, for some reason or other, choose to look for it. I am looking for just general trends of accounts.

30 Q. You are not looking for deposit slips that obviously had some alteration to them? A. Not necessarily. I am looking for just plain information. For instance, a cheque drawn by Universal Guarantee for £100,000 in favour of some Melbourne subsidiary, that is of interest to me because it is £100,000 of credit funds that has gone from my branch. That is the type of thing I would look for, but if it was for £1.10.0. -

Q. You would not be concerned about it? A. No.

40 Q. Did you notice during your time there that on a number of occasions they drew cheques in favour of Universal Guarantee? A. No, I did not notice it. I had no reason to look.

Q. I suppose you would agree with this, would you, that if a cheque were drawn by Universal Guarantee in favour of Universal Guarantee and crossed "Not Negotiable, Account Payee Only" you would not have

paid cash for it? You would not have cashed it? A. Me personally?

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(Continued)

Q. No - your branch would not? A. Well, I would assume - you mean a person walks in and presents a crossed "Not Negotiable, Account Credit Payee Only" cheque for some amount, payable to Universal Guarantee and crossed, and somebody presents it for cash?

10 Q. Yes. A. Is that what you are asking?

Q. Yes. A. Well, I would expect the teller not to cash it.

Q. You would expect, before it could be cashed, that "Please pay cash" be written on it somewhere and be signed by the two authorised officers? A. That would be the correct way to do it, yes, or - yes, you could do it that way.

20

Q. You went to this Branch in August, 1959, I think?
A. I think so, yes.

Q. First of all, would you open Exhibit B111. You see that there is a cheque for £450? A. £450?

Q. £420? A. Yes, £420.

30 Q. Would you turn over the deposit slip to the place where it is marked. Do you see it? A. That is where that cheque is recorded?

Q. Yes. There will be a mark on the deposit slip, I think. A. Yes.

Q. And you can see it appears to have been inter-lined, doesn't it? A. That is right.

40 Q. And it represents £420 out of a total of cheques of £2,814? A. Yes.

Q. About one-seventh of the cheques and it is one-tenth of the total deposit. Do you follow? A. Yes.

Q. And it is on 1st September, 1959? A. Yes.

Q. Would you turn to 112. Would you open that up?
A. Yes.

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Cross-
Examination
(Continued)

Q. And you see a cheque for £425? A. Yes.

Q. And if you will look at the deposit slip it is on the summary page, I think. You see it? A. I see it.

Q. And it appears to have been interlined there, doesn't it? A. Yes.

Q. And that is on 7th September? A. Yes.

10

Q. Now if you would go to 113 do you see a cheque for £465? A. Yes.

Q. And it is on the front; it is the last entry on the summary sheet? A. Yes.

Q. And that is on 8th September? A. Yes.

Q. Turn to 114. That is a cheque for £460? A. Yes.

20

Q. Can you see the entry in the deposit slip? A. Yes.

Q. It again appears to be interlined? A. Yes.

Q. And that is on 15th September? A. Yes, that is right.

Q. And 115. Do you see a cheque for £440 there? A. Yes.

30

Q. And in the deposit slip it is on the summary page at the very foot of the page? A. Yes.

Q. And that was paid in on 17th September? A. Yes, 1959.

Q. And also it is £440 out of the total cheques of £2,915? A. Yes.

Q. About one-seventh of it, and the total deposit was 40 £3,414. A. Yes.

Q. And 116? A. Yes.

Q. A cheque for £440? A. Yes.

Q. Deposited on 22nd September? A. £440 on 22nd September, 1959.

Q. And interlined? A. Yes, interlined.

Q. Apparently interlined? A. Yes.

Q. And £440 out of cheques for £3,027 and a total deposit of £4,055? A. Yes.

Q. And 117, a cheque for £430? A. Yes.

10 Q. And, on the deposit slip, at the bottom of the summary sheet? A. Yes.

Q. £430 out of a total of £4,342 cheques? A. Are we on the right one? 28/9/59?

Q. Yes. A. The total of the deposit is £2,760.11. 3. and the cheques £2,342.

20 Q. So that during the month of September the company has deposited its own cheques payable to third parties for £3,080 to the credit of its own account? A. I have not examined the cheques other than the amounts.

Q. I am putting those particular cheques to you, the ones that you have examined. A. I have not examined them. I have looked at the amounts.

30 Q. There is no need to examine them. The amounts, you can take it from me, add up to £3,080. A. And you assure me those are the cheques in question? Those are the type of cheques we are talking about?

Q. Yes. If you want to look at them, you may, but you can assume that they have all got the same endorsement. A. Do you think I should, Your Honour?

HIS HONOUR: I think you may accept Mr. Newton's assurance, Mr. Moffatt.

40 WITNESS: Thank you. Yes?

MR. NEWTON: Q. All endorsed in the same way, signed by Moffitt sometimes on the front but always on the back and they total £3,080 for the month of September. Do you follow that? A. Yes.

Q. If you had appreciated that, would you not have thought

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(Continued)

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– it wise to make an enquiry of the manager of the company of your customer? A. If I had appreciated it?

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Q. Yes. A. I do not quite know how I could have appreciated it.

Cross-
Examination
(Continued)

Q. But if you had known that cheques to the extent of £3,080, properly drawn, payable to a payee whom you did not know and crossed as they are with a name
10 written on the back and the notation signed by Moffitt on the back of them, had been deposited to the company's own account during the month of September, 1959, would it not have occurred to you that it might be wise to make some inquiry? A. We are assuming that at some mark one of my men walks up to me and says "Mr. Moffatt, there's £3,000 - odd worth of Universal Guarantee's own cheques have been paid back into their own cheque account for this period"?

20 Q. Yes. A. I would take no notice whatsoever. I would look at them myself but I would say to myself "They are the company's own cheques. They are going back into their own account. It is purely a book entry. It is quite normal practice."

Q. In fact, if it had been drawn to your attention that those cheques had been in many cases interlined in the deposit, that would not have alerted you in any way? A. No.

30

Q. I do not want to take you through it in detail but are you prepared to assume that there were similar cheques to the total of £3,460 during the month of October, 1959, dealt with in the same way? Again you would say this: If it had come to your notice you would have seen no reason to make any inquiries? A. I would have made no inquiries.

40 Q. And in November, if they had amounted to £800, you still would have seen no reason to make any inquiry? A. No.

Q. And in December to £1,700, still no reason? A. No.

Q. And January £965, still no reason? A. No reason.

Q. February £590, still no reason? A. Still no reason.

Q. March £1,590, still no reason? A. Still no reason.

Q. April, £2,000, still no reason? A. Still no reason.

Q. May, £1,745, still no reason? A. Still no reason.

Q. June, £2,025, still no reason? A. Still no reason.

10

Q. August, £1,300, still no reason? A. Still no reason.

Q. And September, £1,740? A. Still no reason.

Q. And, finally, October, £1,335? A. Still no reason.

RE-EXAMINATION.

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Cross-
Examination
(Continued)

Re-
examination

20 MR. STREET: Q. Mr. Newton, you will remember, showed you Exhibit G. Do you remember he showed you that and you were asked some questions as to whether - it is not the examiner. Who is it who reads it? A. The ledger supervisor.

Q. - whether the ledger supervisor would observe the absence of a bank stamp, and you said if there was no bank stamp he would see it?

30 HIS HONOUR: If there were no bank stamp, he would notice it.

MR. STREET: Q. I am sorry. If there was a bank stamp, would he look to see what the branch was of the bank which had stamped it as the receiving branch? A. No.

Q. I think there are something like 100 branches of the National Bank in New South Wales alone, aren't
40 there? A. Yes. Over that.

Q. And each branch has a stamp which looks the same as the one used at Wentworth Avenue, except that instead of Wentworth Avenue it has got, well, "Bondi" or whatever it may be? A. Not completely identical but the form of it in effect is broadly the same.

(Witness retired)

Plaintiff's
Case in
Reply

17th June,
1964.

(Admitted that the system of deferred posting was in force in the Wentworth Avenue branch of the defendant from August, 1950, onwards.)

(Case for the Defendant Closed)

CASE IN REPLY .

MR .NEWTON: Mr .Brock has the figures for us .

HIS HONOUR : I suppose Mr .Street will accept Mr .Brock's arithmetic?

MR .STREET : Yes .

(Admitted that the cheques contained in files numbered 1 to 65 inclusive amount in all to the total of £17,910, whilst those contained in files numbered 66 to 165 inclusive amount to a total of £41,837.)

(Admitted that the sum of £51,303 referred to in evidence by Mr .Brock as the actual cash taken by Moffitt represents £11,222 taken prior to 16th September, 1957, and £40,081 taken after that date.)

MR .NEWTON: I do not concede that it is the only cash taken, Your Honour

There is only one other matter, Your Honour, and that is the question of the calculation of the interest having regard to the overdraft. Mr .Brock and Mr .Deane have discussed the matter and I understand they have arrived at a formula which is satisfactory. The calculations are being made, Your Honour .

HIS HONOUR : I will reserve liberty to you and to Mr .Street, by agreement, later to have recorded the amount which is the correctly calculated sum which would represent the interest, if you are entitled to it.

(Counsel addressed.)

(Further hearing adjourned to 10,00 a .m . on Tuesday, 15th June, 1964.)

NO. 4.

REASONS FOR JUDGMENT OF HIS HONOUR
MR. JUSTICE MANNING

Reasons for
Judgment
(No. 4)

His Honour
Mr. Justice
Manning

22nd July,
1964.

HIS HONOUR: In this action the plaintiff company seeks to recover from the defendant bank damages in respect of alleged breaches of a contract between the parties, by virtue of which the banker-customer relationship between them was
10 established, or, alternatively, damages for breaches of various duties which it alleges the defendant bank committed, such duties being alleged to arise out of such relationship.

Before dealing with the precise nature of the claims made by the plaintiff, it will be convenient to set out the facts,

The Plaintiff company is a reputable financier. It is a
20 subsidiary of Electronic Industries Limited, a large manufacturer of electrical goods. Both companies have their headquarters in Melbourne. The Sydney office of the plaintiff company was, in effect, a branch office. None of the directors appears to have resided in Sydney at any relevant time.

The plaintiff company's business was primarily the provision of finance - mostly on hire purchase - for persons who desired to purchase goods manufactured by Electronic Industries Limited. However, the business was not so
30 confined and it did engage in other similar transactions in respect of other goods, and in particular motor cars.

The claim has its origin in the fact that an officer of the plaintiff was guilty of a series of frauds, as the result of which he succeeded in misappropriating a large sum of money. The precise amount does not appear to have been ascertained but may well have been in the region of £100,000. In these proceedings counsel for the plaintiff forecast an attempt to recover, by way of general damages, substant-
40 ially the whole of the loss suffered. However, it was impracticable for the plaintiff to adduce proof of the losses sustained, and ultimately it relied upon the particular loss established in respect of a series of individual instances whereby it was defrauded. The evidence established to my satisfaction that a total of 165 cheques had been fraudulently obtained by the employee in question and that the sum total of these cheques was £59,747. It was not possible to establish that the whole

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of the proceeds of these cheques was misappropriated but it was established that the total amount of cash misappropriated by the use of such cheques was £51,303. In the ultimate result, the last mentioned sum was the amount which the plaintiff claims it is entitled to recover.

It is clear that the whole of the plaintiff's losses were due to misappropriations by its former employee, William Raymond Moffitt. He was prosecuted and convicted in
10 respect of the frauds and is at present serving a gaol sentence.

As I have said, the plaintiff company is a reputable organisation of high standing. It is almost unnecessary to say that the defendant bank is a well known and most reputable organisation carrying on an extensive banking business in Australia. In one sense, it may be said that the question for determination is which of the parties, both of whom are entirely innocent of any wrongdoing, must bear the losses
20 sustained as the result of Moffitt's defalcations.

The Sydney office of the plaintiff company, being a branch office, was under the control of a Manager. During the relevant period, which commenced in 1954 and ended in 1960, the staff of the plaintiff company varied between about 20 and 40 employees. At all times, the senior responsible officers of the company were the manager, the accountant, and the acceptance officer. It was the last of these three offices that Moffitt filled during the whole of this period.
30

Although the plaintiff, in its points of claim, asserted that the banking transactions carried on between the plaintiff and the defendant were governed by a memorandum dated 22nd July 1952 and a copy of this memorandum, which is a fairly usual form of authority addressed by the plaintiff to the defendant directing the manner in which banking transactions might be carried out was set out in the points of claim, it is clear, on the evidence given on behalf of the plaintiff, that this memorandum was varied on at least two occasions thereafter.
40 However, it does not appear that anything turns on the precise form of the authority to the bank given by the plaintiff company. I am satisfied that at all times the bank was authorised to pay cheques drawn by the Chairman of Directors solely (the Chairman residing in Melbourne) and any two of three named officers. For the greater part of the period in question, Mr. Leslie Tyack was the manager and Mr. Alexander Sorby was the accountant. The precise date upon which Mr. Tyack joined

the company is not stated but it seems to have been in about the year 1953. Mr. Sorby joined the company in 1955. When each of them joined the company the bank was authorised to honour cheques drawn by each of them and another authorised signing officer. Stated briefly, any two of the three Sydney signing officers were authorised to sign cheques and any one of the three was authorised to endorse cheques. When each joined the company, a new authority was given to the bank. Notwithstanding that copies
 10 of these authorities are not available, nothing turns upon this. The effect of what was done is not in dispute.

By 2nd December 1954 Moffitt commenced to misappropriate the company's funds.

In his capacity as Acceptance Officer he received all proposals made to the plaintiff for finance. The usual practice appears to have been that a retailer, or "dealer" as he was ordinarily referred to, procured a proposal from a
 20 customer desiring to purchase goods on hire purchase. The proposal was in the form of an offer to hire addressed to the plaintiff. These agreements were submitted to the plaintiff company. Inquiries were made and documents originated in order to conform to the then system in operation and ultimately the proposal came to Moffitt for either acceptance or rejection. In his capacity as acceptance officer, he was responsible for recommending the acquisition of any goods which a dealer desired to dispose of by selling such goods to the plaintiff which in turn would hire them to the customer
 30 introduced by the dealer.

It is not disputed that the general system adopted by Moffitt to defraud the plaintiff resulted in the whole of the cheques being drawn which are in issue in these proceedings. Moffitt prepared a fictitious hire purchase agreement. Sometimes he used the name of a fictitious dealer although generally he seems to have used the name of a dealer known to the plaintiff company. The description of the goods, the name of the proposed hirer, and the details of
 40 the transaction were supplied solely out of Moffitt's imagination. He procured the necessary inter-office forms to be originated, falsely certified that the credit rating of the parties concerned was satisfactory, recommended acceptance of the proposal and procured a cheque to be signed for the amount which, if the transaction had been a genuine one, would have been payable to the dealer. The cheques in question were at times signed by the manager and accountant, although at other times Moffitt himself was

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one of the signatories. By these means Moffitt obtained a cheque properly signed by authorised drawing officers in favour of a named payee in settlement of the fictitious transaction.

The subsequent steps in Moffitt's depredations were quite simple but would not have been possible except for two circumstances, viz.,

- 10 (A) The cashier was under Moffitt's control and Moffitt was authorised to conduct or supervise the banking of all moneys received by the plaintiff, and
- (B) At the end of each balancing period Moffitt's services were utilized in balancing the ledgers, thus permitting him to carry out the addition of at least some portion or portions of the balances shown in the debtors ledger
- 20 as due by debtors to the company.

When Moffitt obtained a cheque duly signed as above-mentioned in respect of a fictitious transaction, he either compiled the banking documents or actually carried out the operation of depositing the takings with the bank. At a point of time at which he had access to the cash and cheques to be banked for the particular day, he extracted from the cash takings an amount approximately equivalent to the amount of the cheque which he had obtained and included in the banking

30 the cheque in question. At times it was not practicable for him to extract from the cash the precise amount of the cheque he had wrongfully obtained but in some cases he was able, without difficulty, to make adjustments by withholding other cheques which had been received in the ordinary course of business and, if necessary, adjusting any such withholdings by paying in a cheque of his own to the company's credit. The adoption of methods of this type accounts for the fact that the total amount of the cheques drawn and re-banked

40 by Moffitt was £59,747, whereas the actual total of the cash which he extracted from the company's takings, on the days upon which such cheques were banked respectively, was about £8000 less, i.e., the abovementioned figure of £51,303. The general pattern remained the same throughout and it was Moffitt's control of the preparation of the pay-in slips and, on many occasions, the actual conduct of the deposit of the takings to the company's credit which allowed him to substitute the company's own cheques for the cash he

extracted.

It appears to have been the custom of the plaintiff to make payments of all sums due in respect to transactions with dealers of the type mentioned by a cheque of a special type expressly printed for this purpose. Each such cheque was payable to a named payee or "order" and was crossed by two transverse parallel lines with the addition of the words "Not Negotiable Account Payee Only." This involved
 10 Moffitt in the need to procure an endorsement of each of the cheques by the named payee. In fact he forged each such endorsement and, having done so, he endorsed the cheque on behalf of the plaintiff, adding above the endorsement the words "Endorsement Guaranteed".

It is not without importance to note that each and every of the misappropriations was effected by procuring a cheque duly signed by authorised signing officers on the plaintiff's behalf, by his then making the endorsements abovementioned,
 20 and by his then banking such cheque with the defendant bank, upon which the cheque was drawn, for collection on behalf of the plaintiff. Thus, in one sense, it may fairly be said, as Mr. Street submitted for the defendant, that the bank did no more than make a debit entry and a corresponding credit entry in respect of each cheque so drawn and deposited.

Most of the banking transactions whereby these cheques were deposited to the plaintiff's own credit were perfectly
 30 normal and regular on their face.

There are other factors of some importance. Although Mr. Newton, for the plaintiff, attempted to establish that it was not usual for a customer's cheques to be deposited to the credit of his own account, it appears to have been a not infrequent practice in the conduct of the plaintiff's banking business. One hundred and sixty five (165) files were tendered in evidence, each of which contains the cheque in question and the original deposit slip in question (with minor exceptions) and an
 40 inspection of the deposit slips indicates that other cheques of the plaintiff company were at times deposited to the credit of its account. Although it is to be noted that, in most such other cases the cheques were for small amounts, I have selected at random three groups each of ten files. In the files Nos. 1 to 10 inclusive the deposit slips indicated that eleven other cheques drawn by the company were deposited to the credit of the company's own account and were included

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in some of the very same deposit slips on which the cheques in question were listed. Files numbers 71 to 80 inclusive indicate that six other cheques drawn by the plaintiff were deposited to the credit of its own account and were included on the deposit slips in question. Files Nos. 151 to 160 inclusive indicate that six other cheques at least were deposited by the company of its account and were included on the same deposit slips. It is possible that the number was greater, but in File No. 157 the deposit slip is missing.

10

Thus it appears by the test check conducted as above-mentioned that to every ten cheques fraudulently obtained by Moffitt and deposited to the credit of the company's account there were seven other cheques also drawn by the company and deposited to the credit of its own account in respect of what are presumably legitimate transactions.

In any review of the facts it is desirable to view the transactions brought into question in this action in the light
20 of the overall picture. The plaintiff company banked each day. For the six years in question it may be assumed that approximately 1500 deposits were made. The amount of the deposits in general varied between £2000 and £5000. Most of the individual sums involved were small, because each deposit included a number of cheques and money orders. The number of cheques, in general terms, varied between about 20 and about 100 and sometimes even more. The number of money orders varied in general from 10 to 30 or 40. Each cheque and money order was listed on the deposit slip.

30

The 165 cheques drawn by the company and deposited by Moffitt to the credit of the company's account would accordingly represent something slightly more than a corresponding entry in one out of about each ten deposits.

With the exception of the matters to which I shall refer presently, each of the deposits was made in circumstances which do not seem to me to have been such as to raise suspicion in the mind of a prudent banker as to the circum-
40 stances. Whilst the cheque in question was added by Moffitt more often than not in a way which would make it apparent that the details had been inserted after the deposit slip was made out, the figures contained in the slip balanced, the details of the notes, coin, money orders and cheques correctly set out the totals banked in respect of each item, and the only possible grounds upon which any suspicion could be aroused would be if the bank teller receiving the deposit

scrutinised each of the several sheets comprising the deposit and could recollect from time to time that other inter-lineations had been made more often than not in respect of cheques drawn by the company itself and deposited to the credit of its account.

10 When these deposits were made, no question was ever raised by the bank as to the regularity of the endorsement of the payee nor as to the company's own endorsement preceded by the words "endorsement guaranteed".

20 When a careful examination is made of the whole of the deposit slips there are, however, some occasions when an ordinary prudent teller would find, on comparing the carbon copy presented to the bank for its receipt with the original, which was retained by the bank, that there were irregularities. Evidence was not given in respect of each individual deposit. Indeed, although Moffitt was called as a witness, I came to the conclusion that his independent recollection of each individual banking transaction was not reliable and that, broadly speaking, he set out to reconstruct what he thought probably happened from what appeared on the face of the documents themselves. I have examined each of the deposit slips in question and compared it with the carbon copy where such a copy is available. There are at least nine instances where I have concluded that differences between the original deposit slip and the carbon copy would have been apparent to a teller had he compared the original with the copy even in a cursory manner. For example, in File No. 61 (which is Exhibit B61)

30 it is obvious that the deposit slip was originally made out so as to show that the amount of notes being presented for banking was £450. Moffitt actually signed the deposit slip and, before presenting it to the teller, he altered the sum of £450 shown as being deposited in notes to £50. This he did by deleting the figure 4 and initialling the alteration. Even a glance at what purported to be a carbon copy would have made it quite clear that no corresponding alteration had been made to the copy. Similarly, the deposit slips in Files Nos. 62 to 68 inclusive

40 teller making any comparison at all.

Deposit slip No. 158 is another example of an obvious difference between the original deposit slip and the copy. The figures on what purports to be a carbon copy of the original do not correspond with those on the original and it is patently obvious that the whole of the figures in the copy have been filled in at a different time. The writing is different and a

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different carbon paper has been used. In his evidence Moffitt asserted that the copy was blank at the time the deposit was made at the bank, and this is at least consistent with the appearance of the documents and I would think probable. Apart from the nine cases mentioned, there were others as to which I might well have entertained doubts. Twenty-two other deposit slips have clearly been tampered with. However, Moffitt, in his evidence, admitted that in many cases alterations were made to the carbon
10 copies of the deposit slips after the deposit had been made, and the general appearance of the documents supports this conclusion.

In the result, I find that in nine instances out of the 165 in issue the bank teller receiving the deposit failed to observe differences between the original deposit slip and the carbon copy which should have been obvious to him if he had made any comparison at all between the two documents.

20

Upon these findings of fact, I return to consider the precise nature of the plaintiff's claim, which is divided into two branches, each of which is separate and distinct from the other.

In the first instance the plaintiff seeks to recover damages because of what it alleges to be the wrongful dealing by the defendant bank with the cheques which were drawn by the plaintiff and deposited to the credit of its own account.
30 Secondly, it seeks to recover damages by reason of it having suffered losses consequent upon the receipts given to it by the bank for sums deposited having been stated in accurately.

It will be convenient to deal with each branch separately.

It is alleged that the defendant bank was guilty of various breaches of an express or implied term of the contract between the parties. Each of the breaches of the contract alleged is made the subject of a separate allegation in tort, the
40 allegation being that the defendant bank was under a duty substantially identical with the term of the contract in question and that there was a breach of such duty.

The promise and the duty alleged are in five categories, namely:

- (1) That the defendant bank would not debit to the plaintiff company's account any crossed cheques drawn by the plaintiff if the endorsement of the payee appearing on the back of the cheque was forged.
- (2) That the defendant bank would not pay any crossed cheque drawn by the plaintiff company on its account unless the holder thereof presented such cheque through a bank for payment.
- (3) That when the plaintiff company drew cheques in favour of a named payee and crossed such cheques "Not Negotiable, Account Payee Only", the bank would not debit any such cheques against the plaintiff's account if the endorsement of the payee was forged.
- (4) That when the plaintiff company drew a cheque in favour of a named payee and crossed such cheque "Not Negotiable, Account Payee Only", the defendant bank would not debit any such cheque to the plaintiff's account unless such cheque had been negotiated through another bank or paid to the credit of the payee in an account with the defendant bank.
- (5) That when the plaintiff drew a cheque in favour of a named payee crossed "Not Negotiable, Account Payee Only" and such cheque was lodged for collection to the credit of the plaintiff's account the defendant bank would not accept such cheque unless it was endorsed on behalf of the plaintiff by the signatures of two officers of the plaintiff authorised to draw cheques.

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It is to be noted that the fifth allegation was originally in a form which alleged a promise and a duty upon the bank not to accept any cheque sought to be deposited to the credit of the plaintiff's account unless such cheque was endorsed on behalf of the plaintiff by an officer authorised to endorse cheques. On the last day of the hearing this alleged promise was amended in the manner mentioned. Thus the plaintiff receded from the attitude originally adopted in the pleadings and by the particulars, as well as by argument during the course of the hearing, and asserted that an endorsement, in the circumstances mentioned, by a person authorised to endorse cheques

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was insufficient, and that any such endorsement necessarily would have to be made only by the person or persons authorised to draw cheques.

In the particulars furnished the plaintiff alleged that the various promises abovementioned arose either out of the express contract between the parties establishing the banker-customer relationship or out of the promise implied in the contract by reason of the existence of such relationship. The
10 particulars also made it clear that the plaintiff's allegation was that each of the cheques in question had been "wrongly debited by the defendant to the plaintiff's account". The allegations in question are in general terms and I have come to the conclusion that the pleadings and particulars do not sufficiently, if at all, distinguish between the obligations of the bank's duty as a collecting bank on the one hand or as a paying bank on the other.

When the first alleged promise is considered, it seems
20 clear that, in its capacity as collecting bank, the promise (or the obligation, as the case may be) of the defendant bank will differ.

As a collecting bank the obligation to ensure that a cheque is regularly and properly endorsed is one which the bank undertakes in the interests of the true owner of the cheque. A collecting bank has no obligation in this regard to the drawer of the cheque. The risk to which a collecting bank is exposed is that it converts a cheque presented to it
30 for collection by procuring payment of the proceeds thereof for some person other than the true owner. Similarly, the relief given to a collecting bank by s.88 of the Bills of Exchange Act is designed solely to exculpate it from liability in an action by the true owner.

Here the whole of the cheques in question were lodged with the defendant bank for the credit of the plaintiff company itself. No question arises of the intervention of any third party rights. Indeed, upon any view of the facts, the
40 plaintiff company at all times was and continued to be the true owner of the cheque. Thus, I conclude that no such implied promise or duty as is alleged can arise for consideration in this case, and the same considerations apply to the third promise and duty alleged.

As regards the duty of the defendant bank as paying bank, it has undoubtedly paid a cheque upon which the endorsement of the nominated payee was forged. If the

question of relief in such circumstances given to the paying bank by s.65 of the Bills of Exchange Act is disregarded, the simple fact remains that the bank did no more than pay to the plaintiff's account the proceeds of the cheque which it had drawn upon the identical account, and it is impossible in these circumstances to allege that the plaintiff suffered any loss by reason of the bank having paid the cheque.

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10 Thus it is unnecessary to consider whether the nature of the crossing should have put the bank upon inquiry. However, even if it be assumed that the defendant bank was put on inquiry, its only duty was to inquire so as to ensure, in the interests of the plaintiff, that the endorsement of the named payee was regularly and properly made. Such a duty would, in my opinion, be adequately discharged if an inquiry had been made of any one of the officers of the plaintiff company authorised to operate upon the account and an assurance had been obtained that the endorsement
20 had been regularly and properly made. Here again, the same considerations govern the third of the promises alleged above, and I am satisfied that the alleged promise or the alleged duty is not one which can give rise to any cause of action in the circumstances of this case.

The second and fourth promises and duties set out above relate to the dealing by the defendant bank with a crossed cheque. It has long since been firmly established that the crossing "Not Negotiable" is directed towards the negotiability of the cheque only in the sense that the crossing prevents
30 any person into whose hands the cheque comes from acquiring a better title to it than the person from whom he took it. The transferability of the cheque has never at any time been in question. Similarly, a cheque crossed with the words "Account Payee Only" has never been taken to have the effect of interfering with the transferability of the cheque, and I can see no substance for the allegations in the fourth claim abovementioned that the crossing "Not Negotiable, Account Payee Only" requires the cheque to be negotiated through some bank other
40 than the defendant's bank or to be paid to the credit of the payee in an account with the defendant bank.

Here again there seems to be some confusion between the functions of a paying bank and a collecting bank. A crossed cheque must, of course, be presented for payment through a bank, but it has never been suggested that the one single bank is at any disadvantage in performing the functions of

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both paying and collecting bank.

The cheques in question were in fact negotiated through a bank and it is implicit in the general nature of the promises and duties alleged that the bank upon which a cheque is drawn may not act as collecting bank or, alternatively, that if it does act as collecting bank it is entitled to collect the cheque only for the named payee.

10 The final allegation seems to me to illustrate the problem in which the plaintiff has found itself placed. It was firstly argued that the words "endorsement guaranteed", which preceded the endorsement of the plaintiff on the back of the cheque, which endorsement had been duly signed by an authorised officer in that behalf, was unusual and should have attracted attention and put the defendant bank on inquiry. During the course of the hearing it was first contended that the officer who had signed the endorsement on behalf of the plaintiff company was not an authorised officer in that
20 behalf. However, it became apparent notwithstanding that the relevant authority documents had been mislaid, that Moffitt was in fact an officer authorised to endorse cheques and that the endorsement was regular on its face. As a result, the plaintiff company changed its ground in the circumstances abovementioned and alleged that the endorsement was one which should have been made by two signing officers and not by one endorsing officers.

30 There was some conflict in the evidence given by the various experts called for the plaintiff and for the defendant as to what normal banking practice required. However, irrespective of which of the various views might be preferred, the fact is that an endorsement of the named payee, which was regular on its face, did not require the bank to make any inquiries where the cheque was being received for the credit of the drawer. Even if it is to be supposed that some inquiry should have been made, the memorandum appearing on the back of the cheque that the endorsement was guaranteed, and such memorandum having been signed by an endorsing officer
40 on behalf of the plaintiff, would, in my view, constitute an anticipation of inquiry by the bank and a good and sufficient answer to any such inquiry as might be made.

The real problem in regard to the plaintiff's claims under the first branch of the case lies rather in the matters discussed at large during the argument. Counsel for the plaintiff contended that either:

- (a) A bank was not entitled to act as both collecting bank and paying bank; or
- (b) If a bank was entitled to act in both capacities, then all circumstances brought to its notice in one capacity put it on inquiry in dealing with the cheque in the other capacity.

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I know of no warrant for the first proposition. For
10 many years, banks have acted in both capacities and to
suggest otherwise would be contrary to accepted practice
and the usage of bankers.

In regard to the second proposition, I do not find it
necessary to express any concluded opinion. Assuming,
without so deciding, that there is some basis for the sub-
mission, I can see nothing in the facts of this case which
would entitle the plaintiff to succeed. The defendant receiv-
ed, for the credit of the plaintiff's account, cheques which
20 had been drawn by the plaintiff. No circumstances known
to the defendant could have given rise to any inquiry by it
as collecting bank. Even if the circumstances would norm-
ally have given rise to inquiry in its capacity as paying
bank, there was nothing in such circumstances which would
have given it any reason to suppose that any loss might
possibly have been suffered by the plaintiff as a result of
paying the cheques collected for the credit of the plaintiff's
own account.

30 The second branch of the case presents quite a diff-
erent problem. The question for determination is whether
the plaintiff may recover damages if it is established that
it suffers loss as a result of receipts being given by the
bank for deposits because such receipts state the facts in-
accurately.

For the defendant bank it was contended that the bank
was concerned, when issuing a receipt for a deposit, only
with three matters, namely:

40

- (1) The date of the receipt, and
- (2) The name of the customer, and
- (3) The total amount of the deposit.

It was said that in many cases, for example, when a

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deposit slip with a butt or counterfoil is used, no other matters are stated. Evidence was called that tellers normally are instructed that they have no duty to verify any details upon receipts issued for deposits except those mentioned. Generally speaking, I accept the evidence called for the defendant in this regard, particularly that of Mr. N. E. Farmer, whose evidence was given fairly and objectively.

10 Although this evidence doubtless states the general rule, am not prepared to accept that there are no limitations.

Normally, a customer is required to furnish a list of all cheques and money orders included in any deposit, upon the deposit slip, but is not required to furnish a duplicate of such list to be receipted. If a duplicate is prepared, it is regarded as a copy made by the customer for his own convenient reference.

20

It is not the custom for the teller receiving the deposit to compare each cheque or money order lodged with the list on the original, let alone on the copy. It is customary for the total amount of the cheques and money orders to be ascertained by the teller's clerk, frequently with the assistance of an adding machine, and compared with the total shown on the deposit slip. At least, this is the custom in metropolitan and larger branches where a teller's clerk is employed, even if not in smaller and
30 more remote branches.

I see no reason to condemn this practice. Indeed, I am satisfied that it is a step forward, and that the necessity for the teller to verify that the list supplied is correct in all respects would place an undue burden on the bank, and would gravely retard banking business. It follows that there is no obligation on the teller to compare the copy with the original in this respect.

40 Nevertheless, when the customer adopts the system of making a carbon copy of the original deposit slip, to be receipted by the teller, it does not necessarily follow that the only matters to be verified are those stated. Each case will, of course, depend upon its particular facts. I do not think that the teller is obliged to carry out a detailed examination of the copy and to compare it in all details with the original. In the view I have taken of the facts,

it is not necessary to attempt to lay down a general rule. It is sufficient to say that if a teller fails to observe a striking and obvious difference, or any discrepancy which should be observed upon a cursory examination (to put it as its lowest), then I am disposed to think that if the customer acts upon the faith that the erroneous receipt is correct, and suffers loss as a result thereof, the customer may be entitled to recover damages. But I do not think it can be denied that no right of action can be maintained in
 10 any event unless the customer does act upon the faith that the erroneous receipt is correct and does suffer loss as a result of so acting. In this case, I can see no evidence either that the plaintiff did act upon the faith that the erroneous receipts were correct or that it suffered loss as a result thereof. It was no part of the book-keeping or auditing system of the plaintiff company that any examination was made of the duplicate bank deposit slips after they had been receipted by the bank. On the contrary, the evidence established that the only occasions
 20 when reference was made to the duplicate bank deposit slips were as follows:

- (1) If the bank, after the teller had initialled and stamped the duplicate deposit slip, discovered an error either in the additions, or otherwise, it was the practice of the bank to inform an officer of the plaintiff company and ask that the duplicate be corrected. In such cases reference was made to the copy
 30 only for the purpose of making the necessary correction. There is no suggestion that, even in these cases the duplicate deposit slip was compared with the records of first entry or with the cash book.
- (2) Once a year reference was made to the duplicate bank deposit slips for insurance purposes. The plaintiff company had a policy whereby an insurance company indemnified
 40 it against loss of cash in transit to the bank. For the purpose of enabling premiums to be fixed, a return was required to be made of the amount of cash, as distinct from money orders and cheques, lodged with the bank during the preceding year. This information was obtained from the duplicate deposit slips. But after this was done no further reference

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was made to them.

There is no evidence that the auditors at any time made reference to the duplicate deposit slips or carried out any examination for the purpose of ensuring that such deposit slips correspond with the entries made in the company's books of account.

The real cause of the loss is to be found in the
10 circumstances already referred to, namely, that, on each
balancing date, Moffitt's services were utilised to add the
balances in one or more of the debtors ledgers. In fact,
Moffitt concealed his defalcations by ensuring that he added
the ledger or ledgers in which the original entry had been
made of the fictitious transaction, and he increased the
actual balance shown in such debtors ledgers by adding there-
to an amount equal to the sum of the fictitious accounts he
had created. It may be inferred that Moffitt's false addi-
20 tions were accepted both by the company's officers and by
the auditors as being correct. Thus, over the whole of the
period in question, Moffitt was enabled to conceal from
both the company and its auditors the fact that he had mis-
appropriated the amounts in question.

Accordingly I have come to the conclusion that even
though it may possible be that a theoretical right of action
may accrue in the circumstances I have mentioned, the
facts of this case are such as to preclude the plaintiff
from recovering.

30

I find a verdict for the defendant.

I certify that this and the 23 preceding
pages are a true copy of the reasons
for judgment herein of His Honour,
Mr. Justice Manning.

40

Associate

Dated 22. 7. 64.

NO. 5.

RULE OF FULL COURT OF NEW SOUTH WALES
GRANTING FINAL LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL

Rule of
Full Court
of New South
Wales granting
final leave to
appeal
(No. 5)

7th September,
1964.

10 The seventh day of September, 1964.

UPON MOTION made this day pursuant to the Notice of
Motion filed herein on the first day of September, 1964
WHEREUPON AND UPON READING the said Notice
of Motion the affidavit of Brian Bullock sworn on the thirty
first day of August, 1964 and the Prothonotary's Certificate
of Compliance AND UPON HEARING what is alleged by
Mr. W. E. Reddy of Counsel for the Appellant and Mr.
R. F. Smart of Counsel for the Respondent IT IS ORDERED
20 that final leave to appeal to Her Majesty in Council from the
judgment of the Honourable Mr. Justice Manning given and
made herein on the Twenty second day of July, 1964 be and
the same is hereby granted to the Appellant.

BY THE COURT

30

FOR THE PROTHONOTARY

E. LENNON

CHIEF CLERK

NO. 6.

Certificate of
the Prothonotary
of the Supreme
Court of
New South
Wales
Verifying
Transcript
Record
(No. 6)

6th October,
1964.

CERTIFICATE OF THE PROTHONOTARY OF THE
SUPREME COURT OF NEW SOUTH WALES
VERIFYING TRANSCRIPT RECORD

10 I, RONALD EARLE WALKER of Sydney in the State of
New South Wales Prothonotary of the Supreme Court of
the said State DO HEREBY CERTIFY that the sheets here-
unto annexed and contained in pages numbered one to 327
inclusive contain a true copy of all the documents relevant
to the appeal by the Appellant Universal Guarantee Proprietary Limited to Her Majesty in Council from the judgment of the Honourable Mr. Justice Manning given and made herein on the Twenty second day of July One thousand nine hundred and sixty four so far as the same have relation to the matters of the said appeal together with the reasons for the said judgment given by the said Judge and an index of all the papers, documents and exhibits in the said suit included in the annexed
20 transcript record which true copy is remitted to the Privy Council pursuant to the order of Her Majesty in Council of the Twentieth day of December in the year of Our Lord one thousand nine hundred and fifty seven.

IN FAITH AND TESTIMONY whereof I have hereunto set my hand and caused the seal of the said Supreme Court to be fixed this 6th day of October in the year of Our Lord one thousand nine hundred and sixty four

30 (LS)

R. E. WALKER
PROTHONOTARY OF THE SUPREME COURT
OF NEW SOUTH WALES

PART II

EXHIBITS

Exhibit A

Letter from
Defendant's
Solicitors
to Plaintiff's
Solicitors

30th January,
1964.

EXHIBIT ALetter from Defendant's Solicitors to Plaintiff's Solicitors

Messrs. Remington & Co. ,
Solicitors,
125 York Street,
SYDNEY.

30th January, 1964.

10 Dear Sirs,

re - The National Bank of Australasia Ltd.
ats. Universal Guarantee Pty. Limited

We refer to the Points of Claim served on behalf of the plaintiff in the above matter. Counsel retained on behalf of the defendant has advised that the defendant is entitled to the following further and better particulars of these Points of Claim:-

20 1. AS TO PARAGRAPH 6 -

(a) During what period is it alleged that the defendant has, through its Wentworth Avenue Branch in Sydney, acted as Bankers to the Plaintiff?

(b) Is it alleged that the defendant has, during the period referred to in (a) supra, acted as Bankers to the plaintiff pursuant to a contract between the plaintiff and the defendant?

30

(c) If the answer to (b) supra is in the affirmative:

(i) is it alleged that such contract is in writing, oral or implied, or partly in writing and/or partly oral and/or partly implied?

(ii) If in writing or partly in writing what are the documents alleged to constitute or partly to constitute such contract and when and where may such documents be inspected?

40

(iii) If oral or partly oral when, where and between whom on behalf of the plaintiff and with whom on behalf of the defendant is it alleged that such contract, or so much thereof as is alleged to be oral, was made,

and what are the alleged terms of such contract?

- (iv) If implied or partly implied what are the full facts and circumstances (including documents) from which it is alleged that such contract, or so much thereof as is alleged to be implied, can be implied, and what are the alleged terms thereof?

Exhibit A
(Continued)

Letter from
Defendant's
Solicitors
to Plaintiff's
Solicitors

30th January,
1964.

10

2. AS TO PARAGRAPH 8 -

- (a) Is the contract alleged in this Paragraph alleged to be in writing, oral or implied, or partly in writing and/or partly oral and/or partly implied?

20

- (b) If in writing or partly in writing what are the documents alleged to constitute or partly to constitute such contract and when and where may such documents be inspected?

- (c) If oral or partly oral when, where, and between whom on behalf of the plaintiff and with whom on behalf of the defendant is it alleged that such contract, or so much thereof as is alleged to be oral, was made, and what are the alleged terms of such contract?

30

- (d) If implied or partly implied what are the full facts and circumstances (including documents) from which it is alleged that such contract, or so much thereof as is alleged to be implied, can be implied, and what are the alleged terms thereof?

40

- (e) In relation to the "implied term and condition or warranty" specifically alleged in this Paragraph, please supply full details of all facts and circumstances (including documents) from which it is alleged this specification "implied term and condition or warranty" could be implied.

3. AS TO PARAGRAPH 9 -

Please supply in relation to this Paragraph the part-

Exhibit A
(Continued)

Letter from
Defendant's
Solicitors
to Plaintiff's
Solicitors

30th January,
1964.

iculars sought in Paragraph 2 supra in relation to paragraph 8 of the Points of Claim.

4. AS TO PARAGRAPH 10 -

Please supply in relation to this paragraph the particulars sought in paragraph 2 supra in relation to paragraph 8 of the Points of Claim.

10 5. AS TO PARAGRAPH 11 -

Please supply in relation to this paragraph the particulars sought in paragraph 2 supra in relation to paragraph 8 of the Points of Claim.

6. AS TO PARAGRAPH 12 -

20 Please supply in relation to this paragraph the particulars sought in paragraph 2 supra in relation to paragraph 8 of the Points of Claim.

7. AS TO PARAGRAPH 13

Please supply in relation to this paragraph the particulars sought in paragraph 2 supra in relation to paragraph 8 of the Points of Claim.

8. AS TO PARAGRAPH 14 -

30 (a) Is it alleged that the duty in this paragraph alleged to be owed by the defendant to the plaintiff was owed by the defendant to the plaintiff pursuant to a contract between the plaintiff and the defendant?

(b) If the answer to (a) supra is in the affirmative:

40 (i) is it alleged that such alleged contract was in writing or oral or implied or partly in writing and/or partly oral and/or partly implied?

(ii) if in writing or partly in writing what are the documents alleged to constitute or partly to constitute such contract and when and where may such documents be inspected?

(iii) if oral or partly oral when, where, and between whom on behalf of the plaintiff and with whom on behalf of the defendant is it alleged that such contract, or so much thereof is alleged to be oral, was made, and what are the alleged terms of such contract?

Exhibit A
(Continued)

Letter from
Defendant's
Solicitors
to Plaintiff's
Solicitors

30th January,
1964.

10

(iv) if implied or partly implied what are the full facts and circumstances (including documents) from which it is alleged that such contract, or so much thereof as is alleged to be implied, can be implied, and what are the alleged terms thereof.

20

(c) If the answer to (a) supra is in the negative or if it is alleged that such alleged duty arose otherwise than by reason of or in addition to a contract between the plaintiff and the defendant please give details of all facts and circumstances by reason of which it is alleged that such duty arose.

9. AS TO PARAGRAPH 15 -

Please supply in relation to this paragraph the particulars sought in paragraph 8 supra in relation to paragraph 14 of the Points of Claim.

30 10. AS TO PARAGRAPH 16

Please supply in relation to this paragraph the particulars sought in paragraph 8 supra in relation to paragraph 14 of the Points of Claim.

11. AS TO PARAGRAPH 17 -

40

Please supply in relation to this paragraph the particulars sought in paragraph 8 supra in relation to paragraph 14 of the Points of Claim.

12. AS TO PARAGRAPH 18 -

Please supply in relation to this paragraph the particulars sought in paragraph 8 supra in relation to paragraph 14 of the Points of Claim.

Exhibit A
(Continued)

Letter from
Defendant's
Solicitors
to Plaintiff's
Solicitors

30th January,
1964.

13. AS TO PARAGRAPH 19 -

Please supply in relation to this paragraph the particulars sought in paragraph 8 supra in relation to paragraph 14 of the Points of Claim.

14. AS TO PARAGRAPHS 20, 21, 22, 23 and 24 -

10 Please supply the following particulars in relation to each of the cheques mentioned, set out in paragraph 20 and referred to in each of these paragraphs.

(a) Is it alleged that the cheque in question was the property of the person shown as "the payee" or that such cheque was the property of the plaintiff?

20 (b) What is meant by the date given as "date paid", what is the amount so paid, and to whom was such payment made?

(c) By whom is it alleged that the cheque was presented to the defendant for payment?

30 (d) It is alleged that payment was made to any person or persons or company or companies other than the plaintiff, and if so to what person or persons, or company or companies is it alleged that such payment was made?

(e) Is it alleged that the cheque was drawn on the plaintiff's Bank Account?

(f) How and by whom is it alleged that this cheque was negotiated.

(g) By whom was this cheque drawn?

40 15. AS TO PARAGRAPH 25 -

Please supply in relation to each of the duplicate receipts in this paragraph mentioned the following particulars:

(a) When, where and by whom on behalf of the defendant and to whom on behalf of the plaintiff

is it alleged that such duplicate receipt was given by the defendant to the plaintiff?

Exhibit A
(Continued)

Letter from
Defendant's
Solicitors
to Plaintiff's
Solicitors

30th January,
1964.

16. AS TO PARAGRAPH 27 -

- 10 (a) Is it alleged that the moneys in this paragraph claimed to be owing by the defendant to the plaintiff for moneys received by the defendant for the use of the plaintiff are so owing pursuant to a contract between the plaintiff and the defendant?
- (b) If the answer to (a) supra is in the affirmative:
- 20 (i) is such alleged contract alleged to be in writing or oral or implied or partly in writing and/or partly oral and/or partly implied?
- (ii) If in writing or partly in writing what are the documents alleged to constitute or partly to constitute such contract and when and where may such documents be inspected?
- 30 (iii) If oral or partly oral when, where, and between whom on behalf of the plaintiff and with whom on behalf of the defendant is it alleged that such contract, or so much thereof as is alleged to be oral, was made, and what are the alleged terms of such contract?
- (iv) If implied or partly implied what are the full facts and circumstances (including documents) from which it is alleged that such contract or so much thereof as is alleged to be implied, can be implied, and what are the alleged terms thereof?
- 40 (c) As regards each sum of money alleged to have been received by the defendant for the use of the plaintiff when, where, and by whom on behalf of the defendant and from whom is it alleged that such sum was received and what was the amount of each such sum?

Exhibit A
(Continued)

Letter from
Defendant's
Solicitors
to Plaintiff's
Solicitors

30th January,
1964.

- 10
- (d) It is alleged that the moneys alleged to be payable by the defendant to the plaintiff for money lent by the plaintiff to the defendant are so payable pursuant to a contract between the plaintiff and the defendant?
- (e) If the answer to (d) supra is in the affirmative:
- (i) is it alleged that such alleged contract was in writing or oral or implied or partly in writing and/or partly oral and/or partly implied?
- 20
- (ii) If in writing or partly in writing what are the documents alleged to constitute or partly to constitute such contract and when and where may such documents be inspected?
- (iii) If oral or partly oral, when, where, and between whom on behalf of the plaintiff and with whom on behalf of the defendant is it alleged that such contract, or so much thereof as is alleged to be oral, was made, and what are the alleged terms of such contract?
- 30
- (iv) If implied or partly implied what are the full facts and circumstances (including documents) from which it is alleged that such contract, or so much thereof as is alleged to be implied, and what are the alleged terms thereof?
- 40
- (f) When, where, and by whom on behalf of the defendant and to whom on behalf of the plaintiff is it alleged that the moneys alleged to be owing by the defendant to the plaintiff for moneys lent by the plaintiff to the defendant were so lent?

17. AS TO PARAGRAPH 28 -

Please indicate on what basis the plaintiff claims to recover a verdict for the damages in this paragraph alleged and please supply full particulars and details of such alleged damages.

18. AS TO PARAGRAPH 29 -

Please supply in relation to this paragraph the particulars sought in paragraph 18 supra in relation to paragraph 28 of the Points of Claim.

Exhibit A
(Continued)

Letter from
Defendant's
Solicitors
to Plaintiff's
Solicitors

30th January,
1964.

Yours faithfully,

10

MINTER SIMPSON & CO.

Letter from Plaintiff's Solicitors to Defendant's Solicitors

Messrs. Minter Simpson & Co.,
Solicitors,
20 29 Reiby Place,
SYDNEY.

20th February, 1964.

Letter from
Plaintiff's
Solicitors
to Defendant's
Solicitors

20th February,
1964.

Attention Mr. Ferguson,

Dear Sir,

re - Universal Guarantee Pty. Limited v
The National Bank of Australasia
Limited.

30

We acknowledge receipt of your letter of the 30th ultimo and point out that this request for particulars is long out of time as the points of defence should have been filed prior to the date of the request for particulars. However we furnish you with the following particulars. As a matter of convenience we will refer only to the paragraph number of the points of claim and shall not refer to the numbers given by you to your various requests for particulars.

40 As to Paragraph 6.

- (a) As you will have observed from the Points of Claim the plaintiff's first claim against the defendant is in receipt of a cheque debited to the plaintiff's account with the defendant on the 1st day of December, 1954. The defendant acted as the plaintiff's bankers through its Wentworth Avenue

Exhibit A
(Continued)

Letter from
Plaintiff's
Solicitors to
Defendant's
Solicitors

20th February,
1964.

10 branch in Sydney prior to that date. The exact date when the account was opened and the circumstances in which it was opened are not known to the plaintiff, but must be within the knowledge of the defendant's officers and the defendant's records. At the appropriate time we shall seek an order for discovery of all documents held by the defendant and if these documents furnish further information as to the origin of the relationship between the plaintiff and the defendant we will be happy to supply you with particulars of what your own records contain if you so desire them.

(b) It is alleged that the defendant acted as the plaintiff's bankers partly pursuant to a contract between them and partly in pursuance of the relationship of banker and customer.

20 (c) The only writing of which the defendant is presently aware is the writing set out in this paragraph of the Points of Claim. If further writing is produced by the defendant on discovery the plaintiff will also rely on such writing. Otherwise the plaintiff claims that the contract is implied from:

- 30 (i) the relationship of banker and customer,
(ii) from the course of dealings between the parties,
(iii) by the custom of the trade and -
(iv) by virtue of the statutory provision of the Bills of Exchange Act, 1906-1908.

As to Paragraphs 8, 9, 10, 11, 12, and 13 -

40 The contract alleged in these paragraphs in contract details of which have been given above in relation to paragraph 6.

As to Paragraphs 14, 15, 16, 17, 18, and 19 -

It is alleged that the duties alleged in these paragraphs arose out of the matters set out above in (c) in relation to paragraph 6.

As to Paragraphs 20, 21, 22, 23 and 24 -

- (a) It is not alleged that the cheque in question was the property of the person shown as the payee nor is it alleged that such cheque was the property of the plaintiff. It is the plaintiff's contention that such an allegation is unnecessary.
- 10 (b) By date paid is meant the date on which the cheque was wrongly debited by the defendant to the plaintiff's account. It is alleged that each of these cheques was wrongly debited by the defendant to the plaintiff's account.
- (c) The plaintiff does not allege by whom each cheque was presented to the defendant for payment, nor is such an allegation material to the Plaintiff's case.
- 20 (d) It is alleged that these cheques were wrongly debited by the defendant to the plaintiff's account.
- (e) It is alleged that each of these cheques were drawn on the plaintiff's bank account.
- (f) It is not material to the Plaintiff's claim to allege by whom the cheques were negotiated.
- (g) It is alleged that the cheques were drawn by the plaintiff.

30

As to Paragraph 25 -

The original receipts held by the defendant bear the defendant's stamp from which the defendant should be able to determine which teller received the deposit, and if the defendant is prepared to supply the name of the officer receiving the deposits in question, we will be happy to furnish the name of such officer to you. It is not material to the plaintiff's claim as to whom on behalf of the plaintiff such
 40 duplicate receipts were given, but it is alleged that each duplicate receipt was given by the teller receiving the deposit on the day of the deposit at the defendant's premises where the deposit was made.

As to Paragraph 27 -

- (a) & (b) It is alleged that the monies claimed in this paragraph are recoverable by the plaintiff from the defendant pursuant to the contract referred to in

Exhibit A
(Continued)

Letter from
Plaintiff's
Solicitors to
Defendant's
Solicitors

20th February,
1964.

Exhibit A
(Continued)

Letter from
Plaintiff's
Solicitors to
Defendant's
Solicitors

20th February,
1964.

the particulars given in relation to paragraph 6 above and also because these monies were wrongfully debited by the defendant to the plaintiff's bank account.

- 10 (c) The plaintiff alleges that the defendant over the years received monies from the plaintiff which were credited to the plaintiff's bank account with the defendant and that as such each of these sums of money was received by the defendant for the use of the plaintiff and that the defendant wrongly debited the cheques referred to in paragraph 20 against the monies so deposited and thereby the plaintiff was deprived of the use of such monies.
- 20 (d) & (e) It is alleged that the monies deposited by the plaintiff from time to time with the defendant were monies lent to the defendant pursuant to the contract referred to in the particulars in relation to paragraph 6 above.
- (f) It is alleged that the monies lent by the plaintiff to the defendant were the monies deposited over the years to the credit of the plaintiff's bank account with the defendant.

As to paragraphs 28 and 29 -

- 30 The plaintiff claims under these paragraphs that as a result of the defendant's negligence in wrongly debiting the first cheque referred to in paragraph 20 to the plaintiff's bank account with the defendant and in the defendant's negligence in issuing the first incorrect duplicate receipt the defendant enabled Moffitt to perpetrate the misappropriation of the funds of the Plaintiff represented by the cheques set out in paragraph 20 of the Points of Claim. In addition to such misappropriations Moffitt perpetrated other misappropriations from the funds of the plaintiff and the plaintiff seeks
- 40 to recover any such further misappropriations which can be proved. At the present moment we have no details of any such further misappropriations which can be proved but we are seeking instructions on this matter and will advise you if there are any such further claims.

In the meantime and as such further claims, if any, are not material to the points of defence, we must ask you to file the points of defence forthwith as the time allowed for so doing has already expired.

Yours faithfully,
REMINGTON & CO.

EXHIBIT C

PARTICULARS OF PLAINTIFF'S ALLEGATIONS OF FAULT
IN RELATION TO THE NON-CORRESPONDENCE OF
ORIGINAL AND DUPLICATE DEPOSIT SLIPS REFERRED
TO IN PARAGRAPH 25

Exhibit C

Particulars of
Plaintiff's
Allegations
of fault in
relation to
non-correspondence
of original
and duplicate
deposit slips
referred to in
Paragraph 25

10 A. Each-original deposit slip in the following files
includes the cheque or cheques for the amount
or amounts shown in paragraph 25 of the Points
of Claim but such cheque or cheques is or are
not shown in the duplicate deposit slip:

- 68
- 71
- 72
- 74 - 81
- 85 - 88
- 90 - 92
- 20 94 - 98
- 101
- 104 - 114
- 116 - 127
- 130 - 131
- 133 - 150
- 152 - 155
- 157
- 159 - 160
- 162 - 165

30 B. In addition to the particulars in A being applicable
to the following file numbers, in each of the follow-
ing cases the summary of cash and cheques
making up the deposit differs as between the
original and the duplicate, the matter of diff-
erence in the summary having been brought
about by an alteration to the duplicate after
banking:

- 40 73
- 82 - 84
- 89
- 93
- 99 - 100
- 102 - 103
- 115
- 128 - 129

Exhibit C — C. _____ The following to be the subject of specific
 (Continued) evidence:

Particulars of	
Plaintiff's	132
Allegations	151
of fault in	
relation to	156
non-	
correspondence	158
of original and	161
duplicate	
deposit slips	
referred to in	
paragraph 25	

EXHIBIT D
(PART ONLY)

Exhibit D
(Part Only)

Summary of
Interest on
Files 1-165

UNIVERSAL GUARANTEE PTY. LIMITED, SYDNEY

SUMMARY OF INTEREST ON FILES 1 - 165

10	1. Total Interest 1 - 165 as per schedules submitted	£ 17,992. 16. 1.
	Less: Adjustments for Credit balances & Overdrafts less than progressive defalcation to date -	
	1/12/54 to 21/10/60	975. 2. 4.
	22/10/60 to 16/9/63	<u>1,216. 15. 5.</u> <u>2,191. 17. 9.</u>
20	Corrected Interest 1 - 165	<u>£ 15,800. 18. 4.</u>
	2. Total Interest 1 - 165	17,992. 16. 1.
	Less Interest 1 - 65	<u>7,660. 11. 11.</u>
	Interest 66 - 165	£ 10,332. 4. 2.
30	Less: Adjustments for Credit balances & Overdrafts less than progressive defalcation 66 - 165 to date -	
	1/12/54 to 21/10/60	250. 19. 7.
	22/10/60 to 16/9/63	<u>486. 2. 0.</u> <u>737. 1. 7.</u>
40	Corrected Interest 66 - 165	<u>£ 9,595. 2. 7.</u>

Exhibit E

 Admission
 of
 Facts

EXHIBIT E

ADMISSION OF FACTS

It is admitted that:-

1. Each of the cheques in all of the files in Exhibit "B"
 (with the exception of the files marked as Exhibits
 B44, B53, B54, B89, B102, B103, B128, B139,
 10 B147 and B164):
- (a) was drawn by the Plaintiff upon its account with the
 Wentworth Avenue Branch of the Department;
- (b) was crossed "not negotiable account payee only";
- (c) was payable to the payee named in paragraph 20
 of the Amended Points of Claim;
- 20 (d) was endorsed in the name of that payee;
- (e) was endorsed on the back thereof with the name of
 the payee which was placed thereon by William
 Raymond Moffitt;
- (f) bore on the reverse thereof the inscription "endor-
 sement guaranteed pp Universal Guarantee Pty.
 Limited, W. R. Moffitt" which inscription was
 signed by the said William Raymond Moffitt.
- 30 2. As to each of the cheques referred to in the files
 marked as Exhibits B44, B53, B54, B89, B128,
 B139, B147 and B167 respectively:
- (a) the same admissions as are made in sub-paragraphs
 (a) to (f) inclusive of paragraph 1 hereof; and
- (b) the Defendant is unable to find or produce the orig-
 40 inals of those cheques; and
- (c) the photostatic copies of cheques included in the
 said files are photostatic copies of the originals
 of those cheques.
3. All of the cheques referred to in the files marked
 as Exhibits B1 to B165 inclusive were debited by the
 Defendant to the Plaintiff's account with the Wentworth

Avenue Branch of the Defendant provided that the Plaintiff admits that the amounts of all of those cheques were credited by the Defendant to the same account.

Exhibit E
(Continued)

Admission
of
Facts

4. The original deposit slip in relation to the file marked as Exhibit B54 being the deposit made on the 13th February 1957 cannot be found by the Defendant and the photostatic copies of two sheets of an original deposit slip included in the said file are photostatic copies of sheets of that original deposit slip.
- 10
5. The original deposit slip in relation to the file marked as Exhibit B89 being the deposit made on the 24th February 1959 cannot be found by the Defendant and the photostatic copies of two sheets of an original deposit slip included in the said file are photostatic copies of sheets of that original deposit slip.
- 20
6. The original deposit slip in relation to the file marked as Exhibit B128 being the deposit made on the 8th December 1959 cannot be found by the Defendant and the photostatic copy of one sheet of an original deposit slip included in the said file is a photostatic copy of a sheet of that original deposit slip.
- 30
7. The original deposit slip in relation to the file marked as Exhibit B139 being the deposit made on the 23rd March 1960 cannot be found by the Defendant and the photostatic copy of one sheet of an original deposit slip included in the said file is a photostatic copy of a sheet of that original deposit slip.
8. The original deposit slip in relation to the file marked as Exhibit B147 being the deposit made on the 10th May 1960 cannot be found by the Defendant and the photostatic copy of one sheet of an original deposit slip included in the said file is a photostatic copy of a sheet of that original deposit slip.
- 40
9. The original deposit slip in relation to the file marked as Exhibit B164 being the deposit made on the 11th October 1960 cannot be found by the Defendant and the photostatic copy of one sheet of an original deposit slip

Exhibit E
(Continued)

Admission
of
Facts

included in the said file is a photostatic copy
of a sheet of that original deposit slip.

DATED the 9th day of June, 1964.

B. BULLOCK

.....

Solicitor for the Plaintiff

FERGUSON

.....

Solicitor for the Defendant

EXHIBIT G

SPECIMEN CHEQUE OF UNIVERSAL GUARANTEE PROPRIETARY LIMITED

Exhibit G

Specimen cheque of Universal Guarantee Pty. Ltd.


 <p>UNIVERSAL GUARANTEE PTY. LTD. A DIVISION OF ELECTRONIC INDUSTRIES LTD.</p> <p>The National Bank of Australasia Limited 50 WENTWORTH AVENUE, SYDNEY, N.S.W.</p>		<p>N^o</p>	
DATE	CHEQUE No.	AMOUNT IN WORDS	AMOUNT OF CHEQUE
10 6 64 0000		FOUR HUNDRED POUNDS	£400:--
PAY TO THE ORDER OF <i>J Bruce</i>		For and on behalf of UNIVERSAL GUARANTEE PTY. LTD. <i>A L Smith</i> <i>J C Robinson</i>	
ENDORSEMENT OF PAYEE <i>J Bruce</i>		NOT NEGOTIABLE A/C PAYEE ONLY	

Exhibit 1

 Extract of
 Minutes of
 Meeting
 of
 Chief
 Accountants

 14th and 15th
 July, 1959.

EXHIBIT 1

AUSTRALIAN BANKERS' ASSOCIATION

Melbourne,

16th July, 1959.

Minutes of Meeting of Chief Accountants held at the
 10 Bank of New South Wales, 341 George Street, Sydney, on
 Tuesday and Wednesday, 14th and 15th July 1959.

PRESENT :

Mr. R. K. Aitken (E. S. & A.) Chairman;
 Messrs. M. G. Arthur (Wales), Alan Cadell
 (C. B. C.),
 C. A. Chessell (National), L. G. Hall (Common-
 wealth Trading Bank), W. S. Hirst (C. B. A.),
 20 M. A. Lodge (Adelaide), R. D. Windust (A. N. Z.),
 A. R. Allingham, Secretary.

PART I

Items on which the Chief Accountants reached
 unanimous agreement.

30 1. THE INSTITUTE OF CHARTERED ACCOUNTANTS
 IN AUSTRALIA BANKING PRACTICES.

Consideration was given to a letter from Mr. C. A.
 Gray, New South Wales State Chairman, The Institute of
 Chartered Accountants in Australia, addressed to Mr. H.
 C. C. Marshall as New South Wales' representative of the
 Australian Bankers' Association. Mr. Gray enclosed with
 his letter a copy of his memorandum dated 6th June, 1958,
 addressed to the Registrar, The Institute of Chartered
 40 Accountants in Australia. Both the letter and the memo,
 had been distributed to member banks.

Chief Accountants in considering the text of this
 correspondence noted that the writer is concerned that,
 inter alia, established banking procedures are being varied
 without the knowledge of the Institute; he considers that banks
 generally are relaxing vigilance and should tighten up their
 procedures.

However, Chief Accountants are of the opinion that the basic fundamentals of established banking procedures directly affecting the public and customers have not varied to any marked degree over the years, also that any changes in procedures and systems adopted have not been instituted at the expense of accepted banking standards.

Exhibit 1
(Continued)

Extract of
Minutes of
Meeting of
Chief
Accountants

14th and 15th
July, 1959.

Concerning the specific points raised in the correspondence, Chief Accountants' comments are as follows:-

10

- (1) Checking individual cheques deposited, with customers' lodgment slips.

20

This has never been a regular banking practice particularly where deposits have contained large numbers of cheques and it has always been an accepted view in banks that it is the customer's responsibility to present an accurately detailed lodgment slip to the bank; this slip is invariably proved for correctness of total. (This procedure is, of course, apart from the normal perusal of cheques for endorsements, exchange calculations, not negotiable crossings, etc.)

Minutes of Meeting of Chief Accountants
held on 14-15/7/59.

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1. THE INSTITUTE OF CHARTERED ACCOUNTANTS
IN AUSTRALIA BANKING PRACTICES. (Cont'd.)

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- (2) Indemnities re surrender of paid cheques

It is considered not unreasonable for a banker to retain the right to regard a customer's account as settled within a reasonable time and the bank therefore, is entitled to request the execution of an indemnity to cover the situation when paid cheques are surrendered. If, in the future, attendance of auditors at banking chambers becomes of such frequency as to be untenable from a time consuming point of view, banks could, and no doubt would, need to consider a charge to compensate for the time and work involved.

- (3) The Acceptance of not-negotiable cheques.

Exhibit 1
(Continued)

Extract of
Minutes of
Meeting of
Chief
Accountants

14th and 15th
July, 1959.

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If a not negotiable cheque is accepted to an account resulting in the rightful owner being deprived of value through a bank's negligence, the rightful owner of the cheque has recourse on the bank as, when a banker collects such a cheque for a customer to which the latter has no title, the banker is (apart from certain limited statutory protection) liable to an action for conversion. In view of the potential losses by the banks from this source they have not, and would not, relax the present insistence that staff members always remain vigilant to detect the improper acceptance of "not negotiable" cheques. Referring to Mr. Gray's statement on the matter, should a customer after receiving his cheques from the Bank at his own request fail to produce any such cheques, claimed to have been wrongfully debited, the loss of the cheques is not regarded as the responsibility of the Bank concerned and liability could hardly be admitted without evidence.

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However, as the letter is not merely a criticism of bank procedures, but an endeavour to establish a basis on which there could be a regular exchange of information and views, the Chief Accountants consider that the position might be met by informing the Institute that it is welcome at any time to refer to the Australian Bankers' Association matters on which it may have comments to make. Any such matters would be handled by the appropriate committee which would include a representative of the Commonwealth Trading Bank of Australia. Alternatively, the Australian Bankers' Association may wish at times to approach the Institute on matters of mutual interest.

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If any subject were considered of sufficient importance, it was felt that sub-committees representing both the Banks and the Accountants could be appointed and meet for discussion.

It was recommended that the Accountants be informed in terms of the foregoing and that the reply include reference to the fact that the banks are of the opinion that the basic fundamentals of established banking procedures directly affecting the public and customers have not varied to any marked degree over the years and that any changes in procedures and systems adopted have not been instituted at the expense of accepted banking standards.

