

~~PC~~  
~~GEI. G. 6.~~

24/960

# In the Privy Council

No. **15** of 1960

## ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN

"TRUTH" (N.Z.) LIMITED, a duly incorporated company  
having its registered office in Truth Building, Garrett  
Street, Wellington, and carrying on the business of news-  
paper proprietors and publishers .....

Appellant

AND

PHILIP NORTH HOLLOWAY, a Member of the House of  
Representatives and holding therein the portfolio of Minister  
of Industries and Commerce .....

Respondent

### RECORD OF PROCEEDINGS

#### INDEX OF REFERENCE

#### PART I

No.	Description of Document	Date	Page
	IN THE SUPREME COURT OF NEW ZEALAND		
1	Statement of Claim	21st April 1959	1
2	Notice to File and Serve Particulars	24th April 1959	3
3	Statement of Particulars	24th April 1959	3
4	Statement of Defence	29th April 1959	4

ii  
PART I (continued)

No.	Description of Document	Date	Page
	<b>Plaintiff's Evidence:</b>		
5	D.S.G. Deacon - Examination		6
	- Cross Examination		7
6	I.A. Gordon - Examination		9
	- Cross Examination		10
	- Re Examination		13
	- Cross Examination		14
7	C.T. Watson - Examination		14
	- Cross Examination		15
	- Re Examination		19
8	P.N. Holloway - Examination		21
	- Cross Examination		30
	- Re Examination		67
9	L.A. Atkinson - Examination		72
	- Cross Examination		78
	- Re Examination		85
10	C.T. Watson (Recalled) - Examination		87
	- Cross Examination		87
	- Re Examination		89
	<b>Defendant's Evidence:</b>		
11	A.G. Sercombe - Examination		90
	- Cross Examination		92
	- Re Examination		95
12	J.S. Wrigley - Examination		95
	- Cross Examination		96
13	Reasons for Ruling of Hutchison, A.C.J. as to Evidence	5th June 1959	97
14	Summing-up of Hutchison, A.C.J.	8th June 1959	99
15	Letter of Defendant's Solicitors as to Transcript of Summing-up	18th June 1959	109
16	Notice of Motion for Order Granting New Trial or for Judgment for Defendant	19th June 1959	110
17	Particulars of Misdirections Annexed to Notice of Motion for New Trial	19th June 1959	111
18	Reasons for Judgment of Hutchison, A.C.J.	23rd July 1959	112
19	Formal Judgment of Supreme Court	23rd July 1959	135

No.	Description of Document	Date	Page
	<b>IN THE COURT OF APPEAL OF NEW ZEALAND</b>		
20	Notice of Motion on Appeal	24th July 1959	136
21	Reasons for Judgment of Court of Appeal (delivered by North J.)	16th November 1959	137
22	Formal Judgment of Court of Appeal	16th November 1959	153
23	Order of Court of Appeal Giving Final Leave to Appeal to Her Majesty in Council	3rd March 1960	154

PART II

Exhibit Mark	Description of Document	Date	Page
<u>Plaintiff's Exhibits</u>			
A	Article in N.Z. Truth	24th March 1959	161 162
B	Report of Tribunal Appointed to Inquire into Allegations reflect- ing on the Official Conduct of Ministers of the Crown and other Public Servants	21st January 1949	Not printed
C	Documents from Department of Industries and Commerce file re Glass Importation Memorandum E.P. Doogue to L.A. Atkinson Letter J. Randal to the Secretary Department of Industries and Commerce Memorandum L.A. Atkinson to the Comptroller of Customs Draft Letter Plaintiff to the Secretary New Zealand Glass, Paint and Wallpaper Merchants' Federation.	14th July 1958  25th July 1958  30th July 1958  11th September 1958	206  208  209  210

iv  
PART II (continued)

Exhibit Mark	Description of Document	Date	Page
C (continued)	Letter Plaintiff to the Secretary New Zealand Glass, Paint and Wallpaper Merchants' Federation	15th September 1958	211
	Letter H. Judd & Co. Ltd. to Plaintiff	20th February 1959	212
	Letter H. Judd & Co. Ltd. to W.B. Sutch	20th February 1959	216
	Letter R. Boord to H. Judd	2nd March 1959	220
D	Documents from Department of Industries and Commerce file re Trade with Czechoslovakia		
	Letter H. Judd & Co. Ltd. to Plaintiff	4th February 1958	167
	Letter H. Judd & Co. Ltd. to Plaintiff	27th February 1958	169
	Memorandum L.A. Atkinson to R.B. Gray	27th February 1958	171
	Memorandum L.A. Atkinson to Plaintiff	6th March 1958	172
	Letter Plaintiff to H. Judd	7th March 1958	176
	Note on file by R.B. Gray	11th March 1958	177
	Minute Sheet	12th March 1958	178
	Minute Sheet	12th March 1958	179
	Memorandum - Meeting with Czechoslovakians	13th March 1958	180
	Memorandum L.A. Atkinson to Plaintiff	1st April 1958	181
	Memorandum R.L. Hutchens to Plaintiff	9th April 1958	185
	Cabinet Minute R.L. Hutchens to all Ministers	18th April 1958	186
	Memorandum R.L. Hutchens to Plaintiff	22nd April 1958	188



v  
PART II (continued)

Exhibit Mark	Description of Document	Date	Page
<u>Plaintiff's Exhibits</u>			
D			
(continued)	Statement in "Evening Post" Memorandum L.A. Atkinson to Plaintiff	29th April 1958	189
	Letter L.A. Atkinson to J. Tichacek.	7th May 1958	190
	Letter L.A. Atkinson to J. Tichacek.	13th May 1958	192
	Letter L.A. Atkinson to J. Tichacek.	15th May 1958	194
	Note on file by A.W. Broadbent	10th June 1958	195
	Memorandum L.A. Atkinson to Plaintiff	18th June 1958	197
	Memorandum L.A. Atkinson to Plaintiff	25th July 1958	199
	Draft Press Statement	8th August 1958	202
	Summary of Trade Talks with Czechoslovakia	27th November 1958	203
E			
	Correspondence between Parties' Solicitors		
	Letter Plaintiff's Solicitors to The Editor "New Zealand Truth"	6th April 1959	221
	Letter Defendant's Solicitors to Plaintiff's Solicitors	7th April 1959	223
	Letter Plaintiff's Solicitors to Defendant's Solicitors	10th April 1959	225
	Letter Defendant's Solicitors to Plaintiff's Solicitors	13th April 1959	226
	Letter Plaintiff's Solicitors to Defendant's Solicitors	17th April 1959	228
	Letter Defendant's Solicitors to Plaintiff's Solicitors	27th May 1959	229
	Letter Plaintiff's Solicitors to Defendant's Solicitors	28th May 1959	230
F	Article in N.Z. Truth	26th May 1959	166
G	Article in N.Z. Truth	27th January 1959	155
H	Article in N.Z. Truth	3rd February 1959	158
I	Letter from Plaintiff to L.S.Hancock	31st July 1958	231

vi  
PART II (continued)

Exhibit Mark	Description of Document	Date	Page
<u>Defendant's Exhibits</u>			
1	Article in "The Standard"	26th May 1954	232
2	Extract from New Zealand Parliamentary Debates (Hansard)	31st August 1955	233
	Certificate of Registrar of Court of Appeal of New Zealand		234

# In the Privy Council

## ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND

---

BETWEEN

"TRUTH" (N.Z.) LIMITED, a duly incorporated company  
having its registered office in Truth Building, Garrett  
Street, Wellington, and carrying on the business of news-  
paper proprietors and publishers .... ..

Appellant

AND

PHILIP NORTH HOLLOWAY, a Member of the House of  
Representatives and holding therein the portfolio of Minister  
of Industries and Commerce .... ..

Respondent

---

### RECORD OF PROCEEDINGS

---

No. 1

#### STATEMENT OF CLAIM

IN THE SUPREME COURT OF NEW ZEALAND  
WELLINGTON DISTRICT.  
WELLINGTON REGISTRY.

No. A 111/59

In the  
Supreme  
Court of  
New Zealand

No. 1  
Statement of  
Claim

21st April,  
1959.

BETWEEN

PHILIP NORTH HOLLOWAY, a Member of the House of  
Representatives and holding therein the portfolio of  
Minister of Industries & Commerce .... ..

Plaintiff

10

AND

"TRUTH" (N.Z.) LIMITED, a duly incorporated company  
having its registered office in Truth Building, Garrett  
Street, Wellington and carrying on the business of news-  
paper proprietors, printers and publishers .... ..

Defendant

The plaintiff by his solicitor says:—

1. The plaintiff is a Member of the House of Representatives and at all material times held the portfolio therein of Minister of Industries & Commerce .

2. The defendant is a duly incorporated Company having its registered office in Truth Building, Garrett Street, Wellington, and is the printer and pub-

In the  
Supreme  
Court of  
New Zealand  
No. 1  
Statement of  
Claim  
21st April,  
1959.  
(continued)

lisher of "N.Z. Truth" a weekly newspaper having a wide and extensive circulation throughout the Dominion of New Zealand.

3. On page 17 of the issue of the said weekly newspaper dated the 24th day of March 1959 under the heading of "This Ex-Russian's Import Licences Should Be Investigated" the Defendant falsely and maliciously printed and published or caused to be printed and published of the Plaintiff and of him in the way of his said office as Minister and in relation to his conduct therein the following words :-

"He told a man who approached him some time subsequently about import procedure that he was 'sick of things here' and that '25,000 smackers had just gone like that.' He gave the impression that there was nothing doing (in the import field) for him any longer. He told the caller that he had come too late, that there was 'no use talking' and that the Prime Minister, Mr. Nash, had put his foot down. At a subsequent discussion with the same man, the disconsolate Judd told his caller to 'see Phil and Phil would fix it'. He warned him whatever he did, not to let Mr. Nash hear about it. By 'Phil' his caller understood him to mean the Hon. Philip North Holloway, the Minister of Industries and Commerce."

4. In the article in which the said words quoted in the preceding paragraph hereof appeared such words were preceded by the following words:-

"If, in fact, Mr. Freer has been paid or is to be paid any commission whatever on an import licence for anyone, the Government has an absolute duty to inquire into the matter with the utmost strictness. It was operations such as this which touched off the famous Lynskey inquiry in Britain in the late forties when an adept operator named Sidney Stanley was shown to have had certain dealings with a British junior minister, Mr. John Belcher. The British Government overhauled all the dealings between Mr. Stanley and Mr. Belcher in minute detail. Mr. Belcher resigned and left public life. Mr. Stanley had taken the precaution of removing himself from Britain and has never returned."

and were followed later in the said article by the following words:-

"In Truth's view the New Zealand Labour Government should show itself no less meticulous in preventing any suspicion of under-the-counter dealings with Parliamentarians than did the British Labour Government when it dealt with Sidney Stanley."

and the said words quoted in the preceding paragraph hereof were placed between and in juxtaposition to the two passages from the said article set out in this paragraph.

5. By the said words referred to in paragraph 3 hereof the Defendant meant and was understood to mean that the Plaintiff is and was a person who has

acted and is prepared to act dishonourably in connection with the issue of import licences.

6. The Plaintiff has in consequence been seriously injured in his character and reputation and in the way of his said office as Minister of Industries & Commerce and has been brought into public hatred, ridicule and contempt.

WHEREFORE the Plaintiff claims:-

- (a) By way of damages the sum of fifteen thousand pounds (£15,000).
- (b) Such further or other relief as may be just.
- (c) The costs of and incidental to this action.

10 THIS Statement of Claim is filed by Wilfrid Erne Leicester, solicitor for the Plaintiff whose address for service is at the offices of Messieurs Leicester Rainey & Armour, solicitors, 125 Featherston Street, Wellington.

#### NO. 2

#### NOTICE TO FILE AND SERVE PARTICULARS

TAKE NOTICE that the Statement of Claim filed herein is deemed to be defective in that it fails to comply with the requirements of Rule 136B of the Code of Civil Procedure.

20 The Defendant requires you within four days of the date of service of this notice to file and serve particulars of the facts and matters on which you rely in support of the allegation that by the words set forth in paragraph 3 of the Statement of Claim the Defendant meant and was understood to mean that the Plaintiff is and was a person who has acted and is prepared to act dishonourably in connection with the issue of import licences.

DATED this 24th day of April 1959.

J. H. Dunn  
Solicitor for Defendant

To the Plaintiff and His Solicitor.

30 This Notice is filed and served by James Hamilton Dunn, Solicitor for the Defendant whose address for service is at the offices of Alexander, J.H. & Julia Dunn, 17 Grey Street, Wellington.

#### No. 3

#### STATEMENT OF PARTICULARS

THE PLAINTIFF, in answer to the notice for particulars herein, relies on the fact that the words 'see Phil and Phil would fix it', in the context in which the said words were used, were capable of being understood and were understood in a sense defamatory of the plaintiff, more particularly in that the word

In the  
Supreme  
Court of  
New Zealand

No. 1  
Statement of  
Claim

21st April,  
1959.

(continued)

No.2  
Notice to  
File and  
Serve  
Particulars

24th April,  
1959.

No.3  
Statement of  
Particulars

24th April,  
1959.

In the  
Supreme  
Court of  
New Zealand

No.3  
Statement of  
Particulars  
24th April,  
1959.

"fix" was used in the said context in a secondary or colloquial meaning connoting irregular and dishonourable conduct on the part of the plaintiff in connection with the issue of import licenses.

DATED at Wellington this 24th day of April 1959.

W.E. Leicester  
Solicitor for Plaintiff

TO The Defendant and his Solicitor

No.4  
Statement  
of Defence  
29th April,  
1959.

No. 4

### STATEMENT OF DEFENCE

The defendant by its solicitor says :—

10

1. The defendant has no knowledge of the matters set forth in paragraph 1 of the statement of claim and therefore denies the same.

2. It admits the allegations set forth in paragraph 2 of the statement of claim.

3. It denies the allegations set forth in paragraph 3 of the statement of claim.

4. It denies the allegations set forth in paragraph 4 of the statement of claim.

5. It denies the allegations set forth in paragraph 5 of the statement of claim.

20

6. It denies the allegations set forth in paragraph 6 of the statement of claim.

AND FOR A FURTHER AND ALTERNATIVE DEFENCE the defendant says :—

7. It repeats the admissions and denials contained in paragraphs 1 to 6 hereof.

8. The words set out in paragraph 3 of the statement of claim do not bear and were not understood to bear and are incapable of bearing the meaning alleged in paragraph 5 of the statement of claim.

9. The said words in their natural and ordinary meaning are incapable of being defamatory of the plaintiff.

AND FOR A FURTHER AND ALTERNATIVE DEFENCE the defendant says :-

10. It repeats the admissions denials and averments contained in paragraphs 1 to 9 hereof.

11. The words set out in paragraph 3 of the statement of claim are in their natural and ordinary meaning true in substance and in fact.

#### PARTICULARS

10 The functions and powers of the Department of Industries and Commerce, under the control and direction of the Minister of Industries and Commerce, include promoting and encouraging the development of industry and commerce and the export trade of New Zealand, and collaborating with appropriate Departments in respect of matters relating to the regulation and control under Acts of Parliament of imports or exports.

In connection with these powers and functions it is within the authority and has been the practice and policy of the Department of Industries and Commerce under the control and direction of the plaintiff to arrange or facilitate the granting of applications for import licences in cases regarded as suitable including the case of Hyman Yudt (otherwise called Harry Judd).

AND FOR A FURTHER AND ALTERNATIVE DEFENCE the defendant says :-

20 12. It repeats the admissions denials and averments contained in paragraphs 1 to 11 hereof.

30 13. If it shall be proved that the words set out in paragraph 3 of the statement of claim or any of them were published by the defendant of the plaintiff, then the said words were published by the defendant in good faith for the information and benefit of the public without any malice towards the plaintiff, and the public had a legitimate interest and concern in the matters referred to, which were relevant to and referred to in the course of an article dealing with the working of the import licensing system and trade barter agreements and the need for an inquiry into the means whereby one Hyman Yudt (otherwise called Harry Judd) had been able to import goods into New Zealand. It was the defendant's duty and/or of common interest to the public and the defendant that the defendant should so publish the said words. The occasion on which the said words were so published is therefore privileged.

This Statement of Claim is filed by James Hamilton Dunn Solicitor for the Defendant whose address for service is at the Offices of Alexander, J. H. & Julia Dunn, 17 Grey Street, Wellington.

In the  
Supreme  
Court of  
New Zealand

No. 4  
Statement  
of Defence  
29th April,  
1959.

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 5  
D.S.G. Deacon  
Examination

NOTES OF EVIDENCE TAKEN BEFORE THE  
HON. MR. JUSTICE HUTCHISON

2nd June, 1959:

DESMOND STEWART GRANVILLE DEACON:

I am a clerk in employ of the solicitors for the plaintiff in this action. I produce a copy of the Truth of Tuesday 24th March 1959 at p. 17 of which appears the article headed "This Ex-Russian's Import Licences should be Investigated". I also produce from the General Assembly library, Wellington, an official copy of report of Tribunal appointed to inquire into allegations reflecting on official conduct of Ministers of the Crown and other public servants. 10

At p. 80-81 of book produced there appears summary of findings insofar as taken against Mr. John Belcher. (reads short summary):-

"III. The Case of Sir Maurice Bloch.

We are satisfied that Sir Maurice Bloch made presents of wine and spirits to Mr Belcher for the purpose of securing favourable and expeditious treatment by the Board of Trade of his applications for licences to import sherry casks and that Mr Belcher received these gifts knowing the purpose for which they were made and in return for these gifts intervened to secure the grant of licences to import sherry casks (para. 60). 20

"IV. The Case of Mr Sydney Stanley.

We are satisfied that Mr Stanley paid for Mr and Mrs Belcher's stay at Margate in May, 1947, for one week and made Mr Belcher a present of a gold cigarette case and a suit of clothes; Mr Stanley entertained him at dog race meetings and boxing matches. Mr Stanley at his flat offered continuous hospitality to Mr Belcher from the time he first met him on the 23rd April, 1947, to the 5th August, 1948. These benefactions were made by Mr Stanley for the purpose of securing expeditious and favourable consideration by the Board of Trade or other Ministries of any application made by any person whom he might introduce to Mr Belcher and to secure the latter's assistance for such persons. Mr Belcher accepted these benefactions knowing the purpose for which they were made and as a result thereof gave Mr Stanley free access to him in his private office and met any persons Mr Stanley might desire to introduce to him either in his private office, the House of Commons or in Mr Stanley's flat. 30

It was because of these benefactions and the obligations which he felt that he owed to Mr Stanley that Mr Belcher assisted Mr R. J. Pritchard in relation to the Margate premises of Craven Productions Ltd., (para. 82) and Mr. R. R. Curtis in relation to the licence for the Annexe to The Royal Norfolk Hotel, Bognor Regis (para. 90). It was also because of these benefactions that Mr Belcher decided upon the withdrawal of the prosecution of Shermans Pools Ltd., (para. 112, 166). We, however, are not satisfied that Mr Stanley sought or received any assistance from Mr Belcher in the Berkeley Square case (para. 174) or the Case relating to Amusement Machinery (para. 200). 40



We are not satisfied that Mr. Belcher received the sum of £5,000 or any other sum in respect of his decision to withdraw the Shermans Pools prosecution or that he received the sums of £50 or any other sum a week from Mr. Stanley or that Mrs Belcher ever received any money from Mr. Stanley (para. 163).

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 5  
D.S.G. Deacon  
Examination  
(continued)

10

There is no reliable evidence that Mr. Belcher received any sums of money in respect of any of the transactions which we have investigated or indeed in respect of any transactions. The only benefits which we can find he did receive were the small gifts and hospitality from Mr. Matchan, the wines and spirits from Sir Maurice Bloch and the benefactions by way of gifts and hospitality from Mr. Stanley."

I formally produce the copies of correspondence.

CROSS-EXAMINED. Would you turn to first page of report, it's a report of a Tribunal of Inquiry? That's correct. Who is report made to? Rt. Hon. James Chuter Ede. Are you aware Mr. Chuter Ede was Home Secretary of Labour Government in England in 1948? I was not aware of it. Would you refer to para. 3 which refers to responsibilities of Tribunal - read second sentence of paragraph 3. (Witness reads out loud):-

Cross-  
examination

20

"3....A Tribunal appointed under the Act of 1921 is itself responsible for the collection of evidence, taking statements from witnesses, presenting their evidence, then testing its accuracy and finally finding the facts."

Also read to jury paragraph 5 giving some description of procedure. Witness reads:-

"5. The Treasury Solicitor, on our behalf, to assist us in the presentation of the evidence and the ascertainment of the facts, instructed the Attorney-General the Right Hon. Sir Hartley Shawcross, K.C., M.P., Mr. Gilbert Paull, K.C., the Hon. H.L. Parker and Mr. Mark Littman (of counsel). Any witness called or to be called before us who appeared to us to have such an interest in the matters into which we were inquiring as to justify such representation we allowed to be represented by counsel and solicitor. Nineteen witnesses were so represented."

30 Tell jury how many pages report consists of? The total report, 82 pages. Would it appear to be fair say that shows there was a very thorough inquiry into and sifting of a number of transactions? That would be correct. Would you refer to paragraph 335, last page of report, read what is said there. (Witness reads:)

40

"335. The allegations which led to the appointment of this Tribunal were that large sums of money were being, or had been paid, to some Ministers and some public servants. These allegations in our view were largely the result of the statements and activities of Mr. Sydney Stanley. We are satisfied that for his own purposes he represented to various persons that upon payment by them to him of substantial sums he could secure licences for various purposes and also assistance from different Ministries, and in particular the Board of Trade, and that he was able to do this by paying part of the money received by him to the Minister and officials who would have to deal with these matters,

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence  
No.5

D.S.G. Deacon  
Cross-  
examination.  
(continued)

Mr. Stanley is a man who will make any statement, whether true or untrue, if he thinks that it to his own advantage so to do. He was, however, able to give colour to his statements because Mr. Belcher, Mr. Gibson and Mr. Key received him on apparently friendly terms and it is not therefore surprising that rumours arose and that these baseless allegations of payments of large sums of money were made."

In that passage you've read there was reference to Belcher and Gibson and Key. So far as Gibson is concerned was there a finding against him set out on p.81 of report? - reading page 81 heading Mr. George Gibson. (Witness read out)

" Mr. George Gibson, C.H.

10

We are satisfied that Mr. Gibson was offered by Mr. Stanley the chairmanship of the proposed new company J. Jones (Manchester) 1948 Ltd., as a consideration to induce Mr. Gibson as a public servant to assist in obtaining from the Treasury upon the recommendation of the Capital Issues Committee permission for a public issue of the shares of the new company and that Mr. Gibson realised the reason for this offer. Although for other reasons he refused the offer, Mr. Gibson continued to assist Mr. Stanley in his efforts to secure this permission for a public issue and to assist in any other enterprise in which Mr. Stanley sought his help. We are satisfied that Mr. Gibson did this in the hope of material advantage to himself although in fact all that he received apart from some trivial gifts was the present of a suit of clothes (para.245)." 20

Then is there not a reference to Mr Key and two paragraphs relating to matters concerning him? Yes. Is effect of those paragraphs that Mr Key is cleared? Yes. Finally, read paragraph which begins at top of last page of report under heading "Other Ministers as Public Servants" -? (read out)

"Other Ministers as Public Servants.

So far as there are any allegations or suggestions in reference to the Right Honourable W.G. Glenvil Hall, M.P., Sir John Woods, K.C.B., M.V.O., the Right Honourable Sir Frank Soskice, K.C., M.P., the Right Honourable Hugh Dalton, M.P., Mr. Harold James Gray, Mr. James Richard Cross or Mr. Gerald Lionel Pearson, M.C., we are satisfied that there is no foundation for any such allegation or suggestion. We find that in the transactions which have been investigated before us no payment, reward or other consideration was sought, offered, promised, made or received in connection with any licence or permission or in connection with the withdrawal of any prosecution by or to any one of them. "

30

(Adjourned until 2.15 p.m.)

IAN ALASTAIR GORDON:

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence  
No. 6

I.A. Gordon  
Examination

I reside at 91 Messines Road, Wellington - a University Professor. My qualifications - I am M.A. and Dr. of Philosophy from University of Edinburgh. My present appointment is Professor of English Language and Literature and also Dean of Faculty of Arts. I have been Professor of English since 1937 at Victoria University. I was consulted by the plaintiff's solicitors about an article in New Zealand Truth of Tuesday 24th March. I was asked to read the article and consider certain aspects. In my position I am consulted on occasions about the meaning of written English - very frequently consulted. In course of my work questions of interpretation of English arise - that's about three-quarters of my job. The principles which I have to apply in considering the interpretation of English words and phrases - English words - all words have meanings but I would say very few words indeed have one single and unambiguous meaning. Only words of single meanings are scientific terms, invariably any other word has got usually 2-layer meaning - technical term, reference meaning is basic factual content of word and the emotive meaning is the secondary meaning that is grown up through usage.

10

There is a phrase or rule which expresses in short compass what I've been saying - I would suggest words acquire meaning through the company they keep. You can't judge meaning of word unless you see context of which it is written of, with it. On consulting a dictionary or large dictionary of type which I might consult I'd get a number of meanings - it would depend on word. Some words have very short, one meaning answers - others have a great number. "Get" may have 40 or 50 meanings for example. In order to decide what particular words or phrases mean, e.g. used in article before us, it would depend on dictionary and how up to date dictionary was. For words up to about end of nineteenth century I think big Oxford dictionary would give most meanings and auxiliary meaning. For contemporary words it might be more difficult - that's particularly true of colloquial. Context would be peculiar for colloquial sense. I was asked to peruse the whole article. My attention was drawn to certain words "See Phil and Phil would fix it". My attention was drawn to those words which purported to be advice to someone inquiring about import procedure. In connection with those words the meanings available in that context for words "fix it" bearing in mind current New Zealand usage - it depends on whether phrase were printed in isolation by itself or not. See Phil and Phil would fix it - in isolation from context I think would mean Phil would mend something, he might be a mechanic, to fix motor, or organise something, but in the total context of article and in particular in close juxtaposition with the passage that concerns the resignation of British Junior member under somewhat unpleasant circumstances I think meaning undoubtedly acquires another significance. I took precaution of looking up a dictionary at my disposal - not Oxford Dictionary but a very reputable one from America called American College Dictionary which gives some 20 meanings of word "fix" but it includes 3 colloquial meanings one of which is "to arrange matters especially privately or dishonestly so as to secure favourable action" and it instances usage to fix a game, and if I may use term, to fix a jury.

20

30

40

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 6  
I.A.Gordon  
Examination  
(continued)

This of course is an American dictionary but I've been working on New Zealand English now for a long time and have found that American colloquialism usage has infiltrated into colloquial usage into New Zealand much more deeply than in England and I think most people reading this article would take this particular meaning of fix out of it in the context.

That is to arrange dishonestly or privately to secure favourable action. That is a current colloquial usage in New Zealand in my opinion, unquestionably. I would like to point out too this is not the only colloquial phrase which is reported - you have 25,000 smackers and Mr Nash putting his foot down - those are colloquial to whole setting. In dealing with matter of context the words are preceded by a paragraph referring to Lynskey inquiry, dealings between British Junior Minister Mr Belcher and Mr Stanley and resignation of Belcher and his leaving public life. I think the immediately following sentence "By subsequent discussion with same man . . . . hear of it" I would say unquestionably the fact that the matter had to be kept secret from the Prime Minister was not being above board and that reinforces the pejorative sense. That is preceded by Lynskey and followed for secrecy from the Prime Minister. It reinforces again by passage in black print "under the counter . . . ." All reflect back on usage of the word "fix". I refer there to final paragraph in black type when it dealt with Stanley. That is also relative in fixing the meaning of "fix". Having regard to those 3 passages of context which I have referred to and examined, in my mind the meaning reasonably - in my view the reasonably drawn meaning from the expression, I don't read Truth but I saw this particular article when brought to me first and only time up to then and I could see no meaning in word "fix" other than meaning of implying secret and possibly dishonest and underhand action. As is always done in cases like this I thought in personal terms if Professor Gordon would fix an exam, particularly if followed by phrase - don't let the Vice-Chancellor hear about it I would take great exception to it because I would be acting dishonestly.

Cross-  
examination

CROSS-EXAMINED. Have you a copy of the article before you? Yes. Look at headline, 1st paragraph, headline at top of first page on outside cover, page 17, looking at those things I've referred to and article as a whole what would you say was the whole theme? It's an attack on Mr. Freer. Would you agree it would be fair to say the chief concern of the article is to urge there be a full searching and impartial inquiry into Freer-Judd case? I think that is the primary theme of the article, Mr Freer and Judd occupy front and two columns and top half of column 3. There on it shifts to Holloway. There's a good deal more - most of third column? No, about 50% of third column. Fourth column? All fourth, and yes about half perhaps of final one. The only reference to Holloway in final one is ".....including Mr Holloway ..... explanation" - correct? That's only specific reference. I'm not sure if reference under counter - parliamentarians is capable of interpretation. You told my learned friend when this article was brought to you first you could see no meaning other than secret, possibly dishonest and underhand action in words See Phil? That's right. No other possible meaning at all? No - particularly when you find another usage of fix which is quite different and unexceptional meaning in column 4 - "He said that Harry Judd would be man to see and fix it up." That

is not capable of same dishonesty. No exception can be taken to words "fix it up". No I think See Phil and Phil would fix it up I don't think anyone could.... Fix is word capable in context of dishonesty, fix it up is not. Even in this American dictionary to which you refer there are over twenty meanings given to word "fix"? From my memory, about twenty, yes. Almost all are subject by context. To understand what sense a word is used in is it not necessary to know circumstances in which it is spoken? I don't think I understand. If you want to know meaning in which a word is being used, isn't it necessary to know all circumstances of the speaker at the time?

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 6  
I.A. Gordon  
Cross-  
examination  
(continued)

10 COURT: Is that not something the same as context? Yes, I think taking a wider meaning than intended.

Wouldn't a great deal depend on tone in which he speaks? Unquestionably, except that you cannot reproduce tone in print. In case of a word which is capable you say of one bad meaning and twenty or so innocent meanings, wouldn't it be important to know whether the speaker thought well of the person to whom he was referring? No, I don't think so, I think all you can judge by is what you hear or read in paper. You have no evidence - you read a sentence in context of what is going on. You can only judge by what you hear or see. And what you know of relationships of persons concerned? In this particular case I have never met  
20 Mr Judd, or seen Mr Holloway, I think I once saw Mr Freer at a Committee meeting. I can't judge by what I know because I know nothing.

From a reading of the article, do you suggest that an inference is that Judd was hostile to Holloway? I think that would be fair enough - he said he's sick of things. He's hostile to whomever has made him sick. Do you say he is criticising Mr Holloway when he says "See Phil.....fix it"? No, I can't see that it's criticism. No. Can you suggest that the statement "he is sick of things here", means he is sick of things because of something Mr. Holloway has done? I don't think I would know one way or the other. He hasn't got licences - he's sick of things because he hasn't a licence. No particular reference to Mr Holloway? No.

30 You told us that this statement about "Seeing Phil" was, to use your own words, in close juxtaposition to a statement about resignation of Mr Belcher? Yes. Can you put in simpler language what you mean by close juxtaposition? Yes, it follows on immediately after an account, abbreviated account of Lynskey tribunal which resulted in resignation of Mr Belcher. By saying it follows almost immediately after you refer to fact that it follows after a headline and four paragraphs? Fourth paragraph you find it? Headline and three paragraphs. It's in fourth paragraph? Yes. Is it not fact that the reference to Belcher's resignation is in a paragraph which is concerned with Mr Freer? It begins with Mr Freer, it then goes on to Mr Belcher, then moves on to .....then to phrase to which objection has been taken -  
40 suggestion of dishonest dealings. In line with reader's conditioning by long paragraph in which he is brought into atmosphere of bribery, corruption, then very short paragraphs with use of word "fix". Is it not fact that reference to Belcher is in an earlier paragraph following a reference to Mr Freer? "It was operations such

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 6  
I.A. Gordon  
Cross-  
examination  
(continued)

as this....returned". Below headline....Freer's creditors...." So far, Mr.Freer only. You referred to American Dictionary in which you found amongst many other definitions a definition of word "fix" To arrange matters especially privately or dishonestly..... ? One or other? I'm quoting definition as I find it. You accept that definition? I would say fix in its unpleasant use, always implies underhand action - so and so has been fixed. All of these imply somehow, breaking rules. Unusually secrecy in usually unpleasant circumstances. Yes. You regard privately as an unpleasant sense? In this particular usage of word "fix", yes, implication is something is done under counter, privately, secretly, that rules have been broken and those whose job it is to administer the rules have..... You say word fix can't mean privately necessarily includes a reference to dishonesty? I'm certain of it. Why is it that American Dictionary says privately or dishonestly? I don't know. I went to American dictionary because you find in print a verbal definition of meaning I'm very familiar with. That's only dictionary of any kind you can produce which lends slightest support? No I can produce the Oxford dictionary. Have a look at it. I'd like "F" volume of big Oxford. You say there is something in that? Yes, there is definition of fix in sense in which I have given it, where it applies to American usage - 1901 - in course of 58 years the usage has become common in New Zealand. Is your suggestion one should look at some more up to date dictionary to find support for your view? I think my dealings - might be or might not be substantiated. Colloquial usage or not. Is it not fact there are a number of modern dictionaries which make a point of inserting colloquial usage? There are some. Here we are referring to article written, in New Zealand by New Zealanders. Quotation is U.S. To make favourable to one's purpose or interprets a slang usage by another slang usage - to square. To square a person or to fix a person. In usage in 1901 in America quoted in Oxford Dictionary these are synonymous. That is given in Oxford Dictionary as an alternative American usage? No, fix in this sense is given as American usage, the word used to interpret fix is given inverted commas - another colloquialism - using word "square" apparently square was recognised in 1901 as English equivalent of word Fix. Oxford dictionary gives alternative meaning as well as square? Two full definitions. It gives two meanings separated by comma "To make favourable to one's purposes, to square. Roughly how many other definitions of word "fix" are there in Oxford Dictionary? I haven't counted. There are a considerable number? Twenty or thirty? There are fifteen major meanings with subdivisions. This is at the very end? Yes, because it's American usage. This is a dictionary of English usage with occasional American terms. That's one which you suggest may be meaning of See Phil and he will fix it? Not may be, in my opinion it is. In your evidence-in-chief you said that is possibly the meaning - is that not what you meant? I don't remember using word possibly but if it's in record... I thought I used the word "unquestionably". Is it not fact - whether or not notes are correct of what you said, I'm putting to you you say these words may mean privately? It has suggestion of privacy, under-counter dealings. You say it necessarily suggests all those things? I think it does. Anything I know is fixed is done in secret without responsible parties knowing and something is going on that should not be going on - all these things are implicit in use of fix. If some candidate for entry into University said to you Can you get me into your classes next year and you said I may not be able to do, but see so and so and he

will fix it? You're using a different context and a different tone of voice. Tone of voice is important? Where we are indulging as now, yes. Context is all important? Yes.

RE-EXAMINED: You said U.S. colloquial meaning which is given in Oxford Dictionary is 1901? Quotation is for 1901. Of course this matter has to be decided in terms of New Zealand usage now? Yes. Your judgment - opinion - of it in terms of New Zealand colloquial usage now is what? I consider fix means colloquial usage as in New Zealand at present - I have certain other evidence but it depends on one of my research ... and I didn't think it would be acceptable. We can take it from that  
 10 there is currently research going on all time? There has been for some years.

In course of question and answer with my learned friend you gave two current colloquial examples of usage? - To fix a race, to fix a game, to fix a horse. In all those expressions is dishonest conveyed? I'm certain. Dishonesty in sense of doing something underhand, any other dishonest factor? No other dishonest factor. You tell us examples you cited all convey aspect of dishonesty, underhand dealings - I merely asked you if any further element in those expressions? No I think dishonesty and underhand dealings - major implications of usage. It may be done for financial reasons. I presume if a horse is fixed it's fixed so somebody will win or lose money. Primary meaning is arranged, secondary meaning is arranged dishonestly and secretly and third meaning is financial advantage. But I don't think it need  
 20 necessarily imply financial advantage to person who fixes it.

My friend put to you a number of questions whether it wouldn't make some difference if we knew tone of voice in which words may be said - can you tell us what relevance tone of voice would have in interpreting a written passage such as this? I don't see how you could work out a tone of voice from written passage. Tone of voice - "you're a fine one" might be ironical but that ironical - when you mean you are not a fine one and ironical tone of voice could not be recaptured in print. Then is that a thing the ordinary average reader can be expected to take into account when reading an article like this? I don't think the average reader can take into  
 30 account more than words he sees before him. Finally, my learned friend put to you it was evident from the headings and the main burden of article that its main purpose was to urge the necessity for an inquiry into issue of import licences and system in general? - remember? Yes. I don't think he quite said that. I think I agreed with the other counsel that the main purport of first half of article was about Mr. Freer. Generally an inquiry into issue of import licences perhaps to Mr. Judd. Bearing in mind that is the main import which comes out of this article, look at two paragraphs which particularly contain words complained of - in third column "At a subsequent discussion ... Commerce" - see those two paragraphs. Would you now imagine the article with those two paragraphs removed entirely. Take them away.  
 40 Would it still remain effective for main purpose which was put to you? Apart from those two objectionable paragraphs -? Short of reading the whole thing again it's difficult to answer. I think if you remove those two paragraphs you then have column one and two, attack on Freer and Judd, and column three Mr. Judd, Freer, then reference to Mr. Belcher, you would then go on to one, two, three short paragraphs about Mr. Freer and Judd, then Judd's reference to Freer being a silly boy, then go to this anonymous speaker, conferring with Czech Consulate and being referred back to Judd, then further editorial fact on Judd then reference to Holloway that

In the  
 Supreme  
 Court of  
 New Zealand  
 Plaintiff's  
 Evidence  
 No.6  
 I.A. Gordon

Re-examination

would simply be a call on Mr. Holloway as responsible Minister to take action, then go on with under-counter dealings with parliamentarians, then further attack on Mr Freer - only possible interpretation. I think if those paragraphs were deleted whole thing would be attack on Freer and Judd and to certain extent a demand that the Government Mr Holloway should take appropriate action.

CROSS-EXAMINED: It you were told to rewrite the article this way and cut out few paragraphs in third column that wouldn't be enough? Probably not, I did say short of reading thing in detail I couldn't give complete answer. Later on next column it has reference to interview with Czechoslovakian Consulate and that paragraph begins by saying "The caller ... consulate" - right? If you are going to rewrite article it would work all right - it would tie back on to he gave impression ... caller had come too late - that would tie in with obtaining no satisfaction from Mr. Judd. You have to leave in this bit about telling caller he had come too late, 25,000 smackers and Mr. Nash? I was doing no more than instructed by Collins, delete two short paragraphs and comment on effect. Interview at Czechoslovakian Consulate obviously follows on an interview with Mr. Judd - article as printed or as directed by Collins? In either version? Yes. It's obvious that interview at Czechoslovakian Consulate was consequent on earlier interview with Judd, Yes. References to Holloway are part of description of that interview with Judd? Yes. 10

CLAUDE THOMAS WATSON

I am editor of "Dominion" newspaper - have been for little over nine years. I have been engaged in journalism upwards of 30 years. During that time I have been Associated with Dominion twenty-five years or thereabouts. Have been associated before that with "N.Z. Herald" Auckland and before that an evening paper called "Sun" in Auckland.

I first read the article subject of this discussion of 24th March in Truth - two or three days after. The assistant drew my attention to it and said "What do you think of that". Since that time I have re-read the article. The words in third column "He told a man ....Phil being Hon. Philip North Holloway". I am familiar with any meaning it may have acquired in New Zealand usage in its colloquial sense you hear a good deal of that in newspaper office - secondary meaning. In my experience, colloquial meaning of fix its commonest is to fix a boxing match - boxers agree to do something and it's fixed. I would define colloquial meaning - it depends entirely on context. It might be entirely harmless or could be quite serious. It depends on context. In context in which the words are used in this article, I understand the term "fix" - the article as a whole in my opinion means the Minister could be successfully got at, this whole article has strong flavour of graft, that's the atmosphere in which the article finishes as a whole. My reading of the word The Minister can be successfully got at - first of all, Judd must have had a go between - prob- 30 40



ably Freer, as a Parliamentarian Holloway, - Judd, to Freer to Holloway - In my meaning of the Minister had been got at - to arrange with the appropriate Minister, Mr. Boord to issue licences in his favour, to fix it up with Customs Department. The meaning which I gave to it - It's pretty sinister that Prime Minister had to be kept out of it - Mr. Nash would put his foot down therefore keep it away from him at all costs. The two references to Belcher case I don't see why they should be put in at all except by inference that Freer, equivalent of this man Stanley and Holloway is equivalent of Minister Belcher, for purpose of this article - Inference I take out of it is Freer is local Stanley, Holloway is local Belcher.

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 7  
C.T. Watson  
Examination

(continued)

10 The references in passage of third column - I think it's perfectly legitimate for Truth to say here is apparent irregularity start an inquiry into it, but quite unnecessary and wrong to bring in the Minister himself - have inquiry by all means about Judd getting hold of licence. I mean bring in Minister as Minister in charge of portfolio and his personage - keep it to principles, not to personages.

In Oxford Dictionary the word "fix" can be used to arrange or organise - I'm not very familiar with dictionaries. I would say that is probably obvious meaning. When I first read the article the passage referred to - this looks pretty bad for Holloway on face of it. That was the view I took on first reading of the article. I've since re-read it on one or more occasions. I see no reason to change original view - not  
20 on article as complete whole. It's final impression in my opinion which matters.

My experience in thirty years of journalism where a newspaper makes an attack on a named person involving probity or integrity of that person - practice adopted I can only speak for day papers - where persons name or good faith is involved, never publish allegations without simultaneous reply. The procedure as quite often happens with Ministers of Crown and parliamentarians is send it up to them, this is what has been said - and invite comment. The article is then withheld for reasonable time to enable reply to be given - we wouldn't publish it when it's affecting a person's integrity. The time element could come into weekly papers - I know of no real reason why that can't apply with weekly papers. I would have followed that procedure my-  
30 self on any newspaper. - Certainly.

CROSS-EXAMINED: With regard to practice you've just spoken of you don't suggest that's invariable? Quite invariable when it's a person's good faith or good name in question, - in case of Minister, administration of his portfolio in general way which reflects in any way on his personal integrity, yes. Did your paper follow that principle in case of recent attack by Mr Walsh on Mr. Neary? I think so, yes. That was one in which it was attack in Court of Arbitration. Isn't it fact you were warned about the danger of publishing a one-sided statement but no contemporary statement by Mr. Neary was published by you? Different circumstances. We said Mr. Neary was attacked in Court of Arbitration means of defending himself - this case was  
40 brought to my personal knowledge, it's a very difficult one because - in Court of Arbitration in entirely privileged position, whereas .....permit Mr. Neary to reply to position given in Court of law.

Cross-  
examination

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence

No. 7  
C.T. Watson  
Cross-  
Examination

(continued)

What we suggested was we were perfectly willing that that reference to Neary had his reply in paper provided it was authorised by his lawyer Mr. Dunn. Would it be fair to say circumstances alter cases? In broad principle no they don't. There are extremely difficult situations where certain parliament - it's particularly difficult when name of person in Court of Law and he is not in position to defend himself. Isn't it more important he should have chance to defend himself in press? It's extremely difficult to know how far you can go - Attack in Court of Arbitration. In this case we said we would publish a statement from Mr. Neary, possibly with consent of court, we tried to bend over backwards, to give expression - in other words if Neary would have his statement authorised by lawyer we would publish it. You gave him an opportunity to publish in later issue of paper an explanation? In same no. Yes. 10  
It's published first in "Evening Post", we were then to have next morning - assistant editor discussed it with me I said it's extremely awkward and difficult, but in fairness to Neary we must find means to try and publish it and if Mr. Neary - lawyer would supply statement, we would publish it and if necessary contempt of Court - either Supreme Court or Mr. Justice Tyndall. Isn't it a fact that Mr. Walsh's statement appeared in your paper one morning and following morning a statement by Mr. Neary appeared? Yes, it's quite possible. Opportunity was given I understand for simultaneous publication. Are you sure about it? I'm sure every effort was made. Every effort may not been enough to give opportunity? Yes. You considered it reasonable thing in that case to publish explanation the following day? I would say we made every effort to carry out principles. Did you consider it reasonable in that case that explanation by Neary should be published on following day? I can't answer yes or no, I would say we would prefer it to be simultaneous - much prefer it. This practice only applies where there is attack on man's integrity? No, broadly so, there are so many aspects - broadly speaking where a man's good name and good faith is involved. If papers made no attack on his integrity then practice doesn't apply? It doesn't apply when attack on Parliamentarian or broad administration. As a newspaper editor, would you agree with the statement in last paragraph of Truth's article? Yes, I agree with it, nice little editorial article. I also understood you to say to Mr. Leicester you agree Truth were justified in seeking inquiry into circumstances of reason why Judd got a licence? Yes. You agree that if such an inquiry was necessary it ought to be a thorough and comprehensive one? Certainly. If Judd said something to effect that a Minister had helped or been sympathetic to him, shouldn't the inquiry extend to part played by the Minister? Yes, it all depends on what you mean by helped - being helpful. If Minister helped in any way isn't it desirable that the inquiry should establish exactly what he did? That depends entirely on the circumstances - depends how serious the issues are. If Minister has been helpful in getting Member of Parliament new school, it's important. The issue relating to Judd's activities was a serious issue? Truth made a serious issue of it. Don't you think any suggestion that Judd or anyone else had paid a commission to someone in connection with an import licence is a serious matter? Depends who someone was, if it was Parliamentarian or Minister, very serious. You referred to the Stanley case and said you regarded Freer in this case as being in position of Stanley in that case? I think I said I supposed. Holloway as corresponding to Belcher? Yes. What part does Judd play? In your comparison? I found it extremely difficult to get it out of Truth's article. I take it Judd is man who saw Freer who saw Holloway. Isn't the 40

reasonable inference from article as a whole that Judd's activities were being likened to Stanley's activities? It seems immaterial whether it was Freer or Judd. I think you suggested earlier perhaps something passed between Judd and Freer? I had that inference on reading Truth article, Yes. Is inference you draw that in consideration of that, Freer persuaded the Minister or tried to persuade him to arrange licence? There again, article is not clear, but there again I'd say that's best inference that could be taken out of it, yes. Did you hear Professor Gordon's evidence? Yes. Do you agree with him that you don't take it from the article in this interview Judd was criticising Holloway? I can't take it - I think Judd was sick of whole import system and setup. It wouldn't suggest to you he was making allegations against Holloway? No, tired of whole import system which put him out of business. You said "fix" can be used in secondary and bad sense? Yes. It would be used in that sense by someone making allegations against someone else? Not necessarily at all. You wouldn't regard it as an unpleasant statement? In the particular context we are discussing I think it's very unpleasant. What I'm putting to you is if man uses the word in what you call secondary sense in relation to someone else he is making some sort of charge or insinuation against that person? I don't really narrow the interpretation to that. If he says he can fix it - it can be managed, he can be got at successfully - not necessarily in bad sense. It would all depend on context in which word was spoken? No, not in this case but way in which it's written, recorded in paper. It's obvious a paper can't record such things as tone of voice? You get over that quite simply by saying - said with a smile put in those words "with a smile". You wouldn't have to say it with a smile to be using word in its ordinary and natural sense? It depends, I can say having read the article, whole article smells - tended to graft going on. To complete it - as though there is some graft going on and it ought to be investigated? Yes. That Judd was implicated in the graft? Yes. And if Judd made some statement in connection with a Minister isn't it right that the investigation should extend to Minister's part? Yes. You said I think in your evidence in Chief, is it your suggestion that the article implies that in consideration of a money payment or other reward, Freer on behalf of Judd intervened with the Minister? No I think all we can be certain of is Judd, if article is to be relied on, used his services to Freer in some way for which he was to get a commission as said in article.

That's as far as you can feel you can safely go? No, the Minister is implicated otherwise why bring in something in connection with Belcher. Article could have been more effective and more honest if it had demanded an inquiry as to how Judd got hold of the licences. I might add since they brought him into it, invite the Minister courteously to participate - all this stuff about keeping it away from Nash was unnecessary. If Judd said that or words to that effect, wouldn't it be right that the inquiry should extend to what he meant by that? It's necessary, since they've drawn the analogy by inference, Holloway is local Belcher... Stop there

(Adjourned for 10 minutes)

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No.7  
C.T. Watson  
Cross-  
examination  
(continued)

About comparison about inquiry - look at third column of article. Read to jury the three paragraphs immediately above Headline "These activities .. returned". That's a suggestion there should be inquiry as to whether Freer was to be paid commission on import licence? Yes. The person whose licence is in question is Judd? Yes. Judd was apparently a Russian by birth, so Mr. Leicester tells us? A baby Russian, yes. Most Russians are at birth. Stanley was a Pole? I don't know. It says so in article. Belcher wasn't a cabinet Minister? No, he was under Secretary of State. He was a Minister of Crown. Of a junior kind? Answerable to House of Commons. But not of seniority of Minister of Customs, or Industries and Commerce? I can't answer that.

10

COURT: Did we not have two under secretaries? We have had one or two.

The connection between Judd and Freer is likened with connection between Stanley and Belcher? No. Because you're talking of Ministers. You see Minister Holloway implicated. Freer has no authority over licences - he can put hard word across, but that's all. That was your suggestion earlier, Freer had put hard word across because of suspicion he in receipt payment from Judd? Yes.

This relates to your evidence about practice if a person's integrity is attacked he has a contemporary opportunity of answering it - would you agree where the integrity of any supporter of the Government is in question it's reasonable thing for a newspaper to do to mention matter to Prime Minister? You can't give a yes or no on that. Broadly, no, the Minister or Parliamentarian concerned yes. If matter involving scandal certainly we ask Prime Minister for statement. That would be reasonable and proper thing to do? First we would see the Minister himself. About case of a parliamentarian who was overseas, in such a situation it would be eminently reasonable to put matter to Prime Minister and ask him what he had to say? That has been done in present case in respect of Freer. Did you read first article in series? No, I haven't read it. I want to read to you extracts from the article and would like your comments on it, setting out Freer's affairs and fact he has gone overseas. "Truth was unsuccessful...answer them". Do you not agree that it is reasonable and proper to seek the Prime Minister's comment or explanation on the Freer matter before publishing the first article? Yes, of course for very good reason - if Freer doesn't turn up, there will be a by-election. The article does refer to the tangle in which Mr. Freer's financial affairs appear to be involved and fact he left country with unsatisfied debts? Yes. It was reasonable thing for Truth to put to Prime Minister for explanation before publishing first article? Yes. Do you think it was reasonable thing to refuse to give answer? Yes, point is he was entitled to, that's all that matters.

A rebuff of that kind would not encourage the Newspaper to approach the Prime Minister again? They would be at him every time Freer comes into news.

COURT: That hasn't quite answered the question.

A refusal to answer questions would hardly encourage a newspaper to give the Prime Minister or other Minister opportunity of commenting on the Freer case?

40

It's a rebuff. If Truth did come back in the circumstances and give Mr. Nash another chance that was fair play on the part of Truth? Certainly fair play if they had asked for simultaneous publication. If having been rebuffed first time, on later occasion they came back and gave him later chance - that's fair play? Yes. I want to read to you questions put to him and your comments on it. "The Prime Minister was angry ..... report me on that. Here are the questions ..... 1-12." Do you agree that those are questions of great public interest? Certainly. Questions which may properly be put to the Prime Minister? Certainly. If Mr. Nash declined to answer those questions and to say anything on that occasion just as he declined to say anything on the first occasion, don't you think Truth have done enough? At least he must be given opportunity and he was given opportunity, but not in Holloway - Holloway was implicated and given no opportunity. When you say Holloway was implicated are you referring to the remark purported to be made by Judd? Yes, and in general to the whole article. 'I refer to the finishing piece of the article referring to Parliamentarians, not to the one parliamentarian. That was one you agreed was a good editorial? Yes, but they say parliamentarians, not parliamentarian. Would paragraph make sense - "In Truth's view ... Parliamentarian.....". A parliamentarian - You're suggesting I should be saying Mr. Freer is involved. Natural way of putting the matter. Well, parliamentarians should be above suspicion? Yes. If Mr. Judd's reported statement hadn't been there, his statement about seeing Phil, would you have regarded Holloway as being implicated in any way? If he had not been mentioned in the article I'd consider he had not been implicated. "Responsible ministers including Holloway"..... another paragraph in the article. Anything wrong in that? Ministers, no; Holloway, no. Perfectly reasonable thing to ask for their explanation when there is a suspicion about Judd? Yes. Is it not a fact in your statement you consider Holloway was implicated because Truth has reported a remark by Judd about seeing Phil. Yes, as Holloway, is one who does fixing, one to see. If that is Mr. Judd's view or opinion, wouldn't it be reasonable that there should be an inquiry as to why Judd thought that or said it? Yes. I quite agree with an inquiry.

RE-EXAMINED. Would you tell us whether or not in your view Truth ought to have known whether or not Freer had any control over the issue of licences? I think so, everyone knows, an ordinary Member of Parliament has no administrative authority whatever. In the article "In Truth's view ..... Stanley" do you read that article as applying to Freer as well as Holloway or Holloway alone? To Freer as well as Holloway. Any and all.

When you tell us that in your view the whole article smells of graft, and that in your view both Judd and Freer on your reading of articles are implicated in graft do you or do you not include Holloway? (Leading question - re-framed)

You spoke of the article smelling of graft, who in your view was implicated in graft? Freer, Judd, some unknown caller on Judd, and the Czech Consul, and the Minister. (Counsel objected)

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No.7  
C.T.Watson

Cross-  
examination.

(continued)

Re-examination

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence

No.7

C.T.Watson  
Re-examination  
(continued)

My friend Mr. Cooke put to you a series of questions framed for Mr. Nash referred to in the two articles in which Truth attacked Freer prior to the article of the 24th March. If Nash declined to answer these questions, do you or do you not consider by reason of that refusal that Truth was entitled to impute dishonourable practices in the Ministry? (Disallowed)

Reverting to those questions Mr. Cooke put to you, would you as a journalist consider that the Minister whether it be Nash or Holloway, was called on to make a reply in regard to Freer's personal affairs? No, that's entirely the business of the Prime Minister. All newspaper is obliged to do is to give them the opportunity to reply and we have discharged our duty. Mr. Cooke asked you whether it was fair play on the part of the defendant to give Mr. Nash an opportunity of answering these questions - looking at this article as a whole, do you or do you not consider it was fair play to publish this article without giving the Minister an opportunity of simultaneous reply? In our kind of journalism we would certainly give him immediate chance of reply. If he chose not to reply that's his business. Mr. Cooke put it to you Mr. Leicester had said Mr. Judd was Russian by birth - look at the article - the article itself said Mr. Judd whose proper name is Hyman Yudt is a Russian by birth - is it not? Yes. You were asked whether or not in your experience the right of simultaneous reply should be given where there was criticism of a Minister - you said there were limits to that? Not criticism of the Minister, criticism of the Police, and general politic attitude that calls for no reply, but when its high integrity expressly or impliedly, then how do you regard that phraseology of the paragraphs in the third column of the two paragraphs - ones commencing "At a subsequent discussion..." - in regard to the opportunity of giving a simultaneous reply? Answering in general terms, when an allegation appears to reflect on public man upon his integrity, or good faith, the newspaper, for its own safety from law and in fair play to the one against whom an allegation is made, must offer opportunity unless it so happens a man cannot be reached, but you make every effort to do so. If you can't get him, you don't publish it. In regard to the reference in the article of the Belcher case, what is your reason for telling us that you regard that reference as having application to the Minister rather than Freer? By analogy, by innuendo. By the Courts - one in England and one in New Zealand. At the time of first reading the article did you or not yourself draw that? I can remember as I said to the Assistant Editor (Answer more directly). When you first read the article did you draw analogy? I did because I couldn't see a reason otherwise for reference to Belcher appearing at all.

10

20

30

3rd June, 1959 - 10 a.m.

PHILIP NORTH HOLLOWAY:

I am a Member of the House of Representatives. I hold portfolio of the Minister of Industries & Commerce. I am the plaintiff in the present action. I was born in 1917 at Hokitika. I went to Main School - Waitaki Boys' High School, Oamaru. I later attended the Otago University, doing a two years course at the University. After I had my two years University I went to sea. I was at sea no more than about twelve months altogether. While absent from New Zealand I worked at odd jobs in America while attending University. Working my way through College. I attended University at Boston in America, one of the New England States. I took a series of lectures, advertising, economics, business management and odd lectures in that field. After that I went to England from U.S. I was there employed on a political paper for some time - about twelve months. I returned to New Zealand in 1939. I would then be 22 years of age. I became a partner in a small firm dealing in motor accessories. All the partners then joined the Forces, including myself. The firm went into liquidation. I served from 1941 - 1946 in the New Zealand legion in Egypt - at the end of 1941. When I returned in 1946 I became first employee and later manager of an importing firm. It was this year, 1946, when I was first selected as Labour candidate for Manawatu - I stood against Sir Matthew Oram. I was not successful. In 1947 - end of 1947 - I was appointed Member of the Price Tribunal after passing of Control of Prices Act, 1947. My functions as a Member of the Price Tribunal - I was a member of the Tribunal which was responsible for controlling most prices in New Zealand goods and services. People made application to the Tribunal, had them investigated, and we had them considered - it was a judicial body. Hunter was the president. When I was appointed to Price Tribunal I ceased having any association with the importing company. I had no association with anyone else in the business while on the Tribunal. There was another election in 1949 - I didn't stand because I was a member of the Tribunal and didn't think it would be proper for me to stand at an election. The following year, 1950, I resigned from the Tribunal, went back to the business, firstly took a trip overseas and returned in 1951 as a representative of some English firm. In 1951 I stood as a Labour candidate for Otaki electorate. I stood against Mr. Maher. I was again not successful. Between 1951 and 1954 I resumed my business career - remained in business associated with the business company. I acted as organiser for the Labour Party in Wellington, New Plymouth and Hawkes Bay districts from 1952 until 1954. In 1954 there was a further election. I stood as a candidate for Heretaunga electorate and was elected. I stood against Mr. Maher's son-in-law. There was no bitterness in the election at all, certainly not. I remained in Parliament until 1957. Then there was another election, and I stood for the same electorate again and went in. On being so elected, I was made a Member of Cabinet, holding portfolio of Minister of Industries & Commerce. In regard to any business activities at that time, I immediately disassociated myself from them. I was a shareholder in a company interested in importing. I resigned the directorate and got rid of my shares. That was a company that was relying on obtaining licences for import to a degree. The company has pretty much gone into recess - not liquidation, but its total licences I understand are only about £800 and that's not sufficient to carry on. When this article of 24th March came out I read it as soon as I had copy given to me when I returned from Australia. It came out on 24th March this year. My solicitor did not write to Truth until 6th April

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 8

P.N. Holloway  
Examination

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N.Holloway  
Examination  
(continued)

because of the legal holidays over Easter period.

Turning to paragraph 3 of the statement of claim which contains the passage mentioned several times to the jury. The reference to 25,000 smackers gone like that - I have no idea at all to what that might refer. "He told the caller... foot down" It couldn't refer to anything in connection with this case at all putting his foot down, because Nash has only acted as adviser and has not been implicated directly in these negotiations at all. We know he sat as Member of Cabinet on or about 21st April when the Czechoslovakian agreement was approved in principle. Nash has had no association with licences of Judd - at any time - none whatsoever. Mr. Nash at no time had discussion with me in which he used the term "Put his foot down" or any- 10  
thing equivalent to that - never.

At a subsequent discussion with the same man - I haven't the slightest idea who this mystic man may be - "The disconsolate Judd told his caller to see Phil .. fix it." When I read that I understood to mean that I would be prepared to act in a dishonourable way, in connection with the issue of licences. Of my own knowledge I am able to say many people - a great number of people have spoken to me about it - have put similar interpretation. "He warned him whatever...about it". I would regard it as most improper to keep back from Nash anything that was right that he should know about. The number of licences to be considered in course of the year is well over 50,000 individual licences. As far as routine issue of licences is concerned it is not customary to 20  
consult Mr. Nash. Prior to this article there were two articles in Truth directed against Mr. Freer in his financial affairs. In the first of these articles, Tuesday 27th January, there were four questions posed in conclusion of 5th column (Read). In regard to those questions, I considered I was under no obligation at all to deal with them. This article makes no reference at all to me. The second article is dated 3rd February 1959 and contains in the third column under the heading "Mr. Nash is annoyed" - some twelve questions. (Read first ten) In regard to those ten questions, I considered I had no obligation at all. (Questions 11 and 12 read) In regard to those two questions which touch more closely on my department, I considered I was under no obligation - the questions were asked of the Prime Minister and I shouldn't think it right 30  
that I should take his place in a controversy with the newspaper. There was no reference to me at all in this section article. The first reference to me was in halfway through the third article. In regard to the suggestion in these articles that there should be an immediate inquiry into Mr. Freer's doings or misdoings, I would think it would be most improper to hold any inquiry when sought - they were his own private affairs. I would say he should have an opportunity of answering them - the first consideration. No other paper was pressing for inquiry into Freer's affairs - to my knowledge Truth was the only paper that was asking for it. In regard to reference to Belcher case, I am familiar with the details of the Belcher case. I agree that a number of prominent people were charged in that case - quite a number of them - I think the majority of them - were 40  
acquitted of these charges. There is no reference in the Truth article to the fact that a number were acquitted. Of the number of people charged, Belcher was the only one who occupied an equivalent position to myself. Without going into lengthy explanation, the functions I control in regard to licences compare with those of Belcher - difference between United Kingdom political arrangements and our own is that the United Kingdom might have forty Ministers. Of the forty, only about fourteen are members of Cabinet known as "inner cabinet". That doesn't mean the other twenty-four are less ministers because of it.



Mr. Belcher was one of twenty-four. In regard to the question of actual functions, Belcher performed they have relation to mine. He is under-secretary to the Board of Trade and the Board of Trade is equivalent to the Department of Industries & Commerce in New Zealand. The portfolio which I hold, Minister of Industries & Commerce. There is no set ranking seniority or otherwise. It is mostly marked on age and experiences of the Minister. From the point of view of political experience I would be the junior to Mr. Nash.

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 8

P.N. Holloway  
Examination

(continued)

10 The function of my department in regard to licences - all licences are issued by the Customs. Industries & Commerce Department does have the responsibility of making recommendation on various categories in the schedule, particularly where those items are known as C. or "Control" items. Under present conditions it is impossible for businessmen who have friends in my department to obtain a licence.

Statement of Defence, paragraph 11-"In connection with these powers and functions ... Judd" - in regard to that passage because it is function of my department - it is not correct that the policy is to arrange for the grant of licence. Our policy is to investigate and make a recommendation on it. The final decision rests with the Customs Department.

20 COURT: Counsel didn't ask you about the word "facilitate" - remember the passage? Yes. Only where facilitate is analagous with recommend - we make investigation.

30 In relation to bilateral agreement - the position within the Commonwealth generally as far as trade is concerned in the latter part of 1957 dealing particularly with dairy produce - at the end of 1957 the overseas balances of New Zealand had reached a record low level, caused not only by heavy importations but had been caused mostly by serious drops in wool prices, dairy price and some instability in meat price. That presented a problem - a very big problem. The Government decided to face the problem. The first thing it did was to immediately restrict physically the importation of goods, secondly we embarked upon a policy of diversification of trade, thirdly we tried to change the nature of imports to more raw materials to be manufactured in New Zealand - promotion of secondary industries - and fourthly certain monetary action was taken as well. The opening of new markets was one of the second line of policy and was initiated immediately at the beginning of 1958. That policy was to obtain new markets, particularly in the hopes that by so doing the price would increase. Trade with Czechoslovakia was a policy of diversification of market. That gave rise to a consideration of bilaterial or barter agreement. There was not already functioning in New Zealand one such agreement at that time. The nature of the bilateral agreement - our main trade is what we call multilateral, we sell on the best market and buy on the best market using international currencies as a means of exchange. A bilateral agreement is an agreement between two countries to the advantage in trade of both and does not involve the trade of a third country. When the bilateral agreement with Czechoslovakia was being considered - there was a precedent with the United Kingdom and with many other countries as well. The United Kingdom has bilateral agreements - has a number which she negotiates every year on a year to year basis. Under these agreements type of goods specified are generally specified in a schedule attached to the agreement. Australia recognises - I'm not certain whether she has any bilateral as such but she definitely realises the need to make provision for import of goods from places to which she exports, sometimes administrative.

40

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 8  
P.N. Holloway

Examination  
(Continued)

COURT. Would that be the Federal Government or the State Government?  
Federal.

It was early in 1957 that Mr. Judd interested himself in that bilateral agreement – that was first information that I had. He is described as an ex-Russian. He left Russia I understand when he was a baby. He was naturalised in U.K. I understand, before he came to New Zealand. He came to New Zealand in 1939.

I produce the two files which are departmental files, the first or larger file being trade with Czechoslovakia and the second or thinner file being General Information file on the Glass Industry. (Exhibits D and C).

A letter which Mr. Judd wrote to the Secretary of my Department on 20th February, 1959 read by witness - from the middle of the first page to the second paragraph on page 2 - it's from H. Judd & Co. Ltd. "In 1957 ....increases." The facts alleged there have been verified by my Department. 10

The position of Czechoslovakia in regard to glass - it is an independent producer, has traditionally been one of the leaders in glass production in the world and undoubtedly is selling to-day at one of the cheapest prices in the world outside what we know as Brussels Ring prices. The country was a member of the Brussels Ring before the war. That position altered at that time of the change of Government.

Turning now to the large file - reads paragraph 1 on page 1 of that letter: "As promised - dated 4th February 1958 from H. Judd & Co. Ltd. ....New Zealand". 20  
Reads paragraph 3 - "From discussions....tallow." Reads paragraph 2. on page 2 "You are no doubt .....ring source." At that stage as far as I know the relationship was between Judd and the Czechoslovakian Government. Subsequent upon receiving this letter I had checked with the Czechoslovakian Consulate in Wellington to make sure Mr. Judd was speaking with authority of Czechoslovakian Consulate and he was. In paragraph 1 of that letter, there is a reference that he had been accompanied by Mr. Warren Freer - that is usual practice - part of the functions of Members of Parliament where necessary to introduce people to Ministers of the Crown. It was no surprise to find Mr. Freer to introduce himself with opening up of trade with the communist countries - he has openly advocated for many years that we must trade more 30  
with what we know as Communist block. It constitutes at least one-third of the world's purchasing power. Prior to this interview Mr. Freer had been to China - he went on a private trade mission, if you can call it that, to the East, including China, about two years ago. The New Zealand Government does not recognise the Chinese Communist Government. There are no trade relations between the New Zealand Government and the Chinese Communist Government - no trade relations - not between Governments.

Turning to the next letter of 27th February, 1958 - reads letter "in confirmation of discussion .... available glass" - then a number of commodities are described. Turning to departmental memorandum of 6th March, 1958 from my secretary to myself. Reads paragraphs 1 and 2 "Mr. H. Judd ..... nature" Reads paragraph 6 "The details 40  
..... 1957 nil". In the balance of the 1957 season no butter was purchased by the

Czechoslovakian Government - none at all. On those particulars it was advantageous to the Government to have this agreement - butter was one of the most important items in order to open trade and to get the swing away from London market where the price was low. "Beef and tallow ..... for butter". About the importance of selling beef and tallow to Czechoslovakia it is important to find diversified market for tallow. Beef at this time was of more importance than it would be to-day because at the beginning of 1958 the United States market had not been established so strongly. Turning to three or four concluding paragraphs 13 - 16 (reads) That memo. contains a note in my own handwriting approving it. On receipt of letter I wrote on bottom of file and returned it to Mr. Atkinson "Thanks. I do not intend to contact....." signed my own signature.

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Examination

(continued)

Referring to the letter of 7th March, following day from my Department to Mr. Judd "I have now studied ..... efforts." That letter was drafted by the Department. It was not the intention of the Department to grant licences to Judd in respect of all the specified articles under the agreement - that was never envisaged.

Turn to the lengthy memo. from my secretary to myself of 1st April, 1958. That deals substantially with the difficulties and advantages of the situation and the question of reduction of amount. It follows upon several discussions he had had with Judd in reference to this proposal. Reads paragraph 2 of memo. "I have ..... Judd's firm". That would mean Mr. Judd would handle the arrangements but the actual licences would have been issued to all those firms who were involved with trade with Czechoslovakia, The Department took steps to obtain a list of all firms who are traditionally trading with Czechoslovakia and that list is on the file. Reads paragraphs 14 and 15 - "Having said all this ..... desire". At the bottom of that memo. there is a departmental note - it is signed by Mr. Atkinson, Secretary of the Department. Reads - written in his handwriting - "I advised the Minister on 3rd April, 1958 .....to-day". The matter went before Cabinet in the first instance in the preliminary way. I now refer to my own memorandum to Cabinet of 18th April. Reads. "Bilateral trade..... signed P. N. Holloway". That was a minute that was asked for by Cabinet meeting of 8th April. The proposed purchases by Czechoslovakia are shown at 350,000 and not 500,000 because I considered with the Department that wool content in the original proposal of Czechoslovakia was too high in relation to other goods and we reduced the amount of wool - we reduced it. In the original there was an item for £50,000 for sheet glass - I think a little higher - between 50,000 and 60,000. The schedules show that it was spread over 1958 - £25,000 and 1959 - £35,000.

To finalise this aspect of the matter, refer to Cabinet Minute of 22nd April. Reads - from Prime Minister's Office to the Minister of Industries & Commerce. That minute gave the green light to my Department to complete the agreement. If the agreement had gone through at that stage with the schedule of £60,000 of Czechoslovakian glass Judd would have received that licence because he was authorised agent of the Czechoslovakian organization that exports glass. I did nothing to help Judd to obtain that licence. If anyone has been responsible for his not getting it, it's been myself. That agreement has not yet been signed.

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 8  
P.N. Holloway  
Examination

(continued)

The question of motor cars had something to do with it not being signed. Shortly after Cabinet minute, there was an approach made to us that we should alter the imports to be bought from Czechoslovakia and one of the altered items they asked that cars and motor cycles should be included in the list. I think it was Mr. Judd and Mr. Freer came and spoke to me about the alteration. We wouldn't accept it. I myself made a memorandum as to my view on that. It is attached to a letter of 7th May from the Secretary of the Department to myself in which he mentions the suggested change by the Czechoslovakians and I wrote at the bottom "I approve we cannot continually change the basis of imports ..... alterations." The question arose of the reduction of the butter the Czechoslovakians would take - that was the next development that they proposed that the amount of butter be reduced and to that proposal too, we could not accede. There was a letter on 15th May written to the Commerce Secretary of the Consulate, signed by Mr. L.A. Atkinson, Secretary of the Department "Thank you for .....dropped". In regard to the delay in signing this agreement, my own attitude towards wool content had significance - I had been concerned about wool being included at all because of the fact that wool is our only international commodity and we were not having difficulty in selling wool, it was the price we were getting for it that was the trouble. Wool purchased by Czechoslovakia in 1958-59 bore that out. In the 1958-59 season up till two months ago the Czechoslovakians had purchased approximately 1,800,000 value of wool. More than Judd had suggested in his opening letter - far more, but you must remember Judd's suggestion was this was to be additional to the normal purchase.

10

20

The Czechoslovakians wished then to make alteration to 350,000 amount and go back to 500,000 again. That half million had not been considered or dealt with by Cabinet. In this period from February to July there was proceeding in England certain negotiations - it was at that time New Zealand was involved in re-negotiating the Ottawa Agreement which establishes trading conditions and relationship between the United Kingdom and New Zealand.. It got its name because it followed on a meeting of Prime Ministers in 1932 at Ottawa. This was the first major revision that had taken place - it had not been substantially revised before. We had four negotiators in London from New Zealand. It became known in London that a bilateral agreement with Czechoslovakia was being negotiated. That had some effect on the work being done by New Zealand negotiators.

30

Because the type of agreement we were proposing with Czechoslovakia was unknown - all that was known was that there were discussions and there was danger of their being misunderstood by the United Kingdom negotiators during our discussions on Ottawa, and in fact the proposed agreement with Czechoslovakia was raised in argument by the United Kingdom. It was raised in argument of certain proposals put forward by negotiators.

40

I informed the Czechoslovakian Consul in Wellington that we could not proceed with our discussions until the Ottawa agreement had been satisfactorily re-drafted and signed. I was, in about August, approached by the Press to make some statement as to what position was in regard to the bilateral agreement. There had been previous to this a fair amount of talk in Auckland regarding the issue of licenses from Czechoslovakia.

I was approached by the Press to make a statement and I did so. Copy of it dated 8th August is read. What I meant by licences available for imports of non-scheduled sources - a licence once issued is available to be used on any country in Sterling block and in fact in many cases, on a global basis, that is from any country in the world. Licences are not issued specifically on one country, they are issued to the trader who decides for himself from what country he will import and in the main there is no restriction as to where he shall obtain his imports. In reference to the suggested talking in Auckland about licences from Czechoslovakia, no licences had been issued - none at all.

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Examination

(continued)

10

(Short Adjournment)

Press release of 8th August, 1958. The Department - Mr. Judd had brought two trial shipments in "Karama" and "Peri" in 1957 between October and December. No licences were required at that time for those shipments. The necessity for licences arose from 31st December, 1957.

In 1958 Mr. Judd obtained an excess licence for £3,000. He had no licence in 1956 - he was not importing glass in 1956. He obtained an excess licence in 1958 - every trader or importer who had goods on the water or for which firm orders were placed, could, on application, receive an excess licence irrespective of his trading history. The licence which Mr. Judd obtained, an excess licence in 1958, was the  
20 same as merchants in similar circumstances were able to obtain. Between time he had received excess licence and press release in August he had not obtained any further licence.

Turning to departmental memorandum of 14th July, 1958 - reads. To Mr. Atkinson, signed by the departmental officer, E.P. Doogue. "Sheet glass ..... largest". That matter was dealt with on 30th July, 1958 in a letter written by the Secretary to the Controller and referred to under marker "K" in the small file. This matter was discussed between the Secretary of the Department and the Controller of Customs - that's not myself. That is the issuing authority. In reference to a  
30 suggestion of £15,000 licence should be issued, Reads - dated 30th July, 1958 to Controller of Customs "Tariff Item ..... £10,000" signed by L.A. Atkinson, Secretary. Turning to the memorandum written to me by Mr. Atkinson on the large file marker H.1 - that is a lengthy memorandum dealing with the situation generally and refer in particular to paragraph 7. Reads "Following up their .....additional". The deal referred to in that paragraph was the bilateral agreement. That information had effect on my recommendation or approval of £15,000 licence. It had quite an effect because the Czechoslovakian Consul or Acting Consul had also been to me and expressed the same point of view in very strong terms. The point of view was that they had a right to expect some action on the bilateral agreement that they  
40 were now proposing to purchase additional goods from New Zealand and they expected some action on New Zealand's part in return. If no action had been taken on New Zealand's part there was a danger that they would switch their purchases to South America, particularly Bolivia - for wool.

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 8

P.N. Holloway  
Examination

(continued)

In addition to that consideration in recommending the licence of £15,000 to Judd price had something to do with it. This was also an opportunity of testing the ring price. There had been concern expressed by builders and by the Government Departments concerned with building at the high price of window glass and this was clearly a better way of trying to reduce the prices than by implementing some rigid control system. I then recommended to my Department £15,000 for Mr. Judd and £10,000 for McDermott & Duncan for Japanese glass. Round about this period in June I had a letter from the Merchants' Federation complaining of shortage of glass. At the time I approved the licence for Judd I considered I should do something for the Merchants. They received at the same time an increased allocation of approximately 10% of their 1956 imports which would amount roughly to an additional £90,000 of licences. Mr. Judd did not in fact get his £15,000 licence. He received a licence on its face value of £10,000. But because he had received an excess licence of £3,000 previously in the year the Controller of Customs in Auckland deducted that amount from his £10,000 licence making an effective licence of £7,000. On the amount of profit he would derive there was no control exercised by the Government but we had an understanding. Under that understanding there was no mark-up but he undertook to distribute the glass to builders and joiners on an indent basis and usual indent mark-up in this particular field is round about 10%. During these months he had been dealing extensively with the possibility of putting this bilateral agreement through. I'd say he had used practically all his time during those months on this project. He wrote to my Department a letter on 20th February 1959 on small file under marker "L". This is the letter. I read from the first of all - reads in full. To Dr. Sutch - he was now Secretary of the Department - taken Mr. Atkinson's place "Our company is the appointed..... £15,000". Mr. Judd asks for licence of £15,000. That request for a licence was beyond the £15,000 I had recommended which was reduced to £7,000. This was the second application. The request started off with £50,000 - he then urged £15,000 to go on with. He didn't get either £50,000 or £15,000. The file contained a similar letter to the Minister of Customs to Mr. Judd dated 2nd March. "I wish to acknowledge ...to you again." Between 2nd March 1959 and the date of publication of the article on 24th March, no progress had been made with Mr. Judd's licence. As far as licences were concerned, Mr. Judd had excess licence in common with all others in 1958 who had shipments on water and he had reduced licence of £7,000 later on. I know of no other licence he had in connection with Czechoslovakian glass - none at all.

10

20

30

Referring to passages in the article - in the first column about half-way down "Truth believes that this £44,000 ... amount" That appeared in large type in the article. He has no licence of that amount £44,000. The second matter is conclusion of the second column where it is said under the heading "Big Way - These activities ... 1956". From my own experience the holder of a licence of £7,000 - the total licences issued for glass were approximately One million pounds so the persons who held licence for £7,000 would be very very small importer. The fact that he did not have a licence in 1956 has not affected the issue of £7,000 licence. The category was turned to C item in 1958 and it was under C he got this extra allocation, C standing for control. The third matter immediately underneath that "The official ... 1956". The trade figures that we have show £35,000 was the value of the glass which came from Czechoslovakia in that period.

40

Short passage in 5th and last column of the article "If as Judd .... at that." Mr. Nash has certainly never interfered nor did he have anything to do with this case and he has never interfered with the issue of licence to anybody at any time to my knowledge. I produce original copy of correspondence passing between my solicitors and Truth's solicitors.

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Examination

(continued)

10 The writing of the first letter was a little delayed after publication of the article by reason of legal vacation. Reads first letter addressed to Truth, of 6th April, 1959. "We act for the Hon.....article." I instructed my solicitors to say that the innuendo was ruinous to my career because I believe that the most important aspect of character that a Minister or any man in public life must have is the confidence of those who elect him is that he will be honest in carrying out his responsibilities and will in no way take advantage of his position for his own gain. 7th April 1957 - reply reads "We have been instructed .....Department." In regard to the statement in the second paragraph of the letter "There is evidence however that the import control ....information." That is not correct. The schedule was changed and the regulations have been carried out exactly as they were - as it was said they were to be carried out and no discrimination has been made in favour of anyone personally. Looking at the 3rd paragraph which relates to a suggestion against Mr Freer, they say he might reasonably be expected to answer, I made investigation to make sure what licences Judd had got. When I knew Judd had at that stage, then I made investigations only the effect of £7,000 licence. I knew Freer couldn't possibly have received commission for a licence that was never issued. Prior to publication of the article no approach was made to me personally - none at all.

20

30 Truth has the right to have a reporter in the Press Gallery. I have had approaches from such a reporter from time to time - on several occasions. I know of no reason why that reporter or any other reporter should have approached me. As far as my investigations have gone I am informed no approach was made to the Department or to my Secretary. My experience where an attack is made by the press on some member of Parliament in relation to administration of a Department or otherwise, I find that the press representatives are only too eager to come along to the person concerned to try and get more information for their article or by way of reply. Criticism here about public inquiry to go into Freer's dealings. I have no right whatsoever to do so. I am relatively a junior Minister, Freer - accusations against him in the main are personal, he is not in the country, he had left the country prior to the first article appearing and he has had no opportunity to reply. He has been out of the country for all three articles.

40 Reads reply by my solicitors of 10th April. Letter from Leicester, Rainey & Armour to Messrs Alexander J.H. & Julia Dunn. "We have to acknowledge ... substantial." To that letter a reply was furnished on 13th April from Truth's solicitors - reads. "We have your letter .....for it." In regard to those five assertions I regard them as having no bearing on the charge against Truth - none whatsoever (continued). "It has never been suggested ....early date." In regard to that letter in respect to the statement in paragraph "We desire to make it clear the article was published in good faith....." So far as the article relates to me, I know of nothing at all which would justify the statement

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No.8  
P.N. Holloway  
Examination  
(continued)

that Truth believed it to be true. I did not give consideration to the suggestion that it would be adequate simply to give me a right to reply in a later issue because that in no way amended the position as far as I was concerned and put me in a position of defendant of something which I knew to be incorrect. My solicitors' reply to that letter on 17th April reads "We have to acknowledge ... coming week." The writ was issued as I know. I was in this Court on Monday, 25th May. On that occasion an adjournment was asked for by Counsel for Truth, of this case. I was present when Counsel for Truth referred to a rumour that the case had been or was settled. He said he wished to make it perfectly clear on the Defendant's behalf that the case had not and would not be settled. I produce Truth of 26th May reporting on the application. These remarks of Counsel for Truth appear in large black type in the article. Counsel for me in opposing the adjournment referred to certain rumours as to whether or not I was proceeding with the case - as I remember it, it was you who first referred to that rumour before Counsel for Truth. There had been stories I was not proceeding with the case and that from that time it became necessary to issue a writ I had never deviated from my intention to proceed. Publicly I regarded that as a matter of importance. There is no reference in black type or otherwise to remarks of my own Counsel on that point. None at all.

10

Cross-  
examination

CROSS-EXAMINED. What is the purpose of this action? The purpose is to clear my character and to receive just compensation for wrong done to me. Where is Freer? I have no idea. Where is Judd? I have no idea. Is it possible that they are somewhere like Hong Kong together? I have no idea whatsoever where Judd might be. All I know about Freer is what I read in the newspaper. You are not calling either as witnesses we may infer from that? No. Isn't it difficult to find out the truth of Judd's transaction without Freer being here? I'm not concerned in the Judd transaction between Judd and Freer - I'm concerned in the Judd transaction between Judd and my Department. Isn't Freer in that? Only to introduce Judd to me.

20

As regards the article you have complained of, wasn't the main theme of it that an impartial inquiry ought to be held in the circumstances in which Judd got import licences? It was an inquiry requested into the circumstances where it was claimed that Freer received commission from a licence Judd never got. Do you agree that the main theme was there ought to be an impartial inquiry into the circumstances in which Judd got licences? That is part of it. Don't you agree it was the main theme? No.

30

On the front page of the paper one has "Probe this Ex-Russian in Freer case?" Yes. On page 17 one has headline "This Ex-Russian .....investigated?" Yes. The article begins "Government should take immediate steps ...capital." The article ends with a paragraph in black type "In Truth's view .....Stanley." Wasn't the need for inquiry the main theme of the article? No I do not agree. It was continuation of the attack on Freer - the other was just words. Don't you think Truth was justified in saying there ought to be an inquiry? I don't, no. Don't you think Truth's articles call for any answer at all from the Government? If Truth had come to me and asked me had licence been issued I'd have told them it hadn't. I knew the facts. You and your Department were instrumental in getting licence to Judd in 1958? We helped him by recommending to Customs that he get a licence.

40



If there should be an inquiry into the Judd affair shouldn't the inquiry extend to the part played by you and your Department? If there was an inquiry, yes. It wouldn't be a full inquiry without extending to that would it? No.

You referred to the first of the two articles which I think was published about two months before - remember referring to that? My Counsel referred to it. You read from it - you were asked about questions put to Mr. Nash? That's right. (Copy put in front of witness) This article was drawn to your attention at the time it was published? Yes. We've had some of it read - read the rest of it to the Jury (Registrar reads).

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

10 Was the Government concerned about that article? Corrections appeared in the issue of 3rd February - Registrar reads. Did that article concern the Government? It depends by what you mean by Government. It was never discussed by the Government. It was by individual members of the Government. You are a Cabinet Minister - did you discuss it with your colleagues? Privately, yes. Did you discuss it with the Prime Minister? No. Did you not regard it as of sufficient importance for that? It's not for me to tell the Prime Minister what to discuss with me, rather the reverse. Do you not think the subject matter of this article serious? It is to Mr. Freer. Do you not think it concerns the Government? Only because he is a member of the Government. Mr. Freer has the same rights as a citizen, the same as anyone else, despite the fact he is an M.P. He is supposed to be coming back to New Zealand later this month? I understand he is coming later. When does sitting begin? In the last week of this month. You were very anxious to get this case on at this stage? Yes, I was. Wouldn't we have got a better picture of the Judd affair if Freer had been available to give evidence? No, my case is against Truth. It has nothing to do with Freer or Judd. With licences Judd obtained but nothing to do with accusations made against Freer. Hasn't it got something to do with what Judd said about you? I don't know if he said it. If he did say it? If he did say it, but I doubt it very much. If he did say it, is it not relevant to your case? If he did, it could be relevant. You've told us there was a discussion of the matter by members of the Government including yourself? Privately, between individual members. Didn't any of you consider it desirable that it should be the subject of independent inquiry? Not of the type suggested by Truth, because Freer wasn't in the country - he had left the country five weeks before. What about when he comes back? There might be, I don't know. I'm not in a position to say. Judd was in the country wasn't he? Yes. While all three articles were published? Correct. The third article said he was taking steps to leave the country? Only temporarily. Are you telling us he is coming back? My department has been informed he is already on the way back. His wife and family are still in Auckland. When is he due back? I don't know exactly - he went away on a business trip. Wouldn't it be some help if we could hear him in the witness box? I don't think it would be against my case, it would have nothing to do with it. Do you seriously suggest that Judd's evidence has nothing to do with your case, notwithstanding the passage you complain of is something said by Judd? It is a report printed by Truth. If a Minister is going to take notice of everything that is said about him, it would be an impossible situation. My case is against Truth. You are taking notice of what is being said about you to-day? Yes, it's a Court of Law. And report of something said about you by Judd? Yes. Wouldn't Judd's presence be

20

30

40

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 8

P.N. Holloway  
Cross-  
examination  
(continued)

of some help in a case of that kind? Not necessarily. Why didn't the Government have an inquiry into the Judd affair before he left the country? There were no grounds for an inquiry. The Government knew that as he didn't receive a licence claimed by Truth - Government knew he received a licence? Yes. The Government knew there were suggestions that consideration had been paid by him to Freer in connection with licence? There is not a day goes by that I don't get a letter to my office accusing some private firm of having misdealings. If I were to have a public inquiry every time anyone made accusations against anyone else there would be a spate of them. Freer as a parliamentarian has the same rights as private individuals. You imply by that it is important to hear what he has to say? In this case, none at all. You agree in the third of the articles Judd seemed to be on the point of departing? That's right. Did you confirm reports in the Press that he left by Teal on the 5th April? Yes, we had also been notified he was going away on a business trip and where he was going. It is true that he left on the 5th April? I don't know. I confirmed that he had left but don't know the exact plane or day that he left. You could readily have confirmed it if you had wanted to? There was no cause. The Department could have found out if they had gone and asked Teal. It was reported in the press that he had left on 5th April? I didn't know the date, I knew he had left. And that that had been reported in the press? I can't remember the day it was reported but it was reported. Do you agree the report would have indicated the date when he left? It may have, it doesn't always. What was the date when your solicitors first wrote to Truth? On 6th April.

10

20

(Adjourned Until 2.15 p.m.)

2.15 p.m.

You told me before the adjournment that a reason why the Government didn't have an inquiry into the Judd case was because the Government knew he hadn't got a licence for £40,000? I said the reason why there wasn't an inquiry was because I knew the Government had never considered the matter as a Government. It was considered by individual members? I can only speak for myself. As Industries & Commerce Minister you were mostly concerned? I was with the issue of licences but not with what Freer appeared to get himself into. But the Judd case related to the issue of licences? Only that aspect. He didn't get a licence for £40,000 and that was the reason for not having an inquiry. My knowledge of the actual amount he got and why he got it - concern of private firms if their own business. The Government cannot disclose private dealings of those firms. This was the dealings of one man with Freer? As far as I was concerned it was dealings of that one firm with my department. Did you consider it good reason for not having an inquiry that you knew he hadn't got a licence for as much as £40,000? I knew he had a licence for £7,000. You considered that a good reason? Yes. Why not tell the public that? I was not given the opportunity. Is that your answer to that question? That is right. Truth's solicitors offered you the opportunity of publishing whatever you wanted to in Truth? That was two weeks after. Didn't you want to make an explanation? I wanted it made in the proper place. I suggest that the proper place

30

40

if not the press would be an inquiry? No. Would you regard the fact that a licence for as much as £40,000 wasn't issued to Judd as a complete answer to any allegations about the Judd case? If there was any allegation about the Judd case to answer it was for me to answer in the House of Representatives, not Truth. I can be cross-examined by the other side - the Opposition. Would you regard the fact that licence for as much as £40,000 was not issued to Judd as a complete answer to the allegation? From the Department and myself, yes. Isn't it perfectly possible that commission was paid on a licence for £10,000? I don't know anything at all about any suggestion about commission being paid. Should that be investigated?

10 Not by my Department. Shouldn't that be investigated at an inquiry? I don't know - I'm not competent to express an opinion. Have you any view on the matter? No. I cannot see how commission could be paid for a licence that wasn't issued. Licence was issued? Yes, for £ 7,000. Commission could be paid on that? Yes, but his total gross profit would have been about £700. He hasn't much room to pay consideration. It is also possible that there could be a promise of commission if a licence for £40,000 was obtained? That's a supposition. It's quite possible? If supposition, I know nothing about it. I'm not suggesting by your department - there should be a proper public inquiry as in the Stanley case? Yes, but I'm only responsible for the administration of my own department, not for the rest of the

20 Government. As a responsible Minister, don't you consider it one of your functions to press for an inquiry if necessary? If necessary, yes, but I don't think it was necessary. In fact, Judd in 1959 made an application for a licence of £50,000. He applied for that through the Customs Department. Writing to you and the Customs Department at the same time? No, writing to my Department, not me. Was the question whether an inquiry should be set up ever considered by Ministers? It might have been, but not by me. Never considered by you? No. Notwithstanding you read this Truth article - you never considered setting up an inquiry? There was no reason to set up an inquiry because Truth writes. You don't worry much about what appears in Truth? Sometimes I think they are very far from the mark. If they were couldn't

30 that be proved in an inquiry? No, because the Government cannot be forced into the position of having an inquiry if one paper happens to make an allegation known to be untrue. If it was untrue wasn't it important to prove it untrue at an inquiry? No, the Government cannot be forced into doing acts because an outside body says it should be. Is your attitude you owe the public no ..... My attitude is that the House of Representatives will get full detailed report - from my Department. Anything said in the House of Representatives will be absolutely privileged? Yes. The truth of it wouldn't be open to examination in a Court of Law? It would be in Parliament which is the highest Court of Law.

40 What was the real reason why no inquiry into the Judd case was set up? There was no reason other than that I've told you. Wasn't it that such an inquiry might be embarrassing to the Government? Not at all. Have you anything to fear from such an inquiry? No. Wouldn't you welcome it then? Not necessary. You wouldn't welcome it? There is no point in it. The suggestion I'm making is that the Government decided against having an inquiry because it might be embarrassing? That's entirely incorrect. Article was published in Truth on 24th March? That's the day it came out on to the street, yes. The following week, did the Leader of the Opposition make a public reference to the matter? Yes. What did he say? He said it involved the

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

integrity of the Government. Did he not urge an immediate inquiry? He may have. You don't deny it? I don't deny it. Did Mr. Nash make a public reply? I can't remember. I'm not fully conversant. Were you not very interested in what was going on? Yes, but I have a lot of other things to think about. Did he make a public reply? I'm not certain. Are you prepared to dispute that he did make a public reply saying legal action on the article was pending, and it would not be proper? Yes, that's right, he did. At the stage when he made that statement, had any legal action been started? I had informed Nash I had been in touch with my solicitors and would be taking legal action. Action had not been commenced? Had a writ been issued? I don't think so - it would have been impossible because of the legal holidays. Had a letter been written? No, because of the legal holidays. When did you first consult Mr. Leicester? As soon as he returned from Australia. What date? Saturday I think. About 4th April? No the week before, Saturday - the Saturday after he returned from Australia. It was the first opportunity I had of seeing him. It wasn't Easter Saturday, but the following Saturday? Yes, that's right. So you didn't consult him until after Nash's press statement? Yes. At that stage the matter hadn't even been mentioned to the solicitors, I had informed him that legal action would be taken. I think Nash was satisfied with my word. Anything to stop Nash saying other than legal action was pending? That's for Nash to say, not me. Did you discuss the case with him? I told him I thought I should take legal action. He agreed. In fact he encouraged you to take it? No, he didn't. Would he prefer to be free to be able to say something? He didn't say anything about it. I told him what my mind was. He said "you go ahead and make your own decisions, it's your own choice." I put it to you earlier, after the first article was published about Freer, the matter was one of concern to the Government - agree? Not with the Government. We don't discuss private people's lives until we give them a chance of answering the charge. You think it might be a good idea to take some steps to see that the charges are answered? How could we if Freer wasn't in the country? Judd was in the country? I think so. Is it not a fact that after the first article was published, a Mr. Jolson from Auckland came to Wellington and saw Cabinet Ministers? If he did, he did not see me. Are you not aware that he came to Wellington and saw Cabinet Ministers, bringing with him a statement of Mr. Freer's affairs? I'm told there was a man from Auckland came down and showed a statement to some Minister but I didn't see the statement. The man was Mr. Jolson from Auckland - was he or not? I'm told afterwards. At that stage I didn't know who it was. You now know it was Mr Jolson? Yes. Was he the same Mr. Jolson as was recently involved in a car accident? I understand it is the same person. On that occasion was he coming to Wellington with Judd's solicitor and a man who had recently been in China? I don't know who Judd's solicitor was. You've heard since? I've heard of the incident. You know there was a solicitor involved? So I read in the papers. Hadn't you been informed he was Judd's solicitor? Since then. You told us that you heard about the statement of financial affairs relating to Freer which Jolson brought with him on the first occasion? Yes. Who did you hear about it from? I couldn't honestly answer that, I just heard someone talking about it. In political circles? Yes. The statement was a matter of interest and concern, to people prominent in your party? Yes, because it involved the financial affairs of one member. It also showed that commission was due to Freer on a licence of £44,000 (OBJECTION). Does he know, I'm putting it to him, that the statement

contained a statement showing that commission on licence for £44,000 was due to Freer? I've never seen the statement. Do you know what it contained? No, not in detail. Do you know whether or not it contained a statement that commission on licence for £44,000 was due to Freer? No, I do not know. Have you not been informed that this is so? I was informed that there was a claim that commission was due, but knew nothing about the amount due, or for what. Do you ask the jury to believe you know nothing about what amount was said to be for, or what the amount was? Yes, that's the truth.

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
Examination  
(continued)

10 Do you ask the jury to believe you've never seen this statement? The only statement I've ever seen was a rough copy of a purported statement handed by you to my solicitors and I don't even know if that is the statement you are talking about. Apart from the document shown to you by your solicitors, do you ask the jury to believe that you had never seen Mr. Jolson's statement of Freer's affairs? I've never seen Mr. Jolson's statement of Freer's affair. Is this the document which was shown to you by your solicitors? Yes, this is the one. Does that document, the one shown to you by your solicitors in front of you, indicate that commission on a licence for £44,000 amounting to £2,200 was one of Freer's assets? (Court indicates in wrong form). Does that document show it's claimed by somebody - £2,200? Yes, that's so. Do you ask the Court and Jury to believe that in no other way have you heard of  
20 such a suggestion or claim? I've already answered and said that I knew there had been some talk of some commission involved. When I saw this document its first time I knew these figures were actually put down and listed in this way. Did you have some idea that the document circulated by Jolson had something to this effect? I don't know what document was supposed to have been circulated by him. I never saw it. Did you have some general idea it had a statement along these lines? No, the only idea I had was it was a list of Freer's debts showing a sum total of money he owed. Do you say you thought it was exclusively confined to his debts? That's what I thought it was, yes. You don't want to qualify that statement in any way? No, that's what I understood it was - showing how much he owed and who he owed  
30 it to. Had you not said it also showed money due to him? No, not in the document. I was told there was some money due to him and he owned the home to the value of about £8,000. What was the money due to him to be for? I was told the moneys were due to him for commission. On what I don't know. It couldn't be the licence because nobody got a licence. It could have been promised licence? No licence was promised. By whom? By anybody that I know of. Could not Freer have undertaken to get a licence for him? He couldn't even intimate he could get a licence. He would have to persuade responsible Ministers? The Ministers and administrative departments who would recommend and advise the Ministers. Knowing that there was at any rate a suggestion that some commission was due to Freer, didn't you  
40 think that called for some examination, explanation or enquiry? I did have an assurance from my department that no licences were issued that would warrant any commission being paid. If commission was paid or promised, your department would not be likely to know about it? They certainly would not, that's the point I've been trying to make. Judd would be the man to ask? Not necessarily, Freer would be too I suppose. Were any steps taken to ask Judd? Not by me. Did you suggest to anyone that such steps should be taken? No, it is not my job to. As Minister of

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No.8  
P.N.Holloway  
Cross-  
examination  
(continued)

Industries & Commerce, didn't you consider that it was within your sphere? No. Do you suggest that irregularities in connection with licences don't concern you? There's no irregularity in this case - no possibility of irregularity. You knew there was a suggested irregularity? Only a rumour printed on a piece of paper that no one signed. It was printed on a piece of paper? Yes. It came from Auckland did it? You've just told us Jolson sent it down. You accept my statement? You said it. Did you know Jolson lent money to Freer? I know nothing about Freer's private position. Don't you think you ought to take steps to find out? No, no reason at all, I'm not interfering with private business. The licence Judd got was got with help of you and your department? Yes, but that has nothing to do with Jolson lending money to Freer. If there is a suggestion that at one stage there was an irregularity? There was no irregularity. How do you know? I know the workings of my department. You know the workings between Judd and Freer? No, that's their business, not mine. I suggest it is the public's business? Not necessarily. You don't think the public ought to know of irregularity? There is no irregularity. You are asserting that as a positive statement of fact? I'm stating there was no irregularity whatever in the issuing of a licence to him. At what stage? At the time licence was applied for to when the licence was issued. Are you asserting it as a fact that there was no irregularity between Judd and Freer? I..... what I'm putting to you is you should have taken steps to find out? It's not my business to find out. It's not the business of the Industries & Commerce Department. Isn't it a matter which concerns the Government? Only if Freer has done something illegal. Shouldn't the Government find out if he had? He couldn't possibly have done if Judd never got the licence he got commission on. Freer and Judd can't possibly do anything illegal? From my department's point of view there is no possibility whatever. You say you don't know what took place between Judd and Freer? I'm talking about it from the point of view of my department and myself. In your evidence in chief you gave us a good many details of your career. You told us you attended the University of Otago for two years? A two year course - one year I did while still at High School. How did you do a course at University? There are such things as extra-mural students. What was the course? Commerce. Did you finish the course? No. At a later stage you say you went to Boston University? Yes. You took some course there? Yes. What? Economics, advertising and public relations, a course on what they call banking, general commercial practice, financial manipulations, including stock exchange and things like that. That would be a similar term to fiscal measures you used this morning? Yes, only it applied to commerce. Did you finish that course? No. Have you ever claimed in electioneering or otherwise, that you attended London School of Economics? Yes, I attended lecture courses. In what? Economics. When? 1938. When were you in Boston? 1937. Did you finish the course at the London School of Economics? There was no course - I attended a series of lectures. Those were in the days of Professor Laski? He was there but he wasn't the lecturer I sat under. Who was it? One course I got was Condliffe. I went to another series, given by Cole who had come from Oxford to give the series. You've also told us you were a seaman for a time? That's right. You claimed in electioneering materials or otherwise you joined your first union in your teens? Yes. What Union? The New Zealand Workers' Union. When? At twelve years of age when working in a shearers' shed in the summer holidays.

10

20

30

40

COURT. You had to pay your dues? Yes. Voluntary unionism in those days.

You returned to New Zealand when? 1939. When did you join the Army? 19.. I'm not sure when called up, but late 1941 or early 1942 I think. Did you receive a commission? In Italy, yes. Did you receive a commission earlier? No commission earlier, no. You ask the Jury to believe that? Yes, they didn't issue commissions in New Zealand - temporary commissions which is a very different matter. Isn't it a fact that on 2nd November 1942 you resigned your commission as Second Lieutenant? That's right.

COURT: Where was that? In New Zealand. What purpose? To expedite my posting overseas.

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 8

P.N. Holloway  
Cross-  
examination

(continued)

10 I put it to you as bound to the reason why you resigned that commission was that it had been discovered that you had obtained it by a false statement and attestation in a document concerning alleged service by you in the Spanish Civil War? No, that is not correct. Have you ever claimed you served in the Spanish Civil War? I claimed to have a great deal of knowledge on tactics used in infantry support in the Spanish Civil War and at one stage at Trentham, as is well known, I didn't stop the impression getting around that I had actually served, when in fact I had only studied and been informed of the tactics used. After you returned from overseas service, you told us you became Labour candidate for Manawatu? That's right. Before standing for Manawatu as Labour candidate, did you not approach the National Party? No, I did not. Did you not attend at the office of Mr. Hill then 20 the Wellington Secretary of the National Party, when the others present were Mr. Malcolm, Mr. McIlroy and Mr. Meadowcroft? That's right. Wasn't it the purpose of that meeting to discuss the possibility of your standing as a National Party candidate? No, it was not. What was its purpose? Mr. Malcolm, with whom I was living at the time, and from whose home I had been married, insisted that I meet some of his friends. I told him before I met them that I did not want to go. Why? Because I was already a member of the Labour Party and had been a member of the Labour Party in England and was already nominated as Labour Party candidate for Manawatu. But I went with him to that meeting, purely because of 30 kindness he had shown to me after I returned from the war when he was the only person in Wellington who gave me accommodation. Whom did you tell you had already been nominated Labour candidate for Manawatu? Malcolm. What was the purpose of the meeting? Malcolm wanted me to meet some of his friends because he said "You've been away from New Zealand for so long, it's time you had a look to see who the people are..." He meant the other political party? That's right. The question of your possible candidature for the National Party was to be under consideration at that meeting? No, no question of that had been raised at all. Why did it take place in the office of the Secretary? I don't know, it was where Malcolm took me under duress I might say. It must have been a painful experience? It was embarrassing. I put it to you that you switched to the Labour Party as the National Party 40 representatives told you that they couldn't guarantee your election as a candidate because it depended on the vote of membership? That's entirely incorrect. You say in 1946 you stood for Manawatu, were unsuccessful, but the Party was successful at that election? That's right. In 1947 did you receive some appointment? In December 1947. What? Member of the Price Tribunal. When did you stand for the Wellington City Council? I think it was in 1948. As Labour candidate? Yes. While

In the  
In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Examination  
(continued)

you were a member of the Price Tribunal? That's right. What was the reason you gave this morning for not standing as a Labour candidate in 1951 election? I did stand in 1951. I mean 1949? Because as a member of the Price Tribunal I did not feel I should enter into the national politics. Some distinction between representing your party in local politics and representing them nationally? Yes, a very big distinction. What is the name of the Company with which you have been connected since the war? Campbell Beaumont (N.Z.) Ltd. before and a company called Amalgamated Commercial Traders after. What was your position as regards Campbell Beaumont? I was manager there. Was that an importing concern? Yes. What sort of goods? Mostly hardware. Was it a limited Company? Yes. Were you a shareholder? At the end I was offered shares which I didn't take up. You were never a shareholder? I've forgotten whether I did or not take them up. If so it was only 500 shares. If you did, when did that take place? At the beginning of 1947 or end of 1946. For how long did you hold them? Only till the end of that year. Which year? The end of 1947. Is your recollection clear on that point? If I held them at all. I can't even remember whether I actually took them up or not. I know I was offered them. What did you mean when you said you gave up business interests when you became a Member of the Price Tribunal? I never had any job. You had shares? If I did, I got rid of them. It was one of the undertakings I gave when I took the appointment. Honestly, I can't remember whether I took them up or not. Later you were associated with Amalgamated Commercial Traders Ltd? Yes. What sort? Mostly manufacturers' representatives. You told us you immediately severed all your associations with that company when you became a Minister? That's right. When did you become a Minister? 1957. You have seen this document? Yes. Is it a certified copy of particulars of directors of Amalgamated Commercial Traders Ltd. signed by the Secretary, Mr. Mason, and dated 14th March, 1958? Yes. Does it name you as first of three directors? Yes, that's right. Are you aware that any change in directorship of company has to be registered within fourteen days from the date of change? I understand so but I passed in my resignation to the Company when I became Minister. How that occurred I don't know. You say it is a mistake? Oversight or mistake. By whom? By the Secretary of the Company. You see on the form the names of three directors given? That's right. Do you think it likely that the Secretary of a Company having three directors could make a mistake about who they were? On this sort of company where the directors only have a meeting about once every six months I would say it is quite likely. When do you say you resigned as director of that company? In December 1957. Was your resignation put in writing? Yes, I believe so. If not then, shortly after. At least the Secretary was notified verbally by me I'd have to get out. When it was put in writing was a date put on it? I should imagine so. Do you know? I can't swear to it now, but I don't generally write letters without putting dates on. Was it simply recorded in a letter or a separate document? I think it was a separate document, or it might have been recorded in minutes - I'm not sure which. I put it to you at some stage a separate undated document came into existence purporting to be a resignation by you?, My resignation took place from

10

20

30

40



the end of December. That doesn't answer the question? I don't know that document you are referring to. Do you not know if it was in writing? It must be in writing somewhere, in the minutes. What happened to your shares in that Company? They were taken over by the Secretary, that is, Mr. Mason. Has he recently received some appointment? He received one last year of a very small nature - he was put on the Industries Efficiency Board. Licensed Industries Committee? Yes. He was appointed member of that committee by you? Yes, that's right. I don't think they ever sat. Do you know? No. What was the point in appointing him? We feel there may be an application coming up in the next few months.

10 When did you say the appointment was made? I don't know when - it was made temporary for a little while, then permanent. Was it not under your signature of 14th May this year? That was the permanent appointment but there was a temporary appointment before that. When did you first meet Judd? In 1939 when he travelled on a vessel I travelled on coming to New Zealand. That's when he go to call you Phil - on ship? Yes. What did you call him? Hyman. You became quite friendly? No, just on Christian name terms? Yes on ship - you usually do on ship. You get to know a man pretty well? On the surface. Of the sea? When did you next meet him? I think a couple of times during 1940 around town - he settled in Wellington.

20 I don't even know. I saw him in Wellington, but after that I haven't seen him again until February last year. Did you see him in Christchurch at all? No. When you told Leicester this morning you understood he left Russia as a baby? That's my memory of his story when he was coming out on the boat. Did your information about naturalisation come from him also? Yes. Most things you know about him came from him? No, I don't know much about him. Don't you think you ought to? No. You met him again in the beginning of 1958? Yes. Where? Auckland. At whose office or house? At no one's house.

30 He came with Freer to a hotel where I was staying, after having an appointment. What hotel? The Waverley. You were staying there? Yes. On your own? With my secretary. Who was it at that time? I think either Black or Sutherland, I am not certain. You're quite certain one was with you? Yes. Who made the approach to see you? Either Freer or Judd, but they rang my secretary, not me. Any recollection of what time of day the appointment was made? I haven't the faintest. Or how long it lasted? About ten minutes or a quarter of an hour. It didn't seem very important at that stage. No, not at all. Anyone else present besides you, Freer, and Judd? My secretary may have been, I'm not certain. You're not certain which secretary it was or if he was there? Yes, I take a different secretary each time I go to Auckland. What was the purpose of that visit? To put forward a proposal that New Zealand and Czechoslovakia enter into a trade agreement. That was the proposal they were putting forward?

40 Yes. What was Freer's status in the matter? He introduced Judd to me. He hasn't any executive duties in the Government has he? No. After that interview did Judd write you a letter? Yes, I asked him to. Is that the letter which begins "Dear Mr. Holloway, As promised....?" I think so, but I haven't got the letter here. Dated 4th February 1958? That's correct, the letter that I had asked him to write to me.

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

The only passage in that letter which hasn't been read to us - two passages not read - read second paragraph "You will recall..... Last Government." Read next paragraph "From discussions.... tallow". Up to this time Judd had been a comparatively small businessman so far as is known? As far as I knew, yes. What was the name of his company? H. Judd & Co. Ltd. - it is on the letterhead. He had another company? So I was told later - I didn't know at that stage. Paint company? That's right. He had recently been on a visit to Czechoslovakia and probably other Iron Curtain Countries? Not that I know of - Czechoslovakia is the only one I know of. He may have been to China? I don't think so. You don't think he returned to the land of his birth? I don't think so, I don't know. You don't know whether he went back to Russia? I haven't the faintest idea where he went. You haven't much idea what he did this trip or what he had been doing over the years, since you came back? No. Didn't it strike you as rather surprising that this man in a comparatively small business was suddenly blossoming out with an international trade agreement? Yes, that's why I asked him to write me a letter and when I got it we checked with the Czechoslovakian Consul to make sure he was bona fide. Do you think a check with the Czechoslovakian Consulate was adequate? Yes. Don't you think the matter would be worth investigating from a security point of view? No. Do you know whether Judd is a communist or not? I'd very be surprised if he was. Why? Because he likes making pounds too much. Do you think he might be the type of man who has no particular principles and is willing to work with communists if it pays him? I'd say he is a trader and willing to trade where trade is. You would describe him as an ordinary respectable trader? That's how he appeared to me. If persons of experience were to give evidence that on meeting Judd it is obvious that he is an unsavoury character, would you disagree? I would disagree - I don't think you can judge anyone on meeting them straight off. The position is that you had no inquiries made about Judd except what you call a check with the Czechoslovakians? There is no reason why I should. We are a trading department, not a police department. In a matter of this kind, shouldn't Security be asked? They generally know what is going on and if they thought it was worth while they'd have told us. Did they know what was going on between Freer and Judd? I don't know the workings of the Security Department. Judd was not only having control of imports but control of exports? No he wasn't. Arrangements were to be made with Judd. He was arranging negotiations. The exports we purposely laid down in the agreement they would go through the normal trade channels. The exports would be done through the Dairy Commission, wool through wool brokers and importing by people in the importing business.

Didn't you write a letter on 7th March 1958 to Judd "I have now studied ..... commitments". Is that saying the type of arrangement involved is political dynamite? No administrative difficulties. Like financial manipulations. "On the other hand", you go on to say, "sales to Czechoslovakia.." Doesn't that indicate you

were relying on Judd to arrange sales? Yes, he wasn't an operator at this stage, he was the agent for the Czechoslovakian Government. A man like Judd in his position was not a suitable man to entrust with the function of arranging sales to Czechoslovakia of wool, butter and meat? That's for Czechoslovakia to decide, not me. He was their agent, not ours. The Czechoslovakians decide who is to have control of exports? No, I said he was the agent to the Czechoslovakian Government. We have to negotiate with whomever they desire us to negotiate with. Do we have to put in charge of our export arrangements for primary produce whoever they can nominate? No we are selling to them, they are the buyers. He doesn't get put in charge? Once they buy goods they belong to them. The effect of this letter, does it not suggest that Judd was to be in charge of export as well as the import side? He was in charge of arrangements. Arrangement of both export and import side of your plan? That's right. You had this interview in Auckland - when? A few weeks before this letter it must have been. He wrote the letter of 4th February. You might read the third paragraph from the end. "If a mutual trade ... economy". Is the effect of that Judd is urging that New Zealand capital equipment should be supplied from behind the Iron Curtain rather than from the U.S.A? No, nothing of the sort. What he is suggesting is he is trying to sell a story and pointing out that equipment is available from Czechoslovakia. There is no suggestion that it would replace purchases from other countries. How do you explain the two sentences which read "This equipment includes..... from United States ....needs". That's right. You say there is no suggestion that these purchases aren't to replace? The whole idea of this agreement was for additional trade in addition to what was already being purchased - consequently anything agreed on would not replace but would add to the inflow of goods. With all Judd's importance he could not increase the demand?

The demand unfortunately was here and wasn't being satisfied because of import control. If so wouldn't it be fairer to give special licences to importers who had been hit by control? That was the intention. There is a list of all importing houses. Was any other importing house given a chance to apply for the licence that Judd got? Not that one, no, because Judd was the agent. You don't have to give them? No, but as he had done all the work and he was the agent, and he was handling that type of glass from 1957 I can't think of anyone who deserved it more than he did.

What he had been trying for was a much bigger deal? Yes. Including licences to import glass for £50,000? He hadn't actually nominated himself. In one letter he suggested the licences be given to end users. You know better than any of us that would be completely impractical and known to Judd? No, I think it could be done - there is a lot of merit in it actually. Make us a nation of importers? We are - a few more won't matter.

Then did you have a second meeting? I think there were about three altogether. Was Freer present at all those meetings? Not all of them. You and Freer and Judd? No, I wouldn't put it that way. I was in my office and they came in. That was you

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence  
No. 8

P.N. Holloway  
Cross-  
examination

(continued)

and Freer and Judd? Yes, but not in that order. Judd and Freer came to see me as Minister in my office. What was the date of the second meeting? I couldn't tell you. There were several meetings - two or three, not several because as soon as I could I referred them down to the department. I wanted them to deal with it, not me. Look at the letter of 27th February Judd wrote to you. How does it begin? "In confirmation of the discussion..." Where is that letter written from? Auckland. It refers to a discussion "this morning"? Yes. Where did that discussion take place? At this stage I can't recall - it is too long ago. It is written from Auckland and confirms a discussion that morning? Yes. When was it received by you? It is dated 27th February - received by you on the same day? Yes, except I fail to see how it could be. It might have been received by you in Auckland? Yes. You have an office in Auckland? There is an office common to all of us there.

10

Does the file show on the same day as this interview and later you saw your departmental officer Mr. Atkinson, about the matter? That shows you there must have been a wrong date on one of these letters. That would be impossible. He was in Wellington, I couldn't see him in Wellington and Judd in Auckland on the same day because I wouldn't have travelled down and seen Atkinson the same day. This is signed by Atkinson, not by me. Reads memorandum. In that memorandum two words are underlined urgently and immediately? Yes. Why had this matter become suddenly so very urgent? I underlined the words myself when discussing the matter with my counsel. The reason for urgency was the fact that at this stage the bottom had fallen out of New Zealand butter market in London and if this sort of proposal was to have effect it had to be gone into quickly and knowing the delay in departmental inquiry I asked for it to be done urgently so that it could be speeded up a bit. Since you first saw Judd sometime in January and had these three interviews you spoke of, matters had been jogging along in the ordinary way? Yes. You suggest suddenly about 25th or 26th February the bottom fell out of the butter market? It was at that time that we were facing grave difficulties overseas. Any greater than on 4th February? No, but 27th February was the first time we had really had a proposal put to us - it was only broad discussion before that. The letter of 4th February is fairly detailed isn't it? No. If you'd wanted more detail urgently couldn't you have asked for it? I did ask for it. Three weeks later? That's right.

20

30

(Short adjournment)

We were dealing with urgency that seems to have suddenly crept into this matter on 27th February when all in one day you had an interview with Judd and Freer, apparently in Auckland, got a long letter from him and handed it over to your departmental head - Mr. Atkinson was permanent head of the Department in those days? Yes. In this memorandum in which urgency is stressed, you refer do you not to the fact that you don't necessarily think the full proposal should be carried out but you would consider a proposition involving butter and possibly tallow and the import of possibly two items - instanced glass and tractors. Glass is the thing which Judd was particularly interested in? Yes, and we were too. What was Freer doing during these discussions? Mostly he sat and didn't say very much, sat and advocated - his total advocacy and was one of pressing that we did try and press that we trade

40

with communist countries. Pressing his case? Yes. Later? He asked questions on behalf of Judd. He was acting as advocate or representative of Judd? Advocate would be the word. Judd was acting as representative of Czechoslovakia? Yes. So Freer was really acting as representative of Czechoslovakia? No. His attitude was no different from many other Members of Parliament when they are pressing claims of people in their constituencies. Is it normal for Members of Parliament on behalf of their constituents, to take as extensive a part in dealings with Government Departments as Freer did here? Not customary, but not abnormal. Is it usual for Members of Parliament who hold no ministerial or executive rank, to communicate to Government Departments proposals from other Governments? Not from other Governments, no. At one stage in this matter didn't Freer communicate with you at your Department, the wishes of the Czechoslovakians as to inclusion of the cars, motor cycles? No. Freer told me - the House was in session at this time. He came and sat next to me one night and said he had been talking to Judd and he proposed to the Department that cars should be included and what did I think about it. I refer you to memorandum of 7th May 1958 from Mr. Atkinson to yourself. I have that. In that memorandum Atkinson said "Yesterday I received a call ....." referring to requests of inclusion of other items? That's right. Wasn't Freer acting as some sort of intermediary on behalf of the Czechoslovakians? No, to me he was working along with Judd. Doesn't that amount to the same thing? It might do, it doesn't make it any worse for that. You think Judd's activities are all completely above board? I had no reason to suspect otherwise. I can only speak for his action with the Department and they have all been very honest. He would hardly dare do otherwise would he? I don't think many people do or any of them that I know of - they don't get very far if they do. You told us about the urgent memorandum? No it wasn't an urgent memorandum. Urgent instruction? Yes. Didn't you have time to record it in writing? There was no need to. Once a week Atkinson and I had a meeting in which we discussed all points outstanding. Was this interview you had with Atkinson one of normal monthly or weekly meetings? Certainly not a special one. Just a coincidence it was the same day? Yes, if I had wanted him urgently I'd have rung him. Doesn't the memorandum record urgency? Yes. You're putting emphasis on the wrong word. I said urgency as opposed to delay. As a result of your stress on urgency, did Atkinson write you a memorandum dated 6th March? Yes. That's quite a long document? That's right. Dealing with Judd's proposals? That's right. Generally counselling caution? That's right. Did Atkinson also suggest in that memorandum that you would wish to discuss the matter with the Minister of Customs? Correct. What minute do you make on memorandum about that suggestion? I read it before "Thanks, I do not intend to contact the Minister of Customs at this stage .....issues". Was your attitude you wanted to finalise the deal with Judd before the Customs had a say? No, I had no authority to finalise it. It would have to go to Cabinet first. I wanted to ensure it didn't involve the time of another busy Minister while in the discussing stage. Made in the interest of Boord? Partly, yes. This arrangement, if carried through as Judd's proposal would have involved issuing important import licences? Yes. You yourself emphasised authority to actually issue licences rested with the Customs Department? Correct. No Department knows better than Customs the difficulties and worries of importers? Yes. Many importers were going to be displeased when they knew preference was being given to

In the  
Supreme  
Court of  
New Zealand  

---

Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

Judd? A lot of them would be very pleased too. Who? Those firms who are agents of a Czechoslovakian importing house. Wasn't it a fact that in Judd's proposals he was to have exclusive control over import and export side? It's also a fact we told him he wouldn't have. Where? In these memoranda. Refer me to the letter. I can refer you to a letter where it refers to "through normal trade channels". Can you tell me where it is in the file? I know it is on the file, that is the practice we always follow. I'm suggesting it was at a later date? That might have been so - we were merely discussing proposals and trying to find a way through administrative difficulties. At this stage when you decided not to contact the Minister of Customs - at this stage the proposal was that Judd should have full control of import and export? No. 10  
It's true on this memorandum it says I'm not going to send a memorandum to the Minister of Customs but you can be assured he knew discussions were taking place. There was no question of his being kept in the dark. We don't like at least two departments discussing the same proposal with the same person. Notwithstanding that the Act of Parliament says to collaborate with other departments? We do that all the time. That's why Mr. Atkinson and Dale discussed this through the whole period. At this stage, 6th March, wasn't it appropriate that you should give Customs a say if you were going to put Judd in charge of both import and export side? We weren't putting him in charge - nothing had been done, until it had been approved. I wouldn't take it to Cabinet unless I was certain of it being successful and in New Zealand's 20  
interests - I had to find it out first.

COURT. What is the memorandum of 1958? No, that's just Czechoslovakia's preference. They prefer to have one firm handling the import and export arrangement. We wouldn't agree to that.

On 7th March, the day after you wrote this note, you wrote to Judd saying "The New Zealand Government does not enter into trade directly and I presume .....plan"? That's right. Wasn't it appropriate the Customs Department should at least have a say at this stage? No, this has nothing to do with the issue of licences. What we are dealing with is who is going to make arrangements. Czechoslovakian Government does all its own buying and selling. It is done by State institutions. Import licences 30  
had to be issued? That's right, but we hadn't got to that stage. You wanted to get to the stage when you had concluded agreement, then present it to the Customs? No, we couldn't have gone to that stage - impossible. Words in your own handwriting in the footnote are "Thank you, I do not intend to contact ..... at this stage...issued." That's right, when we got to the stage when we have to consider the issue of licences. When final arrangements have been made? Yes, but the Customs Department say who is going to get licences, not us. To carry out those arrangements, it would have been necessary to issue import licences to him? Not necessarily at all. Was Leicester wrong in saying when he opened the case that Judd would be entitled to have import licences? That's right he would be. I've said that. He would be entitled to licences 40  
if arrangement was made? In respect of glass. £50,000? Yes. You wanted to get into a position where you had made final arrangements which would entitle Judd glass licences and then turn round to Customs and say you've got to issue such licences to Judd? That is impossible because the whole agreement wasn't agreed to by Cabinet in principle. Why did Atkinson say in his memorandum on 6th March to you you would wish to discuss the matter with the Minister of Customs? That's his thought at that time - he quite often advises me - that's his function. He had reason

for his advice? He always has good reason for his advice. What was it? You'd better ask Atkinson. You didn't take his advice? Not at that stage. If you don't take advice isn't it advisable to find out the grounds on which he gives that advice? No, we knew each other's minds very well indeed, we were constantly in discussion. What was in his mind? In his mind he was the same as I was. He could see some value in the agreement but both of us were very cautious and cagey. We wanted to make sure it was right. That's why he suggested we send it to the Minister of Customs and I didn't send that memorandum. Your minute says "I do not intend to contact the Minister"? That's right. He had already been contacted before this stage. By

10 whom? By me. Is there any memorandum or minute on the file to confirm that statement? No there doesn't need to be. Why didn't you say in your minute "Thanks I've already contacted ....." I didn't like it that way. Why? Why do .....fly. Are you telling the jury when you said "I do not intend ....." you meant you had already contacted? No, he already knew of the proposals we had discussed. That is a way of contacting? Yes, but not interpretation you put on it. How do you interpret contract? In officially sending the document I had discussed the matter with Boord on several occasions. We necessarily work closely together. When Atkinson advised it, you say you don't intend to contact the Minister at this stage? That's right, because I'd already done it. You expect the jury to believe that? They will. After

20 this memorandum you wrote a letter to Judd of 7th March. At that stage you had two or three interviews with Judd? Yes. And Freer? Yes. I suppose those interviews were of some importance in the history of this proposal. Not of outstanding importance because my practice was always in these special applications to hear the applicant, then to send him to the Department to have the matter investigated. I'd only hear it in a general way, then he would go down to see that departmental officers for investigation and inquiry. You heard him in a general way at two or three interviews? Yes. He had two letters? Yes. You hadn't told your department about it? No, that's incorrect, the Department knew as soon as we got the letter from Judd at the beginning of February. That letter was immediately minuted down - this is

30 on the departmental file. Why in Atkinson's memorandum of 27th February "The Minister handed me correspondence"? Yes, that's the letter I received. Why is it if interviews were of some importance that any reference to them is omitted from your letter to Judd of 7th March? Because I didn't attach a great deal of importance to it - I was listening to their proposals in a general way then referring them to the Department for investigation. Does your Department's file show on the 11th March Dr. Sutch suggested that a check should be made as to whether Judd was the best man to deal with? Yes. What was his position at that time? Assistant Secretary. He has since succeeded Atkinson? Yes. What action was taken on his suggestion?

40 I couldn't say. That's a departmental minute for reference inside the department. Was any action taken by you? I spoke to the Czechoslovakian Consul myself. He is the representative of another Government in New Zealand. About this time did news begin to leak out amongst other importers of Judd's proposal? I shouldn't think it was as early as this. Look at the file and see reference to visit on behalf of a firm called Prevost & Co.? Yes, that wasn't a leak - they are wool buyers for the Czechoslovakian Government, in New Zealand and they were informed, I understand by the Czechoslovakians themselves. The letter is 13th March - also a minute

In the Supreme Court of New Zealand

Plaintiff's Evidence No. 8  
P.N. Holloway  
Cross-examination  
(continued)

of earlier discussion. On or about the 12th or 13th March? Yes. This is another departmental minute. It doesn't concern my office directly. Reads "Pacific Import Company.... (which is Prevost) ...also to Government ... will keep me informed," then signature. It's a disturbing thing that someone can sell the idea that he alone has the ear of the Government? That's one person's opinion. This was a company that felt they were losing business, they are apt to make any sort of claim. Did Atkinson not discuss this with you at one of your regular meetings? Yes, he told me Prevost had been along. Prevost was one of our main agents of Czechoslovakian textiles in New Zealand. They wanted the lot I think. Not very different from Judd's action? No, practically everyone in business wants the lot. It's one of the functions of Government Departments to see that no one gets the lot - but fair for all? That's what we aim to do. At this stage you weren't taking active steps to ensure a fair share? Yes, were were taking very active steps. What steps were you taking? At this stage it was completely unnecessary to do so - we had not got the proposal in principle or got Cabinet to agree to it. What you had in mind was Judd was to be king-pin in arrangements? In arrangements, yes, but not all licences. He had all glass licences? Yes. The file shows there was a meeting at the Department on 13th March. There is one. Memorandum of meeting between the Czechoslovakian Attaches and officers of your Department? Yes. Reads to Jury "Czech. Commercial Attaches will call to discuss ...." then visiting cards of three members. Underneath those cards there is a note on the file? Yes. What does it say? It's in handwriting "Why did not come to us direct. The blackmail on butter begins...." another note put on by an unsigned member of the Department. He has put it on the Department file. That comment implies your department felt rather surprised if approach or agreement with Czechoslovakia was to be made, it should have been made by Judd and Freer to you rather than by Czechoslovakian Attaches with your Department in the normal way? No, I think why it was done from Judd to me and not through Consul. This wasn't normal procedure? No, but there have been several other occasions when the same things happen, with four other countries. Is that the way to do business? No, but the way communist countries care to do with it. When you are doing business with them you have to fit in with them. If we didn't New Zealand economy and wool sales would have collapsed. Do you think it helps New Zealand economy to buy goods from Czechoslovakia? No, we only have it for surmise. We do know if Czechoslovakia and China and other countries had not bought at New Zealand wool sales, our price would have dropped disastrously. But wool sales were not being arranged with Judd? No, I don't suggest that they were. If you are able to sell a lot of butter to Czechoslovakia, isn't there a substantial risk to consider of butter consigned to that country being re-exported and dumped on our market? We would have written conditions into the purchase to take care of that. Because in trading matters we've never found the Czechoslovakians to go against their word, despite what they might do politically. What about the reliability of Judd? My Department had no reason to suspect it, no reason to doubt it. They did come next day - there is a memorandum of what occurred? Yes, all I can go by is what is on the file, I wasn't at the meeting. You've had ample opportunity to read them. It's a fairly short memorandum? Yes, not long - a lot unintelligible. Reads:



10 "Meeting with Czechoslovakians 1. Judd approved ...by choosing New Zealand  
 butter over Danish or Dutch". Note about something Freer said? Yes. "Freer  
 said Minister wanted small dealings in first place, Minister suggested..." At  
 this stage I was interested in making certain doing what you're asking me if I  
 could do - I wanted to send an officer from London Office to Prague to see if every-  
 thing went all right. That is what you wanted or suggested to be done was conveyed  
 to this meeting by Freer? Not necessarily at all. I don't know who "Freer says"  
 it starts - what does it say he said "Freer says Minister wanted small..." I  
 had told Freer before I wasn't interested in a big proposal. We could only justify  
 a small proposal as an experiment. Freer was not in any way in an executive  
 position in your department? No, none at all. There were present at this meeting  
 representatives of Czechoslovakia, Judd and officers of your department? I can't  
 see Judd's name on this file except Judd was approved. There were representatives  
 of the Czechoslovakian Consulate and officers of the department and Freer? Yes.  
 If you wanted to convey something to a meeting of that kind, wasn't it the normal  
 way to do it through departmental officers? That's the way it was done. I can't  
 stop Freer from making comment. Doesn't it show it was undesirable to have Freer  
 present? No, we are talking about a statement in Truth, not about Freer. You told  
 us you indicated to Freer your views were ones he conveyed to the meeting? I  
 20 certainly wasn't interested, nor would I look at anything on a large scale. Do you  
 think it was really wise to let him play such a prominent part in the matter as he  
 appears to have done? He didn't. He wasn't just introducing Judd to the Minister  
 at this stage? No he came along on two occasions and spoke to me in the House  
 but that's not abnormal. Is it normal for a member who is not a Minister nor with  
 any executive responsibility to attend a conference between departmental officers  
 and representatives of foreign states? No it's not, but there was a reason because  
 of his advocacy of this line of trade. He was closely concerned in the whole matter?  
 I'd say he was, yes. On 1st April, Mr. Atkinson wrote another memorandum. There  
 are two drafts here, but no date on them. The memorandum from Atkinson to you on  
 30 1st April? (Marked "E") Yes. That's again quite a long memorandum? Yes.  
 Again in that memorandum did he suggest approval of Minister of Customs be ob-  
 tained - towards the end I think? That's right. But in this case automatically the  
 Minister of Customs got the copy of this memorandum? That was because of At-  
 kinson's suggestion he should? No that's automatic - copy automatically went to  
 the Controller of Customs. Why did Atkinson suggest a copy go to him? I think it  
 would be the polite thing to put at the end of the memorandum - he doesn't order  
 them to, he asks them. On 3rd April did Atkinson see you personally, stating in his  
 opinion the Prime Minister should be told of the proposal? Yes, that's right, he had  
 to. Did I understand you to say this was no concern of the Prime Minister at all?  
 40 No, it was very much the concern of the Prime Minister and he was chairing the  
 Cabinet meeting at which it was approved. I said he had never put his foot down on  
 questions of issue of licences, he did not interfere. But at the date we are now  
 speaking of it is well before the Cabinet meeting - had the Prime Minister been  
 informed? Yes, I think I told him we had a proposal of trade with Czechoslovakia  
 which I proposed putting to Cabinet. You think? I'm sure - I wouldn't have been  
 proceeding as far as I had gone. The matter was of some importance and he would  
 be informed? Yes, he would be informed - external affairs. No security involved

In the  
 Supreme  
 Court of  
 New Zealand

Plaintiff's  
 Evidence  
 No. 8  
 P.N. Holloway  
 Cross-  
 examination

(continued)

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 8

P.N. Holloway  
Cross-  
examination  
(continued)

in trading with foreign country. We are buying and selling from them all the time. You don't know anything about Judd with whom you are dealing? We don't inquire into the background of every man who comes before the Department. You agree the proposals Judd was putting forward it was right that the Prime Minister should know about them early and he knew of them because you had told him? Yes, he knew we were having discussions. Why do you think Atkinson bothered to record on the file that at a personal interview with you he advised the Prime Minister should be told? Because he is very meticulous and always puts down in detail what has been said. He is an expert of public administration. He knows the importance of putting things down on a file. What he was giving to you at this personal interview was a piece of advice to which he attached importance? Yes, I attached importance to it too. Did he have some cause for advising you in this way? No, nothing but general prudence I should think. Perhaps to enable the Jury to follow the point, read Atkinson's memorandum - the note about his interview with you. After the whole memorandum had been discussed with me. "I advised Minister ... to-day" Signed Atkinson. He records on 8th April - on 3rd he told you he thought the Prime Minister ought to be informed? That's right. You say you agreed with Mr. Atkinson - it would be right to tell the Prime Minister? Yes. Was the reason for that that you realised that trade agreements with the Czechoslovakian Soviet Republic might be thought unjustifiable at a stage when imports from the free world were restricted? That's - first of all imports were restricted just as much from Czechoslovakia as from the Free World, secondly the Prime Minister had a right to know for a far more important reason, that is this involved a change of policy on New Zealand's part and it was extremely important that no commitment be made not only until the Prime Minister was aware but until the Government and Cabinet approved it. Was Atkinson urging that on you this time? No, he stressed it was always the intention of taking it to Cabinet, that it couldn't be done otherwise. Did he see you on two occasions, 3rd and 8th April, on which he mentioned desirability of telling the Prime Minister? No, we met on many more occasions than that, on many occasions we discussed this proposal - it was causing a great deal of headaches to see how we could get it through if it was going to be of advantage to New Zealand. Naturally we discussed all details of it on many occasions. Apparently he thought the interview of sufficient importance to make a record of it? So do I - nothing strange about it. I suggest it's strange for the head of a department to have to tell you that the matter ought to be referred to the Prime Minister. Not at all, I'm a comparatively new Minister at this stage - I had only been a Minister for three months. I expected my department head to advise me on a number of things. I'm not a genius by any means. On 15th April, did you write a memorandum to Cabinet generally advocating the proposal? Well it was discussed in Cabinet before that. Orally it was raised on 8th April - when I got the impression as to whether it was worthwhile proceeding or not. On 18th I wrote a long memorandum. On the date of the Cabinet meeting? Yes, that's right. There is another date on it - 15th, 15th is the date of the memorandum, 18th is the date of the Cabinet? Yes. The memorandum is a long one and advocates the proposal? Yes. Did Cabinet approve in principle of the proposal? They approved in principle. In generally, when I

10

20

30

40

raised it verbally. Only a general outline? No, because a Cabinet minute on 9th April reads as follows "Approved in principle...." What is the date of that minute? 9th April. Was a formal minute to that effect placed before Cabinet? Yes, that's the one on the 15th. The long memorandum we've been talking about? Yes. You're "satisfied the proposals were advantageous"? That's right. On 21st April, did Cabinet approve a barter deal to the value of £350,000 directing you in consultation with the Minister of Customs for further details and method of operation? That's right. Throughout all this period, from meeting with the Czechoslovakian representatives on 13th March, had negotiations been proceeded with through your department with them? Yes. Did some rumour of this become known to the general public? Well it did, what time exactly I'm not certain. Is there on the file a press cutting from the "Evening Post" on 29th April? Yes. In which Mr. Nash stated that he had received no communication from Czechoslovakia on the subject of the barter deal? That's right. At that stage Cabinet had given you authority to go ahead? That's right. The public weren't exactly being enlightened about what was happening? There was a perfectly good reason - it was security information. Confidential dealing with a foreign Government, and those matters are not generally made public. In May did Freer see you about this request from Czechoslovakia that cars should be included in the deal? Yes, that's the time when he came to speak to me while in the House. Then on 18th June, did Mr. Atkinson refer back to you the whole proposition for Cabinet approval? That's right. Was that reference back to you from Atkinson, dealt with in a long memorandum which he wrote on 18th June? It's a page and a half. They weren't circulated, the letter wasn't sent to anyone. Atkinson's memorandum was one to you advising he had all sorts of doubts about the proposals and it was to be referred back to Cabinet? No, no.

(Adjourned until 10 a.m.)

4th June, 1959 - 10 a.m.

Before we return to the departmental files, one or two matters have arisen overnight - do you read the papers at all? Yes. Notice the items of news this morning about Mr. Freer still in Hong Kong? Yes. Apparently he cancelled a booking on a 'plane for Sydney from Hong Kong? According to the news. Any idea what the reason might be? Not the slightest - I have no communication with him at all. You told me about Mr. Freer yesterday, when he approached you in May 1958 with the Czechoslovakian request for inclusion of cars and motor cycles in the deal. He came up to you in the House and sat next to you? I didn't say he came to me with a request - I said he mentioned it to me and spoke to me about Czechoslovakia. He didn't come acting on behalf of Czechoslovakia. On whose behalf? I understand on behalf of Judd. Who was acting on behalf of Czechoslovakia? That's right. You told me Mr. Freer came up to you in the House and took a seat next to you and mentioned the matter? Yes. That was in May? I don't know the date. It was in May he approached you? I can't say for sure, it's too long ago now. Look at the file - memorandum of 7th May 1958 addressed to you by Atkinson paragraph 2 "Yesterday I ....." referring to these additional matters they wanted included? Yes. You put a minute on that memorandum dated 7th May "I approve... alterations"? That's correct.

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

COURT: Does that then fix the date approximately for you? I would say so.

You said in evidence yesterday - page 44 - I asked you did Freer communicate to you the wishes of the Czechoslovakians. You said "No. Freer told me - the House was in session at this time. He came and sat next to me one night and said he had been talking to Judd and he proposed to the Department that cars should be included and what did I think about it." That's right. Parliament was not called together in 1958 until 10th day of June? That might be so. I can't remember exactly the comings and goings of everybody. I was perfectly honest in what I thought occurred yesterday - if that is so, it must have been on another occasion he spoke to me. It is clear that in May he had approached you about the request from Czechoslovakia? Yes, and I disagreed. So that must have been on some other occasion than on occasion when he spoke to you in the House? It must have been. Did he have some special appointment? I don't know - he might have come into my office. Did you see him pretty constantly about this matter? No, he was seeing me. I can't refuse to see a Member of Parliament when he asks to see me. Another thing you said in evidence was this meeting between you and the representatives of the National Party? Yes. I understood what you were saying was "Yes I went to this meeting but was reluctant to do so"? I didn't say that, I said I went with a friend of mine who had asked me to meet some of his friends, but I didn't know at that time they were representatives of the National Party. I knew they were associated with the Party. The meeting was something to do with that? I didn't know it was anything to do with the Party. I went because I was under an obligation to my friend who was my host at the time. He wanted me to meet them as I had been out of New Zealand for so long. Before I committed myself. I told him I was already committed to the Labour Party. His purpose to go to the meeting before you committed yourself to one party or the other - so that he was inviting you to come into the National Party camp and meet some of the people in it and you agree with that? Yes. In the hope you could join the National Party? To that effect I think sir. With a view to persuading you become a candidate? No, I don't say that was never considered. What was in mind? Just to meet them, the only grounds. What would they want to meet you for? I don't know, I went with Malcolm. What did they talk about? Not very much. I was only there about five minutes. Didn't they give any indication of what you were there for? I didn't say anything - didn't converse at all, just sat there. Mr. Malcolm did most of the talking. What about? I was his friend, he wanted me to meet them, I met them all. Having been introduced to them all you then went away? I did. Subsequent to that an arrangement was made for you to go to Waikanae to address a meeting? Mr. Malcolm told me and I said I would not fulfil it and I did not fulfil it. What was the purpose of the address? I don't know, just to give an address was what I was told. Why didn't you want to? I was already a candidate for the Labour Party. Why was that any objection to addressing the meeting? Because elections were on that year. It was obviously impossible for me to address a National Party meeting when I was chosen to be Labour Party representative. You knew it was a National Party meeting? I did, but I didn't go. You never told them you weren't going either? I told Malcolm I wasn't going - he was the one who made the arrangements. I told Malcolm who asked me to go that I was not going. You don't deny this meeting in Hill's office took place although you didn't say much? I never have denied it. When this

10

20

30

40

matter was raised in the House of Representatives on 31st August, 1955 Hansard at page 2153 did you say this "Just before the tea adjournment this evening when I was absent from the House, the Member for Ashburton made a statement .. I rejoined the Labour Party. I was immediately elected a member of Miramar Branch It was a meeting of the National Party in the Otaki Electorate...That is the sum total of my association with the National Party then or at any other time ...."

Correct. There is no reference whatever in that statement to this meeting at Hill's office? Not it wasn't necessary. I was asked if I had been a candidate or tried to become a candidate. What you said was - it was stated in the House - "That is the sum total of my association with National Party then or at any other time." Was it true? In general, yes, that the request for the meeting was associated at that time it all took place in two or three weeks, that was the sum total of my association with the National Party. The fact that I didn't mention in my explanation that I had met two or three of these people doesn't mean the rest was untrue. The meeting in Hill's office was with officials of the National party? I didn't know that at the time. Afterwards I did and I was very annoyed. Why didn't you tell the House about that? There was no need to, I only had time for a short explanation - not given permission to go into long speeches on an occasion like that. It wouldn't need much to add to explanation would it? No. It would be a difficult matter to explain? It was embarrassing.

Turning to another matter. You told us you had a connection with Campbell Beaumont? Yes. You couldn't remember if you took up shares or not. On reflection I don't think I did. I know I was offered them, mostly because I didn't have the money. You are sure if you had shares you got rid of them before you became a member of the Price Tribunal? Yes, I certainly received no dividends from them and the company is still going. I put it to you that you didn't transfer your shares in Campbell Beaumont Ltd. until 15th January 1949 when you transferred them to Joan Diggie of Wellington, Private Secretary. That might have been the registered time, but I'm certain I didn't have any association - I certainly got no dividends neither do I think I ever paid for any shares - they were allotted to me but I don't think I ever took them up. They were allotted to you? Yes. You did transfer them? On the records they were - I can't remember the details. You wouldn't challenge the records of the Companies Office if they show they were transferred in January 1949. No, they were transferred. When did you become a Member of the Price Tribunal? I started at the beginning of 1948 - it was started in 1947. The other company with which you were connected was Amalgamated Commercial Traders? Yes. That company changed its name? Yes. What was its name before? Holloway & Co. Do you recollect about when that name was changed? No I can't. Would it be about 1950? It may be about then, yes. After I left the Price Tribunal. It had earlier another name? Yes, I took over another company. What was the name it originally had? I'm afraid I can't remember. Was it Services Trading Co. Ltd.? That's right, correct. Was Services Trading Co. Ltd. registered on or about 10th September 1947? That would be right. Were the shareholders Malcolm John Mason holding 1,000 shares, Denham J.A. von Sturmer holding 500 shares, P.N. Holloway holding 500 shares? Yes, the shares were never called up. In or about the month

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence  
No. 8

P.N. Holloway  
Cross-  
examination  
(continued)

of July 1950 did von Sturmer transfer his shares to you and Mason transferred 500 of his shares to you? Yes, I think that's right. Did you hold those shares - original shares between September 1947 and July 1950 after which time your shareholding increased? Yes, but the shares were never paid up and the company never operated. When do you say it began operation? It didn't begin its operations until it changed its name in 1950. Did you ever pay anything on your shares? I think about £10.

Is it true that you have given instructions to the department of Industries & Commerce that any statements to the Press should be issued to the Dominion newspaper before the Evening Post? That's entirely incorrect.

Returning to your files - remember yesterday you read part of a note on the file relating to what Mr. Freer had told the meeting with your department on 13th March? I can read what's on the file but I know nothing of the meeting, I wasn't there. These files are in your control? They are in the department yes. You read part of what he said? I read only a note alongside Freer's name. That was paragraph 4? I'm trying to find it. Note here is undated written in pencil and ink scribbled all over. Note which contains a statement what Freer said from Minister - that's right. Is that in a paragraph which has some number on it? No. About the fourth paragraph? No, below that. Fourth paragraph, then a line then various notes taken while talk was going on. Read the rest of those notes. "Freer - (in pencil) said Minister wanted small deal - first place." Then follows in ink - Minister suggested - officers to Prague. Judd underlined suggests export certificates. Licences to Judd for distribution - need to be in Government purchases. Exports pay for imports, importers involved inedible tallow - then one line I can't read - something and exports, danger of re-exports! Passage you couldn't read - Is it 21 Importers involved? It could be. Does next say "Danger of re-export"? Yes. What does next sentence say? Diversion of Danish or Dutch butter no advantage. 3. Problem of annoyance in trade if deal leaks and others want similar chance. 4. need for secrecy, 5. blackmail on all further exports". It's a comment of some officer. The two notes "problem of annoyance in trade if deal leaks ..... chance" and "need for secrecy" - what is your interpretation? I would say the departmental officer who made those notes was concerned that this type of negotiation if spread on a broad basis would be embarrassing to the Administration, and I agree with him.

The point we reached last night when we adjourned - memorandum of Mr. Atkinson's dated 18th June. The passage in that memorandum to which I would like to direct your attention is paragraph 5. Is this memorandum from Atkinson to you? Yes. Dated 18th June? Yes. What does paragraph 5 say "It was with intention of ..... forestalled". Was the position at this stage so far as you and your department were concerned, you were anxious to keep the proposed deal away from the knowledge of the public? No we were anxious that the proper interpretation should be given to the public if the deal were concluded. What was the need for secrecy? There was no need for secrecy once the deal had been concluded but this was a Government-Government arrangement at this stage and it is necessary when carrying out these undertakings that there be some degree of secrecy. It had ceased to be an arrangement with Judd? He was acting as agent for the Czechoslovakian Government. I always considered him in that position as a representative of the Czechoslovakian Government as we were informed by the Czechoslovakian Consul. Didn't you say all the Government would have to do was to provide the necessary

import licences? Yes, but that's Government acceptance of it. Apart from providing licences the Government would leave everything to Judd. It wouldn't work. Wasn't the need for secrecy this, that if it had got out that a deal was contemplated which would put Judd in a privileged position there might well be a public outcry? No, because there are other bilateral agreements the same thing could apply to. Once the decision had been made I would have been quite happy to stand up to any criticism. But if the news of the deal had leaked out in advance, then it might have been difficult to finalise it? Yes, that's quite correct, that applies to any arrangement when dealing with governments. Criticism might have been such that you couldn't have gone on and left Judd in sole charge? He was in sole charge on Czechoslovakia's part, not ours. We were in charge of the New Zealand parts. By we - the Government? Yes, and the Department. What responsibilities fell on the Government and the Department under the proposed deal? To see that the purchases were made, to see that the interests of New Zealand were taken into full account and not hurt and to see that our side of the deal was carried out. Why is it that you said to Atkinson in the memorandum of 27th February 1958 - remember that memorandum? Yes. The Minister "envisages this as possible arrangement .....where traders would carry through transaction, the only assistance from the Government would be the issue of licences ...." Yes. You say more assistance is required than that? No, that refers to the fact we do not buy and sell goods to the Government. Buying and selling is in the hands of traders, but such an arrangement as this which is a departure from multilateral trade, the Government must be involved in the same way as the British Government is engaged with Moscow at the present time. Why do you say "New Zealand Government does not enter into trade directly .....plan." That's right. but he is prepared to arrange and make certain exports take place and we receive certificates showing exports had taken place before any import licences were issued. It was for him to arrange that exports took place as well as imports. He was agent - buyer for the Czechoslovakian Government. Exporting involves co-operation from the seller as well as the buyer? Yes, that's right and the seller is not the Government. Wasn't the Government envisaging Judd was put into a position where he would deal with both sellers and buyers? That he was responsible for making arrangements - we are not a trading department and did not intend to become involved in that part of commercial life. He would be put in a position of considerable importance and influence. Of course, the same as any other person who had a similar type of agreement - he was already in importance as an agent of the Czechoslovakian Government. Can you tell us of other people in similar position as Judd? A chap who is doing a log deal with Japan - a textile merchant in Auckland. Snow Rainger. The amount he is sending is half a million oneway and a quarter of a million the other, and no one is objecting. The public know about it? Yes, the public have been told. Other traders were given the opportunity to apply for these? Yes, at least four are doing deals with Japan on the same basis. Any other traders given the opportunity to apply to privilege given to Judd? No privilege had been given to him at this stage. He wasn't going to have all the imports by any means. He was responsible for on this file is a list of all the agents in New Zealand who would have been considered for those licences. He was going to have all the glass licences? Yes, most likely, but the decision of that rested with the Customs, but in my opinion he should have got the glass licences

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence  
No. 8

P.N. Holloway  
Cross-  
examination  
(continued)

because he was the agent. 50,000 or more? Yes. He was put in this position of considerable importance and influence? By the Czechoslovakians, not by us. You were accepting what the Czechoslovakians said who would handle the whole thing. They nominated the y wanted Mr. Judd as their agent, it's not for us to tell them who they are having to act for them. I had thirty or forty men in my department watching them. All that is required from the Government is the issue of import licences. That's on the buying and selling of goods. A bilateral agreement involves Govern-  
ments and we had to come to an agreement first. He was to have sole charge of both export and importing side? No, no agreement was come to. You proposed to come to? Not at all, the letter you're quoting from was one of the first written. Subsequent to that there was a discussion on the detail and the proposal at the end was very different from the letter which you are quoting. When was it very different from the letter you are quoting. When was it changed? Gradually because of discussion between departmental officers. It must be remembered this was the first major proposal of this kind and involved a considerable amount of administrative discussion. This was the first time you had a major proposal of this sort? It was the first one suggested. Did you ever write to Judd telling him how we had changed our ideas? Judd was fully aware in conferences with my officers - we had many conferences with them. Any record on the file? We don't record everything said in conference - someone else might be able to verify that. Anything on the file to show the change of attitude from your attitude expressed in letter of 7th March 1958 when you said "I presume... ..plan". Yes, because the letter here which says plainly that imports would be through normal trade channels. Where is it? I couldn't find it. I haven't had time, I haven't had the file. Here is a note on the file signed on 10th June 1958 the third paragraph of which reads whole document - "Trade with Czechoslovakia ....." it goes on to outline the scheme to be used for the handling of imports - "Following the public announcement ..... for trouble" which we knew we would get "..... year". Date is 10th June, 1958. The document I referred to earlier would be March? Yes. In March there is a note on the file about the problem of annoyance in trade ....Yes. Was it because of that fear of criticism that Judd was being placed in a privileged position that there was some later modification? The modification was the outcome of discussions on administrative level to evolve the best and fairest system. You say this draft scheme you refer to is essentially different from the scheme originally referred to in correspondence with Judd? No, this is the scheme evolved after discussion with all parties. There was originally no detailed scheme - it was just a proposal. He was to handle all export and import side. All the Government had to do was to issue import licences. He was to handle the arrangements. Was this departed from in the June document? This was the first document we had got through actual administration of how licences would be issued. It was never envisaged Judd would get all the licences. I am asking whether you say the June document is inconsistent with or different from the basis of the original proposal with Judd, namely he should arrange all export and import side and all the Government need do is to issue licences. No it's additional - the letter you are quoting is merely a proposal - we were at the discussion stage then. Is it a proposal which is embodied in principle in the June memorandum? Yes. In other words there was no change in the basic proposal? No, because the first document did not go into details as I've already said. The question is, was the proposal that Judd was to have control of both import and export arrange-

10

20

30

40



ments and all the Government needed to do was to issue import licences - was that proposal the basis of the June draft? That's right because Judd was not acting as New Zealand agent but as agent for the Czechoslovakians. That proposal was in the June draft? Yes. And in the original letter to Judd? Yes, this is in addition. This is the administrative working out of proposals made in broad principle. As far as that basic proposal is concerned, there is no change? No, the proposal was to go ahead on the same basis, that we were to buy and they were to buy. Judd was to be in charge of import and export arrangements? Yes, but arrangements had been nearly completed - he had been responsible for a lot of these negotiations. Arrangements don't mean

10 he was to get all the licences and it was never claimed he was to get all the licences. All the glass licences? In my opinion he had a right to all the glass licences but it was the Customs Department who finally make decisions, not me. If there was no change in basic proposal, was the criticism that there would be annoyance in the trade if the deal leaks and others want similar chance, was that criticism equally applicable to the June draft as well as to proposals as originally set out in broad outline? We don't know because we had attempted to evolve a system which would be fair to everybody. That system, did it get over criticism mentioned in note I've just read? In the main. There would still have been criticism I can be sure of that. You feel if the contents of the June draft or proposed arrangements had been known in the trade and

20 the public there would have been annoyance in the trade? It doesn't matter what proposal you bring down there is bound to be annoyance from some of the trade because they want it themselves. Would others want a similar chance? Yes, and they would have got it. If they would have got similar chances, there was no reason why they should not know about it? We were in the process of negotiation at this stage - we would have made it public in the middle of negotiations. No Government Department could operate in that way. In memorandum of 18th June Atkinson refers to trying to forestall criticism by leaving any public announcement until completed? That's right. He actually said that a press statement should be made. The deal would be a foregone conclusion? That's right. It is the responsibility of the Government to do these

30 things, not to wait for criticism and then change their minds because of that. Any privilege conferred on Judd would be vested in him at that stage? No, there was no privilege conferred on him at this stage. He still had to make application to the Customs Department. You say in your opinion he was entitled to them? That is my personal opinion. The Customs would have arranged licences not me. The letter was never sent out - I just received it. I did not agree with the memorandum. I did not agree that the agreement should be concluded. Did Atkinson send you another memorandum on 25th July? At that stage what was the basis on which import licences for glass were being granted - up till 25th July? It was 75% of 1956 plus any excess licences that were available to ordinary importers. Excess licence for goods on the

40 water? That's right. Apart from those excess licences, the basis was all importers in 1956 were entitled to import up to 75%? Yes. On that basis what licence if any, would Judd have been entitled to? On that basis, none. Is it right that in June and July doubts began to be felt about this whole deal? I had the doubts mostly. Judd was of course concerned with all discussions going on at that time? I don't think he had any with me, he would have had them with the Department. He would realise the deal wasn't proceeding as smoothly as he had hoped? He would have realised it and would have been told the reason. If he was to be given a glass licence and he wasn't

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

entitled to any such licence on the basis then existing, of 75% of 1956 imports, it would be necessary to depart from that basis? That's right. If the deal - the bilateral deal, had fallen through, in order to get Judd a glass licence it would have been essential to depart from the hitherto accepted basis of 75%? If Judd was to obtain a licence from Customs Department there would have to be a change in basic principle. At this stage had the Glass Merchants' Federation and others been urging that the 75% of 1956 was not enough to meet the demand? Yes, that's right. Had you referred these representations to the Customs Department? Yes, by discussion between Atkinson and Dale, Controller of Customs. Did the Customs Department indicate if the case could be made out for glass, consideration would be given to increasing the percentage for regular importers? Yes, that was agreed by both Departments. As Judd was not entitled to a licence on the 1956 basis at all, that wouldn't have helped him? Yes, and other importers. It would have and other importers, not only Judd. If the matter was to be dealt with simply by increasing the 75% that couldn't have helped Judd? No, because the whole licence would have gone to people who already held them. They would get nearer to the amounts they were in fact importing in 1956? Yes. Judd wouldn't be entitled to a licence on that basis because he would be a newcomer? That's right. The attitude of the Customs Department was that established importers who had been cut down by control were entitled to get it? Yes, although that is not the whole story. They had a considerable pool from which they gave licences in cases where people were in business in 1957 but didn't qualify because of no imports in 1956 and imports in 1957. Refer to letter of 25th July 1958 from the Controller of Customs to the Secretary of your Department - Industries & Commerce file 20/12/57. Written for Controller of Customs to Secretary of Industries & Commerce. Reads letter "Import licensing glass New Zealand Paint & Wallpaper.....situation". That attitude and suggestion by Customs Department wouldn't have been any help to Judd? It could have been, it wouldn't normally but could have been because it says from normal and regular importers. By this time he was an established importer. Letter refers to increasing licences. That's right, in general allocations were on the basis of 75% of 1956? That's right. In 1956 Judd wasn't an importer at all? No he was in 1957. Unless the Customs Department were going to make some exception it would be necessary to change the basis of glass licensing for Judd to obtain a licence in 1958? Yes, and that was done. Early in July at a stage when bilateral agreement seemed to be meeting with difficulty did he suggest to your department a special licence should be given to him? Yes. I understand he made application to the Customs Department for one. Did you and your department assist him in getting that special licence by recommending that the basis of glass import licensing should be changed? My department recommended and I concurred that the basis should be changed because of two very good reasons, both Judd & Co. and another Auckland company who were not importers in 1956 both got licences because of that change of policy. Did this change in policy follow a memorandum written by Atkinson to you on 25th July? No not because of that particularly. Was it the start of it? It may have been. Discussions were taking place between the two departments - I didn't know what was taking place or when. All these matters took place much about the same time? Yes. The memorandum of 25th July is of some importance (Read) To Minister of Industries & Commerce "Trade deal with Czechoslovakia" - memorandum from Atkinson, to me with a copy to Controller of Customs

10

20

30

40

...“action” signed Atkinson. The suggestion there made following representations by Judd is that instead of full barter deal there should be licence for what is called “selected importers”? That’s right. He referred to talks in that memorandum. Mr Leicester said in opening there had been an unfortunate leakage in London? Yes. They had got to hear there was a proposed deal. They didn’t know the details of it. They actually thought it was far different from the one proposed. Who was the head of the New Zealand delegation or representative in London? Mr. Johnson, the present chairman of the Board of Trade. Mr Skinner was in London but not taking part in these discussions.

In the  
Supreme  
Court of  
New Zealand  
Plaintiff’s  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

10 COURT. What was Johnson’s position at that time? A member of the Board of Trade.

Mr. Skinner was available for consultation on matters of importance? Yes. When the Government sends some representatives to negotiate a trade agreement, do they have authority to settle the matter? No. They have to refer back? Yes. If any difficulty owing to leakage or otherwise occurs, would they refer that back to New Zealand or notify the Government in New Zealand? Yes. What are the channels through which that is done? By cable. To whom? To the External Affairs Department who channels all overseas correspondence. Who is the Minister in charge of that department? The Prime Minister. So news of this leakage and the attitude of the United Kingdom Government would be conveyed to New Zealand through the Prime Minister? He’d see it, yes. What did he think about the position on receiving this? He thought it was awkward and very difficult. Was that one of the reasons why it looked as though the barter deal might have to be abandoned? No that was the reason why I advocated and took the stand we should not proceed under any circumstances till we had concluded a satisfactory arrangement with the United Kingdom and Economic Committee of Cabinet agreed with my view. Was there any difference of opinion in the Government on this matter? No, none at all. The Prime Minister was as firm as anyone else in saying that the matter ought to be held up? No he didn’t attend the meeting when we discussed it, he accepted the recommendation of the Economic Committee. He thought it was awkward? Yes, he would do. Anybody else would do too. So Atkinson says, rightly I understand, the Government decided to withhold action pending finality in London? Yes. If action was to be withheld on the barter deal, if Judd was to have licence for glass, you then had to change the basis of 75% of 1956? No reason why Judd should have a special licence at that stage. No attempt was made to get him one on purpose. Didn’t your Department specifically recommend to Customs Department that Judd be granted a licence? Yes, they did, but not for the inference you’re trying to put on - for very different reasons altogether. For reasons that seemed good a recommendation was made to Customs Department that Judd be given a special licence? Yes, for reasons that were good, but not because he happened to be Judd. Wasn’t your suggestion in your evidence-in-chief that he spent a lot of time in connection with negotiations of this barter deal, and therefore he was a specially deserving case? That was my own interpretation but the recommendation on which he was given a licence was a recommendation from my department in which I concurred. You concurred in their recommendation? Yes. Is that recommendation set out in a letter dated 30th July 1958 to the Controller of Customs from Atkinson? It was set out in a letter, yes. In that letter, does this passage occur “It is recommended that rather than make a direct increase... the item be charged to “C” plus 75%”. Yes, amongst other things. “Which would

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

provide some elasticity as to source of supply .. In making ...The circumstances of H. Judd & Co. have been discussed and it is recommended ...£10,000". Was that the basis of the recommendation from your department to the Customs Department as a result of which Judd ultimately got a licence? Yes. The recommendation with which you agreed? Yes.

(Short adjournment)

You told us this morning that there were other people who had been put into the same sort of position as it was contemplated that Judd would be put in when the barter deal was proposed? Yes. You recollect in June 1958 receiving a French importer who approached you with a similar proposal? No, if you tell me the name I might tell you. Louis Dozci. I can vaguely remember someone coming along, not with a firm proposal but to discuss generally what could be done. You told him you weren't interested in barter agreements? I think this person wanted to have a barter agreement solely based on wool purchases, to a particular company in France. I think the Renaut Co. so that he could import back goods from Renaut & Co.. I told him we were not interested in any barter agreement based solely on wool. Did he say "What about Judd?" I can't remember what he said. Remember saying to him "I've never heard of Judd"? I certainly wouldn't say that, there would be no cause to. I might have said I was not going to discuss Judd's business with him. Czechoslovakia wasn't the only country Judd was interested in? At this stage it was. What about China? Not for a long time after. Wasn't there a Chinese trade delegation that came out? Yes, from Australia. Wasn't Judd given some official status by the Chinese as trade representative here? I understand along with twenty others - there are at least twenty firms who think they represent the Chinese trade. Didn't he replace some other merchant? I wouldn't say that. At least twenty firms consider themselves to be agents of Chinese. In Communist China. The reason is in China they might have six branches of the same organisation from six cities and trading in the same commodity. Each branch, it appears, happily appoints their own agents in any country without reference to other branches. When this Chinese Trade Delegation came out Judd was very interested? He visited the Department with them, yes. Did anything come of their proposal. No nothing at all. Why? Because we don't recognise the Chinese mainland Government and we couldn't enter into an agreement with the Government when we don't recognise it exists. The political problem made it impossible even to consider the trade possibility. The External Affairs would have a big say in a matter like that? It wasn't a question of them having a big say. We never gave it any consideration. Political relations with foreign states is an appropriate one? On political matters, certainly. They always referred to. Wasn't the reason why this Chinese agreement fell through a political one - the Chinese Government wasn't recognised? We never gave it any thought. For that reason? That was the paramount reason. We didn't consider any other reason, for that made it impossible. What did Nash think about it? He wasn't even consulted. There was nothing to consult him on. The issue was plain and open. There was no deal. As Head of External Affairs as well as Prime Minister, wasn't it appropriate that the matter should be referred to him? It was discussed with my department. Between the two departments rather than between Ministers? We got their point of view to confirm our own. What was theirs? The same as ours. But there is nothing to stop any individual company trading with China but no consideration could be given to any

negotiations that could be construed as an acceptance or recognition of the Chinese Government. That being the point of view of the External Affairs Department even if you had disagreed with it, you couldn't have gone against it? I could have taken it to Cabinet. You'd have had to try and persuade the Prime Minister to agree with you? If I wanted to, but I didn't want to. There was no question in my mind. You were quite content to concur in what External Affairs said? They concurred with what I thought. The Chinese had actually come into the country as a delegation? No, they had received a permit from the Labour Department before they could come in. It was known that they were coming for the purpose of suggesting some sort of trade negotiations? No, the only information we had was that they were coming on a trade survey as a follow on of visit they were paying to Australia. They must have been disappointed when it was rejected? They might have been but they also purchased a great deal of wool at following wool sale. If Judd was interested in their proposals he must have been disappointed when they fell through? Nothing to fall through, no proposal. Didn't they make proposal to you? Not to me. I never saw them. To appropriate Department. They went to Department to discuss trade and were told not possible because of situation. Of foreign affairs situation? No, because of position New Zealand was in. The situation as regards affairs or relationships between this country and China? That is reason why it couldn't even be discussed. You could well understand Judd being disappointed about that? I don't think so - I never saw him about it. I don't know what his reactions are. Go back to this licence - recommending on 30th July. If that recommendation was to be effective it was necessary to change from 75% basis to C plus 75%? Correct. Mr. Leicester described that as meaning some degree of flexibility? It gives that. Does it mean that importers can be selected in discretion of appropriate department? That elasticity can be given - we don't select importers but make provision if there are circumstances which warrant change from stable basic line. In recommendation of 30th July you do select Judd & Company as a specific importer which could be given a licence under this special category? Yes. That an instance of flexibility? Correct. Your recommendation was for £15,000? Yes. Recommendation of my Department. With which you agreed? Yes, I had very good reason for recommending it. Did he get as much as that? No. What did he get? A nominal licence for £10,000 which was further reduced to £7,000 by cancelling off an excess licence he previously had. Did Customs take view the recommendation received from your Department was generous? It must have, I don't know their reasons at all. I wasn't in discussion. They did cut down your recommendation? Yes. The licence that was in fact issued to Judd, was issued to him as result of you and your Department? Not of me but of my department in which I concurred. The initial inquiries in Mr. Judd's proposals starting back in February 1958, had been set on foot by you? No by Mr Judd, not by me. Judd and Freer first made their approach to you and you had a number of interviews? I had one interview and asked them to put their proposition in writing so it could be investigated. Then you told us more interviews? At odd times they came to see me. They wrote, typewritten, and on the same day that letter was confirmed - interview was confirmed you said to your department look into it? I think it's impossible for me to be in Auckland, seen Judd and Freer, to have arrived back in Wellington to see Atkinson for him to go back to his

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

Department and issue a memo all on same date. It's just a note of his interview with you? It has to be typed. How many paragraphs? Four. It's not impossible? No, but most unlikely because I very very rarely if ever come back from Auckland visit before night plane. Whatever date that was - the matter should be looked into urgently and immediately? Immediately. I don't know if I used word immediately - that's Atkinson's note not mine. You told us you underlined those words? Yes, to show they had been said. In accordance with your instructions to him? Yes, he was recording impressions of his interview with me. As you urged department to look into Judd's proposals immediately and as licence ultimately issued to him was issued because of a recommendation of your department with which you agreed, would you suggest it would be unreasonable of Judd to take the view that it was you who had fixed it for him? I think that would be most unreasonable because I never fixed anything. 10

On 31st July 1958 did you write a letter to a Wellington importer, in reply to a letter he had written to you inquiring about alleged preferential treatment of Judd? Who was importer? I think you've seen letter. Yes, but I'd like to be certain who. Hancock? I remember him. Did you say in this letter of 31st July 1958 "Your information regarding licences issued to Judd & Company Ltd. Auckland, is very much away from the facts. Judd & Co Ltd have small licences based on their importations of sheet glass in 1956, but these are very much smaller than the ones you mention". If it's in letter there and if it's a true copy, yes, I would have signed it. You've told us this morning that Judd was not an importer in 1956? Yes, that's right. He couldn't have received a small licence based on importation of sheet glass in 1956? No, I'd say a small error has been made but effect is just same, he had only received a very small licence, an excess licence and not based on 1956. You were in a position to know on what basis any licence he had received had been granted? I also sign about 50 - 60 letters a day, quite likely one would go through in which there is a small error. In all circumstances including fact that at the date when that letter was written your department had already recommended Judd get special licence for £15,000 that was a frank letter? I did not know at that stage the department had made that recommendation. I did not know till later. When did you know? Not till I was informed later on that Department had recommended a licence be issued - licence was not issued until August or September. In Atkinson's memo to you of 25th July he refers to Judd's proposal that selected importers be granted special licence? Yes but that proposal had nothing to do with application he made to Customs Department Auckland on which he received licence. Is that same application as one in respect of which your recommendation was made? I didn't make recommendation. The Department did. You agreed with it? Yes when they told me what they had done. Didn't Mr. Atkinson make recommendation on 25th July. In his memo to you on 25th July hadn't Atkinson referred to Judd's revised proposal under which selected importers such as Judd himself should get special licences but barter deal should be put off? Yes he did that no doubt but licence he got subsequently had nothing to do with that memo. It was for entirely different reasons. Did you discuss Atkinson's memo with him? No I don't remember. What view did you take? My view was it was unworkable. In fact a selected importer Judd did get a licence? But not for that reason. Along with McDermott and Duncan he got a licence for a very 20 30 40

different reason entirely - two licences issued other than the 90,000 which went to registered importers. Two special licences recommended by your department on 30th July and you agreed with that recommendation? Yes, but I didn't know about it till later. When Atkinson says in his letter to Customs the circumstances of Judd have been discussed is he referring to discussion with Minister? No, with Customs Department. He would hardly tell them he had discussed matter with them? Why not he was referring to fact that these had been discussed, normal phrase to use in a normal letter. Before you replied to letter such as that from Hancock which complains of preferential treatment for one importer, is it practice to look into it. Yes, my staff would look into it, his complaint was that Hancock wasn't getting licence, not that Judd was getting licence. He wanted to know why discrimination in favour of Judd? He wanted to know why he wasn't getting a big glass licence. The complaint was he wasn't getting a licence and he thought he should. He made reference to Judd & Co? Oh yes. Didn't you think it was of some importance if member of public wrote about it, that it should be looked into with reasonable care? It was looked into. You say it was carelessness that led .....It was a mistake which has no real significance. Whose mistake? I would say it was a mistake of someone who drafted letter - I have to take responsibility for. Any difficulty about finding out real state of affairs? Only fact that two men have to look into facts and draft 50 - 60 letters a day - they're very busy. Dont you think there should be some more reliable machinery by which members of public could have complaints like that looked into? Yes if taxpayers would pay their salary, I'd welcome it.

You told us there is dispute about figures given in Truth about importation of glass from Czechoslovakia? I think my counsel referred to matter, yes. Do you know or can you say from the file what was the figure for 1956 according to your record? I don't know, I think there is something on file. Yes, there is a table here. 1956 figures - £35,689 worth according to these figures. Is that all goods from Czechoslovakia? No sheet glass, common window and plate. How much of that is sheet glass? I don't know. It doesn't include any table glass? No.

COURT: What is table glass? Glassware.

What does that cover? Sheet glass common, window and plate. Where are those figures taken from? I couldn't tell you, it's report supplied by my department. Can you explain why in the Official Year Book the figures given for plate and sheet glass imports in 1956 from other countries, not specifically listed, is £4,000 whereas figure you have given is £35,000? No I have no idea, I don't print Year Book. I don't know where they get figures from - explanation could be, one set of figures is based on country of origin and other from country of dispatch lot of goods in Europe have been purchased traditionally through Holland, Belgium, and U.K. appear as exports of those countries whereas in fact they are re-exports. If that were explanation figure from country of origin might be exaggerated? I doubt it, I can't say where these figures come from. If explanation were uncertainties in country of origin any statement based on country of origin would be exaggerated statements? No that depends on which country it is, whether it's manufacturing country or one of trading countries, e.g. Holland's trade to great degree is made up of re-exports. It would benefit Holland may be but not necessarily benefit the

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

country from which he was buying to re-export.

There does seem to be some marked discrepancy between figures you've given based on departmental file and figures in Year Book? Yes, they do not correspond with figures we have in department from Czechoslovakia for that year. As far as members of public are concerned or press the Year Book is proper source of information? No there are other places, customs return. Year Book would be made up from Customs returns? Well I presume so, but I'm not certain where it comes from. There are different types of customs returns - as every importer knows they can become very complicated. Would you suggest any criticism of a newspaper that they base statement on information given in official Year Book? I'd say there would be an excuse for information if it were wrong.

10

You told us Freer has always been keen on trade with communist country - what is your own personal view about matter? I don't think western world can avoid trading with communist countries, politically we may not like it, but we rely on them to buy a considerable quantity of our produce and we can't ignore the fact that they do control a great deal of the earth's surface and of the population of the world, and it gives emphasis because a great deal of the prospective purchasing power because they are under-developed countries, are in the communist block and if exports are to increase New Zealand cannot ignore the possibility of markets in those countries. You think trade with communist countries is desirable thing? I think on balance we can't avoid accepting it. You are sympathetic to reasonable proposals from any source which will increase New Zealand trade. If proposal is made to you like Judd's - to increase trade with Czechoslovakia - prima facie that meets with your sympathy? It meets with desire from myself to have proper look at it to see if it is of advantage to New Zealand. Just the same as U.K. has a trade agreement with Czechoslovakia on same basis. You'd like to help such a proposal if reasonably possible? If of advantage to New Zealand. There are other schools of thought about it? Not many, it's generally accepted we must trade with them. Don't people take view there are dangers in trading with countries where labour is cheaper, working conditions are poor? If that applies it applies even more so to India, Hong Kong and Japan. Some people feel we have to be careful not to buy too much from countries to whom we do not sell. The reverse is the position in this case. Is there a certain amount of pressure from older established markets to stop the opening up of new markets? No, not really. Individual traders who see some of their own profits disappearing, they object. But it's conceded by both the United Kingdom and countries like Australia, Germany and France and to lesser degree by the United States that trade with these countries is not only necessary but in some instances, desirable, as a result of which the recent U.K. trade commission to Moscow has entered into a bi-lateral deal. You told us that one of reasons, most important reason your counsel said, why this particular barter deal was held up, was U.K. objection which came out in London following leak? No it wasn't put like that, it was the argument that the U.K. negotiators were putting to our people based on a misinterpretation of what was involved in this particular proposed agreement. According to Atkinson's memo of 25th July the difficulty was emphasis the U.K. have placed on non-discrimination? The U.K. there was thinking that this deal involved a proposal similar to the trade agreement entered into by Holland with Australia whereby preference was given to Australian motorcars at the expense of the U.K. and it was that type of

20

30

40



agreement they were a little bit wary about. The agreement you had in mind with Czechoslovakia capital equipment only should come in and New Zealand primary produce. Glass is not capital equipment - was it should be clearly additional to trade. That is one of difficulties obvious in file, which has caused us to hesitate, to prove was it or was it not addition. It wasn't confined to glass. In Judd's longer letter to you of 27th February 1958 he refers to tractors of crawler type. A lot of goods of that kind were included? Yes, but we wouldn't agree to that. Is it position because of possible international difficulties and embarrassment you can't always make trading arrangements you'd like to? Certainly it's very difficult for us to evolve a system where we can marry our trading system to the trading systems of communist countries where we have a different set of proposals altogether. Insofar as there are difficulties, because of attitude of other countries, that would be a matter within the cognisance and sphere of Prime Minister? No, primarily - he as Prime Minister he would have to agree, but the negotiation of these types of agreements is the responsibility of Industries & Commerce Department. But if some objection from United States, United Kingdom or some other Commonwealth country to proposed agreement? It would go through Prime Minister's office because method of communication between countries for messages through cable is always through External Affairs Department. They have the cable room and they operate the various sales. Trade relations with U.K. are very important? Most important of all. We send senior Ministers - Skinner for instance, to negotiate our deals with U.K? No he went to negotiate agreement on butter dumping not revision of Ottawa agreement. He was in London when Ottawa agreement was revised? He was there first month or so but they were discussed over four or five months. If another Government such as U.K. disapproved of some agreement which you were negotiating with Iron Curtain country that is very sort of matter which is sufficiently important to call for consultation with Prime Minister? Not on all occasions no, sometimes it can be done by cable, sometimes by High Commissioner in New Zealand, speaking to Prime Minister or he may on some occasions as he has done, come and see myself, or sometimes U.K. Trade Commissioner who would either see me or my Department and they would lodge letter or state their reasons. Depending on circumstances? Yes, and on particular case.

You told us you would welcome facilities for dealing with complaints and inquiries of members of public rather more efficiently than can be done under present system if taxpayer would foot the bill? Yes, all it means is more staff. Bit hesitant to incur extra expenses, Government is hesitant to incur any extra expense when it involves extra taxation. Fiscal measures? Yes, that's right. In the absence of more efficient system in Government itself, members of public who have complaints about such things have to approach sources such as press? No, the public has got entrée into my department and offices at all times. You say they haven't time to look into things? I was referring to my own office. My department has never refused to see people who wish to see them. The difficulty was time. You were referring at that time to a letter written to my office. Whether complaint or inquiry about this man... Yes to see if he could get licence for himself.

COURT: The point is it was addressed to the Minister? Yes.

If there is serious allegation, it should be put to the Minister isn't it appropriate? Yes, if it's serious. Don't you regard a complaint of discrimination? No because it

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination.  
(continued)

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

was not based on discrimination but on desire to get something for himself. Is there an institution in this country not subject to political control to which a member of the public could go with a complaint about such a matter as import licences and have it fully and impartially and independently investigated? If the Chamber of Commerce is not political they could go there. The Chamber of Commerce is not a body which has any public authority? No but we would have to take a lot of regard for representations made by a representative body such as Chamber. Have they any facilities for conducting inquiries into alleged irregularities in connection with import licences? They have weight of commercial community behind them and they could make representations to either myself or to my department and we would have to take notice of them. Best they could do was to make representations to you? Yes but we would give them full facility and full reason as to why things had been done. Give them full facilities for inquiry into Judd case? No necessity for it. Who is to be judge of that? I think Government might be. Is there to be no control apart from political. House of Parliament is responsible body, not newspaper or Chamber of Commerce but elected representatives in Parliament. Courts of law might have some jurisdiction in matters concerning import licence? Matters that are referred to them, yes. Is there any way in which a member of the public can get such matters investigated with a view to court proceedings if necessary other than through political channels? Yes they can go to a department, they are not political. Any Government Department not under control of Minister of Crown? No but I think it would be most unfair to suggest civil servants carry out their duties with a political intent or purpose and otherwise then as administrator. I'm not making any allegations against civil servants, what I'm suggesting is we haven't got in this country an office like office of director of public prosecutions in England which is completely independent of political control and has the facilities for conducting thorough inquiries into suggested irregularity with import licence procedure? I think it would be fair to say Justice Department which fulfils the same purpose it could not be said they are subject to political control. There is Minister of Justice but Department carries out its work with full sense of responsibility. Is it one of the functions of a department of Justice to investigate and sift and inquire into statements of alleged irregularity with import licences? No. There is no independent body in New Zealand to which members of the public may go - body not under control of Minister? I don't know of any other country where that exists either, even in U.K. before an inquiry can be made it has to be authorised by Home Secretary. For what sort? For any sort of inquiry. Are you quite sure about that? Yes. What I'm suggesting to you is member of public in New Zealand today suspecting irregularity in matter such as import licence is powerless to investigate it himself - only get matter adequately investigated by going to a newspaper that's not afraid to speak out? No. I wouldn't agree with that at all. Yet you and your Government are not even prepared to set up an inquiry into Freer - Judd case? I didn't say that at all. I can't speak for the Government. I suppose you gave some inkling of what's in Government's mind? I haven't any inkling - subject has not been discussed at Government level. You said between individual members? Yes. You yourself hadn't even considered setting up inquiry? No because nothing to inquire into. If you Minister who is responsible for Department concerned, adopts attitude there's nothing to inquire into what is member of public to do? They did it in this case before they even inquired. They twice put to Mr Nash a list of questions about Freer - Judd case and not a single answer did he make? Yes, because most of them involved Freer's private life, he was out

of country and it would have been impossible or improper to try and answer before they heard other man's point of view. Could not Nash have said that? I'm not saying why he did or didn't say that. Are you saying only good reason is Freer is out of country? That's one very good reason. What is other? Nothing to inquire into. Applicant for a licence may obtain commission for a Member of Parliament? I'm not suggesting that at all. You as Minister of Commerce say it's not worth inquiring about? If I know licence was never issued and not possible for any commission to be paid. The Government cannot put itself into position of having to hold an inquiry to find out whether the wild statement is justified. Whether wild statement or not, this was circulated in political circles before it appeared in Truth? I never saw it, first I heard of it was a statement had been circulated in Auckland, unsigned, undated nothing on it whatsoever to say where it came from or who made it up.

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

COURT: What do you mean by statement? I wasn't specifically referring to the Jolson statement.

Your point about that is - I don't know if it is the Jolson statement. I've never heard it called that. You told us you had heard Jolson associated with it? Yes, but if inference is this statement was prepared by him it's first I've ever heard of it. He is connected with it in some way? So you told me. You had heard? You told me here. You know who Mr Jolson is? I do now. Would be an easy matter to approach him about it? It's not my responsibility. Whose responsibility is it? It's not mine, I'm only here involved in an action against Truth and only responsible directly for administration of my department which is not involved in looking into statements made by other people. Do you not agree that the real purpose of this action is to turn the Judd - Freer case into a case against Truth and to obscure the real issues which relate to whether Judd paid a commission on an import licence? No I don't because to agree to that would be to accept position that I'm a political guinea pig which I don't intend to. I'd say the reverse is the case. It has been attempt of counsel of Truth to turn this case from one against Truth to an investigation of alleged dealings between Freer - Judd. May I accept your statement you're not a guinea pig - not interested in guineas? That's right. (Withdrawn)

What is your full name? Philip North Holloway. Under the name of Philip North did you write a political column in Standard between 1952 - 1954? Yes. These examples of the type of article which you wrote - headlined "Cheap imports from Japan - a Minister's Strange Performance" controversy between yourself and Watts, Minister of Industries & Commerce. An article headed "Deliberate Falsehoods by National Party". An article about Mr. Sheat, Member of Parliament, in which you said "Mr Sheat has by his attempt to usurp Mr Corbett, made a move that is not only unschoolish but definitely not done in any circle even in the National Party. Most people naturally put his action down to what could be expected from a man with his history". Article on Board of Trade "An escape route for Ministers". Article saying the Government has been playing put and take with people of Nelson. Article called "Price Tribunal double talk". Another one called "Communist - Tory Alliance". Another one headed "Nationalists' policy is incentive to low morals". Another one headed "Naughty temper Mr O'Shea". Another headed "Government permits incentive to crime". Another "Mr Watts shows insincerity". An article accusing police of giving false evidence to police commission. An article headed "Sex Debauchery". An article accusing Mr. Algie of having different grades of truth depending on whom he was talking to - those are all your work?

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Cross-  
examination  
(continued)

Well I don't take responsibility for all the headlines, they would be selected, most likely by editor. That wouldn't be unfair example? They might have been some, they were widely read and generally of interest to most people in political circles. Is it true as stated in your solicitor's letter to Truth on 6th April the article you complained of is ruinous to your career as Minister of Crown? I believe that it could be. Has it affected you one iota so far? Yes, in attitude of a lot of people towards me. What has their attitude become? One of doubt as to whether I will carry out my job and responsibility fairly and in the interests of New Zealand. You know the inquiry referred to - Stanley inquiry? Yes. Mr. Belcher who was concerned in that inquiry, did he have any department under his control? Yes he had part of the Board of Trade. Under his sole control? No not under sole control. Was he not subject to control of Minister? Yes but with very large amount of work Board undertakes much of work was his own responsibility. That's inevitable in any large Department? Yes, particularly in U.K. Responsible Minister can't do everything himself? That's right. There were people of great prominence involved in Stanley's inquiry? Yes. Mr. Dalton who had been Chancellor of Exchequer? That's right. There was Sir Frank Soskice who was Solicitor General? I'll take your word for it. So far as those more prominent people were concerned, they were completely cleared weren't they? That's right.

10

Wouldn't you welcome an inquiry to have whole Freer - Judd case cleared up and truth brought to light? I'm not concerned with Freer - Judd case in this action. Would you suggest the Truth article had brought you into hatred ridicule or contempt? In a lot of cases, yes. You feel you are so regarded by the public today? One or the other by a lot of people. If that is so, mightn't it be due to your own fault in not pressing for an inquiry? No. Once statements are made like they were in Truth it doesn't matter what happens afterwards, it sticks. What statement are you thinking of? The reference to fact that I'll fix things. Immediate reference in context where it compares me to Belcher - whole context, of article. You feel comparison is between you and Belcher? Yes. Not between Belcher and Freer? No. You mean that seriously? I wouldn't say it otherwise. You've told us you consulted your solicitor on 4th April - day after he returned from Australia. At some earlier date that week Mr Nash had made a statement to effect that legal action is pending, it wouldn't be proper for him to make comment? I'm not sure of exact statement he made. That was substance of it? Something like that. He made it clear legal action was pending or contemplated? That's right. After he had said that publicly, your pretty well had to go on with it didn't you? I had had legal advice other than from my own solicitor - from a colleague of mine. In the Government? I had asked him. (Delicate ground)

20

30

Who thought of claiming £15,000? I did. You're an experienced journalist? I've had a little, I wouldn't call myself experienced.

(Adjourned until 2.15 p.m.)

Did I understand you to tell us real reason why the Government hasn't had inquiry into Freer case or made any public statement explaining it is due to fact it's not known what Freer has to say about it? I'm not in position to state on behalf of Government anything. My own opinion is it's impossible to make statement until he is back. Till then you don't know his side of story? That's right.

40

Isn't it a fact when Mr Skinner was in London he saw Freer, about the allegation and on his return to New Zealand announced in press he was reporting to Nash what Freer said? That's right he saw Freer on allegations made in first article.

RE-EXAMINED: Was allegation made in first article as far as you can say, an allegation that Freer had received £2,200 commission on licence issued to Judd for £44,000? No I don't think that was in first article. As far as you can recollect first article published on 27th January deals with Freer's departure from New Zealand and leaving certain creditors? That's correct. Counsel asked whether you thought a person with grievance in regard to issue of import licence had a right to take that to newspaper. He asked you that? Correct. Assuming an individual with a grievance went to Truth with complaint about Judd licence do you know of any evidence on which Truth could make the statement that a commission was paid on a £44,000 licence issued in name of Judd? None whatsoever. When the bilateral agreement was first suggested by Judd, the amount was £500,000? Correct. When it reached consideration by Cabinet in April the amount had been reduced to £350,000? That's right. Was that - or was it not the result of investigations and discussions in your department? That's correct. In the suggested £500,000 bilateral deal, there were listed a number of articles as representing possible purchases by New Zealand from Czechoslovakia? Yes. In first instance were they suggested by Judd? They were result of a number of suggestions by Judd reduced, after discussion by my Department. Can you tell us whether or not a number of articles suggested by Judd were considerably cut down or eliminated from list? Yes quite a lot. Give idea to what extent in money? In some cases they were eliminated entirely. Aggregate figure? 'Cut by £150,000 from £500,00 to £350,000.

In first of articles published by Truth a number of questions were put to Nash? Correct. You told us that you considered it not your province to set up any inquiry? That's right. In regard to second article where a great many more questions were posed have you any different opinion? None at all, the questions were still asked of Prime Minister not me. You told us whether any reference to yourself in any earlier article? None at all. Article subject of this libel action was published on 24th March? Correct. Did Holyoake make a public statement about it on 1st April? Yes, he did. Can you tell us whether or not in that public statement he drew an inference unfavourable to your own integrity? Yes he said this article involved the integrity of the Government and of the Ministers concerned. Did Nash on or about the same date also make public statement as to whether or not he would deal with allegations? Yes, directly afterwards. Did he suggest he had been informed that legal proceedings were being taken in connection with articles? That's what he was told. By you? By me, yes. You had made up your mind about that before your present counsel returned from Australia? That's correct. You saw him on 4th April which was a Saturday? That's right. We know the first letter to Truth was written on the Monday? Correct. Did you consider at that stage it was a matter for you to set up an inquiry or to vindicate your character in Court? I felt I had to vindicate my character in Court.

You have been asked about a number of articles which you wrote while on staff of Standard? I wrote the articles, I wasn't on staff of paper. You contributed to paper? Yes. What is practice in such articles in journalistic circles - about headings? I send the article in, the editor selects the headings.

Questions put to you about your department's recommendation of this licence of £15,000 of Mr. Judd which you told us he received in August or September approved by your department?

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Re-examination

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 8  
P.N. Holloway  
Re-examination  
(continued)

That's right. You told us it was cut down to £10,000 by Customs Department? That's correct. The question was put to you this morning didn't Customs Department think it too big a licence to issue - remember? Yes. Do you remember whether or not at the same time your department had recommended to McDermott & Duncan a licence for £10,000 for Japanese glass? Yes, on same level. Can you tell us if it was cut down or approved for full amount? Also cut down. To what figure? To £5,000 Was it at or about same time your department approved a 10% increase on the 75% that glass traders were entitled to on their 1956 allocations amounting in all to £90,000? That is correct, at the same time. About the same time as Judd got his licence? At the same time as recommendation.

10

You were asked whether or not these communist countries had poor working conditions and you replied that we imported from Hong Kong, India and Japan? That's right. Are any of those communist countries? No, none of them. What do you say about working conditions there? I suppose worst working conditions in the world are in Hong Kong which is Crown Colony, Indian working conditions are very poor, Japan is not nearly as good as us but is better than either U.K. or India. You mentioned U.K. had recently entered into a deal with Russia - what is amount? It is aimed at increasing trade between U.K. and Soviet Union by over 50 million pounds in next twelve months. You were questioned as to whether a discrepancy between trade figures shown on your file of imports of glass from Czechoslovakia in 1956 at £35,000 and figures shown in year book as imports from other countries, something like £4,000? Yes. Would other countries include Czechoslovakia? Yes. Whether you select one statement or other what do you say as to statement in Truth in this particular article, second column bottom - "official trade figures show no glass at all"... They couldn't take that from figures in year book or from the others.

20

My friend Mr. Cooke put a letter to you in reply to a Mr Hancock. Have you the letter there - read the whole letter to us (EXHIBIT D) 31st July 1958. Would you tell us first whether you or your department get a number of letters of that type? Yes a lot. At time that letter was written, 31st July, the only licences Judd had was one for £3,000 excess licence? Correct. It is therein described in your letter as a licence for 1956 - a small licence? Yes, incorrect. Other than that error is there anything in letter you would wish to retract? No, nothing at all. It was suggested when letter was written you should have pointed out your department had approved a licence of £15,000 to Mr. Judd? I most certainly disagree with that because we had not approved. My department had made recommendation but it was by no means certain that a licence would be issued. Can you recall whether Hancock in his letter dealt with licence actually issued to Judd or likely to be issued to him? Licence actually issued.

30

It was put to you, that you personally had some ulterior motive in bringing this case to trial before Mr Freer arrived back in New Zealand- do you agree? I completely disagree with it. From the time the writ was issued which I think was 27th April, or thereabout what was your attitude in trying to get case on for trial? I wanted to get it on as soon as possible to make certain this case was finished before House re-assembled. If case had been adjourned to next session would you have been in difficulty? I might not have even received a pair in the House. By pair you mean a licence under certain conditions to have substitute in your place? It means one of opposition do not go into lobby and vote while I am absent. If you had been unable to obtain that concession your vote would have been lost to House? Yes. That might have been awkward for everyone? Very awkward, for half House anyway.

40

Mr. Cooke put document to you yesterday that was presumably filed in Company's Office in March 1958 and showed you as a director of existing Company? That's right. Return by Secretary of Company as to the directors? That's right. As result of further consideration do you know now whether return relates to position of directors as in March 1958 or some earlier date? No this document is document required under Companies Act 1955 whereby every private limited Company was required to register its directors immediately following 1st January 1957 the directors to be shown as at that date. The document shows you as director as at 1st January 1957? Correct. That was before you became a Minister of Crown? Nearly 12 months before. Have you also since questioned on this matter given any thought to what actual date of your resignation was to Company? Yes I resigned actually from Company on 10th December, 1957. Do you know whether or not there is record of that fact in Companies Office Wellington? Yes they have that fact recorded, immediately I notified the Secretary of my resignation following Xmas vacation he took necessary steps to have (objection by Counsel). Do you know if that particular information was supplied to Truth's solicitors before the case? Yes it was.

In regard to this question of setting up an inquiry into the relations between Freer and Judd, and whether or not Freer received commission on any licence you told us that was a matter for Government? That's right. Would you agree that the question as to whether or not Freer had behaved discredibly in regard to his creditors .....(Leading question).

What have you got to say in relation to a possible inquiry into the question regarding the alleged discreditable nature of Freer's financial transactions? I think that's a matter purely for Mr. Freer and his creditors. Do you know whether or not it would be considered a proper matter to set up a public inquiry? No I do not consider it a proper matter. Do you know of any reason why if such a position exists the creditors couldn't adequately deal with it on equal terms? No they have recourse to law same as any other creditors have. What is your view generally as to whether there should be an inquiry into any of Freer's activities during his absence? I think it would be most improper.

You were questioned at length with regard to allegation that you had offered or prepared to offer yourself as a candidate for National Party? Yes. You told us you had made a statement in House in 1955? That's correct. Was that question raised at any of elections at which you offered yourself as candidate? It was raised in 1946, 1951, 1954 and 1957. How did your explanation compare on those occasions with any explanation you made in Court? Just the same.

The late Mr. Rugby Malcolm was land agent? Correct. Silent or talkative? Well, he was a land agent. When he asked you to address a meeting it was in Hutt? No, Otaki electorate. Did you know at outset that he had in mind some National meeting? No, not at the outset. Did you ascertain the position before you had actually taken the meeting? I found out from him. It was suggested you didn't tum up? Mr. Malcolm was talkative, but extremely warmhearted man, I told him my position, embarrassment he put me in and informed him I could not fulfil the engagement. You were given portfolio of Minister on your second term of office? Correct.

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence  
No. 8

P.N. Holloway  
Re-examination  
(continued)

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence

No. 8  
P.N. Holloway  
Re-examination  
(continued)

You were then 40 years old? Yes. Do you know whether or not the Government was aware of this suggestion put forward by my friend prior to being Minister? Not only Government, but every member of Government party, and House and National executive of the Labour Party. Was it possible or impossible at this time that it was suggested you to propose yourself as National party for you to do so? No, I couldn't, I was a member of Labour party.

Question - Secretary and shareholder of last Company you were associated with Amalgamated Traders was Mason? That's right. You told us on becoming Minister you handed your shares over to him? That's right. You also told us the Company had really folded as far as business was concerned? Yes it had to be-  
cause it had no import licence entitlement. That was a Company you had been  
associated with for some time? Six years. That Company couldn't get sufficient  
licences to carry on? That's right. My friend made the point that Mason had been  
made a member of some licensing commission? Yes. Industries Licensing Com-  
mission. In 1947? 1958, confirmed in 1959. More than a year ago? Firstly, yes.  
Has that Commission done any work yet? It hasn't sat for a day in last 18 months.  
He is only paid on a daily basis. Have there been many matters that could be  
brought before that commission? No, only one, it's a relic of old Licensing Act  
and only industry from which matters are referred, are paper industry and they've  
had no application to my knowledge for last 3 years. Paua shell industry - that  
come before it? That would. You told us you first met Judd when you came back  
from England in 1939? Yes, he was on same vessel as I was. You hadn't known  
him prior to that time? No. Before you got to New Zealand it was Harry and Phil?  
On ship yes. You met him a couple of times in Wellington 1940? 1940 or 41, just  
in street casually. Did you tell us it wasn't till 1957, some 16 years later that you  
saw him again? 1958. We know from correspondence he wrote to you on 4th February  
1958? Yes. We know that in that letter he speaks of being introduced to you by  
Freer some weeks before? Yes. Do you know whether prior to that time he was  
known to London office of External Affairs Department - of Industries & Commerce?  
Yes he called on office in 1957 with proposal for this type of arrangement after he  
came back from Prague. He had advanced this bilateral agreement idea before you  
ever met him? Yes.

Some comment was made in regard to Mr. Atkinson's memo. I think, of 7th March  
1958 suggesting you discuss bilateral agreement project with Minister of Customs?  
Yes. Atkinson was head of department at time? Yes. You had already had some  
discussion with Mr Boord about proposal? Yes, before that. Also that it was the  
first major proposal at the time the Government had considered? Yes. Is it usual  
or unusual thing for head of department to make suggestions to see some other Min-  
ister? Quite usual. How does the Minister to whom memo. is addressed decide  
whether or not he should see the other Minister and when? It depends on how well  
informed he has kept the other Minister on that particular project. Had bilateral  
agreement proposals reached stage where Minister of Customs could exercise his  
administrative function? No, not at all. You told us it was not till June that actual  
proceedings were laid down? That's right. You were questioned about some note  
made on behalf of a firm called Prevost & Co. of Auckland suggesting Judd had  
jumped the gun? I think it was their Wellington office. Is this firm a firm of very  
large woolbuyers? Yes, one of the largest buyers in New Zealand. Had bilateral  
agreement been signed, can you tell us if there was any possibility of Judd getting



licence in regard to wool? No he couldn't, it would have had to be purchased at auction in usual way. If wool was additional to ordinary purchases, would Prevost & Co., have suffered from agreement. No they would have gained.

COURT: Why? Because they are buyers. They would be able to buy more wool? That's right.

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 8

P.N. Holloway  
Re-examination

(continued)

You've read already, your minute or memo. to Cabinet of 18th April in which you make certain suggestions to Cabinet in regard to bilateral agreement? Yes. Although the memo is signed by you was it drawn by you or department? By my department. It resulted in the cabinet approving these bilateral dealings? Yes. If you had wished to confer some early benefit on Judd can you tell us whether or not it would have been proper for you to have completed bilateral agreement? Yes, in terms of details arrangements arrived at in June between my department and Customs Department. At that point if I had signed the letter sent to me for signature instead of refusing to sign it he would immediately have got the licence it was claimed he did receive but didn't receive.

On this question of bilateral agreement some point was made about Freer's interest in promotion of this one? Correct. Have there been others interested in promoting such agreements with other communist countries? Yes, at least three or four still being investigated. One proposed with Yugoslavia? Yes, that's one of them. Who is promoting interest? Hon. E. Halstead, who was Minister of Industries & Commerce before I took over. That has not been finalised? No. This question was put to you - is it not fact you had given instructions to your department that in any releases Dominion was to be preferred to Evening Post? That's quite ridiculous. Can you tell us whether or not Dominion paper is marked for its labour leaning? No I'd say the reverse. My friend put it to you when you were considering approval of licence to Judd for £15,000 there were a number of others who would be interested in obtaining such a licence? Yes. You've told us in your view he was entitled to glass licence? Yes. Was that view of Czech people concerned? Yes they were even more firm. In regard to traders - glass ring in New Zealand - would they have been interested in bringing cheaper Czech glass into New Zealand? No. You told us there were two specific reasons why you approved the licence to Judd? Yes first one was because of the irritation that had been caused in Czech officials that could have seriously restricted their buying at the wool sales last year and the need to make some gesture of goodwill towards them that we weren't repeating what happened Czechoslovakia two years previously when an agreement that was half entered into was not completed by New Zealand. Second that by granting the licence to both Judd and McDermott and Duncan we were allowing imports of glass considerably cheaper than supplied by ring in which methods we could test ring price and attempt to force reduction right throughout whole deal. Is that matter of great importance? Most extreme importance because ring price and ring tendering of glass merchants and glaziers was most restrictive and was we felt keeping building costs high. You told my friend in order to approve that licence some change had to be made to existing licensing regulations? That's right. Would that position bring you within the C class consideration? Yes, it turns provision from basic allocation to one of a basic allocation plus provision under heading of control. Apart from two reasons you've given us, the gesture to Czechs and bring down of prices do you consider Judd had any merit himself? Yes, there were some merits, he had been importer

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 8

P.N. Holloway  
Re-examination

(continued)

in 1957 and we do make provision right throughout import schedule for those people who have no basic entitlement based on 1956 but who have invested money during 1957 and we feel they have a right at least to be able to continue in business and not lose their investments. You referred to correspondence between your solicitors and Truth's solicitors in which Truth had declined to apologize or retract from what is put forward as libel case? Yes. Can you tell us from that time any apology or retraction has been tendered? None whatsoever.

No. 9

Plaintiff's  
Evidence

No.9

L.A. Atkinson  
Examination.

LEONARD ALLAN ATKINSON:

I reside in Wellington, public servant. I have been in New Zealand Public Service 35 years; at an earlier stage in my career I was one of a small group of Public servants selected to undertake a special course in public administration. As a result of that course I hold diploma of public administration. My present appointment is Chairman of Public Service Commission. That is one of top administrative appointments in Public Service. A little time ago I was Acting Head of Department of Industries and Commerce. I acted from 1st August 1957 till 9th September, 1958. During that period I was officer in charge of Department of Industries and Commerce. From December 1957 throughout my period as Acting Head Mr. Holloway was my Minister. I know that the article in question in this case and evidence that has come out in this case deals with licences for the importation of 20 sheet glass from Czechoslovakia and also to trade arrangements with Czechoslovakia. In general terms the significance of those two matters - the glass and trade arrangements with Czechoslovakia from Departmental point of view - I think largely the evidence I could give has been given already from files because I think files were reasonably documented; however two parallel concerns of Department, one was the purely glass import issue which culminated in the representations from Federation as to increasing shortage of sheet glass and some extra provision would have to be made. The other major issue was proposed deal of bilateral nature with Czechoslovakia featuring in that of course, one item they offered us and which was of interest to us was sheet glass. The Czech deal went through the vicissitudes 30 that have already been explained in this court. The position at the time when deal began to be considered with regard to New Zealand export markets for primary produce, we were greatly concerned at outflow of our overseas funds and very low ebb they had reached. A matter of grave concern and every possible step had to be taken and taken urgently to remedy position. Our reserves were at a dangerously low level. As a result the full scale import licensing which we imposed from 1st January, 1958 - action to try and stop the flow from our overseas funds, on the other hand the Government and Department took every possible step they could to find us ways and means of increasing inflow of our overseas funds by exploring all possible potential markets for our produce, either to sell more or 40 get higher price, and Czechoslovakia was considered from that attitude. Dairy products including butter and wool must be two of our major export licences. The low prices we have spoken of at the time were in our traditional markets - overseas. As far as dairy produce was concerned, as far as wool was concerned, that sold on world market and was common low price. The position about sheet glass prices in New Zealand at the time from ordinary sources, New Zealand has

imported its glass from limited number of sources for very many years. It has been imported almost entirely through what is known as ring - United Kingdom and Belgium substantially. In fact pre-war I believe Czechoslovakia were also in ring. The offer of glass from Czechoslovakia at prices that have been mentioned and other offer from firm who has access to supply from Japan was at this time when shortage arose, extremely interesting to us because it gave us a chance to test ring prices and to try and obtain more glass for same amount of money. If we could get glass at a lower price we could get more glass for same amount of money. It appeared to the Department there could be a correlation of two objectives, one relating to glass the other to primary products. The Department tends to react to an approach made along those lines in the beginning of 1958 - we were certainly interested because economic conditions certainly dictated we should try and get more imports at cheapest possible prices so we could get more imports for same amount of overseas funds.

The evidence has shown matter first came to my attention in February 1958, when some correspondence was sent to me by the Minister. The files are at hand. There was correspondence referred to me on 27th February 1958 by the Minister. It appears that that correspondence has a minute on it written by me of same date 27th February. I saw the Minister, came back and dictated note to one of my staff. There has been a question raised about the time of these minutes. The letter from Judd & Company is dated 27th February and my minute appears to be written on the same day. I cannot help as to that coincidence of dates - only additional information I can see here slightly relevant, is the officer I immediately minuted this to, put note on - his minute was dated 3rd March a few days later. The correspondence in question contained preliminary proposals for this apparently desirable trade-dealing. It was the Minister's request to put it in more specific terms that brought forth this letter. From my experience with the Service, when a Minister receives written proposals which may be of some interest, and wants them investigated, it is usual for him to pass them to his Department straight away - quite usual. Action of that kind could not be taken in Minister's own office - not on deal like that. Need to refer to Department straight away. Looks at written minute - "urgent and immediate". Reads minute "Bilateral trade..... report". I used word immediately. That went to Mr. Gray, who is referred to, for action. He would have - he was officer immediately under me who would undertake this work in one of his sections in the Department. In fact he sent it on to the head of that section straight away. That section would be initially trade relations section of Industries and Commerce. The letter of 27th February contains statement that proposals are made by Judd as agent of Czechoslovakian Consulate and refers to willingness of the Czechoslovakian Government to enter into an agreement - First relevant section reads "This proposal is submitted ....." Evidence has been given that following receipt of that letter in the Department some inquiries were made to check on Judd's statement. I recollect them very clearly. It seemed a little strange in the first place and outside traditional approaches of one Government to the other for trader to come along and say he represented the Government. I was concerned, having been in Customs Department many years before, so I deliberately said to staff "Check with the Consulate and find out what status Judd has in this matter". They did so. From that inquiry it was established we could conduct negotiations with Judd as he was

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No.9  
L. A. Atkinson  
Examination  
(continued)

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No. 9

L.A. Atkinson  
examination  
(continued)

representing Czechoslovakian Government. The study made of the proposals by the Department resulted in a Departmental memorandum dated 6th March 1958 - that was first report to Minister. That report would have been drafted initially on trade relations section, discussed with Gray who was responsible to me for this type of work, finally discussed with myself by Gray before I would sign it or alter it and send it on. There would be a fair amount of consideration in content of report before it went over. I would have signed it personally myself - I did. The file doesn't show any amendments made before sending it on - only original copy. The general recommendation of the Department as set out in that memorandum. This sort of deal had a lot of difficulties, something New Zealand was not experienced in. At the same time we could not ignore approaches of this nature if they had benefit to New Zealand and we should carry on with negotiations and try and see if we could work out a deal which would be of advantage to New Zealand. Attached to memorandum and referred to in it was a draft letter reply for Minister to send off to Judd. That was also prepared in the Department. That reply was actually despatched shortly after - within a day anyway. It invited Mr. Judd to - final words were "I would suggest therefore you now get in touch with Secretary of Industries and Commerce to reach agreement on procedure to be adopted." The point was raised that in representations sent to Minister I suggested a copy be sent to Minister of Customs. That is correct. In matters of this kind where various departments may be concerned, as Public Service routine it is usual for an officer to suggest that kind of circulation - quite common. The Minister replied that he did not intend at this stage to contact the Minister of Customs. He has said that the Minister of Customs knew about this deal and he had had discussions with him about it. As a fact I know the Minister of Customs and of Industries and Commerce work close together - at that time there were almost constant series of meetings because of the economic position and the necessary course of action that had to be taken and I'd say Holloway and Boord would be seeing one another very very frequently. I think it likely that this new development would be mentioned between them. Following sending of that letter to Judd he did, in fact, get in touch with the Department. I attended several meetings at which the suggested arrangement between two countries were discussed. I took part personally in some of the earlier meetings and then negotiations were continued mainly with trade relations section of Department reporting back periodically. There were some questions raised about meeting to discuss these proposals on 13th March 1958. There is one with all cards of Czech officials on it. One indicating Mr. Freer had been in attendance. From looking at that note the Department of Industries and Commerce was represented by me I do not recognize the writing, it is handwritten. I may have been at that meeting I remember being at a meeting where Mr. Freer was present. At those meetings where he was present the Departmental or New Zealand point of view was put forward by myself and my officers of the Department of Industries and Commerce. The suggestion if it was made, that it was Freer who was putting forward New Zealand Government point of view - he certainly was not as far as I was concerned. Following these first negotiations, I got to a stage where I could report back to Holloway on progress of the talks and I prepared a memorandum for the Minister of which there is a first draft about 28th March 1958. The file shows that that first draft memorandum was circulated to various officers in Department - shows a reference

10

20

30

40

to one specific officer - have you any comments please specifically regarding the the list of imports and practicability of import licensing. That report to Holloway by me was then retyped in final form on the 1st April 1958. My recommendation to Minister about the deal at that stage reads "Having said all this I am inclined to the view this proposal should be treated as a test case ... general". At some stage after that there was a minute by me to the effect that the Prime Minister should be informed. I wrote on the last page of memorandum just referred to, this minute "I advised Minister on 3.4.58 that I considered it advisable the Prime Minister ... today". My minute to effect that the Prime Minister should be informed referred to the fact that the proposal was going to cabinet that day. (Counsel) Holloway told us the Prime Minister was informed by him verbally of the stage negotiations had reached. If a matter was to go to Cabinet the same day as I made that suggestion - It is a different day I made the suggestion - a very short interval, 5 days - if a matter was on the point of going to Cabinet, it would be likely in my experience for the Minister to mention the matter to the Prime Minister orally - I would think it quite probable. I understand Ministers on occasions like to warn Prime Minister what is liable to come up. That is done orally if it is an item not on the already circulated agenda. If the suggestion to inform the Prime Minister in memorandum as a matter of Public Service procedure - if this is memorandum to be placed before Cabinet it could be either Department or Minister. In fact the matter did go to Cabinet and was approved on 8th April. Cabinet approval authorized negotiations tending to conclusion set out in the memorandum. It approved the negotiations proceeding in principle. These further negotiations - the Czech Government was represented by - I can't recall those present at each of the meetings - Mr Judd although still playing part, took less part in later stages and Czech officials took greater part than they had previously. Czech officials were persons from Czechoslovakian Consulate in Wellington. On the Departmental side members of staff of Industries and Commerce took part and members of Customs Department. One of the names referred to in evidence was Mr Lockwood, he was Customs Officer. If members of Customs Department took part in these discussions they would report back to their permanent head and I am sure he would inform the Minister. The Minister of Industries and Commerce did not have any part in detailed negotiations with these officials. In May 1958 I ran into a difficulty with some proposals from Czechoslovakians. You will recall evidence which said in initial stages suggestion was to trade in butter, meat and tallow. Czechoslovakian officials about this May period, advised us they had had instructions from Prague to try and negotiate on a different basis from that originally proposed. At that stage it wasn't so advantageous to New Zealand as far as we could see and we started to cool off.

(Short adjournment)

40 You told us that consequent upon some changed proposals in proposals in Czechoslovakian side, the Department felt it had cooled off in its enthusiasm for this arrangement. There were a lot of variations, one related to motor-cars. Inclusion of motor-cars. One referred to butter. They wanted to introduce motor-cars as an import from Czechoslovakia, and they wanted to reduce the quantity of butter they were prepared to take from us. As a result of that on 7th May I sent a

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence  
No. 9

L. A. Atkinson  
Examination

(continued)

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 9  
L.A. Atkinson  
Examination  
(Continued)

memorandum to the Minister to inform him of the changes in the Czechoslovakian position - new developments. The Minister replied in a handwritten minute on the foot of my report "I approve we cannot continually change the basis of imports. I have already advised Mr Freer of the difficulties involved in further alterations." It was quite clear to me from that minute the Minister shared the Departmental view. On receipt of the Minister's confirmation I wrote a note or letter to the Czechoslovakian Consulate pointing out that we couldn't vary the original proposal. That in effect was a rebuff to the Czechoslovakians. I think it was at that stage. The Minister holds the overall policy direction for the Department. If the Hon. Mr. Holloway had wanted to push through this deal with the Czechoslovakians, he could have been much more enthusiastic in his suggestions to me that the negotiations proceed, but he was not. After the Czechoslovakians had been rebuffed in that way there were some more talks with the Czech representatives. I think the only progress made in that desultory period was probably some more clear thinking on methods of handling but as far as conclusion of arrangement was concerned, no progress

10

COURT: From what period? From period following letter of 15th May written to Czechoslovakians.

In that period, desultory period, the Hon. Mr. Holloway brought no pressure to bear on me or department to get on with negotiations. There are two members of Czechoslovakian Mission, Tikajek and Janek. Mr. Tikajek was a Commercial Attache, Mr. Janek was acting Consul-General whose name has been in the press over the last few days. Mr. Tikajek was a commercial attache. These two gentlemen called on me in July 1958. Memorandum of 25th July. They made a descent on me in July 1958. The first paragraph of the report to the Minister says "As explained to you I am continually embarrassed ...." When they called on me in that way it was evident they were calling on instructions from their Government in Prague - I understood they were. Although we have had it before, they said - suggested the Government still wished to proceed with arrangements with New Zealand but they had instructions to purchase considerable quantities of our primary products in addition to what they may have already purchased. They felt that their Government would like to see some progress towards reciprocal trade before they operated on that authority. I got the impression they might, - if no progress, they would refrain from buying at the forthcoming August wool sales - one suggestion. It was important. I considered that the approach should be reported to the Minister. A few days elapsed between the visit I referred to in the memorandum and the actual preparation of report by me to Holloway because I had reported to him verbally after seeing the Czechs and my opening words are "As explained to you the other day..." The report was my report of 25th July the whole of which has already been read. About this time, 25th July 1958, my feelings about the glass position in New Zealand - it was June we had the representations from the Federation saying glass was short and becoming increasingly so. We also knew of this possibility of buying glass from a non-ring source from Judd's firm and from McDermott and Duncan - and Mr. Dale and I - then Controller of Customs - has some discussions on it, decided if there was to be an increased allocation it was an opportunity to test

20

30

40

the position and we should so arrange we should have sufficient flexibility to try it. It was an important point when we were discussing glass imports from new sources that they would have some effect on the ring price. It was certainly worth testing - what price we could land the glass as compared with ring prices. It was discussed in some details between me and Head of Customs Department. There was a time relation between that consideration and Czech approach on agreement - it was coincidence if you like that we were thinking of Czech glass at the same time as we were concerned with the over-all glass position.

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 9  
L.A. Atkinson  
Examination  
(continued)

10 In relation to trade agreement. The advantage in taking decision now about glass position - it was just a gesture at that particular time to help in the overall glass position - some gesture to the Czechs who were sitting on our doorsteps. Wool sales were in August. With those considerations in mind, Mr Dale and I decided - we agreed we should recommend - he would recommend to the Minister of Customs a change in basic policy for glass and it would have "C" added to it to make it control item and that I would suggest to him amounts that could be obtained from non-ring sources for consideration when additional licences were being granted. No pressure from Holloway in this. Following those discussions I wrote a memorandum on 19 July 1958 to the Controller of Customs (small file). In that memorandum I made some recommendations for licences - excess licences for glass.

20 "The circumstances of H. Judd & Company have been discussed ...(read).... £10,000." I had some further discussion as to amount - because there was quite a period between this memorandum of mine and issue of licences later on to both these firms. I know the recommendations I made myself to Customs were reduced by Customs to figures we have had, £10,000 Czechoslovakian glass and £5,000 from Japan. I shortly after that, left my post in Industries and Commerce - 19th September. I know that the agreement with Czechoslovakia has, in fact, not been brought to conclusion as yet. I believe that is so. I have heard it said that so far as the glass licence - Czechoslovakian - is concerned, firms other than H. Judd & Company might have been considered for a chance of that licence. There is no

30 reality in that - not in my understanding of the position. Judd was representative in New Zealand of state trade organization that handled - he was their agent. We were informed by Czech officials. There were inquiries made as to whether he had to be dealt with - we inquired from Czech officials. It is most unlikely that other established glass importing firms could have got Czech glass. I would be surprised if ring people went outside the ring - might be a bit of trouble with their colleagues if they did.

40 Looking back on this whole affair, apart from the fact that it was a barter arrangement, the only way in which it was handled departmentally, there was in retrospect I would like to say we handled it as we thought best at the time, being a somewhat novel suggestion and I cannot see, looking back how we could have handled it otherwise. I have heard the lengthy cross-examination of Holloway, my feeling about suggestions there was something sinister or improper about this whole affair - my opinion is that it was most unfair to Holloway. I had many months of close co-operation with him. Looking back on it, trying to recollect the atmosphere

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 9  
L.A. Atkinson  
Examination  
(continued)

that we were negotiating in, dealing in, writing memoranda in, I can't remember any sinister or improper aspect anywhere in this negotiation.

To the suggestion that Holloway showed some private interest to pushing of these licences - I would say I was not aware of it. Any private personal interest apart from and beyond his position as head of department (Not suggested by defendant).

The article in question in this case, I know. I know it records a statement "He told his caller to see Phil he would fix it" that purports to be advice to a person inquiring about import procedure. I know there has been evidence that the words "fix it" in that context connotes something underhand and improper. (Leading) Over the period when I was head of the Department had frequency of contact with Holloway - I met him regularly unless he happened to be out of Wellington, once a week, and more frequently on many occasions as necessity arose. In relation to the question of issue of licences for glass whether to Czechoslovakia or to Japan, there was nothing I noticed that suggested anything dishonourable or improper conduct on part of Holloway - not the slightest.

10

Cross-  
examination

#### CROSS-EXAMINED

You have told us import controls were re-introduced on January 1958. It seems that the first interview between Judd, Freer and the Minister took place sometime in January? Yes. That is indicated by correspondence? By letter in early February. To the Minister from Judd referring to the interview two or three weeks ago? Yes. The last of the interviews before you came into the picture was 27th February? Yes. I think that would be right. That is indicated by the correspondence? Yes. Have you any idea what the general attitude of Judd and Freer was in those interviews before you came into the picture? No. Was first you knew of Judd's proposals when the Minister handed you the correspondence? I can't recollect him mentioning it verbally before that, the first official record I have was letters. That is the letter of 27th February? Yes. Refers to the Minister handing you attached correspondence? Yes. Presumably letters of 4th and 27th? Yes, I think that would be right. You said you were not able to help very much on the question of date of 27th. The earlier letter of 4th February was in fact minuted to Department on 5th February stamp on it. Referred for draft reply. I can't find reply. Your personal first contact was on 27th February? My first formal association with it was 27th February. Is that occasion on which you made minute you said the Minister wanted this matter treated as urgent? Yes. I take it that was an accurate record of what he was saying at the time? One comes away from a meeting and dictates one's recollection of what was said. Because he said urgent, you instructed some other officer to take action immediately? Not only that, the Department at that time was under extreme pressure especially on import licensing and anything could be left undone while more urgent tasks could be tackled, would be left on one side, so I gave considerable weight to the Minister's request. You in substance agreed with

20

30

40



the Minister it should be considered urgent? Yes, I did. There is a minute on file of 12th March in which the writer expresses some question as to why the Czechs did not come direct to us? Yes it was minute by Mr Gray the officer to whom I had originally referred this, and he says Dr Sutch rang, considers we should check as to whether Judd is best man to deal with. Also another minute of 11th? That is 11th March. Isn't there another minute the following day which says in effect Czech attaches are coming to see us - under the visiting cards? Yes, it is a written minute, no date as minute but in it it refers to 13th March. It says "Mr Atkinson, Mr. .... and Mr Tikajek of Czech attache will call to discuss proposal tomorrow 13th March - why did not come to us direct - blackmail on butter begins." Someone has written "The quantity is negligible" with exclamation marks after each line. What is reference to quantity being negligible mean? In our overall exports of butter I presume the officer who put that on thought that even proposal as it was was a relatively small quantity of butter. Isn't there a later note on the file when you got to the stage of actually drafting trade agreement - addressed to Mr Moriarty which says something about peanuts? Shows how cautious we must be about writing official minutes. Next to draft trade agreement, by way of comment on it. At some stage on file after Cabinet minute approving in principle of bilateral agreement - you then proceeded to have draft agreement drawn up. At the end of it, there is a comment isn't there? I don't see the one you refer to. At the very end of draft of trade agreement - stated to be copied from existing agreements find footnote written on it.

COURT Does it appear on both files by chance? It wouldn't be on the other file.

Is there a handwritten draft agreement? Just typed one that I see. At time when this file was inspected by solicitors for defendant there was - Meantime we will turn to another matter. You say after 27th February when the Minister handed you correspondence and asked you to have it looked into urgently next note on file is dated 3rd March? Yes. You suggested that was the only point you could add to question as to why everything appeared to have happened on 27th? Yes. What was the point you made? I was asked by Collins whether I could add anything to this close approximation of dates. I said I could add nothing other than there was this note of Mr Gray's dated 3rd March which is his minuting on to trade relations section. Just 2 or 3 words with 3/3 after it. Is that inconsistent with everything else happening on 27th February? No, I was asked whether I could add anything and - all I could see was this, which does not add anything at all to what you asked. 27th February was Thursday and 3rd March was Monday - explanation why it went from one to the other. Really the question as to why everything seems to have happened rather suddenly on 27th February is not very clear from file? No. You've mentioned Dr Sutch suggested check be made whether Judd would be best man to deal with it? Yes. You've told us Czechoslovakian Consulate was asked about it. Was any other check made? No not to my knowledge. I didn't see any necessity to. At that stage he was being put in fairly responsible position? If that was responsible in their Government's point of view we were prepared to talk to him. Did you feel import licences to New Zealand traders really had to be granted to whomever was nominated by Czech Government? At that stage, we had not even

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 9  
L. A. Atkinson  
Cross-  
examination  
(continued)

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence

No.9  
L.A. Atkinson  
Cross-  
examination

(continued)

worked it out but later on we did obtain a list of people who had traded in Czech goods and in evidence already read out before Court there was procedure drawn up as to calling of applications and consideration of it. So far as glass licence originally proposed was concerned that was £50,000 or more? In initial proposal, yes. You agree with Minister it was contemplated that would go to Judd? Yes, I do. That was going to be a valuable privilege to him? If he had got it, yes, but that was initial suggestion it was never brought to fruition. Not only was it contemplated this privilege would be granted to him, also a letter was written to him on 7th March saying "I presume .....both export and import aspects .....plan". That letter was drafted in department? I haven't got that one - I imagine it was. You say you imagine the letter to Judd saying "I presume you would .....plan" would probably be drafted in Department? Yes. That was putting him in position of some importance, wasn't it? Some importance and some trouble which I think was brought out earlier in evidence. That didn't mean Judd would transact business - he was organizer of arrangements. He would obviously have to go to authority of Czechs. He would have to go to wool buying firm to buy wool and to Dairy Products Marketing Commission to make arrangements to buy butter. As far as I can see at that stage we hadn't thought out any detailed arrangements at all as were worked out later and Judd continued in role as organiser with not the same as I understand it, meaning of word arrangements that perhaps you have put on it. I don't regard it in the same way. I'd like your comment on it - memorandum you made from instructions from Minister on 27th February when Minister said "Traders would carry through investigations ....." All arrangements apart from issue of licences, both on export and import side, would be responsibility of Judd? As responsibility of Czechs, that's right. That was putting him in position of considerable authority? By the Czechs, yes. Didn't you feel he would have any responsibility on part of New Zealand as well? He had nothing to do with New Zealand side of arrangements at that stage at all. Any question about export procedure arose how was the New Zealand interest to be protected? By the Department. Then is it right more assistance from Government through its Departments would have been necessary than merely issue of licence for imports? No issuing of licences places responsibility at that stage, on traders who had licence. There was also question of arranging exports? Yes, that had to be done through normal export channels. By Judd? By him making arrangements. I don't know who put through transaction finally. Whole responsibility for export trade was to be placed on Judd? That amounted to no more than him going to Dairy Marketing Commission and saying Czechoslovakian Government want to buy so many tons of butter. And various other marketing organisations and arrangements about shipment? That would be normally done by normal export houses. That is all part organized in latter stages by certificates of export. In early stages it had to be put into detail? Thinking hadn't been done that far. Wasn't broad principle Judd was to have sole control except the Government was to issue import licences? He was sole representative of Czechoslovakian Government at that stage. What sort of man did Judd strike you as? A trader, non-British nationality. Did you feel any hesitation at all about dealing with him? No. I had no reason to - he was just a gentleman whose skin was slightly more olive than yours and mine. Apart from colour of his skin, did you know anything about his background or history? No except he was introduced to us as a business man from Auckland who was credited by Czech people to carry out negotiations on their

10

20

30

40

behalf. His credentials were all from Czech people? Yes as far as I recall. Until this bilateral deal was proposed Judd hadn't figured in international commerce? Not as far as I personally knew, but I understand he had appeared on scene in London. About trading position in Czechoslovakia? Yes. After visit by him to Czechoslovakia? I believe so. I wasn't in Department then. Was it following that visit to Czechoslovakia so far as you know that Judd suddenly emerged as a person acting with the full authority of Czechoslovakian Government? I should imagine there was some connection between his visit and appearing in this role later on. He apparently acted for them in initial stages in preference to their normal representatives at Czechoslovakian Consulate in Wellington? He did in fact do that. It was strange from traditional arrangements I'd been used to but I'd been away from trading departments for some years. Does that supply the explanation for note on file, why didn't come to us direct? That's one reason, yes. Do you know whether Judd was Communist or not? No idea. Were any inquiries made about his history other than asking Czechoslovakian Consulate whether he was authorised to act for Czechoslovakia? Yes I had discussions from appropriate source and had been given information as to his origin - which has since been published. Truth's information was reliable? It seemed to coincide fairly well. In light of whole history of this matter do you now feel it was altogether wise to deal with Judd? Yes, I considered we wouldn't do anything else if it were put to us again - in way it was put to us. You don't feel any qualms about whether Judd was type of man suitable to negotiate a deal like this? No I have no reason to think otherwise than that he was suitable. If in fact he did pay a commission to a Parliamentarian in connection with a licence, would that cause you to revise your opinion in any way? Yes. You were asked by my friend Mr. Collins, about Freer's role in negotiations and you made it clear to him he wasn't representing New Zealand? Yes. Is it right to infer he was representing either Judd or Czechoslovakia? He was acting as intermediary between Judd and the Department, bring him along, introducing him. Do you agree with Holloway's description of him as Judd's advocate? In past - in early stages, that was role he took. It was he, was it not, who came to the Department with proposals from Czechoslovakia about including cars and motor cycles? I don't know that he came, he either came or advised me by phone there was some change in their proposals. He advised me. In your first memorandum to the Minister of 6th March, did you generally counsel the matter should be viewed with some caution? Yes. Was that memorandum in which you suggested the Minister would wish to discuss the matter with Minister of Customs? Yes, I did. Collins asked you questions whether this would have happened - do you in fact know whether there had been any discussion between the two Ministers on this matter? No I don't know at this stage.

Find the draft trade agreement turned up. This is a note written on a draft trade agreement? Small minute sheet attached to draft and this was on turned up corner of it - addressed to Moriarty. What was his part in matter? He had come to Department as Assistant Secretary on trade relations side, I think if my memory serves me right on 1st April, this was dated 29th April. He was new assistant secretary at this stage. Is one of his duties drafting agreements? He was responsible at that stage. This comment I'd say draft was done by his staff in trade

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 9  
L.A. Atkinson  
Cross-  
examination  
(continued)

relations side and this is comment to him about it. Who is comment from? I don't know whose initials are - Subordinate officer to him. What are words on it? "1. proposed exchange of notes herewith, 2. alternative forms TPN also attached but they are far too pretentious for the peanuts involved." Significance was here was an elaborate trade agreement being drawn up, the officer's opinion was the agreement involved was small in consideration of elaborate agreement.

(Adjourned until 10 a.m.)

5th June 1959 10 a.m.

CROSS-EXAMINED (continued)

You told us yesterday that the first of the letters from Judd to Minister dated 4th February 1958 had some note on it indicating it had been minuted to the Department? Yes. And that you couldn't find any reply that had been sent? No I couldn't, not on that file. Next letter was letter of 27th February to Minister from Judd which Minister handed you on 27th February? Yes. It would appear up to 27th February there had been no great urgency about matter? I can't recall having it under consideration before then. And no letter written to Judd? Not as far as I can see on file, no. The letter of 27th February begins by referring to an interview that morning between Judd and Freer and Minister? Yes. That letter was written in Auckland? Yes, it is shown as Box No., Penrose, Auckland. When he handed you the letter that day, the Minister asked you to look into matter urgently? That is correct. Have you any knowledge of what sort of advocacy Freer and Judd employed at the interview with the Minister? None whatever. You told us yesterday also that your view as to whether Judd was a suitable man for the Department to deal with, would be affected if he had paid a commission on a licence? I answered that in the affirmative. Would your view also be affected if he had been going round the country telling merchants that he had the ear of the Government and could get import licences for very large sums? To some degree, yes, but I don't know what tactics businessmen use to sell their wares, but to some degree that would influence me, yes. Is it fair to say an attempt was made to keep the negotiations with Judd as confidential as possible? Yes. Does that explain the reference on file to danger of annoyance in trade if deal leaks out? I think there were more than one reference to fact that this sort of negotiation should not be made public until it was appropriate to do so. In fact some rumours did get abroad? Yes, they did. Wouldn't the very fact that these rumours were afoot, tend to confirm any story Judd told about having the ear of the Government? There were rumours in two areas, rumours locally, and rumours that came back through London. I think they might have come from different sources. Can you tell me when it was that Judd actually got this licence in the end - 1958 licence? I think without having a copy of licence issued by Customs before me, some time about September. It was considerably later in my recollections. Don't Customs Department on receipt of recommendation from you give any notification as to what is done about it? Not necessarily, no. All you can say is you don't know? No, I do know this, it wasn't until a considerable time after recommendation I made. Recommendation was made on 30th July 1958? Yes. Apart from that recommendation

Judd had been given what you call an excess licence in respect of goods on water when import licensing to full extent was imposed? He was treated I understand, by Customs, same as any other trader who had goods on water, given an excess licence. What was nature of goods? Sheet glass. From? Czechoslovakia. When a question is asked in the House of Representatives of a Minister, relating to the affairs of his Department, what is the procedure for having the question looked into? It depends on nature of question, in some cases he prepares the answer with assistance of his secretaries in his own office, on other occasions he refers to Department and asks for a draft reply for his consideration. At any rate all available information is at his command? If he calls for it, yes. Can you suggest why it might be that if the Minister of Customs on the 19th August 1958 stated in the House he gave the assurance that no licences had been issued for importation of glass from Czechoslovakia, can you suggest why that assurance may have been given? No I can't. You gave some evidence about ring prices or prices of glass ring? Yes. Are you in position to discuss glass prices with me? No I'm not. My evidence didn't make any reference to specific prices. I don't want to embark on matter if you feel you are not qualified to deal with it. No I'm not. You know whether Phillips & Impey Ltd are a well known firm of glass merchants in Auckland? I've known them as a firm since before I was in Industries and Commerce. Recollect at one stage on 8th April 1958 you made a note on the big file saying on 3rd April you had told the Minister that you thought the Prime Minister ought to be informed of the proposal? Yes. What was reason for your advising him to that extent? Mainly what I can recollect, because of External Affairs portfolio that the Prime Minister held and I had had some discussions with officers of External Affairs Department and I thought there were political implications in the proposals and the Prime Minister should be fully aware of them. With regard to political implications, was that reason why the deal with Chinese delegates fell through? For very different reasons in that as already given in evidence before Court they were not recognized as a nation, and therefore we were unable to conduct any negotiations with them. Who exactly do Chinese delegation represent? I understood they represented Mainland China and I don't know who each of members represented, I think one or two of State Trading Corporation and one gentleman who represents the State Trading Organisations in Hong Kong. These State Trading Corporations - any counterparts in New Zealand? No. Separate bodies with Government backing? I don't know their exact status in Government machine, but imagine they are in effect a Department of State given responsibility to conduct import or export trading transactions. Would they be rather like National Airways Corporation here we have some separate bodies which are in fact backed by Government but nevertheless incorporated? I don't know. It is very hard to distinguish in communist countries what is comparable with our true Department of State and what is comparative with Corporation. Then we have boards like Dairy Board, Meat Board? They have legal status conferred on them by certain Acts. Why is it that because Chinese Communist Government isn't officially recognized that these trading organizations you referred to can't be dealt with? Not by Government because they are arms of the Communist Government. But no reason why a trader couldn't deal with them and in fact some of our traders have been having discussions with them. Was it decided to deal with these bodies which you call "arms" of Chinese Government might imply some recognition of the Government? Yes. Who made that decision as to whether dealing with them might be thought to imply some

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 9  
L.A. Atkinson  
Cross-  
examination  
(continued)

10

20

30

40

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No.9  
L.A. Atkinson  
Cross-  
examination  
(continued).

recognition of the Chinese Government? External Affairs Department. Once the External Affairs Department had made that decision there could be no question of the Government dealing with them? If that came as a direction from the Prime Minister that would be so. He is political head of External Affairs Department? Yes.

Do you recollect - what was name of Board of Trade immediately predecessor of Board of Trade in New Zealand? There wasn't a predecessor but ad hoc commissions before Board of Trade except if you want to go back 30 or so years. No, I'm talking round about year 1950 or 1951, was it Board of Trade then? I think so. 10  
Do you recollect White Paper discussing generally procedure as regards import control? I don't recall document. It was not a particular interest of mine in those days. You did tell us yesterday you didn't come to Industries and Commerce until 1957? Yes. Is there not some document in existence which lays down the proper way of administering import controls if they have to be imposed? None I know of other than departmental instructions and the Regulations that cover import licences, I couldn't even quote provisions of those off hand. If some general prescription of conditions or ways of dealing with import licences by Board of Trade was produced, you wouldn't dispute it? No except that at this stage when the full scale import licensing was reimposed the Board of Trade had virtually 20  
nothing to do with import licensing. It was quite a distinct body from Industries and Commerce and Customs. The fact was it was concerned with revision of customs tariff and virtually had nothing to do with import licensing. Wasn't Board of Trade in position to advise as to what appeared to be the fairest procedure to adopt in administering import licensing? It may have been in the earlier stages but it took no part in it to my knowledge when full scale import licensing was reimposed from 1st January 1958. When full scale restrictions were imposed in 1958 the matter was dealt with in Department concerned rather than on broader basis? Basic responsibilities were placed on Departments and they carried them 30  
out. If Board of Trade recommended, or anyone else, if licences for imports from a new source were to be granted applications should be called for, would you agree that that was a reasonable recommendation? Yes, in normal circumstances but not without exception and there were many exceptions made to any such rule if any such rule had existed. Was one such exception made in case of glass licence on Czechoslovakia given to Judd? Yes, in association with another exception made in respect to McDermott and Duncan. Their licence related to Japan? Yes. They had been trading with Japan for some years? I don't know their full trading history. You wouldn't deny it was quite possible they had been? No, I wouldn't deny it. Judd was a comparative newcomer in field? If you put comparative, yes, he wasn't 40  
entirely a newcomer. He started in 1957 or thereabouts? Yes. Was any other licence to import glass from Czechoslovakia given to anyone else? No, because it couldn't be, he was representative of trading corporation of Czechoslovakia in connection with glass. If applications had been invited for that licence, might you not have had 20 or 30 applications throughout country from traders? I expect we would have, yes. Is it fair to say both you and the Minister thought there were special merits in Judd's case which entitled him to a licence under what is called

10 "C" category? I don't know whether there were merits, but special circumstances which warranted giving Judd a licence at that particular time. Was that view held both by you and Holloway? Yes. You told us yesterday of a recommendation that apart from special licences, there should be a 10% increase in the ordinary licences based on 75% of 1956 value? I don't think I told you that, Minister did. There was such a recommendation? I believe that was decision taken. When was it taken? I don't know. Anything on file to indicate it - isn't there on file called 20.12.57 a letter dated 11th September 1958? from Holloway to Secretary of Glass Merchants Federation? It's an undated letter but stamp on it shows Referred from Department to Minister on 11th. The date it had on it when it went out was 15th September. Apparently drafted in Department about 11th? The draft was sent up about 11th and Minister's reply which is slightly different from draft, I think, went out on 15th. Does that letter that went out to Federation say as a result of a review authority has been given to grant increase ... Yes. Words are "I understand you already know as a result of this review allocation of imports have been increased by up to 10%". Is it reasonable inference it was round about 11th September that that decision was taken. Somewhere between 30th July when I wrote to Mr. Gale and this date in September. Under that recommendation and that decision, relating to 10% Mr Judd couldn't benefit in any way could he? No. Are you at all familiar with figures relating to glass imports as a whole? No. You have been in Court throughout this case? From second day on. Did you hear the various questions asked about figures for imports of glass from Czechoslovakia? Yes. Do you recollect evidence was given in 1956 £4000 worth of glass (sheet) came in from other countries? I accept what you say was in Year Book. Ref. to two sources of information, one on file and one out of Year Book. Only part I want to ask you about, that is this, Czechoslovakia would be one of other countries? If it wasn't specified as one of named countries it would be one of other countries. Fact that £4000 comes in from all other countries could not give indication of how much came from any one particular country within that year? Not according to those figures, no. All we know is it could not be more than that? The proper source of information regarding this is not in Year Book but is annual publication, Blue Book, known in trade records of import and export trade statistics, shows countries of origin items imported, that would be proper source to go to. What is in that? I last had anything to do with it in 1939. Is it fair to say you yourself have no knowledge of any discussions that may or may not have occurred between Holloway and Prime Minister? No I have no knowledge.

RE-EXAMINED.

40 You have told us you heard cross-examination of Holloway and have just had your own. Was it apparent to you from cross-examination you've just had, what source was of much of material my friend put to you? A lot of it from departmental files. You know in fact that my learned friend has had full access to those files? I understand so. You know as Public Servant, that there are certain rigid rules about confidential character of departmental files? Yes. Quite apart from fact that files have been made available in this case would you as a Public Servant have had any view about privilege or confidential character of these particular files? I would have thought that at least at an earlier stage they should certainly not be made public because of negotiations

In the  
Supreme  
Court of  
New Zealand

Plaintiff's  
Evidence  
No.9  
L.A. Atkinson  
Cross-  
examination  
(continued)

Re-examination

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 9  
L.A. Atkinson  
Re-examination  
(continued)

being conducted, and also private affairs of individual businessmen. So they would be files which had some confidential grading? Yes. They have been made freely available? Yes. You were asked some questions about a note on the draft of trade agreement that was sent back to you in which it was referred to, or form was referred to, as somewhat pretentious? Yes. Looking at it from departmental view is there anything extraordinary or unusual about that comment? No. I hope that our junior officers would make such remarks and put their own thoughts down on file, even if they use colloquialisms. Having regard to the small nature of agreement would there have been possibly some other form of recording it which might have been less pretentious? Yes, exchange of letters. Was any decision later taken if agreement was concluded that might be appropriate form of record? That was suggested, yes. You were asked some questions about Mr. Judd and you recollect you said you had no hesitation in dealing with him and you gave some personal almost descriptive impression? Yes. I think you mentioned he might have been a trader of non-British nationality? Yes. Did you in fact mean non-British nationality or something else? I meant he did not look like average New Zealand businessmen I had been meeting - his person was slightly different. Somewhat different from a New Zealand businessman? Yes. There was evidence given I think he was a naturalized British subject? Yes. I shouldn't have used non-British nationality, but it is the term I used.

10

20

COURT. Rather you meant blood than nationality? That's right.

No reason to doubt he was a British naturalized? No. You did tell my learned friend you caused some inquiries to be made as to his origins? Yes. That information similar to what later appeared in Truth was given to you? Yes. Information in Truth article was his real name was Hyman Yudt he was born in Russia 1906 and believed to have taken British nationality in United Kingdom before he arrived in New Zealand in 1939 - is that information given to you? That is correct. So can we assume he has been in New Zealand for at least 19 years? Presumably he had taken up residence in 19 years. I'd like you to consider the questions that were put to you about your duty to inquire into the background of the agent of a foreign Government. If a person, any person, is presented to you, by a foreign mission, as its accredited representative in New Zealand for specific purpose, to what extent do you think you would have liberty to accept or reject? I don't think it is my business, I think it is theirs as to who they appoint. I wish to clear up a point Mr Cooke asked you in cross-examination whether you in fact know whether there were discussions at this early stage with Minister of Customs between Holloway and Minister of Customs and you said you did not remember? Yes. Did you tell me yesterday (p. 76) that at discussions which took place in April there were members, officers of Customs Department, actually present? I remember statement to you, some reference to Mr. Lockwood, he was a Customs Officer. I don't know what the date of that was. Early April were discussions. I can check on file - Lockwood was Customs Officer and he was the one I referred to. Even if they were not in it before April surely we may take it Customs Department (reform the question).....If they were not in it before early April, when would the Customs Department have known about the negotiations?

30

40



From that stage when they were drawn into discussions at the very latest, if not before. What stage had the negotiations reached at that point? No finality at all. Have you engaged at all in any other negotiations effecting arrangements with foreign Governments? Yes in a much more minor role in my days in Customs Department first minor part, New Zealand made was with Belgium. What is general rule about confidential nature? They were always kept confidential at the negotiating stage. As a matter of negotiating practice is that desirable or undesirable? I think it is essential. There has been a question about the Prime Minister - is there any need for me to ask you what role or weight the Prime Minister would have in Cabinet meetings? None at all, he would have a very prominent role in Cabinet meetings. Are we entitled to assume anything about Prime Minister's knowledge if this agreement were approved - or idea of it, at Cabinet meeting of 8th April. I would assume at that stage he would be fully aware of what was going on.

10

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 9  
L.A. Atkinson  
Re-examination  
(continued)

CLAUDE THOMAS WATSON (Recalled)

You learnt at a late stage yesterday of questions which Counsel for Truth put to Holloway in asking him whether it was true that his Department had instructed any statements to press were to be issued to the Dominion in preference to the Evening Post? I read that in evening paper last night. If any such instructions were given would you as editor know of it? Yes I think I would have for reason that chief parliamentary reporter would certainly acquaint me we were getting an undue share and I think the Evening Post would be fully justified in complaining to our department possibly to me that there was discrimination. Prior to your reading of question in last night's Post had you any knowledge of any such instruction? None whatever, I keep no tally as to which Minister hands out what to each paper. Had you any approach from the Post as to any possible discrimination in regard to that department? No complaint direct or indirect. Before you tendered your evidence in Court did you take any steps to obtain permission to come and if so from whom? Yes. I was requested or asked if I would be willing as an editor of certain years experience whether I would be willing to give evidence for plaintiff, would it embarrass me - personally I said it would not embarrass me in least but I would first require agreement of my Board of Directors and that given, I would come only under subpoena, my reason for that is I am very careful and must be to be completely independent from politics and of politicians. Did you want to add anything? Except this, that when this ref - this question of Mr Cooke was reported in the evening paper and again this morning in my own, there was a great deal of annoyance and anger amongst the senior members of my staff through Managing Director. They took inference Holloway and I had some kind of collusion - he would favour Dominion - possibly as price of my giving evidence here on his behalf and I resent it. Has it any truth? No truth whatever.

20

30

Plaintiff's  
Evidence  
No. 10  
C.T. Watson  
(recalled)  
Examination

CROSS-EXAMINED

40

Did your Directors instruct you to come and give evidence? They did not instruct me. Did they approve? I can say this that I had informed Mr Holloway's solicitors that subject to my Directors approving, I would give evidence for plaintiff. A young man, solicitor's clerk, appeared at my office with subpoena and I said

Cross-  
examination

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 10  
C. T. Watson  
(recalled)  
Cross-  
examination  
(continued)

"No I will not accept this because I have not yet heard whether my Directors have approved." I then told him to come back the same afternoon in about an hour to give me a chance to determine what their attitudes would be. I at once consulted the Managing Director who of course is my immediate contact with Board - my only working daily contact. He said "Yes, I accept responsibility for your going, anyway you will be required by order of Court under subpoena to attend and you haven't much option." He thought it a little ironical, amusing, that the editor of a so-called conservative paper should be seen to give evidence for a minister who was not of same political persuasion. Didn't you tell us a moment ago your position was one of independence and you had friends on both political parties? Yes, I know all National Party by christian names and a few of Labour Party by their christian names. Including Phil? Yes. You did then have approval of your Managing Director to your giving evidence? Yes. The other directors? Subsequently yes I had a meeting of my Board the day after this case started at which they were all present except one - no disapproval whatever. They supported you? Yes that I had done the right thing in my own way to extent of my ability. You referred to reports in your paper and I think also in Evening Post, when you received an account of your evidence on first day from reporter did you make any changes in it? I called for his notes - first I saw whole evidence of case. I was entirely satisfied with reporting work. He had made, I deeply regret to have to say this, he had made such a mess of Professor Gordon's evidence this simply will not do I said. I said to news editor we can't publish things of this sort, I will, havin g seen grossest error in the reporting of Professor Gordon's evidence, I then said I'll look at my own and see what has been done to me, the reporter since had gone home, so I am not going to make any alteration or in any shape or form deal with copy unless it accords with his notes and I checked myself on that by consultation with assistant editor, news editor but I would not in any shape or form interfere if the reporter's notes were to stand up faithfully to what was said in Court. Did you recall reporter to Dominion office to provide additional material or to check alterations against his notes? Yes. I did that. I instructed him to read his notes back - he was a shorthand writer. What had he done to Professor Gordon? I think biggest calamity was - you allude, remember Gordon stated that he always liked to visualise situations like this as virtually applying to him, so he said - roughly that - Professor Gordon said how would he feel if he was asked to fix an examination but that Chancellor of University was not to know about it - our reporter, in his typed script made Professor Gordon say The Prime Minister - he had written the words in - I said Good Lord man what else have you done to Professor Gordon. He had written down Prime Minister instead of Chancellor? Yes. It was excusable because it got into these notes. Reporters don't do that -- they take their own notes. Apparently his own notes corresponded with notes of evidence? Yes, if he used the notes of evidence and not his own report - he could check up on notes of evidence. What appeared in his version corresponded with notes of evidence and you suggest proper thing is to take his own notes - doesn't that suggest his own notes and notes of evidence are same? It made Professor Gordon look silly in the paper.

COURT. In actual article it says "Don't let Prime Minister know about it" Obviously the Chancellor or Vice-Chancellor would be better, but sense is there. Don't you agree? It does seem to me it is not of major importance? With respect, as appearing in newspaper? Yes. But not as said in Court. It wouldn't make nonsense to us - it might to readers of newspaper.

10

20

30

40

10 Apart anything done to Professor Gordon you made alterations in reporter's account of your own? Yes. I'm very glad you asked me. You remember in cross-examination you attempted to grill me, on Walsh - Neary episode - in our reporter's version there was most unfair inadequate report of what you said. I said to this young man this news editor, this is very unfair reporting to Cooke - it will look as though we have given a biased report. We have got to be fair and honourable to Cooke even though it seems to be to my discredit in the paper. The part altered by me was to best of my memory a fair summary of how it was put and fair summary of my ability to reply. If I had not done that it would have been an extremely incompetent and very unfair report to yourself. (Counsel) If alterations were made in my interests I am deeply grateful for them. Not to trust my own memory I had young man in, said I will not submit to this paper for publication unless what I have done is fair report and it accords with your notes. The young man produced his shorthand notes, read it to me - I said is this fair and square, he said I haven't got full reference what Mr Cooke asked you about Walsh - Neary - I said why, he said with respect I couldn't hear you very well on that. So I took precautions before ever an editor amends or otherwise deals with any report of consulting assistant news-editor sub-editor concerned with handling material and reports, in not my interests, but yours. He has since been removed from Supreme Court? From this particular case, he is too inexperienced for this case. As a matter of newspaper ethics - what is proper practice in that connection when dealing with case in which a whole number of witnesses give evidence, do you refer to them as matter of common courteous practice by their surnames or do you give them any descriptions such as Dr or Mr? That's an interesting question. Isn't it fact your report describes you as Mr Watson and everyone else as Holloway etc? Three or four years ago there was a case in which the late Sir William Appleton was a witness. A good many of our readers - Appleton denied - we decided ultimately we would have to make a change because that accorded very much, with best practice overseas to accord courtesy of expert witnesses, Dr., but in criminal cases we do not, but in civil cases we do now depart from it. You suggest some distinction between Holloway and Mr. Watson? 30 No. Mr Holloway is Minister of Crown - he is not on trial. Mr Atkinson - courtesy. That wasn't procedure adopted throughout? It should be. Mr. Atkinson in paper this morning. It should have been observed throughout report in this case? Yes.

## RE-EXAMINED

40 In criminal cases you don't put in Mr Jones? No. It's most difficult to know what is right proper thing to do in various cases. In common with other papers your paper has given extensive report on this case? Yes. Do you feel it has given emphasis to one side rather than to other? No. I do not. It was a report to best of our ability. As far as you know counsel has been referred to as Mr Cooke? Yes

(CASE FOR PLAINTIFF)

(Adjourned for 10 minutes)

In the  
Supreme  
Court of  
New Zealand  
Plaintiff's  
Evidence  
No. 10  
C.T. Watson  
(recalled)  
Cross -  
examination  
(continued)

Re-examination

In the  
Supreme  
Court of  
New Zealand  
Defendant's  
Evidence  
No. 11  
A.G. Sercombe  
Examination

ARTHUR GEORGE SERCOMBE

I am at present a law clerk employed by solicitors for defendant. For some 27½ years my occupation was member of Metropolitan Police Force, London. I retired four years ago with rank of Detective Superintendent, to Scotland Yard. After that I went to some overseas country - took an assignment in Nigeria. Nature of work there was Security work. Subsequently I came out to New Zealand. Reasons were domestic reasons. I have a married son. I am at present employed by defendant company's solicitors. In England it is a common thing for former members of Force to be employed by solicitors - Detective-officers from Metropolitan Police are employed by commercial firms, barristers and any position of trust where investigations have to be made. Security wants tying up. 10

In early part of this year I paid a visit to Auckland in connection with man named Judd. I visited his house. 160 Upland Road, Remuera. First time was 13th March. I had someone with me, Mr Wrigley; he is an employee of defendant company. The door was answered by Mrs Judd (Objection) She said Good morning. Mr Judd was not available. We asked to see him. I didn't indicate what I wanted to see him about. At that stage the first of Truth's articles about Freer case had been published. My impression as to Mrs Judd's attitude - I think she was rather frightened. She (Not relevant or admissible)

We stayed at the house - waited for about an hour and a half I should think. We saw no sign of Judd. The phone bell rang, she answered, put receiver immediately down, said wrong number. Before anyone could have even spoken on the phone. She took us in her car to the bus stop. On the same day I paid a visit to his factory in Auckland, O'Rourke Street, Penrose. There we saw Mr Kac, chairman, and manager-director of Griffins Paints. We made an inspection of factory - looked at the rear and saw that there were some cases against the window stencilled "Tanners Engineering Company, Penrose." Later in the day I telephoned Judd from N.A.C. office whilst waiting for the coach. I spoke to him, expressed my regret that we had not met, that I was interested in bringing into the country some Czechoslovakian dress jewellery. He said "You haven't got a hope." (Submissions by both counsel). 30

(Adjourned until 2 p.m.)

2 p.m.

I had a telephone conversation with Judd. That was after first time I'd been to his house - same day as we were leaving Auckland. In that conversation something was raised about coming to see him again - he said come and see me again when you are next in Auckland. I did, on 18th March. I was accompanied by Mr Wrigley who was also with me on the first occasion. This second occasion I went to his house again. His wife opened the door. He was in bed - at least I gathered he was. She said she would fetch him from upstairs and he came down in his dressing-gown. This was just after 10 o'clock in morning, about quarter past I should imagine. I was shown into lounge - two-storey house. Judd came in, in his dressing-gown. (Objection). I understand I must confine myself - am well conversant with the laws of evidence. Dealing with matters relevant to Judd, whether he said what was in the article - he certainly did. Whether he gave me impression as to whether or not he was favourably disposed towards Mr Holloway - may I put it this way, when he said go and see someone - I said Who's Phil? - I asked him exactly what his 40

position was in New Zealand with Czechoslovakian Government, and New Zealand Government. He then advised me to go to Czechoslovakian Legation and to see Phil and he would fix it. I didn't know who Phil was. I asked him - it was me who asked. I said "and who's Phil?" He said "Phil Holloway, the Minister, the Minister of Industries and Commerce. Whatever you do, don't let Nash know about it." The effects of the words on me did not register because I was more concerned that this man should call a Minister by - using his Christian name. Impression as to whether or not he was attacking Phil when he said this, I definitely did not get impression. He later on - he was very garrulous, talking a lot about breaking rings, and above my head at times. He mentioned he had been adviser to Chinese Legation or something, that it had fallen through and 25,000 smacklers went like that because Nash put his foot into it. He said Nash put his foot in it or put his foot down - he didn't use very endearing terms in regard to Mr. Nash. I wouldn't want to repeat them here. He said Nash put his foot down. He mentioned "silly boy" in reference to Freer. This is conversation again of course. I was rather surprised that Freer should be going to Communist China after he told me about it and I mentioned it, he said "that's his business." I then said "Well, you're closely associated with him." I said about Truth writing up about it. He said something about a silly boy - he said "Yes, silly boy, if he'd told us sooner instead of keeping it to himself, everything would have been all right." Those were words substantially to that effect - it was only he and I having conversation with regard to Freer. I saw it on my first visit he intended to go from New Zealand - I didn't have to learn it from him. His bags were packed. I saw a lot of bags packed. While we were there some one came to view the house. He didn't agree with proposition I was putting forward and he wanted us to come and see him on his return as he would have a far better proposition for us. My colleague asked where we should see him and he said here. Knowing house was up for sale of course (witness shrugged). I put it to him was he going to England and he said yes. He suggested we go to Czechoslovakian Consul at some stage. Then to see Phil. I went to Czechoslovakian Consulate. That's Roxburgh Road in Wellington. I met an official of the Consulate there. I had a conversation with him. In connection with the door - just after we sat down the door came open and the gentleman shut the door and then turned the key in the lock. I didn't place any significance on that, I've been in Russian Embassy in London and it's just as eerie.

What is reported in the article (read) about the conversation is a correct report of what was said to me.

(Counsel) We've heard some discussion about functions of Director of Public Prosecutions in England. (Witness) So far as I know there is no corresponding independent office in this country. (Objection to evidence of practice in England - evidence disallowed). I can refer to book which would give indication of sort of things Director of Public Prosecution does. In Police Law Books - the functions of Director of Public Prosecution are as it says - all cases of public interest. I haven't got the book. I have a copy from my notes - The Stanley Report, in case Mr Justice Lynskey's trial - three cases were submitted to Director of Public Prosecutions there - p. 17 or para. 17.

In the  
Supreme  
Court of  
New Zealand  
Defendant's  
Evidence  
No. 11  
A.G. Sercombe  
Examination  
(continued)

In the  
Supreme  
Court of  
New Zealand

Defendant's  
Evidence  
No. 11  
A.G. Sercombe  
Examination  
(continued)

I have personally heard complaints from merchants, importers and the like about such matters as the administration of import licences in New Zealand - I have heard plenty. (Where does that get you) - disallowed.

I produce a copy of an article in Standard newspaper (EXHIBIT NO. 1) headed "Price battle in the kitchen - politics and people," dated May 26, 1954. Politics and People by Philip North is general heading. The article consists of a number of different topics, one which has connection with Mr Algie - "The Clever Mr Algie" is headline. Reads those paragraphs. "Mr Algie believes ... philosophers". Reference has been made to a passage in Hansard. I produce a copy of Hansard dated 31st August 1955 at p.2153 of which there appears a personal explanation by Mr Holloway - Reads to the jury. (EXHIBIT NO 2). "Sir, I wish to invoke .... indulgence ". I produce also copy of Hansard dated 19th August 1958 at p.1278 of which there appears a statement by Minister (Disallowed because it is hearsay).

10

Cross -  
examination

#### CROSS-EXAMINED

Was it second time you went to Judd's house he came down in dressing-gown? Yes. Was it as law clerk or ex-detective, Scotland Yard you deduced he's been in bed? I think anyone would have thought he would have been in bed not necessarily a law clerk or detective. Were you there as an ex-detective of Scotland Yard? No. Were you there as law clerk? No. What capacity were you? As a person interested in importing Czechoslovakian jewellery, glass jewellery. Glass. Did you say jewellery? Not jewellery, dress glass. Did you say jewellery - use word as person interested in Czechoslovakian jewellery? Czech dress jewellery, diamante clasps, necklaces. Costume jewellery? No. When you gave evidence this morning you said I think that you were interested in bringing out some Czech jewellery? I might have done. I meant Czech glass necklaces, pendants, ear-rings. Isn't that what is known as costume jewellery? No. Were you in fact a gentleman interested in Czech jewellery? I have been. When were you last interested in Czech dress jewellery? About ten years ago when I arrested some people in connection with it. Did you yourself merchandise it at time? No but man who does is a personal friend of mine. Have you ever been as a merchant in Czech dress jewellery? I was in 1954 when I originally intended to come out here. Did you have an office or place of business to deal in Czech dress jewellery? In England, No I was serving in Metropolitan police. Have you ever had any office or place of business either there or New Zealand in dealing in Czech dress jewellery? I have never said I am dealing in Czech dress jewellery. Isn't that what you attempted to convey? I was interested but never said I was dealing in it. May we take it down to time you visited Judd you had never been dealing in Czech dress jewellery? Absolutely so. You told him you were a merchant interested in Czech jewellery? That's right. Was that true? No it wasn't at the time. Did you wish to obtain some information under the false pretence you made to him? I met cunning with cunning. Was it cunning as a law clerk? No, cunning as a detective. You didn't go up to Auckland as a law clerk, as a detective? I went as an investigator. Retired detective. Is that what they call them, investigators? They call them investigators when serving in Metropolitan Police. Were you not still on staff of Dunn as law clerk?

20

30

40

Yes. Is he only remaining partner of law firm? I am not concerned with his partnership. How long have you been on his staff? Since 1st February. Do you know of any other partners who come into office? I haven't seen any, not in office always. Is he a director of Truth? I understand he is. And shareholder? I'm not aware of that side. On whose side were you investigator when you went to Judd? Mr. Dunn's. Are you in fact a law clerk? I am, yes. On this occasion you had ceased to be a law clerk and had become an investigator? I was still a law clerk - I can be both. I've been a chimneysweep and detective. How long have you been law clerk in New Zealand? Since 1st February. Taking any courses of examinations? No. What particular work as law clerk do you do? My time has been very well occupied in last three or four months. As investigator? Yes. So you're not actually working as a law clerk? I am, yes. Could you tell us again what particular function of a law clerk do you fulfil apart from investigator? I've spent a lot of time searching on certain persons' property. Deceased persons? No living persons. Has your function since beginning of February been to investigate matters so Truth could obtain its weekly story? No they had their weekly stories before I started with Mr. Dunn. Is it part of your duty as law clerk to stamp documents? No. Part of your duty as law clerk to draw documents of kind? I have done. What? Plans. Have you filed any document in Court? No. Once again tell us what particular functions of law clerk you fulfil other than your functions as investigator? Anything that Mr. Dunn likes to give me. I've given you filing of documents, stamping of documents - do you do searching in Land Transfer Office? Yes, I've already mentioned I've spent a lot of time in Transfer Office, Companies Office, days and days, not in this case, but other cases. You'll agree your work in main is work in connection with activities of Truth? No. How do you fill in your days? I find plenty to do, I find days are not quite long enough. That often happens in winter months? You're quite right. Assuming they aren't long enough tell us how you customarily fill up your days? I shall have to give you hearsay evidence. It will be most embarrassing to your case. I wanted you to tell us how you fill up a normal day as a law clerk? As a law clerk, well I go to office in morning, read the paper, I do much what a lot of other law clerks do, have my tea, then I probably go to searching in the Land Registry, Companies Office, seeing people with companies, asking to see Secretary on one occasion as I did with regard to your client. When do you rest during day? Not till five o'clock. In course of your investigation in this case you went to see Malcolm Mason? Yes. To see when the plaintiff retired from his present company as Director? I went to ask if I may see his register. For purposes of seeing his register and to copy details from it. I always go to places with perfectly open mind. Did you go for primary or secondary purpose whether Holloway had retired as a director? Yes. Did Mr. Malcolm Mason ask you who you were? Yes. What your name was? Yes. Did you say to him shall we say Green? That was after. Did you say it? Yes, eventually. He then told you to get out of office? No he didn't. Why did you say shall we say Green when your name is Sercombe? I had my own ideas about that. Was this matching low cunning with low cunning again? Yes. You went first of all to Judd's house about 13th March? Yes. Were you in Court when Truth's counsel said he proposed to call some witnesses with impressive qualifications? Yes. Are you one of them? You're asking me the questions which you've objected to originally. What? Qualification of an opin-

In the  
Supreme  
Court of  
New Zealand

Defendant's  
Evidence

No. 11

A.G. Sercombe

Cross-  
examination

(continued)

In the  
Supreme  
Court of  
New Zealand  
Defendant's  
Evidence  
No. 11  
A.G. Sercombe  
Cross-  
examination  
(continued)

ion of Judd. You were accompanied by Mr. Wrigley? Yes. Is he a reporter on Truth? No. Has he been in and out of Court during these proceedings? Yes. Has he been furnishing information to counsel for Truth? No. He is a small man? No. What is Mr. Wrigley - who is he? He is employed by Truth and an ex police officer. He went with you? I went with him. In what capacity did he present himself as an ex police officer to Judd? No. Same as me - we were partners. He was in dress jewellery business too? That's right. Can you tell us whether your methods of obtaining information in this case were ones customarily adopted by you when doing work for Truth - do you customarily pose when asked for information as being other than you are? Oh no. Only occasion on which you have done that? Yes. - There might have been a couple of other cases. On that occasion as merchants of dress jewellery you sat in house for an hour and half? Yes. Where was Judd during this time? The first visit to my knowledge he was supposed to be out - Mrs Judd said he was out. Did he come back that day? He must have, because I phoned him at N.A.C. office in afternoon. When you met him did you meet him with Wrigley? Yes. Did you again present yourselves as being interested in dress jewellery? Yes. When he said to you what was related in the article, see Phil and Phil would fix it, but whatever you did not let Mr. Nash know about it, was Mr. Wrigley there? Yes. Did he say that knowing you were interested in obtaining a licence for dress jewellery? Yes. Do you know whether or not dress jewellery is an entirely prohibited import from Czechoslovakia? No I didn't know that. I went to him because he was put up as the adviser - that's why I asked him. I wasn't cognisant of the fact. When you say he made that remark to you he understood you and your colleague were both interested in bringing in dress jewellery from Czechoslovakia? Yes. I'm asking you whether you knew at that time dress jewellery was a prohibited import? No I didn't know. If in fact, dress jewellery is a prohibited import altogether are you suggesting that Mr. Judd said to you that Mr. Holloway could fix up your getting a prohibited import? I don't suggest anything, I say Mr. Judd told me to go to Czechoslovakian Legation and then see Phil and Phil would fix it - I don't suggest it I say it. When you told him what you were interested in he said See Phil and Phil would fix it, but whatever you do not to let Nash know? That's right. He said that knowing you wanted to bring in dress jewellery from Czechoslovakia? May I qualify the answer? Yes. This is jewellery pendants, necklaces, are made up by workers - what they call out-workers, stuff comes from Czechoslovakia and it is made up by workers and can be brought into country, no licence need be required for that. That's how it is made in England. You were asking him whether you could bring in something in respect of which no licence was required? As far as I know no licence required for beads. Are you asking me to accept you were asking him about bringing into country from Czechoslovakia of material for which no licence was required? Yes, generalising, we had quite a long chat. If no licence was required what did you understand by see Phil and Phil would fix it? No licence for stuff that has to be made up, but other stuff that's made up licence would be required. He said you have to have stuff brought in made up by outworkers. What did you understand him to mean when he put his hand up and said about Nash? It didn't register with me much at first; I was more surprised to hear him refer to a Crown Minister by christian name. (Figure of speech used.)

10

20

30

40



Then of course whatever you do, don't let Nash know about it - after that it didn't sound so good. Did you ask him what he meant by that? No he talked too much you couldn't get a chance to say much to him. When you left him second time, after you'd gone to his house did he still believe you to be persons interested in bringing in dress jewellery? Yes. When you came back too, you resumed your former occupation as law clerk? Yes

In the  
Supreme  
Court of  
New Zealand  
Defendant's  
Evidence  
No.11  
A.G. Sercombe  
Cross-examination

#### RE-EXAMINED

10 Mr Leicester put questions to you based on the assumption that this dress jewellery was prohibited import from Czechoslovakia. You've told us if that is so you didn't know about it. No. Did Judd say anything and suggest if that is so he knew about it? Yes, he seemed to be well conversant with everything so far as Czechoslovakia and China were concerned - he said he was the adviser. Was there any discussion or reference to question of prohibited imports at all? I don't remember anything about prohibited. Until Mr Leicester asked the question had you ever heard it suggested that this type of jewellery was a prohibited import? No. You've told us one of your activities has been making searches; amongst other things, did you obtain a copy from the appropriate Registrar of the marriage certificate of Mr. Judd? Yes. (document disallowed). Did the searches you undertook include a search and obtaining of a certificate in relation to marriage of Hyman Yudt? Yes.

Re-examination

20 JAMES STANLEY WRIGLEY.

I am employed by Truth N.Z. Ltd., as a credit controller. At an earlier date I was employed for twelve years with New Zealand Police Force, I obtained rank of detective. I, in addition to my service in New Zealand, went to England to train in M.I.5 and Scotland Yard. I underwent a course there. In my service in New Zealand I was employed in Security Branch, in latter part of my service. I accompanied Mr. Sercombe on two visits to Auckland in connection with Judd. On first occasion I went into Mr. Judd's House with Mr. Sercombe and waited there for some time. I've heard his evidence today as to what occurred on that occasion. Broadly speaking I confirm it. When I returned to Wellington Mr. Sercombe made a telephone call from N.A.C. Depot at Auckland. I didn't hear any of that conversation. On second 30 occasion I also accompanied Mr. Sercombe. I was present throughout the interview with Mr. Judd. As between me and Mr. Sercombe, Mr. Sercombe did most of talking primarily he knew something about jewellery and I knew nothing whatsoever. In course of that interview there was no suggestion that dress jewellery from Czechoslovakia was a prohibited import - none whatever, first I've heard of it. Judd didn't say anything to indicate he had knowledge of such a suggestion. I confirm, having read and heard the paragraphs relating to interview, that these paragraphs do set out what he said. When he said to "See Phil and Phil would fix it" I understood to whom he was referring. I assumed I knew. Mr Sercombe said he didn't understand at once. When dealing in political personages, as far as I knew there was 40 only one Phil in House. Mr Sercombe hadn't been long in New Zealand to my knowledge. He wouldn't be as familiar with politics and various departments as I would have been - definitely not. He asked Judd who Phil was, Judd said Phil Holloway, Minister of Industries and Commerce. I got no impression Judd was making accusation against Holloway - quite the reverse. Nash seemed to be the fly in Judd's

Defendant's  
Evidence  
No. 12  
J.S. Wrigley  
Examination

ointment. He spoke of him in definitely not respectful terms. Nothing he said indicated disrespect for Phil or Mr Holloway - nothing he said. On occasion of Mr. Sercombe's subsequent visit to Czechoslovakian Consulate I was not with him.

CROSS-EXAMINED.

In the  
Supreme  
Court of  
New Zealand  
Defendant's  
Evidence  
No. 12  
J.S. Wrigley  
Cross-  
examination

Were you in Security Police at the time Compton Commission? I was. That was a Police Commission into an alleged operation between certain members of Force and bookmakers? Yes. Did you give evidence in that Commission? I did. You gave evidence as to certain information you had got from telephone tapping? No Sir. Did you not give any information about telephone tapping? Yes I gave evidence of a telephone that was handed to me by another person who had tapped it. 10  
Were you the man who gave evidence against Mr. Compton that he had used police labour in connection with some of his private affairs? That is correct. Sir Robert Kennedy was Chairman of enquiry? Yes. Is it not fact that your evidence on this report was held to be (question disallowed by Court). Were you dismissed or disciplined by Police Department following that inquiry? Neither. Did you resign from Department? I did. Was it then you joined Truth. That's right. As investigator or credit controller? First investigator, then as credit controller. What is function of credit controller? Controlling credit of Company - pretty obvious. You mean you're sort of accountant? Be more explicit? If a person who wishes to deal in our goods, if he gets behind in his payments it is my job to see his supplies are stopped. 20  
You're a debt collector? No. If someone gets behind what do you do? If accounts are not paid, his accounts are handed to debt collector by me. You're intermediary between debtor and debt collector? Yes. When you went to Auckland with Mr. Sercombe did you go as credit controller or as an investigator? I went as an investigator. Did you also represent yourself as a partner in a dress jewellery business? I did. On two occasions? Yes. Did you - was that type of investigation or method of investigation that you learned in New Zealand Police Force? Similar. You mean that such methods are normally tolerated by Police Force? In certain circumstances. You see nothing wrong in obtaining information in that way? - Purpose of your going to Judd was to obtain information for Truth? That is correct. Had you any reason to 30  
believe that Truth wished to obtain this information in straight forward and honest way - did your instructions from Truth to obtain information, encourage you to think that such information could be obtained in other than a straight forward and honest way? Only way it could be. Only way it could be was dishonest way? Not dishonest. You don't call it dishonest? No. (quite wrong) (Last few words were a comment).

CASE FOR DEFENDANT

## No. 13

REASONS FOR RULING OF HUTCHISON, A.C.J.  
AS TO EVIDENCE.In the  
Supreme  
Court of  
New ZealandNo. 13  
Reasons for  
Ruling of  
Hutchison, A.C.J.  
as to Evidence.  
5th June, 1959.

When this matter was raised before the adjournment, I said that I would admit evidence that Judd said what he is reported in the article to have said and the way in which he said it, that is critically or in a commendatory way or however it was. The former of those, that is the evidence that Judd said what he is reported to have said, is, I think, relevant to the last question that may arise in the case. The latter of those, the way in which he said it, that is whether he said it critically or how he said it, is relevant to a submission, a legal submission I think it is, that Mr. Cooke foreshadowed in his opening but on which I express no view at all. I would not disallow evidence that is adverse to Judd simply because Judd is not here, if that evidence is relevant to any matters in issue in the action; and the question is whether evidence critical of Judd - which of course, I imagine will be only evidence of opinion of a person or persons to that effect - is to be admitted as being relevant to the issues in the case.

The issues in the case, as I see them, are these. The first is whether the passage from the article that is put forward by the plaintiff as defamatory, is, in fact, defamatory of him as bearing the meaning assigned to it by the plaintiff; and I understood the legal submission foreshadowed by Mr. Cooke to be related to that question. The next issue is whether the publication of this article was privileged, and the third issue, if we come to that issue at all, is the question of damages, and one part of what I have already said I hold to be admissible, is related to that question.

Mr. Cooke said to me before lunch that one matter that was in issue was the type of man that Judd is, and he submitted that Judd's principles are relevant. I have searched the pleadings on this point. (You, Mr. Foreman and gentlemen, have already been told that the pleadings are the papers that have to be filed by the parties, setting out, not necessarily in detail, but in broad outline, their claims.) I have searched the pleadings on this point, and I do not find it stated in the statement of defence in any way that the type of man Judd is and his principles are issues in the case, and it is not therefore stated in any such way as would bring it to the notice of the plaintiff. The only reference that could be construed as in any way relating to that appears in paragraph 13 of the Statement of Defence, where it is said that the article was dealing with the working of the import licensing system and barter agreements and the need for an enquiry into the means whereby one Hyman Yudt, otherwise called Harry Judd, had been able to import goods into New Zealand. I would consider evidence to be admissible that related to the means whereby Harry Judd was able to import goods into New Zealand, because that is made part of the case for the defence, and, if there is evidence as to that, I shall admit it; but I am unable to see that a reference to the means whereby Harry Judd had been able to import goods into New Zealand, brings in as relevant to the issue, the type of man that Judd is and what his principles are. In my opinion evidence as to those matters is not relevant or admissible on that ground.

In the  
Supreme  
Court of  
New Zealand

No.13  
Reasons for  
Ruling of  
Hutchison, A.C.J.  
as to Evidence.

5th June, 1959.  
(continued)

It is, of course, so, as counsel pointed out, that when you come to consider any part of an article, you must read the whole article. The jury ought to read the whole article, and to the extent that the article contains matters about Judd (which you, Mr. Foreman and gentlemen, have seen and we have all seen) those matters are properly under the cognisance of the court; but these other outside matters about which, as I understand, it was proposed to ask the witness, are, in my opinion, not relevant on that ground.

The next submission was that the matters upon which it was proposed to ask the witness were relevant under S.22 of our Act. A reading of that section shows that the words that must be relied on – I quote the words – are “upon the whole matter put in issue”. Now that must mean upon the whole matter put in issue in accordance with the applicable rules of evidence, and, in my opinion, it does not widen the scope of admissible evidence. 10

Then it was said that the evidence was relevant to the last issue, that is, damages, if we come to it. In my opinion, it is not so relevant. If Judd is a bad type of man, then of course, that might go to a matter of the prudence, possibly imprudence, or possibly lack of judgment, of the plaintiff in this action; but it does not go to any question of dishonourable conduct on his part, if it should be held by the jury that the article does impute dishonourable conduct to him.

I think that I have covered all the grounds on which Mr. Cooke claimed this evidence is admissible, and I have ruled against each one of them; and, in my opinion, and in my ruling, the evidence proposed is not admissible except to the limited extent that I have already said it was. 20

Solicitors: Leicester, Rainey & Armour, Wellington  
for Plaintiff.

Alexander, J.H. & Julia Dunn, Wellington  
for Defendant.

## SUMMING UP OF HUTCHISON, A.C.J.

In the  
Supreme  
Court of  
New Zealand

No. 14  
Summing up  
of Hutchison,  
A.C.J.  
8th June, 1959

Mr. Foreman and gentlemen of the jury:—

This is an action for libel, in which the plaintiff alleges that the passage to which your attention has been specially directed in the article in defendant's newspaper meant that the plaintiff is and was a person who has acted and is prepared to act dishonourably in connection with the issue of import licences, and that he has been injured in his character and reputation and in the way of his office as Minister of Industries and Commerce and has been brought into public  
10 hatred, ridicule and contempt.

A case of this kind, Mr. Foreman and gentlemen, is placed on the shoulders of juries for decision. The law places it there in the confidence that the jury will deal with the case as a judge would have to deal with it if he were hearing it alone, that is to say, by considering the evidence dispassionately and calmly. Everyone of us may have, and properly does have, some views on political questions, but, in so far as this case deals with any political questions, when you are called on a jury, it is your duty — and I am sure you will carry out the duty, — to put aside any political thoughts that you may have, to put aside any thoughts that you may have for or against the principle of import licensing, and consider the  
20 case purely dispassionately, as all of us must do in a court of law, not allowing any thoughts of that sort that you may have to weight with you one way or the other.

Now, some of the matters that have been discussed before you in these last few days are matters that you will have read about in the newspapers, matters that you may have heard discussed, matters in which you may even yourselves have taken some part in discussing before you were called on for this duty, but you will please put aside out of your minds anything that you have read, anything that you have heard, before you came into this Court, and decide this case solely on the evidence that you have heard during these four or five days, assisted by the  
30 submissions that counsel have made to you for their respective clients this morning.

All questions of fact, Mr. Foreman and gentlemen, in a case like this are questions for the decision of the jury. My duty, besides presiding over the trial and seeing that it is properly conducted — and you saw some examples of the application of my duty in that way on Friday — is to direct you as to any questions of law that rise, and I have a secondary duty of giving you any assistance that I think that I usefully can with the facts of the case; but I propose to say very little indeed about the facts of the case and to make little or no reference to the evidence, because it is all fresh before you and you had the advantage of quite lengthy addresses by counsel this morning, in which they placed before you  
40 the matters to which they requested your particular consideration.

It is entirely for you to say, Mr. Foreman and gentlemen, what evidence you accept and what you reject. I did say in the course of the addresses that I thought that the matter that was put forward about the return that had been made of direct-

In the  
Supreme  
Court of  
New Zealand

No. 14  
Summing up  
of Hutchison,  
A.C.J.  
8th June, 1959  
(continued)

ors of this company in which the plaintiff was at one time interested, was a matter of small importance, and I say that that is so, Mr. Foreman and gentlemen. The position is no doubt, that a return of directors made by a secretary of a company is some evidence, prima facie evidence, of who the directors are at any given time; but prima facie evidence can always be explained, and Mr. Holloway's explanation that there must have been some mistake about the notice that was put in by the secretary, you may think to be a credible explanation, and it is the only real evidence that is before you on the point; it is for that reason that I indicated to counsel that I personally thought that the fact that there might have been a certain return made by the secretary of the company is not a matter that in itself goes strongly to any question of credibility of the plaintiff in the evidence that he gave. It is, of course, for you to say, Mr. Foreman and gentlemen, but I suggest to you that that is not in itself important to the matter at all. All questions of what evidence you accept and what evidence you reject are matters for you. You heard the respective submissions that were made to you on that very point with relation to the different witnesses, and you may give to those submissions just such consideration as you think it proper to give to them. The only other point I want to make, in connection with this, is that it does not seem that any submission at all was made to you to the effect that the evidence of Mr. Atkinson was subject to any criticism at all.

This is a very important case and it calls for your most careful consideration. For, on the one hand, we have the right of freedom of speech, which is one of the fundamental freedoms, which right includes the freedom of the press to criticize actions of Ministers of the Crown and other persons occupying public positions, and, on the other hand, we have the right of gentlemen who undertake these public positions and the duties of these positions to be criticized only in a way that is not defamatory of them but is a fair criticism of them in their public office, every person having a right to retain his reputation untarnished if he deserves to do so. To maintain balance between these two rights, which may compete with one another, the law has laid down a number of principles, and to some of these I shall refer in the course of my remarks at different places. One is this, that a newspaper is in precisely the same position for all the purposes of this case as any one else would be. It has the same rights and is subject to the same obligations.

The wrong of defamation can be quite shortly defined. It consists in the publication of a false and defamatory statement concerning another person without lawful justification.

I started by saying that this was an action for libel. I have now used the word defamation; but, for all the purposes of this case, the word "libel" means the same as the word "defamation", the word "libellous" means the same as the word "defamatory". Libel is just one of the subdivisions of defamation, the subdivision in which, speaking broadly, the defamatory matter is written, as opposed to slander in which, speaking broadly, the defamatory matter is spoken. So that, if I use the word "libel", or if I use the word "defamation", for the purposes of this particular case those two words mean the same.

I will read that definition again. The wrong of defamation consists in the publication of a false and defamatory statement concerning another person without lawful justification. Now there is no doubt or dispute about publication in this case; the article appeared in the particular issue of the defendant's newspaper. Then there is no dispute or doubt about the reference to Philip named in the article being a reference to the present plaintiff. Other words in the definition are these - "false", "defamatory", "without lawful justification", and to those words or phrase I wish to make some small reference. First, as regards the word "false", it will be unnecessary to consider anything rising out of that word, as I shall point out in a moment, and I go then to the word "defamatory".

A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers, which tends, that is to say, to lower him in the estimation of right thinking members of society generally and in particular to cause him to be regarded with such feelings as these - hatred, contempt, ridicule, fear, dislike or dis-esteem. The plaintiff claims that that particular article which is set out in para. 3 of his statement of claim is defamatory. The words that are set out there, coming from the article, are these -

"He told a man who approached him some time subsequently about import procedure that he was 'sick of things here' and that '25,000 smacklers had gone like that'. He gave the impression that there was nothing doing (in the import field) for him any longer. He told the caller that he had come too late, that there was 'no use talking' and that the Prime Minister, Mr. Nash, had put his foot down."

and now we come to the particular words that are complained of:-

"At a subsequent discussion with the same man, the disconsolate Judd told his caller to 'see Phil and Phil would fix it'. He warned him whatever he did, not to let Mr. Nash hear about it."

Then it goes on:-

"By 'Phil' his caller understood him to mean the Hon. Philip North Holloway, the Minister of Industries and Commerce."

We don't really need that last sentence, because, as I have already said to you there is no dispute or doubt as to the fact that the words that have just previously been used do, in fact, refer to the plaintiff in this action.

Now, it is not suggested for the plaintiff that the words "Phil would fix it", in their primary sense of "would arrange it", could be defamatory, and it is reasonably clear, Mr Foreman and gentlemen, that they could not be defamatory, that is in their primary sense; but the plaintiff says in para. 5 of his statement of claim

"By the said words referred to in para. 3 hereof the Defendant meant and was understood to mean that the plaintiff is and was a person who has acted and is prepared to act dishonourably in connection with the issue of import licences."

In the  
Supreme  
Court of  
New Zealand  
No. 14  
Summing up  
of Hutchison,  
A.C.J.  
8th June, 1959.  
(continued)

and certain particulars were given in amplification of that, and these are they:—

“The plaintiff in answer to the notice for particulars herein, relies on the fact that the words ‘see Phil and Phil would fix it’, in the context in which the said words were used, were capable of being understood and were understood in a sense defamatory of the plaintiff, more particularly in that the word “fix” was used in the said context in a secondary or colloquial meaning connoting irregular and dishonourable conduct on the part of the plaintiff in connection with the issue of import licenses.”

Now, the Defendant says:—

“The said words in their natural and ordinary meaning are incapable of being defamatory of the plaintiff.” 10

and that, Mr. Foreman and gentlemen, is common ground in this case, and that is why I have already said to you that the words in their natural and ordinary meaning are incapable of being defamatory of the plaintiff; and it goes on to say in para. 8 of its Statement of Defence:—

“The words set out in para.3 of the statement of claim do not bear and were not understood to bear and are incapable of bearing the meaning alleged in para. 5 of the statement of claim.”

So that you see that the issue here is whether the words mean what the plaintiff says that they mean, whether in their secondary or colloquial meaning taken from the context they mean what the plaintiff says that they mean. If they do not mean what the plaintiff alleges, then they would not be defamatory, but, if they do mean what the plaintiff alleges, you might well hold them without any doubt to be defamatory if they are false and are made without lawful justification. 20

That brings me back, then, to the word “false” to which I said that I would make some reference in a moment or two. I have still to make a reference to the words “without lawful justification”, and I will do that, but it is convenient here though to make the reference to the word “false” that I told you that I would make and to point out to you why in this particular case the word “false” presents no difficulty. The reason why it presents no difficulty is this, Mr. Foreman and gentlemen. If the words of the alleged libel, “Phil would fix it”, bear their primary meaning, they are not defamatory at all, and it does not in the least matter whether they are true or accurate or whether they are not true or accurate because, even if they are not, they give no cause of action to the plaintiff because they are not defamatory. If, on the other hand, they should mean what the plaintiff alleges they mean, the defendant says that it does not contend in this court that they are true and correct. The defendant says that they do not bear the meaning that is suggested, but, if you hold that they do, then the defendant does not contend before you that they are true in that sense. If you hold then, that they do bear the meaning that the plaintiff puts upon them, then falsity of them for the purpose of the definition must be taken here to be conceded. I go then shortly to the words “without lawful justification”. In certain circumstances, Mr. Foreman and gentlemen, there is lawful justification for publishing statements that would otherwise be defamatory. 30 40



In the  
Supreme  
Court of  
New Zealand

No. 14  
Summing up  
of Hutchison,  
A.C.J.  
8th June, 1959.  
(continued)

The only such case claimed here by defendant, but denied by plaintiff, is that the occasion on which the words were published is a privileged one. Now, whether an occasion is a privileged one is a question of law, a question for the judge. The question here as to whether these words were spoken on a privileged occasion might be a difficult one, and I would require argument from counsel on it before I could finally decide it, and that might be lengthy argument. That, of course, is not at all convenient in the course of a jury trial, because it would hold the whole matter up; and the convenient course for me is to do as I have done, that is to say I have ruled provisionally on it, and counsel have agreed that I should rule

10 provisionally on it, and then go on to take your verdict on the case on that basis but leaving the final decision of the question of privilege over to be argued before me later if it is necessary to do that. I rule provisionally that the occasion on which these words were spoken was not a privileged occasion, and your verdict is being taken on that basis. Counsel for the plaintiff indicated early in his address to you this morning that there was a matter left over for me, and this is the matter. Your verdict is being taken on the basis of my provisional ruling that the occasion on which these words were used was not a privileged occasion, but you will quite understand that, when some legal question, some important

20 legal question, because of the exigencies of the matter, is left over to be decided by the judge subsequently, your verdict may not finally dispose of the case. But it will have dealt with all the matters that fully and properly come before you, so that you may then be discharged from further attendance; and, if there still is some matter that has to be argued on the privilege question, that can be taken at some suitable time when counsel are ready to argue it and when an appointment can be made for that purpose.

I wish, at this stage, to make a reference to those Regulations that counsel for the defendant read in part to you this morning. Those Regulations, which are English Regulations dealing with the office of Director of Public Prosecutions, an office that there is in England, deal generally with criminal proceedings, and

30 there may be much doubt indeed whether these Regulations have any relation at all to this particular case. As I understand it, the point that counsel was making was, as he said, that in England the Director of Public Prosecutions has certain functions and that there is no officer occupying a precisely similar position to that in New Zealand. Well, there may be something in that or there may not be, and there may be some doubt as to whether the position of the Director of Public Prosecutions in England and the fact that there is no precisely similar officer in New Zealand, might have something to do with the case or might not. I do not know exactly what relationship it is claimed to have to this particular case, but it does appear to me that the only relationship that it can have is to the claim of privilege, the

40 question that I may still have to deal with and that is not before you at the moment. Well, if it does so relate - and it is the only thing it seems to me it can relate to -, we will let it go at that, because, as I have said that is an issue that I have yet to deal with and you are not concerned with it. My ruling, Mr. Foreman and gentlemen, is that it has nothing to do with the matters that are before you, and that, if it has any relationship at all to the case, its relationship is to the question of privilege which will ultimately have to be dealt with by myself.

In the  
Supreme  
Court of  
New Zealand

No. 14  
Summing up  
of Hutchison,  
A.C.J.  
8th June, 1959.  
(continued)

Going on from that, and still dealing with this question of "without lawful justification", the question of privilege, the fact that the paper was calling for a general inquiry does not in itself justify a defamatory statement that is made in the article unless indeed there is privilege. Whether there should or should not be a general enquiry is not a matter for us here. It is a matter for the Government, whose decision one way or the other might be criticised in the House or might be criticised in the newspapers if they thought it proper to criticise it, but it is not a matter for us here in a court of law to express any view on at all. For your purposes, on the question as to whether the passage was defamatory, in my direction to you, the fact that the paper was calling for a general inquiry is not an answer on the question of whether the passage was defamatory. The fact that it was so calling may be a circumstance to be considered on the question of damages if you come to the question of damages, but I will mention that later, but my direction to you is that, on the question of whether the passage that is complained of bears the meaning that the plaintiff alleges that it bears, the fact that the newspaper might have been calling for a general inquiry, has no bearing at all. 10

I go back then to the question of whether the words mean what the plaintiff alleges. There are certain general matters in respect of that that I want to mention to you. The first is this – the article said that Judd said those words and that the article is reporting him. You were asked to consider whether in fact that was established, but I suggest to you that it does not very much matter for this reason – if you accept that those words were spoken by Judd, it is not a defence at all that a statement that might be defamatory is put forward by way of report only. It does not help the defendant that the way that it is put is that Judd said "See Phil and Phil would fix it". The case is properly to be dealt with as if the defendant itself said "See Phil and Phil would fix it". And it does not matter either that Judd may have used the words, if he did use the words, in their primary meaning of merely arranging it and may not himself in those words, if he said them, have meant or said anything defamatory of the plaintiff. The question is whether the words mean in this article what the plaintiff alleges they mean. 20 30

Then it is not at all necessary for plaintiff's case on the meaning of the words that the writer of the article should not have intended a defamatory meaning. There is no evidence on that particular point, but, if you were of the view that it is possible that the writer of the article did not intend a defamatory meaning, that does not matter either. What is necessary for the plaintiff to show on this question is that the meaning that would be taken from it by ordinary readers of the article is the defamatory meaning which he assigns to the words. Would the words mean to these ordinary readers what the plaintiff alleges they mean?

Now, nothing short of that will do the plaintiff any good. When he alleges a special defamatory sense, he is bound by that special sense, or innuendo as we call it, and nothing short of that will suffice. If you thought that they did not mean that, but might mean something else than that, that the Minister was bungling or imprudent or something of that sort, then, you see, the whole course of the case might be different if that had been alleged, because the defence might have said "We justify those words, we will prove those words are true" or "we say that that is a fair comment on a matter of public interest", and the whole course of the case would have been changed if the plaintiff alleged something different from what he 40

did allege. That is why, when a plaintiff assigns to words of an article a special meaning, a secondary or colloquial meaning, what is called the innuendo, he is bound by the words of the innuendo; and, if he does not succeed in showing that the words to the ordinary reader would mean that the plaintiff is and was a person who has acted and is prepared to act dishonourably in connection with the issue of import licences, then the plaintiff will fail. He sets up that meaning and it is on that meaning that he takes his stand.

The burden of proof, Mr. Foreman and gentlemen, that the passage complained of bears the meaning that the plaintiff assigns to it, rests upon the plaintiff. That burden is discharged or is not discharged according to the meaning given to the passage by ordinary readers of the article. It is not necessarily the view that would be taken by a Professor of English, or a newspaper editor, or a judge or any other lawyer who is trained to give an exact meaning to words that he reads. It is the view that would be given to the passage that is complained of by the ordinary readers of the Truth. Now you, Mr. Foreman and gentlemen, are twelve ordinary members of the public, brought here from your ordinary occupations with no particular training for this duty that you are called upon today to fulfil, but here you are twelve members of the community, a cross-cut of the members of the community and you are eminently qualified to say what the meaning of that article is to the ordinary readers of a newspaper or of the Truth newspaper.

It is quite clear, Mr. Foreman and gentlemen, that words may take their meaning from the context. That is the evidence of Professor Gordon, it is the evidence of Mr. Watson, who is also used to words, and indeed it is common sense and everyone of us would know that that is the position, that words will take their meaning from their context. In their reading of the article, Dr. Gordon and Mr. Watson, in the context those words to them carry a meaning of acting dishonourably on the part of the present plaintiff, they referred to the context, they explained to you how they arrived at this reading. They referred to the Lynskey inquiry that is referred to in the article and they pointed to the reference to the Prime Minister's putting his foot down on it. It is a question for you whether the context gives the meaning that the plaintiff alleges. There was something to which I would just make a passing remark, but a passing remark only, and it is this, that Mr. Watson, looking at the reference to the Lynskey Inquiry (that is the one in which Belcher and Stanley were) cast the present plaintiff, Holloway, in the part of Belcher and Freer in the part of Stanley. That, you may think, seems to disregard altogether the position of Judd, and when the whole article is headed "This ex-Russian's Import Licences should be Investigated", and it starts off and proceeds on the basis that Judd's licences are to be investigated, you may feel that has not given a place to Judd in the case, and it may be you would think that there are alternative ways of casting people in the parts of the two men in the Lynskey inquiry. The main ground, I suggest, of Mr. Watson's casting Mr. Holloway in the part of John Belcher is because he was a Minister, not necessarily in charge of import licensing, because we are told that has to do with the Customs —, but a Minister who had something to do with import licensing, as was Belcher, — the junior Minister in the case in England; but, if it leaves Judd out, you may think that some other casting would have to take place there, and, if the casting were to cast Freer in the part of Belcher and Judd in the part of Stanley, then that would

In the  
Supreme  
Court of  
New Zealand  
No. 14  
Summing up  
of Hutchison,  
A.C.J.  
8th June, 1959.  
(continued)

In the  
Supreme  
Court of  
New Zealand

No. 14  
Summing up  
of Hutchison,  
A.C.J.  
8th June, 1959.  
(continued)

leave the present plaintiff uncast in this play. Of course, there are other ways of doing it than that. There were only two castings in the bit that is mentioned here, whereas in fact, there are three men to be cast here; and you may think that really the true way of casting it is to cast both the plaintiff and Freer in the part of Belcher and Judd in the part of Stanley, or possibly the plaintiff in the part of Belcher and Freer and Judd together in the part of Stanley. However, that is a matter that you can give your consideration to, Mr Foreman and gentlemen, if you think it is worth while considering that aspect of the matter at all; but you may feel that the mere introduction of this reference to the Lynskey inquiry does, in fact, lend weight to the view that the plaintiff puts forward that the complained of passage does bear the meaning that the plaintiff puts upon it, and the immediate context, of course, the reference to "He warned him, whatever he did, not to let Mr. Nash hear about it" gives some added weight to that particular allegation. But I repeat, Mr. Foreman and gentlemen, it is not the way a Professor of English reads it, nor the way that a newspaper editor reads it, nor the way that a lawyer reads it, but the way that the ordinary reader would read it; and you, Mr. Foreman, and gentlemen, are the ordinary readers for the purpose of forming a conclusion. I suggest that you read the whole article carefully and come to your conclusion, giving due weight where you think it necessary, to any submissions that have been made to you by counsel.

10

If you, then, hold that the passage bears the meaning alleged by the plaintiff - "that the plaintiff is and was a person who has acted and is prepared to act dishonourably in connection with the issue of import licences" - if you hold that it means that, then you would be justified in returning a verdict for the plaintiff. If you do not hold that it bears that meaning, you should hold for the defendant.

20

When you come back after considering your verdict, you will be asked "Do you hold for the plaintiff, or for the Defendant." If you hold for the plaintiff, you will be asked "For what damages". Now I come to the question of damages, and what I am about to say about damages is, of course, on the assumption that you have found for the plaintiff, because, if you say that you have found for the defendant, naturally enough you will not be asked anything about damages; but while I make these remarks on the assumption that you have found for the plaintiff, please understand that it is on that assumption only, and on no more than that, and is not a direction to you, because it is quite wrong for me to give you any direction as to how you should find at all.

30

Now £15,000 is claimed by the plaintiff. It is a very large sum, but it fixes the top figure only and a jury can fix any sum from that downwards if they are deciding to allow damages. You would properly hold, Mr. Foreman and gentlemen, if you held that this passage was defamatory of the plaintiff, you would properly hold that some damages would naturally follow from the publication of a libel such as that. Then, starting from there, you may take into consideration all the circumstances. Now some of them are these, pointing one way, that the plaintiff is a Minister of the Crown in a position where his good reputation is very important to him, that the circulation of defendant's newspaper is a very wide one, that the plaintiff was cross-examined in a way that you may think reached very nearly an attack on the

40

honourable nature of his conduct and indeed, it seems, even now, not to be accepted by the defendant that his conduct was honourable but only that the defendant does not set out in these proceedings to prove that it was dishonourable. Pointing perhaps the other way, the general attack, you may think, was rather on Judd or perhaps Judd and Freer than on the plaintiff himself, who is brought in only in a comparatively small passage. Another is it is indeed in the political sphere and the plaintiff himself has at times in the past written strongly on political matters. These are some of the matters for your consideration, but I am not endeavouring to cut down your consideration of any of the facts that have

10 been put before you during the course of these few days because all the circumstances are to be taken into account. On the one hand again it was said that there was a refusal to retract the words by the defendant's newspaper, but rather perhaps you would say that the refusal to retract the words was because the defendant contended that they were not capable of bearing the meaning that the plaintiff put upon them. There was plaintiff's decision not to contribute any reply, but that was two weeks afterwards and you might consider that a reply put in two weeks afterwards would not catch up on the original defamatory statement if, in fact, in your view it was a defamatory statement.

20 Damages, Mr. Foreman and gentlemen, are of different kinds. I do not propose to make an exhaustive division of all the kinds of damages that there may be, but it is clear that there can be on the one hand contemptuous damages. That is an award of some sum like a farthing; the indication there, if there should be an award of contemptuous damages, the indication is that the jury think the action should not have been brought. That was a submission that was made to you for the defence, by counsel, in the event of your holding that the passage complained of was libellous, and he suggested you might give a farthing damages, and that is what is called contemptuous, and, as I say, it is to indicate the jury's view that the action should never have been brought. Then there are compensatory dam-

30 ages. They are damages that are intended to reflect, as accurately as the jury can assess them, the actual loss that has been suffered by the injured person in the action; and those are the ordinary sort of damages that are assessed in an accident claim, where a man has been injured in the street in an accident or at his work or something of that sort. The damages there are always on a compensatory basis, and that basis is also applicable to a suit for defamation, but not to the exclusion of the other two main types of damages, one of which I have referred to, that is contemptuous damages; and the third main type of damages in a case like this is what is called exemplary or punitive damages, the award of a large sum which indicates the view that there should be a solatium or solace to

40 the plaintiff beyond the amount of any damage that is actually to be seen by the jury together with a view that the conduct of the defendant has been such as to justify its being punished by the award of damages. Now, Mr. Foreman and gentlemen, these matters are all open to you to consider, but I do suggest to you that, if you find that this statement is defamatory in the way alleged by the plaintiff, I do suggest that it is not a case in which you ought seriously to consider the question of contemptuous damages, because if, in fact, the plaintiff was libelled by the defendant's article, then the libel was not by any means a slight

In the  
Supreme  
Court of  
New Zealand  
No. 14  
Summing up  
of Hutchison,  
A.C.J.  
8th June, 1959.  
(continued)

one, and so I suggest to you that you ought not seriously to consider the question of contemptuous damages.

Now it is for you, Mr. Foreman and gentlemen to say what is a proper award of damages, if you are finding for the plaintiff, and you will consider, as I have said, all the circumstances, some few of which I have mentioned to you, and you will give consideration to what counsel have said to you in the course of their addresses. The amount, of course, must not exceed £15,000 which is the amount of the claim, but any figure below that is permissible.

Finally, I want to say again this to you, that your verdict will cover all the matters that are matters for the jury in this action, but your verdict is not necessarily final and conclusive, simply because of this question of privilege that has had to be reserved for me to consider, if it is necessary to consider it, after I hear counsel. The convenient course was to put to you all the matters that fall for your decision and leave the final decision of the other matter over on my having, as I have already told you, provisionally ruled that there was not a privileged occasion when this article was written. I do not think I have anything more that I wish to say to you, Mr. Foreman and gentlemen, unless there is some aspect of the case which I have not touched on which counsel feel I ought to give a direction on? 10

Mr. Cooke: If the jury thought the meaning was, in view of Judd's remarks, that an inquiry should include the question whether or not the plaintiff has acted dishonourably in connection with import licences – if they thought the words bore that lesser meaning, a different meaning from the one assigned by the plaintiff, then the defendant would be entitled to a verdict? 20

I hope I have, and I think I have, made that clear. I have told the jury that it is essential for the case of the plaintiff that it should be established by the plaintiff that the words bear the meaning alleged by him.

Mr Cooke: All questions of damages are for the jury.

That is true. I hope that I made that clear to you. I repeat that all matters as to damages are within your competency and for your decision. 30

Will you please retire, Mr. Foreman and gentlemen of the jury, and consider your verdict. All these exhibits put in in the course of the case will be in the charge of the Registrar. You may have them if you want them. You will each take with you, I imagine, your copy of the newspaper article. One other thing – if there is any matter in the evidence that you wish read to you you will have to tell the Registrar, please, and I will bring you back into court and I will read it to you, but I imagine there won't be any need for that and that you have the evidence within your minds as far as you require it.

Solicitors: Leicester, Rainey & Armour, Wellington.

Alexander, J.H. & Julia Dunn, Wellington.

LETTER OF DEFENDANT'S SOLICITORS AS TO  
TRANSCRIPT OF SUMMING UP

18th June, 1959

The Associate to the Honourable  
The Acting Chief Justice,  
Supreme Court,  
WELLINGTON.

In the  
Supreme  
Court of  
New Zealand

Dear Miss Buckrell,

No. 15  
Letter of  
Defendant's  
Solicitors as  
to Transcript  
of Summing up

Re: HOLLOWAY v "TRUTH" (N.Z.) LIMITED

10 Thank you for the transcripts of His Honour's oral judgment and summing up  
herein. 18th June, 1959.

In two material respects the record of the Judge's concluding remarks on page  
17 of the summing up appears to us to be not quite in accord with His Honour's  
words.

First, the sentence at the top of the page – "I hope I have, and I think I have,  
made that clear" does not altogether accord with our understanding of what the  
Judge said in answer to counsel's request. The Judge's statement, as we under-  
stood, was to this effect:

"I do not wish to add anything to what I have already said on that matter.  
I have told the jury that it should be established by the plaintiff that the words  
bear the meaning alleged by him, and I want to leave it at that".

20 Secondly, we understood that, when referring to the fact that the exhibits  
would be in the charge of the Registrar, His Honour also said, "you will probably  
not need to look at them" (or words to the like effect) as well as saying "you may  
have them if you want them".

On these two points, the substance of what the Judge said as set out above  
represents the understanding and recollection of both the solicitor and counsel for  
the defendant.

We should be obliged if you would kindly place this letter before His Honour  
as soon as possible to ascertain whether he will authorise the alterations in  
question. We are sending a copy of this letter to the solicitors for the plaintiff.

30

Yours faithfully,  
ALEXANDER, J.H. & JULIA DUNN

J.H. Dunn

No. 16

In the  
Supreme  
Court of  
New Zealand

NOTICE OF MOTION FOR ORDER GRANTING  
NEW TRIAL OR FOR JUDGMENT FOR DEFENDANT

No. 16  
Notice of  
Motion for  
Order  
Granting new  
Trial or for  
Judgment for  
Defendant  
19th June, 1959.

TAKE NOTICE that on Friday the 26th day of June 1959 at ten o'clock in the forenoon or so soon thereafter as Counsel may be heard Counsel for the defendant will move this Honourable Court at Wellington pursuant to leave reserved at the trial of this action FOR AN ORDER that judgment be entered for the defendant herein on the ground that the occasion of the publication sued on was privileged as pleaded in paragraph 13 of the statement of defence AND FURTHER TAKE NOTICE that in the alternative Counsel for the defendant will then move for an order setting aside the verdict of the jury and granting a new trial of this action UPON THE GROUNDS; 10

1. THAT the learned trial Judge misdirected the jury on material points of law, particulars of which misdirections are annexed hereto.

2. THAT the Judge rejected evidence which ought to have been admitted in:

(a) Confining the evidence of the witnesses Sercombe and Wrigley in connection with their visits to Judd's house to whether Judd said what he was reported in the article to have said and the way in which he said it, and disallowing evidence regarding the character or conduct of Judd, statements made by him other than those reported in the article, and the circumstances in which Judd made statements to the witnesses. 20

(b) Disallowing evidence from the witness Sercombe as to the practice in England in connection with approaches by members of the public to the Director of Public Prosecutions and as to functions in fact performed in England by the Director of Public Prosecutions and the Police.

DATED at Wellington this 19th day of June 1959.

J.H. Dunn

Solicitor for Defendant

To the Registrar of this Honourable Court,  
and to The Plaintiff and his Solicitor.



PARTICULARS OF MISDIRECTIONS ANNEXED TO  
NOTICE OF MOTION FOR NEW TRIAL

In the  
Supreme  
Court of  
New Zealand

No. 17  
Particulars of  
Misdirections  
Annexed to  
Notice of  
Motion for  
New Trial

19th June, 1959.

- (a) Directing the jury that the explanation of the plaintiff of the return of directors made by the Secretary of Amalgamated Commercial Traders Limited in April, 1958, was that there had been some mistake about the notice, and that the jury might think that a credible explanation.
- (b) Directing the jury that it is the right of gentlemen who undertake public positions, such as Ministers of the Crown, to be criticised only in a way that is not  
10 defamatory of them.
- (c) Directing the jury that the fact that there is no officer in New Zealand precisely similar to the Director of Public Prosecutions in England had nothing to do with the matters before the jury.
- (d) Directing the jury that on the question whether the passage complained of bore the meaning alleged by the plaintiff the fact that the newspaper might have been asking for a general inquiry had no bearing at all.
- (e) Directing the jury that the case was properly to be dealt with as if the defendant itself had said "See Phil and Phil would fix it".
- (f) Directing the jury that they should find for the defendant if they thought that  
20 the words sued on did not mean what was alleged by the plaintiff, but might mean something less than that, that the Minister was bungling or incompetent or something of that sort, but refraining from specifically directing the jury upon request that they should find for the defendant if they thought the meaning was that, in view of Judd's remarks, an inquiry should include the question whether or not the plaintiff had acted dishonourably in connection with import licences.
- (g) Directing the jury that the evidence of the witnesses Gordon and Watson was that the words complained of in the article carried to them a meaning of acting dishonourably on the part of the plaintiff.
- (h) Directing the jury in connection with the comparison in the article with the  
30 Lynskey Inquiry and Belcher and Stanley that there were in fact three men (meaning the plaintiff, Freer and Judd) to be cast here.
- (i) Directing the jury in substance that they should give a verdict against the defendant on proof of the sense ascribed to the publication in the statement of claim.
- (j) Suggesting to the jury that this was not a case in which the jury ought seriously to consider the question of contemptuous damages, because if, in fact, the plaintiff was libelled by the defendant's article then the libel was not by any means a slight one.
- (k) Intimating to the jury that they would probably not need to look at the exhibits.

In the  
Supreme  
Court of  
New Zealand

REASONS FOR JUDGMENT OF HUTCHISON, A.C.J.

No. 18  
Reasons for  
Judgment  
of Hutchison,  
A.C.J.  
23rd July, 1959

The issue that was left over from the trial of this action was that raised by paragraph 13 of the Statement of Defence in which it was pleaded that the words upon which plaintiff sued had been published on a privileged occasion, upon which plea I ruled provisionally that the occasion was not privileged. Counsel for defendant now moves for judgment for defendant on the ground that the occasion was a privileged one. Alternatively, he moves for an order for a new trial upon the grounds first that I mis-directed the jury on material points of law in a number of respects particularised in his motion, and secondly that I rejected certain evidence which ought to have been admitted. Counsel for plaintiff moves for judgment for plaintiff in accordance with the verdict of the jury. 10

The first question to be dealt with, then, is that of privilege. For the purposes of this question, it must be accepted that the words of the passage complained of are libellous as bearing the meaning alleged by plaintiff in his innuendo. No express malice on the part of defendant was suggested.

Mr. Cooke for defendant submitted that the wide general principle underlying the defence of privilege is the common convenience and welfare of society or the requirements of public interest. If he had said "the common convenience and welfare of society or the common good", that would have been well supported by authority. But it is not so clear, I think, that the requirements of public interest, by themselves and without more, establish the common good. For his proposition on this point, he relied on *Perera (M.G.) v Peiris* 1949 A.C.1, which, he said, is authority for the view that the basic question is "Was the publication in the public interest?" He submitted that the matters dealt with in the article in question, in its various aspects, were of public interest and of legitimate common interest to the community and the Press. While he submitted that it was not necessary in law to show any duty on the defendant to publish the article, once he showed the common interest of the Press and the public, he contended that there was a duty on the Press to look into "the Freer Case", and publish the result. 20 30

Mr. Leicester for plaintiff put his propositions thus :-

1. The position in defamation is the same for a newspaper as for a private individual.
2. Statements in a newspaper in the ordinary way to the ordinary public are not privileged.
3. If a defamatory statement is unconnected with and irrelevant to the main statement which is *ex hypothesi* privileged, such privilege does not extend to the defamatory statement. 40
4. The words published by the defendant of the plaintiff were not published for the information and benefit of the public nor was it defendant's duty to publish them nor was it in the common interest of the public and the defendant that such words should be published by defendant.

The propositions which counsel numbered 1, 2 and 4 are, I think, the general propositions to be considered against those put forward for the defendant, the proposition numbered 3 being a special one to be considered if the general propositions should fail plaintiff. He cited a considerable number of authorities.

In the  
Supreme  
Court of  
New Zealand

No. 18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.

23rd July, 1959  
(continued)

10 It seems to me that, prior to *Perera (M.G.) v Peiris (supra)* it was well understood that, in general, a newspaper was not entitled to set up privilege as a defence to a claim based on a defamatory statement published by it unless there was a duty on it to publish the matter containing the defamatory statement or unless there was some special circumstance that gave it that privilege. A claim  
10 that there was common interest between the proprietor of the newspaper and the public in the matter dealt with in the publication and that this in itself made the occasion of the publication privileged, was, I think, for one reason or another not acceptable to the Courts. The reason that was more often than not given for rejecting it was that the publication was too extensive. This aspect of the matter is dealt with in *Gatley 4th Edn. p. 253* and the cases are mentioned in the foot-  
notes. However, broader grounds than that have been taken, and I refer to the judgment of Latham, C.J. in *Loveday v Sun Newspapers Ltd. 1938 59 C.L.R. 503, 513:-*

20 "In this case no defence of fair comment upon a matter of public interest has been raised. The press cannot itself make the matter one of public interest by publishing statements about it (*Chapman v Ellesmere*) but the administration of a system employing relief workers is undoubtedly a matter of public interest (Cf *Purcell v Sowler*). There is, however, no principle of law which entitles a newspaper to publish a defamatory statement of fact about an individual merely because the statement is made in the course of dealing with a matter of public interest. No question of comment arises in the present case. The statements complained of are made as statements of fact and the defendant has not sought to defend them as comments. There is no rule that  
30 the circumstance that such statements are published by a newspaper creates any kind of privilege in favour of the publisher (*Davis v Shepstone ; Smith's Newspapers Ltd., v Becker*). Therefore the defendant newspaper company cannot base any defence of privilege upon the facts that the subject matter in relation to which the article was published was a matter of public interest and that the publication was a publication of a statement communicated to the newspaper for the purpose of publication."

40 No case was cited to me prior to *Perera (M.G.) v Peiris (supra)* —, and I am so far considering the position prior to that case - in which such a claim was upheld on that ground alone. The fact is, I think, that the courts were not prepared to give to a newspaper publication privilege on that ground alone but required always that in the absence of the special circumstances that would otherwise protect publication, there should be a duty on the newspaper to make it. If that were not so it would, I think, be, as Romer L.J. said in *Chapman v Ellesmere 1932 K.B. 431, 474*, though he was dealing there with a question of duty and not with this precise question, that :-

In the  
Supreme  
Court of  
New Zealand  
No. 18  
Reasons for  
Judgment  
of Hutchison,  
A.C.J.  
23rd July, 1959  
(continued)

“The power of the Press to libel men with impunity would in the absence of malice be almost unlimited.”

It is not inapt, I think, to refer here to the observation of Evatt J. in *Smith's Newspapers Ltd., v Becker* 1932 47 C.L.R. 279 at 304, which he repeated in *Daily Telegraph Newspaper Co. Ltd., and Anor v Bedford* 1934 C.L.R. 632 at p.658,

“Occasionally there may arise cases where, although the medium of a widely circulated newspaper has been employed by a defendant to meet an occasion the protection of privilege will attach to such publication.”

My particular reference is to the word “occasionally”.

I go then to the question of whether there was a duty upon the defendant company to publish the article containing the defamatory matter sued upon. In the course of his judgment in *Chapman v Ellesmere (supra)*, at p.456 of the report, Lord Hanworth, Master of the Rolls, said:-

“There remains the question whether the plea of privilege can afford protection to the defendants in respect of these paragraphs. It is said that it was a matter of public interest, that it was the duty of the news agencies and of the Times to give to their clients and readers information that was of interest to all racing people, to all the betting public, to all who stand outside these two classes, but yet take an interest in the sport of horse-racing, and in particular in the maintenance of its honour and freedom from corrupt practices – the practice of drugging horses for races having at that time attracted much attention. These are strong arguments. But though the vehicle of the public Press has been held to be a proper and protected one, so as to defeat a claim for libel, where it has been used ‘as the only effective mode’ to answer a charge which had already received as wide a circulation (see *Adam v Ward* and *Brown v Croome*), there is no authority which protects the statement in the newspaper, where it is made not in answer, but as a fresh item on which a general interest, as distinguished from a particular interest already aroused, prevails. Buckley L.J. in *Adam v Ward* stated a proposition, which was approved in the House of Lords in the following terms: ‘If the matter is matter of public interest and the party who publishes it owes a duty to communicate it to the public, the publication is privileged, and in this sense duty means not a duty as a matter of law, but, to quote Lindley L.J.’s words in *Stuart v Bell* “a duty recognized by English people of ordinary intelligence and moral principle”. ‘But these words must be taken in relation to the facts of the case. It appears to me that the learned judge meant by the words ‘matter is of public interest’, ‘has already become of public interest’. The duty cannot arise in respect of a matter not yet made public to all’”.

Romer L.J. at p.474 said:-

“As regards the publication to and in the Times, and to the press agencies, the defence of privilege cannot, I think, prevail. . . . . So far as regards the Times Publishing Company, it may in one sense be true to say that they owe a duty to their readers to publish any and every item of news that may interest them. But this is not such a duty as makes every communication in their paper relating to a matter of public interest a privileged one. If it were, the power of the Press to libel public men with im-

punity would in the absence of malice be almost unlimited.”

and so, on the authority of this case and others, it is said in *Gatley* 4th Edn. 257:—

“But where no duty to the public can be proved, no privilege will attach to the publication of libellous matter in a newspaper.”

I have already quoted a passage from the judgment of Latham C.J. in *Loveday v Sun Newspapers Ltd.*, (supra). In that case, too, Dixon J., dissenting on one point but on this, at p.521 of the report quoted the passage from the judgment of the Master of the Rolls in *Chapman v Ellesmere* which I have set out, and went on:—

10 “This passage formulates principles which appear to me to be fatal to the claim made by the defendant Sun Newspapers Ltd., to privilege, if the facts are assumed to be that, without any consent, invitation or incitement from the plaintiff himself, the newspaper published at one and the same time the criticism or attack upon what had been done by or under the authority of the municipal council by the secretary of the unemployed relief council and the town clerk’s reply thereto. Upon that assumption all that can be said is that in the course of and for the purpose of its business the newspaper company decided to include the criticism and the answers in its columns. Before it did so, no situation existed casting upon the newspaper company any duty to communicate to anyone the rival views of the secretary of the unemployed relief council and the town clerk. It was simply news about a thing done by a public body.”

20

It is in the light of these authorities that I must consider whether there was a duty upon the defendant company to publish the article that contained the defamatory statement. It may be accepted and I do accept it, that the working of the import licensing system and such matters as the activity of Ministers and of Members of Parliament in relation to it, is a matter of public interest.

I have already said that Mr. Cooke’s primary submission was that it was not necessary to the validity of the plea of privilege that there should be any duty of publication resting on defendant, and that it was only alternatively to that, that he submitted that there was such a duty. On that alternative submission, he claimed that the refusal of the Prime Minister on two earlier occasions to answer questions put to him by the representatives of the defendant’s newspaper strengthened the case of the defendant in claiming a duty. I have read the questions, and it does seem to me that the Prime Minister must be entitled to use his discretion as to what questions he is prepared to answer, when put to him by a newspaper reporter, and that his refusal to be “cross-examined”, as the defendant’s newspaper reports him, cannot be given any importance on this question. Counsel suggested that the reticence and inactivity, as he claimed it was, of plaintiff in relation to matters concerning Judd and Freer imposed a duty on defendant to look into the matter and publish the result; but I cannot, I think, accept that submission. Another matter that was mentioned for defendant on this aspect of the case was the fact that there is no such officer in New Zealand as the Director of Public Prosecutions. Counsel referred to the *Prosecution of Offences Regulations* 1946 Reg. 2, which provides:

30

40

In the  
Supreme  
Court of  
New Zealand  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.  
23rd July, 1959  
(continued)

In the  
Supreme  
Court of  
New Zealand

No. 18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.  
23rd July, 1959  
(continued)

"The Director of Public Prosecutions shall give advice, whether on application or on his own initiative, to Government Departments, clerks to justices, chief officers of police and to such other persons as he may think right in any criminal matter which appears to him to be of importance or difficulty and such advice may be given at his discretion either orally or in writing."

The regulation applies "in any criminal matter". The suggestion for the defendant apparently is that the Director of Public Prosecutions would cause an investigation to be made into a person's allegations of the nature of those set out in the article. I am unable to see any ground for the suggestion that he would cause an investigation to be made into allegations in circumstances in which the police, acting on the advice of the Solicitor-General or the Crown Solicitors, would not do the same in New Zealand. 10

In the light of the authorities, I do not think that the defendant may claim privilege on the ground of any duty resting on it. There was no charge against it to be answered by the article, the reference to the matters dealt with in the article was initiated by it, and the article was published without any "consent, invitation or incitement" from the plaintiff. That being my view, I need not go into the further point that might rise in connection with this, whether, if there were a duty, it would justify a charge of dishonourable conduct against the plaintiff as distinct from a general charge, say of incompetence, directed against him and his department. 20

None of the other matters that have in various cases given privilege to a publication in a newspaper is present here, such as that the publication was in answer to an attack upon the paper or on someone associated with it. It was suggested by counsel for defendant that the article was provoked by conduct and attacks, but I cannot see that there was anything in the way of an attack on the newspaper or any provoking conduct directed against it.

I am left, then to consider *Perera v Peiris* (supra), upon the authority of which counsel for defendant submits that the only real question is whether the publication was in the public interest. That case was decided by the Privy Council on Roman-Dutch law, though no point need be made of that, for the judgment of their Lordships indicates, I think, that their view would have been the same at common law. I have fully considered the judgment, and have read the argument of Sir Valentine Holmes, to which counsel directed my attention. Their Lordship's reasons set out at p.21-22 of the report show clearly that the case was a very much stronger case in favour of the existence of privilege than the present case. The judgment may take the common law a little further than it went before, but I am not at all satisfied that it takes it far enough to afford privilege to the occasion of the publication of this article, and accordingly, on the authorities as a whole as I read them, I rule against the submission that the occasion was privileged. So to hold does not, I think impose any undue burden on the Press, for in any action for defamation it always has, in appropriate cases, the defences of justification and fair comment. 30 40

I must now turn to defendant's motion for an order for a new trial, and to the first branch of that based on the grounds that I mis-directed the jury on material points of law. The various points, as set out in the particulars, I shall state as I come to deal with each one of them.

- (a) "Directing the jury that the explanation of the plaintiff of the return of directors made by the Secretary of Amalgamated Commercial Traders Limited in April, 1958, was that there had been some mistake about the notice, and that the jury might think that a credible explanation."

10 Mr. Cooke said in his argument on this ground that it was correct that in cross-examination plaintiff said that there had been some mistake about the notice, but that in re-examination he changed his ground and contended that the Secretary's notice, though dated in March, 1958, and filed in April, was meant, in accordance with the Companies Act, as he contended, to state the position of the directorate of the company as at January 1957 when the Companies Act 1955 came into operation.

20 It is correct that plaintiff claimed that in re-examination, but that did not seem to me to be necessarily a change of ground; it seemed to me rather an alternative explanation. It was really a submission of law, which I thought at the time was probably unsupportable; but the sum total of the position was that plaintiff did not at any time resile from his statement that he had resigned his directorship in December 1957 - in re-examination he gave a precise date, 10th December 1957 - and the fact that he gave two different explanations of the Secretary's notice, not necessarily inconsistent, did not appear to me to show that his statement that he had then resigned was a mis-statement or to have much bearing on the question of his credibility; and I do not think that there was anything wrong in describing his overall explanation as one that there must have been some mistake about the notice. What I said about this was preceded by the statement, applying to evidence generally, that it was entirely for the jury to say what evidence they accepted and what they rejected, and was immediately followed by the sentence, relating to  
30 this particular matter:

"It is, of course, for you to say, Mr. Foreman and gentlemen, but I suggest to you that that is not in itself important to the matter at all"

and by the next two sentences relating again to evidence in general. Surely the jury would see that I was simply endeavouring by a suggestion to help them on a point to which there had been some reference and would not take what I said as a direction of any kind. Even if I mis-stated the effect of the evidence on the point - and I think it is unduly critical to say that I did that - that would, in my opinion, not be a misdirection; still less, in my opinion, would it be a *misdirection* on a point of law.

- 40 (b) "Directing the jury that it is the right of gentlemen who undertake public positions, such as Ministers of the Crown, to be criticized only in a way that is not defamatory of them."

The remark complained of was in an introductory paragraph appearing on page 3 of the typescript of my summing up. In that paragraph I was stating in a broad and general way that there are both rights of criticism of men in public positions and rights in such men as to the type of criticism to which they are to be

In the  
Supreme  
Court of  
New Zealand

No. 18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.  
23rd July.1959  
(continued)

In the  
Supreme  
Court of  
New Zealand  
No. 18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.  
23rd July, 1959  
(continued)

subject. The next sentence was—

“To maintain a balance between these two rights, which may compete with one another, the law has laid down a number of principles, and to some of these I shall refer in the course of my remarks at different places.”

After stating one such principle, I defined the wrong of defamation, using Salmond's definition — *Salmond on Torts* 12 Ed. p.319. I then endeavoured to expound the points in that definition, — and no criticism has been directed to this exposition — with reference to the case before the Court, this exposition extending from p.4 to p.8 of the typescript of the summing up. Then there at different stages appeared my references to the meaning to be attributed to the passage complained of and my reiteration that, for plaintiff to give the passage a defamatory meaning, he must establish his innuendo. 10

The words complained of by defendant are the words “only in a way that is not defamatory of them”. I understood Mr. Cooke to submit that the jury might give the word “defamatory” there a loose meaning, which would disregard such requirements of the definition of defamation as “falsity” and “without just cause” and such matters as the need of plaintiff's establishing the meaning assigned by his innuendo.

I think that the submission is unsupportable. The jury, I'm sure, would understand well that the meaning of the word “defamatory” in that introductory remark was as laid down in the definition that immediately followed it and in the summing up as a whole. To think anything else would, I'm sure, be to under-rate grievously the intelligence of the jury. 20

(c) “Directing the jury that the fact that there is no officer in New Zealand precisely similar to the Director of Public Prosecutions in England had nothing to do with the matters before the jury.”

The passage referred to is at p.8 and 9 of the typescript. It was said for plaintiff that this fact, as claimed to be a fact, went to the question of damages. I am not at all convinced that there is, in relation to any question of damages in this case, any difference between the position of a person or newspaper in England where there is a Director of Public Prosecutions and that of a person or newspaper in New Zealand where there is no Director of Public Prosecutions but there are the Solicitor-General and Crown Solicitors. The Regulations referred to, the Prosecution of Offences Regulations 1946, do not lead me to any view that there is any such difference as could affect the question of damages in this case. In particular, I am unable to see any ground for the suggestion made on behalf of defendant that the Director of Public Prosecutions would cause an investigation to be made into a person's allegations in circumstances in which the police, acting on the advice of the Solicitor-General or the Crown Solicitors, would not do the same in New Zealand. Further, even if there were ground for that suggestion, I do not see how it could affect the question of damages. 30 40

No authority was cited in support of this submission, and I think it unsound and reject it.

(d) “Directing the jury that on the question whether the passage complained of bore the meaning alleged by the plaintiff the fact that the newspaper might have been asking for a general inquiry had no bearing at all.”



- (e) "Directing the jury that the case was properly to be dealt with as if the defendant itself had said 'See Phil and Phil would fix it'."
- (f) "Directing the jury that they should find for the defendant if they thought that the words sued on did not mean what was alleged by the plaintiff, but might mean something less than that, that the Minister was bungling or incompetent or something of that sort, but refraining from specifically directing the jury upon request that they should find for the defendant if they thought the meaning was that, in view of Judd's remarks, an inquiry should include the question whether or not the plaintiff had acted dishonourably in connection with import licences."

In the  
Supreme  
Court of  
New Zealand  
No. 18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.  
23rd July, 1959  
(continued)

10 These three paragraphs of the particulars raise questions of more substance, and it is necessary, I think, for the purpose of all three of them to state shortly and in a general way the course of the trial.

Counsel for plaintiff made a lengthy opening in the course of which he read the article, pointed out the passage in which plaintiff claimed that he had been libelled, stated the innuendo as pleaded, and referred to the context of that passage as he submitted it was, stressing in particular the reference to the Lyskey inquiry. He gave a summary of what the plaintiff's evidence would be in relation to his career and to the matter of Judd's licences to which the article referred.

20 After calling a formal witness to produce the publication and a copy of the report of the Lyskey Tribunal, and Professor Gordon, Professor of English Language and Literature at the Victoria University of Wellington and Mr. Watson, a newspaper editor, to give evidence as to the meaning that they would attribute to the complained of passage, he called the plaintiff. Plaintiff gave evidence as to his business and public life up to date and his dealings with Judd, working for that purpose through the departmental files of correspondence. He was extensively cross-examined. Counsel for defendant, in the course of the argument of this motion, said that he wished it to be quite clear that every question that he asked in cross-examination arose out of the examination-in-chief of plaintiff, and went to credit or to mitigation of damages so far as the question related to his conduct in respect of or in connection with the subject matter of the alleged libel. I accept, of course, what counsel says as to the purpose of the cross-examination, as he saw it, and as to the restriction that he holds that he imposed on himself; but, nevertheless, accepting that, there is still cross-examination and cross-examination, and the cross-examination of plaintiff in this case went very nearly to, if it did not actually reach it, an attempt to justify such a meaning as was given by the innuendo to the passage complained of, though there was no justification pleaded of the meaning given by the innuendo. In dealing in the summing up with the question of damages, I referred to one of the matters that might be taken into consideration as this

30  
40 "... that the plaintiff was cross-examined in a way that you may think reached very nearly an attack on the honourable nature of his conduct and indeed, it seems, even now, not to be accepted by the defendant that his conduct was honourable but only that the defendant does not set out in these proceedings to prove that it was dishonourable."

In the  
Supreme  
Court of  
New Zealand

No. 18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.

23rd July, 1959  
(continued)

What I there said has not been challenged. Then Mr. Atkinson was called, a senior civil servant who was at the relevant time the acting head of the Department of Industries and Commerce. Mr. Atkinson's evidence gave general support to the plaintiff as to Judd's licences. The witness Watson was recalled with regard to a question that had been put to the plaintiff in cross-examination, which might have contained an implication against this witness as well as against plaintiff.

In the course of his opening, counsel for defendant said that Truth did not say, and does not say, that plaintiff acted dishonourably in connection with the issue of import licences; but that submission was one that, I think, need not, and should not, have been taken seriously, so far as the words "does not say" are concerned, for the whole conduct of the case by the defendant, as I saw it, right to the end was inconsistent with that submission and denied it. He said that what Truth said was that plaintiff had not faced up to his responsibility by not having an inquiry into the Judd affair and that the inquiry should be a full one and should extend to the part played by the Minister and the Department. He said that the article put forward the words sued on as a repetition of what Judd said, and that the evidence would be that they were a repetition of what Judd said; that, subject to any ruling that I might give, the general rule was that any person who repeated a slander might be liable to a plaintiff; but that it was very doubtful whether Judd slandered plaintiff in the words that he used, that Judd was not even meaning to criticize Holloway, that the Minister and the Department had been helpful to Judd and that he was not ungrateful to plaintiff.

He called two witnesses to speak of their going to Auckland on behalf of defendant to obtain an interview with Judd. The first witness, Mr. Sercombe, told how he had gone about obtaining this interview; he had misrepresented himself and his associate as being persons interested in importing merchandize from Czechoslovakia. He justified this in cross-examination by the need of meeting cunning with cunning. He said that Judd had used the words attributed to him in the article, and that he, Sercombe, got a definite impression that Judd was not attacking plaintiff when he used them. The second witness confirmed the evidence of the first and, as to the matter just mentioned, said that he got no impression that Judd was making an accusation against Holloway but quite the reverse.

In the course of Sercombe's evidence I had to deal with the question whether counsel for defendant should be permitted to lead evidence from him that Judd was a man of bad character and conduct. (My ruling that he was not to be so permitted is challenged on a later branch of this motion.)

In the course of his cross-examination Sercombe was asked a question and answered it thus:—

"What did you understand him to mean when he put his hand up and said about Nash? It didn't register with me much at first; I was more surprised to hear him refer to a Crown minister by christian name — figure of speech used.

Then of course whatever you do, don't let Nash know about it – after that it didn't sound so good."

Counsel for defendant opened his final address by submitting that there was a stench about the whole Judd affair and asking the jury to keep in mind this expression, "It doesn't sound so good". This he, no doubt, took from what the witness Sercombe had said in the answer to the question that I have quoted. He submitted that, when Judd spoke of Holloway as he did, it was obvious that the Minister's conduct should be inquired into as part of an inquiry. He said that Judd was not slandering plaintiff but commending him, and probably did not use the word "fix" in a bad sense. He went on that Truth does not say that the plaintiff has acted and is prepared to act dishonourably in the issue of import licences; he said that that was an extreme and unqualified meaning and he suggested that plaintiff's advisers were ingenious in pleading that meaning, for they knew that there was little chance of defendant's establishing that. He said that, on a less extreme meaning, they would have been met by a defence of justification. He suggested that such a less extreme meaning might have been that there should have been an inquiry which should have extended to whether the plaintiff acted dishonourably in connection with the issue of import licences. I noted him later in his speech to say "Truth cannot prove he acted dishonourably".

20 He dealt with a number of other matters that went to the credibility of plaintiff's evidence and to damages. He said that before plaintiff was entitled to  $\frac{1}{4}$ d damages, he had to show that the words meant that he has acted and is prepared to act dishonourably in connection with the issue of import licences, and that "Truth can't, doesn't, and hasn't gone that far". He concluded by repeating his opening remark "It doesn't sound so good".

Counsel for plaintiff dealt comprehensively with the two questions whether the passage complained of bore the meaning attributed to it in the innuendo, and damages. Dealing with the former he said that the demand for an inquiry is not the issue and that the introduction of this was "so much hocus pocus and eyewash".

30 I go now to the mis-direction alleged in paragraph (d). There is no doubt that the article starts off by claiming that Judd's import licences should be investigated and it finishes up by returning to the demand that there should be an investigation; but, in between the beginning of the article and the end of it, there are a number of statements, mainly of fact, of which the short passage sued on is one. In the portion of the summing up criticized by para. (d), I indicated to the jury that the fact that the defendant's newspaper was calling for a general inquiry might bear on the question of privilege, which was not before the jury, or might be a circumstance to be considered on the question of damages, if the jury came to the question of damages, but, on the question of whether the passage

40 sued on bears the meaning that the plaintiff alleges it bears, I directed as set out in this paragraph of the particulars. I adhere to the view that that was a correct direction.

Mr. Cooke, in the course of his submission on this paragraph in the motion, said that one interpretation of the words that was open to a properly directed jury was that those words were a piece of factual reporting of non-defamatory

In the  
Supreme  
Court of  
New Zealand

No. 18

Reasons for  
Judgment of  
Hutchison,  
A.C.J.

23rd July, 1959

(continued)

In the  
Supreme  
Court of  
New Zealand

No. 18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.

23rd July, 1959

(continued)

comments by Judd with no implication at all; but that another interpretation, which a jury could have placed on the report of those remarks in their context, was that the newspaper was suggesting that a full inquiry should extend to whether or not plaintiff had acted or was prepared to act dishonourably in connection with the issue of import licences.

The first of those I think is more conveniently to be dealt with in connection with para.(e), to which I shall come shortly, but what I say there should be taken as also said in connection with this particular paragraph so far as it may be relevant. The second suggestion was made to the jury in counsel's final address. It was obviously a highly dangerous suggestion, for, if the jury should hold that the words did not carry their primary meaning but contained some other implication - and as I shall point out later in connection with paragraph (e) no real argument was addressed to the jury to support the submission that the words bore their primary meaning only -, this suggestion would be taken by them substantially to admit the meaning set up by the innuendo. What counsel had in mind, no doubt, was the legal rule that a plaintiff must establish his innuendo as pleaded; but the jury could hardly be expected to appreciate the fine distinction he was drawing. For that reason I do not think it was a useful suggestion. The best that defendant could hope for on such a reading, as it seems to me, would be that the jury would read the passage sued on as setting up a suspicion of dishonourable conduct on the plaintiff's part and not as a statement of dishonourable conduct on his part. Assuming that a statement of suspicion of dishonourable conduct falls short of a statement that there was dishonourable conduct, it might well appear to the jury that one could hardly justify stating in a newspaper a suspicion of dishonourable conduct from what was said by a person (Judd) who the defendant has throughout been asserting is a thoroughly worthless fellow.

But the danger or the lack of value of such a suggestion was not a matter to concern me. What was a matter to concern me was whether the suggestion was a possible suggestion. In my view it was not a possible suggestion, for the paragraph sued on was one of the paragraphs that stated matters of fact coming between the two parts of the article where an inquiry was being called for, the beginning and the end, and the suggestion seemed to me to attribute to the passage a meaning that I did not consider that the jury could possibly put upon it. I wondered whether I ought to tell the jury that but I refrained from doing so.

I think the convenient course is to look at paragraph (f) next. I stressed in my summing up, as I was bound to do, that for the plaintiff to succeed he must establish the innuendo set up by him in his statement of claim. In the course of doing that, I told the jury that, if they thought that the words did not mean what was set up in the innuendo but might mean something else than that, that the Minister was bungling or imprudent or something of that sort, the whole course of the case might have been different. That is what is referred to in the first part of the statement of this ground. At the end of my summing up, when I asked whether there was any aspect of the case on which I had not touched but on which counsel felt that I ought to give a direction, counsel for the defendant said - (p.16)

10

20

30

40

"If the jury thought the meaning was, in view of Judd's remarks, that an inquiry should include the question whether or not the plaintiff has acted dishonourably in connection with import licences – if they thought the words bore that lesser meaning, a different meaning from the one assigned by the plaintiff, then the defendant would be entitled to a verdict?"

In the  
Supreme  
Court of  
New Zealand

No. 18  
Reasons for  
Judgment  
of Hutchison,  
A.C.J.

23rd July, 1959

(continued)

What exactly I said in dealing with that is not quite clear. Mr. Cooke and his instructing solicitor understood me to have said to this effect –

10 "I do not wish to add anything to what I have already said on that matter. I have told the jury that it should be established by the plaintiff that the words bear the meaning alleged by him, and I want to leave it at that."

I have no clear recollection that can assist with this matter at all, but I am inclined to think that I did not say exactly as recorded in the typescript in the first line after Mr. Cooke's question. I think that, if I had said that, it would have been too favourable to him, for I thought that the meaning that he suggested should be attributed to the passage was not a possible meaning, as I have already said in connection with para. (d). It may be that there should be no full stop after that line and that it should run on into the second sentence as recorded. What I think is quite clear is that I repeated to the jury that it was essential for the case of the plaintiff that it should be established by him that the words bore the meaning alleged by him. As far as that is concerned, there is no important  
20 difference between what is recorded and the recollection of counsel and solicitor for the defendant. As to the other part of their recollection, that I said that I did not wish to add anything to what I have already said on the matter and that I wanted to leave it at that, that may well be so. A question had just been put to me that I could not in any way commend to the jury, as it did not, in my opinion, present a possible meaning. If I had dealt with it any more fully than I did, I would have had on that account to do so adversely to the defendant. Then there were other suggestions in the question, with which I would have had to deal in a way that might have been highly adverse to defendant. The first such suggestion was that some reliance ought to be placed on Judd's remarks, and I  
30 ask again what reliance could the defendant fairly ask should be placed on Judd's remarks when the defendant had throughout been treating him as thoroughly worthless? Then there was the suggestion contained in the question that the meaning indicated would be a lesser meaning than and a different meaning from the one assigned by plaintiff, and I doubt very much whether it would have been a lesser and different meaning. I do not say that I could see these additional points clearly at the time when the question was put to me; but what I could see was that the question was very dangerous for the defendant at that stage of the case, and, from its point of view, the least said about it the better, provided I re-  
40 peated the direction that plaintiff was bound by his innuendo, which I did. I do not see any misdirection in the way I dealt with this matter, and I have quite a clear view that what I did did not prejudice the defendant.

In the  
Supreme  
Court of  
New Zealand

No. 18  
Reasons for  
Judgment of  
Hutchison ,  
A.C.J.

23rd July, 1959.

(continued)

I turn now to paragraph (e). I have said that counsel for defendant, opening his case, said that, subject to any ruling that I might give the jury, the general rule was that any person who repeated a slander might be held liable to a plaintiff - I shall call that A -, but that it was very doubtful whether Judd slandered plaintiff in the words that he used, Judd not even meaning to criticise Holloway - I shall call that B -. It was A that I was dealing with when I said what is complained of in paragraph (e). After that I referred to B. The whole passage was this.

"I go back then to the question of whether the words mean what the plaintiff alleges. There are certain general matters in respect of that that I want to mention to you. 10

The first is this - the article said that Judd said those words and that the article is reporting him. You were asked to consider whether in fact that was established, but I suggest to you that it does not very much matter for this reason - if you accept that those words were spoken by Judd, it is not a defence at all that a statement that might be defamatory is put forward by way of report only. It does not help the defendant that the way that it is put is that Judd said 'See Phil and Phil would fix it.' The case is properly to be dealt with as if the defendant itself said 'See Phil and Phil would fix it'. And it does not matter either that Judd may have used the words, if he did use 20 the words, in their primary meaning of merely arranging it and may not himself in those words, if he said them, have meant or said anything defamatory of the plaintiff. The question is whether the words mean in this article what the plaintiff alleges they mean."

Counsel for defendant admitted on the hearing of this motion, and said that he had freely admitted at the trial, that if Judd slandered Holloway defendant could be liable for repeating his statement, and, equally, that defendant could be liable if the report made it appear that Judd's statement carried the meaning alleged by plaintiff, even if, as originally spoken, his statements did not bear 30 that meaning.

In that latter admission, he, no doubt, puts special stress on "if the report made it appear that Judd's statement carried the meaning alleged by plaintiff." The test, in my opinion, is not whether the report made it appear that Judd's statement carried the meaning alleged by plaintiff, but is whether the passage in the article, in its context, carried the meaning alleged by plaintiff. No doubt, the fact that the words were attributed to Judd and the circumstances of his saying them were part of the context, but that, I think, is as far as that goes.

Mr Cooke says that it was fundamentally wrong to ignore the fact that the article showed the words as having been spoken by Judd. I do not accept the suggestion that this passage of the summing up directed the jury to ignore that 40 fact; but I pass that by for the moment. He said that his submission applied in two ways, on the meaning of the words, which was the matter with which I had then started to deal, and also on the question of damages.

I deal with the latter first. I have no note, and no recollection of counsel's making any reference at all, in relation to damages, in his final address or at all, to the fact that the words were attributed to Judd. I did suggest to the jury that they should not seriously consider his submission that damages be on a contemptuous basis, but, as far as any circumstances of the case were concerned, as affecting damages, I commended to their consideration all of counsel's submissions when I said -

10 "..... and you will consider, as I have said, all the circumstances, some few of which I have mentioned to you, and you will give consideration to what counsel have said to you in the course of their addresses."

I do not understand it to have been my duty to deal specifically with a circumstance that might go to damages where counsel has not suggested it himself to the jury; and I am quite unable to accept the submission that what I said, which is now criticized, had anything to do with damages or would be thought by the jury to have anything to do with damages.

20 I return to counsel's submission in relation to the meaning to be given to the passage sued on. When counsel, in his opening made the reference to which I have referred, that it was very doubtful whether Judd slandered the plaintiff in the words that he used, I understood him to be foreshadowing a submission of law. I so referred to it in one of my rulings on the admissibility of evidence, and I dealt with it as such in the summing up. Mr. Cooke, however, says that it was a submission of fact. It made no impact on me at all as a submission of fact, and I do not think it could have made any impact on the jury as such. The mere fact that he said that it was "very doubtful" - and I have these words in my note - whether Judd slandered plaintiff appears to me to show that it was not a substantial submission of fact. The reference to this in counsel's final address was slight. According to my note, it came in between two parts of a submission that the circumstances showed that the plaintiff's conduct should be inquired into as part of an inquiry which ought to be held. My note of it, which is a very small part of my  
30 whole note of his address, is as follows:-

"When Judd speaks of Holloway as he did, it is obvious, Truth says, that Minister's conduct shd. be inquired into as part of inquiry.

Judd was not slandering H. - he was commending him - probably did not use fix in a bad sense, but arrange. Too much attention to "Phil would fix it" and not enough to Mr. Nash.

Everything sd. at interview shd. be considered. Are you not entitled to think inquiry shd. be called for?"

40 I have no note or recollection that any substantial submission at all was made on the lines that have been so strongly urged to me on the argument of this motion in favour of a view that the words might convey no sinister meaning. It was for instance, said on the argument of the motion, that Judd was recommending plaintiff to his caller as being a Minister sympathetic to and ready to arrange trade

In the  
Supreme  
Court of  
New Zealand

No. 18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.

23rd July, 1959  
(continued)

In the  
Supreme Court  
Court of  
New Zealand

No.18  
Reasons for  
Judgment of  
Hutchison ,  
A.C.J.  
23rd July, 1959  
(continued)

dealings with Czechoslovakia, but that the Prime Minister was responsible for stopping arrangements that would be to Judd's advantage, so that he advised the caller that he should on no account let Mr. Nash know of his proposals, but see the plaintiff only, and that there would be in that no insinuation at all that the plaintiff was prepared to act dishonourably in connection with the issue of import licences; and it was said that Judd's being described as being disconsolate and sick of things tells against the meaning of the passage assigned by plaintiff, because, if the meaning really were that the plaintiff could be improperly induced to favour applications for import licences, why should Judd be particularly downcast? These were matters that counsel could have put to the jury if he had thought it proper so to do. What I said, if it had been said before he addressed the jury, would not, in my opinion, have denied him the right to put them to the jury if he thought fit to do so. As he did not do so, there was nothing to draw my attention to such a point as he now takes, and I do not really see that he has any ground for complaint that I did not, for this purpose, introduce an exception into what I quite generally said in the sentence complained of. In any event, it is, in my opinion, very far-fetched to suggest that what I said in any way indicated to the jury that they should not consider the circumstances in which Judd is alleged to have made the statement. It occurs to me that one reason why the matters that I have referred to were not urged to the jury may have been the difficulty that there might have been in trying to run such a submission in double harness with the suggestion that ran right through the defence that plaintiff had acted dishonourably though the defence couldn't prove it.

10

20

- (g) "Directing the jury that the evidence of the witnesses Gordon and Watson was that the words complained of in the article carried to them a meaning of acting dishonourably on the part of the plaintiff."

The passage referred to is at the foot page 11 and top p. 12 of the typescript. I think that the statement complained of was a perfectly correct statement, and I can see no foundation for the criticism of it. A reading of the evidence will sometimes fail to convey the effect of it when it was heard; but even a reading of the evidence of these witnesses - and I have read it carefully -, in my view, fully justifies what I said.

30

If I had any doubt on that, which I haven't, I would still have to consider whether this was a direction, and, if it were a direction, whether it was a direction on a point of law; and there would be, I think, great difficulties in defendant's way on these points.

- (h) "Directing the jury in connection with the comparison in the article with the Lynskey Inquiry and Belcher and Stanley that there were in fact three men (meaning the plaintiff, Freer and Judd) to be cast here."

The witness, Mr. Watson, had said that he read the article as putting the plaintiff in the position of Belcher in the Lynskey Inquiry and Freer in the position of Stanley. I suggested here, at p.12 of the typescript, that that reading might well not be justified, for it would give no place to Judd; but I went on to say, as appears, that you might properly cast two of them in one part. The former suggestion was favourable to the defendant, and the latter pointed out what, I think, was an obvious enough possibility which had to be

40



mentioned so as not to make the former one unfair to the plaintiff. Mr Cooke's first argument was that what I had told the jury that there must be a part found for Holloway, and that, in so doing, I at least in effect said that the article did compare him to Belcher.

In the  
Supreme  
Court of  
New Zealand

No. 18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.

23rd July, 1959  
(continued)

The passage must be taken as a whole; and I do not think that a fair and reasonable reading of it can elevate it or any part of it to the level of a direction. It did no more than make certain suggestions and, moreover, suggestions to which the context makes it clear I was not attaching any great importance. It starts "There was something to which I would just make a passing remark, but a passing  
10 remark only, ....." and finishes "However, that is a matter that you can give your consideration to, Mr Foreman and gentlemen, if you think it is worth while considering that aspect of the matter at all ....."

His other argument was based on the way the case was pleaded by plaintiff. The point of this, as I understood it, was that, on the pleadings, it was not open to the jury to award damages to the plaintiff on account of an alleged comparison with Belcher because the passage on which the plaintiff sued was, by itself, insufficient to convey such a comparison; and he claimed that there should have been, at this stage, a clear direction to the jury that they could not give damages to the plaintiff because of such an alleged comparison.

20 But there was no suggestion made to the jury on behalf of plaintiff at any stage that he should be awarded damages simply on that account. The reference to the Lynskey Inquiry had been pleaded by plaintiff as part of the context on which he relied to establish the meaning that he set up by his innuendo; and that was the way that the case had been throughout presented for plaintiff. There was, in my opinion, nothing in the presentation of the case or in my reference now criticised to justify me setting up a straw man for the purpose of knocking it down again. There were other submissions made by Mr Leicester in reply to Mr Cooke's submissions on this paragraph, but it is unnecessary for me to say  
30 any more on it than I have.

- (i) "Directing the jury in substance that they should give a verdict against the defendant on proof of the sense ascribed to the publication in the statement of claim."

It is said that I did this in breach of Section 22 of the Defamation Act 1954. I think that this submission is untenable. I had S.22 fully in mind. In the course of the hearing I referred to it in one of my rulings on evidence that is the subject of a later submission, and also I mentioned it, as did counsel too, in a conference that I had with them at which the possibility of putting issues to the jury was  
40 discussed. With the section so in mind, I chose the words which I used, after dealing with the meaning of the passage sued on and before I turned to the question of damages -

In the  
Supreme  
Court of  
New Zealand

No. 18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.  
23rd July, 1959

(continued)

“If you, then, hold that the passage bears the meaning alleged by the plaintiff – ‘that the plaintiff is and was a person who has acted and is prepared to act dishonourably in connection with the issue of import licences’ – if you hold that it means that, then you would be justified in returning a verdict for the plaintiff. If you do not hold that it bears that meaning, you should hold for the defendant.”

In my opinion, there is no such direction there as is forbidden by S.22.

Mr. Cooke referred also, as supporting his contention, to my saying, in dealing later with damages,

“Now, Mr Foreman and gentlemen, these matters are all open to you to consider, but I do suggest to you that, if you find that this statement is defamatory in the way alleged by the plaintiff, I do suggest that it is not a case in which you ought seriously to consider the question of contemptuous damages.....” 10

It may certainly be said from that that the jury could assume that I was contemplating that they would award some damages if they found that the statement was defamatory in the way alleged by the plaintiff; but there does not seem to me to be any direction in that that they should.

If it is justifiable, in support of the argument for the defendant on this ground, to pray in aid the assumption appearing in that late reference to damages, it is equally justifiable to pray in aid the other way a remark that I made when starting on the question of damages - 20

“But while I make these remarks on the assumption that you have found for the plaintiff, please understand that it is on that assumption only and on no more than that and is not a direction to you because it is quite wrong for me to give you any direction as to how you should find at all.”

Indeed this, as it seems to me, has much greater force than the other reference, for this one appears immediately after, within a few typed lines, of the main passage, and, I would think, illuminates the main passage.

I do not read S.22 as requiring a judge in a libel action to tell a jury in so many words that, even if they find the alleged libel proved, they are at liberty to find for the defendant. He may not require or direct them to give a verdict for the plaintiff, but, in my opinion, the section requires no more of him than that. Mr Cooke referred to the dissenting judgment of Willes J. in *R. v Shipley* 4 Doug. 73, as stated by Lord Blackburn in *The Capital & Counties Bank Ltd v Henty* 7 A.C. 741, 773. *R. v Shipley* was, of course, a criminal case, and it was followed 30

by the passing in 1792 of the Libel Act of that year, Fox's Act, which was the forerunner of our present section 22, but which applies only to criminal cases. The evil that Fox's Act sought to prevent I take to be the evil set out in the judgment of Willes J. S.22, with us, applies to civil cases also, and the evil against which it is directed in civil cases must be an evil like that pointed out by Willes J., so far as that can appear in a civil case. I see nothing in the way that I put this case to the jury at all like the evil there spoken of.

Mr Leicester, in opposing Mr Cooke's submission on this point, nevertheless made a submission which supported the view that Mr Cooke was putting forward as to the effect of the summing up; but my own view on the particular point is clear, as I have now expressed it. Mr Leicester's other submissions in opposition I need not deal with.

There is, however, one consideration which seems to me to be, at least, worth mentioning. R.277 provides -

"A new trial shall not be granted on the ground of mis-direction ..... on any point of law,..... unless, in the opinion of the Court, some substantial wrong or miscarriage of justice has been thereby occasioned in the trial of the action; ....."

If there has been a misdirection on a point of law, the burden of showing that no substantial wrong or miscarriage of justice has been thereby occasioned rests on those who oppose the application for a new trial; but, assuming a misdirection on this point, I propound this question, without answering it, Does the fact that the jury gave as large a verdict for damages as they did in favour of plaintiff not establish that they would still have found in favour of plaintiff even if they had been expressly informed that, notwithstanding that they might find the innuendo proved, they might find for defendant?

(j) "Suggesting to the jury that this was not a case in which the jury ought seriously to consider the question of contemptuous damages, because if, in fact, the plaintiff was libelled by the defendant's article then the libel was not by any means a slight one."

In presenting his argument on this point Mr. Cooke agreed that a judge is entitled to indicate his views on the facts of a case and may do so even in strong terms. But his contention was that, where a major submission for the defendant has been that only contemptuous damages be awarded, it is going too far to suggest to the jury that they should not seriously consider the question.

I do not agree with this submission. As I have always understood the position, a judge may indicate his view on any question in a case, while, of course, he must leave the decision of it to the jury. I clearly left all questions of damages to the jury. The sentence that immediately follows the criticised sentence was -

In the  
Supreme  
Court of  
New Zealand

No. 18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.

23rd July, 1959  
(continued)

In the  
Supreme  
Court of  
New Zealand

No. 18

Reasons for  
Judgment of  
Hutchison,  
A.C.J.

23rd July, 1959  
(continued)

"Now it is for you, Mr. Foreman and gentlemen to say what is a proper award of damages, if you are finding for the plaintiff, and you will consider, as I have said, all the circumstances, some few of which I have mentioned to you, and you will give consideration to what counsel have said to you in the course of their addresses."

Counsel addressed to me on the motion a long argument directed to show that the jury should have awarded contemptuous damages. I doubt the relevance of that to the motion; but, assuming its relevance, I still adhere to the view that I indicated to the jury that they ought not seriously to have considered contemptuous damages. 10

But Mr. Cooke further contended that I was wrong in the reason I gave for the suggestion in saying that "the libel was not by any means a slight one". He said that whether the libel was a serious one or not is not the test to be applied in considering whether contemptuous damages only should be awarded. He cited *Bekker v Wrack* 1937 N.Z.L.R. 549 and *Hawkins v Express Dairy Co.*, 1940 163 L.T.R. 147. Those cases do not establish that the gravity of a libel is not a matter to be taken into consideration on this point. It is, no doubt, not the only matter that may be considered, but it is one matter to be considered and one matter of importance. If I had had to enter at that point in the summing up upon all the matters to be considered in connection with my suggestion, some of them would have been highly adverse to defendant, notably the way in which it presented its case, to which I had referred earlier. My reference to the libel not being a slight one, would not, I'm sure, lead the jury to disregard the circumstances generally especially when one looks at the next sentence of the summing up which I have already quoted. 20

Among other submissions that Mr Leicester made on this point was this one:- If this were, or contained, a misdirection, the verdict of the jury for £11,000 is the plainest evidence that a verdict for contemptuous damages would never have entered the minds of the jury, and, accordingly, if this were, or contained, a misdirection, no substantial wrong or miscarriage of justice was thereby occasioned. This appears to me to be a weighty submission, but it is not necessary for me to consider it, for I dismiss this contention for the defendant for the reasons which I have already given. 30

(k) "Intimating to the jury that they would probably not need to look at the exhibits."

This refers to the statement in the last paragraph of the summing up -

"All these exhibits put in in the course of the case will be in the charge of the Registrar. You may have them if you want them."

I know that Mr Cooke at one time believed that I said to the jury that they would probably not need to look at the exhibits, as set out in this paragraph of 40

the motion. I do not think that I said that, but think that what is recorded in the typescript of the summing up is what I said; and I think that Mr Cooke accepts that now. On that basis he says that I discouraged the jury from looking at the exhibits; perhaps I did - at any rate I did not encourage them to look at them. The exhibits that he is concerned about are the two departmental files that were put in.

Mr Cooke, in his final address, did refer to certain memoranda that appeared in the files, particularly in relation to the credibility of plaintiff. The various memoranda and the like, however, had been read by counsel or witnesses probably more than once in the course of the trial and had been the subject of a good many questions. I did not understand him to be suggesting that the files should be taken by the jury into their room and studied. If he had said for instance, "I want you to take these files into your room with you and study these memoranda" or words to that effect, and I had understood him to say that, I would have suggested to the jury that they did that, but, as it was, I did what I would have done in any other case; and what I did is, I believe, in accordance with general practice. As Mr Leicester pointed out, if a jury is encouraged to take files of correspondence into the jury room with them, they could waste a great deal of time with them and be distracted from the matters which they really have to decide.

I do not think that I was wrong in what I said about the exhibits, but, if I was wrong, it was for counsel then to say to me that he would like the jury to take these particular exhibits with them, and that request would have been acceded to.

Further, I do not see how what I said to the jury about the exhibits can be elevated to the level of a direction, nor how, if it were a direction, it can be said to be a direction on a point of law.

In dealing with these various matters, I have, of course, been under the difficulty that faces any judge when he has to consider his own summing-up. In endeavouring to take a detached view, he may yet be unduly attracted to the view that he held at the time of his summing-up, as appearing from it, though, on the other hand, he may, in revulsion from that possibility, be inclined too easily to adopt a criticism of it. However, with the best attention that I can give to the various matters put forward by counsel for defendant, I hold against his submissions on each of them for the respective reasons given. In so doing, I have found it unnecessary to consider some of Mr. Leicester's submissions.

The contention that I rejected evidence which ought to have been admitted refers to two matters stated thus in the motion-

- (a) Confining the evidence of the witnesses Sercombe and Wrigley in connection with their visits to Judd's house to whether Judd said what he was reported in the article to have said and the way in which he said it, and disallowing evidence regarding the character or conduct of Judd, statements made by him other than those reported in the article, and the circumstances in which Judd made statements to the witnesses.

In the  
Supreme  
Court of  
New Zealand

No. 18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.  
23rd July, 1959

(continued)

In the  
Supreme  
Court of  
New Zealand

No. 18

Reasons for  
Judgment of  
Hutchison,  
A.C.J.  
23rd July, 1959  
(continued)

- (b) Disallowing evidence from the witness Sercombe as to the practice in England in connection with approaches by members of the public to the Director of Public Prosecutions and as to functions in fact performed in England by the Director of Public Prosecutions and the Police.

The former of these matters concerns two rulings that I gave during the examination-in-chief of the witness Sercombe. The first point rose before the luncheon adjournment on the fourth day of the trial and I ruled on it after the adjournment as set out in the short judgment on record. There is a reference there to the admission of evidence as to what Judd said, but the main point with which I was dealing was whether counsel for defendant could lead evidence as to the bad type of man that Judd was or his bad principles, the "character or conduct of Judd" as referred to in the statement of this branch of the motion. The question of "statements made by him other than those reported in the article" rose, I think, just after that, and I dealt with it immediately. My note on the point is this -

10

"Leicester objects to evidence as to anything said by Judd to this witness; this incl. the words quoted in this article. I over-ruled objection as regards the words quoted in the article - said I would not allow hearsay generally."

I do not recollect any special point as to "the circumstances in which Judd made statements to the witnesses" in relation to anything that Judd might have said, further than as reported in the article, but no doubt any such circumstances would fairly come in in connection with that. The circumstances in which he had made the statement quoted in the article had already been stated.

20

On the argument of the motion, Mr Cooke said that he wished his argument made before me at the trial to be understood to be incorporated, but he submitted further argument to the effect that these matters were relevant to the question of damages. I think that that is a far-fetched suggestion looking at it generally; but within that general submission, he included certain more particular submissions. One of these was on the basis referred to in *Gatley* 4th Edn. at p.638, that the evidence was relevant to the question of damages because the article purported to report what Judd said. But I think that it is quite one thing for an article to report, as coming from a reputable person or source, a statement that turned out to be defamatory, and quite another thing to report it as coming from a person who the defendant claimed throughout the case was a worthless person. Incidentally, when I asked counsel for defendant, when the question rose at the trial, for some authority for his submission that this evidence was admissible, it was p.614 of *Gatley* that he referred to, along with *Thornton v Stephen II Moody & Robinson* 45, 174 E.R. 209, and not p. 638. Counsel suggested, too, that if Judd had said something worse, something highly defamatory, about plaintiff, and defendant had left that out of the article, that would go in mitigation of damages. That might be so under certain circumstances; but, as it seems to me, for the suggestion to have weight defendant would have had to call the writer of the

30

40

article to say that he had left it out for that reason, and the defence did not call and was not proposing to call the writer of the article. Then counsel referred to Cross on Evidence p.309 at the paragraph "(2) Civil Cases". I cannot see that any assistance is obtainable from that, especially having regard to Mr Collins' reference to Gatley p.630.

The question to be decided when I dealt with these matters was whether the proposed evidence was relevant to any issue in the case. I thought that it was not and I am not at all convinced that I was wrong in so thinking. Without in any way cutting across the general principle that evidence should be admitted if it is relevant, there were still other matters to which I had to give some thought, one of which was that, if I permitted evidence to be called as to the bad character and conduct of Judd, I would have to allow, on application on behalf of the plaintiff, evidence in rebuttal, that might go to show that his character and conduct were not as bad as defendant claimed; and the widening of the scope of the evidence in that way would have been, in my view, unjustifiable.

As regards my rejection of evidence as to statements made by Judd other than those reported in the article, the reason indicated by what I said in rejecting it, "that I would not allow hearsay generally", had relation to the way in which Mr Leicester put his objection; but this may be part only of the full reason. If I had admitted the evidence, I would have had to tell the jury that the contents of what Judd said would not be evidence against Holloway because of the hearsay rule but to admit evidence merely that Judd said something and that it was so-and-so might not have infringed the hearsay rule if what he said was not to be used as evidence against Holloway. It would have been more correct, perhaps, to have said what I did about hearsay but also to have said that, in any event, I did not think the evidence relevant.

As regards the disallowance of the evidence referred to in para. (b), I said in disallowing this that Sercombe was not an expert who could be allowed to give evidence as to the duties and powers of the Director of Public Prosecutions, and that in any event any difference between the functions of the Director of Public Prosecutions in England and the Solicitor-General and the Crown Solicitors here, must be found in the books and was not to be proved by the evidence of such a witness. I adhere to the view that that was a correct ruling.

If the argument had shown me that I was wrong in excluding the evidence referred to in either of these paragraphs, which, as I have said, it has not, there would still be a further matter to be considered on this motion for a new trial, and that is the provision of Rule 277.

"A new trial shall not be granted on the ground of . . . improper . . . . rejection of evidence, unless, in the opinion of the Court, some substantial wrong or miscarriage of justice has been thereby occasioned in the trial of the action; ....."

In the  
Supreme  
Court of  
New Zealand

No.18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.

23rd July, 1959  
(continued)

In the  
Supreme  
Court of  
New Zealand

No.18  
Reasons for  
Judgment of  
Hutchison,  
A.C.J.  
23rd July, 1959  
(continued)

While I have said, in connection with one of the mis-directions alleged, that, in the case of a mis-direction, the burden of showing that no substantial wrong or miscarriage of justice has been thereby occasioned, rests on those who oppose the application for a new trial, I do not think that the rule is necessarily the same when the question is one of the improper rejection of evidence. A mis-direction can be seen from the record of the trial, and the effect of it can be appreciated, but that does not apply in the case of rejection of evidence unless one knows what the rejected evidence would have been; and, in this case, I have only the most meagre suggestion from counsel as to what it would be. It seems to me that, before a Court is asked to put a party to the trouble and expense of a new trial on the ground of improper rejection of evidence, it ought to have before it some definite information as to what the evidence would have been, for, if it has not, how can it form an opinion that any substantial wrong or miscarriage of justice has been occasioned by the rejection of the evidence? In *Guest v Ibbotson* 1922 W.N. 72, the judgment of the Court of Appeal, delivered by Lord Sterndale M.R., dealt with this point in connection with an application for a new trial on the ground of the discovery of fresh evidence since the hearing; and what is there said seems to me to be equally applicable to a case where an application for a new trial is on the ground of wrongful rejection of evidence. 10

I dismiss the Motion for a new trial, and must now deal with plaintiff's motion for judgment. On that there will be judgment for plaintiff for £11,000. Costs as on that amount would much exceed £300, especially having regard to the time that the case took in the trial itself and in the subsequent argument. I think that it is a proper case for the Court to certify under para.38 of the Third Schedule to the Code for an amount in excess of £300. I can see that the total costs, if calculated in detail, would not only exceed £300 but would exceed £500, and I propose to fix, and do fix, plaintiff's costs at £500, this to be in full of costs; but plaintiff will have also his witnesses' expenses and disbursements to be fixed by the Registrar. 20

Solicitors: Leicester, Rainey & Armour, Wellington, for Plaintiff  
Alexander, J.H. & Julia Dunn, Wellington, for Defendant



No. 19  
 FORMAL JUDGMENT OF SUPREME COURT

In the  
 Supreme  
 Court of  
 New Zealand

No. 19  
 Formal  
 Judgment  
 of Supreme  
 Court  
 23rd July 1959

Thursday the 23rd day of July, 1959.

THIS action coming on for trial on the 2nd, 3rd, 4th, 5th and 8th days of June 1959 before the Honourable Sir James Douglas Hutchison Acting Chief Justice of New Zealand and a common jury of twelve persons AFTER HEARING the evidence for the plaintiff and for the defendant AND the jury having found for the plaintiff on the issues AND the plaintiff having moved for judgment accordingly AND UPON READING the notice of motion by the defendant for judgment for the defendant or alternatively for a new trial AND UPON HEARING Mr Cooke of counsel for the defendant and Mr. Leicester and Mr. Collins of counsel for the plaintiff IT IS ADJUDGED that the motion by the defendant for judgment or for a new trial be dismissed AND THAT judgment be entered for the plaintiff in accordance with the verdict of the jury in the amount of £11,000 AND IT IS ORDERED that the defendant do pay to the plaintiff the amount of £500 in full of costs together with the sum of £124.11.6 for disbursements and witnesses expenses as fixed by the Registrar.

By the Court

L.S.

K. Seebeck

Deputy Registrar.

In the Court  
of Appeal  
of  
New Zealand

NOTICE OF MOTION ON APPEAL TO COURT OF APPEAL

No.20  
Notice of  
Motion on  
Appeal

IN THE COURT OF APPEAL OF NEW ZEALAND

29th July, 1959

BETWEEN "TRUTH" (N.Z.) LIMITED,  
a duly incorporated company  
having its registered office  
in Truth Building, Garrett  
Street, Wellington, and carry-  
ing on the business of news-  
paper proprietors and  
publishers

10

Appellant

A N D PHILIP NORTH HOLLOWAY,  
a Member of the House of  
Representatives and holding  
therein the portfolio of  
Minister of Industries &  
Commerce

Respondent

TAKE NOTICE that this Honourable Court will be moved by Counsel on behalf  
of the abovenamed Appellant on Monday the 17th day of August 1959 at 11 o'clock  
in the forenoon or so soon thereafter as Counsel can be heard ON APPEAL  
from the whole of the judgment of the Supreme Court of New Zealand delivered  
by the Honourable Sir James Douglas Hutchison Acting Chief Justice of New  
Zealand on the 23rd day of July 1959 upon the grounds that the said judgment  
is erroneous in fact and in law.

20

DATED this 29th day of July 1959

J.H. Dunn

Solicitor for Appellant

TO: The Registrar of the Court of Appeal, and to The  
Registrar of the Supreme Court at Wellington, and to  
The abovenamed Respondent

30

REASONS FOR JUDGMENT OF THE COURT OF APPEAL  
DELIVERED BY NORTH J.

In the Court  
of Appeal  
of  
New Zealand

No. 21  
Reasons for  
Judgment  
(delivered  
by North J.)

16th Novem-  
ber, 1959.

An appeal from the judgment of Hutchison A.C.J. dismissing a motion by a defendant in a libel suit for judgment or, alternatively, for a new trial.

10 The appellant - the defendant in the Court below - is the proprietor of a week-ly newspaper known as "N.Z. Truth". The respondent is a Minister of the Crown holding the portfolio of Minister of Industries and Commerce. The back-ground which led to the institution of these proceedings was import control which was re-introduced by the present Government on the 1st January 1958. Thereafter all importers were required to obtain import licences and the allocation of licences was largely based on 1956 figures. However, there was a special category known as 'C' licences which enabled licences to be issued in approved circumstances to a person who had not been an importer of the commodity in 1956. The issue of all import licences was the special responsibility of the Customs Department but the Industries and Commerce Department had the responsibility of making recom-mendations in connection with the issue of licences.

20 On the 27th January 1959 "N.Z. Truth" carried on its front page an account of the circumstances surrounding a trip overseas which had just been undertaken by a Member of Parliament, Mr. Freer. The paper pointed out that his trip would take him "behind the Iron and Bamboo Curtains", that he had experienced some difficulty before he sailed in extricating himself from threatened bankruptcy proceedings; that the paper understood that his trip abroad had been rendered possible by financial aid he had received from a Mr. Judd, an Auckland businessman with importing interests. The article went on to say that the paper's representa-tive had asked Judd to comment on the suggestion that he had assisted Freer financially on the eve of his departure and that Judd had denied that he had paid Freer any money either by cheque or in cash. Judd then went on to say that Freer in his view had done great work in attempting to develop reciprocal trade 30 between the Peking Government and New Zealand and added that he had himself taken a great interest in imports from China primarily because he had imported "a fair amount of Chinese wood oil for the manufacture of paint at his factory". The writer of the article said "Truth" was unsuccessful in obtaining any comment on Mr Freer's trip from the Prime Minister Mr. Nash. The article ended with four questions which "Truth" wanted to ask Mr Nash about the trip.

A second article appeared on the 3rd February 1959. On this occasion "Truth" gave its readers further information about the bankruptcy proceedings referred to in the earlier article. The paper said that it was apparent that Mr Freer

In the Court  
of Appeal  
of  
New Zealand

No. 21  
Reasons for  
Judgment  
(delivered  
by North J.)

16th Novem-  
ber, 1959

(continued)

had settled his most pressing creditors in cash but claimed that he had given worthless cheques to his less pressing creditors and that he had done nothing at all for those who had not pressed hard enough for payment of their accounts. The writer of the article then printed a list of 12 questions which its representative had invited Mr Nash to answer. Included in these questions—some of which were expressed in rather provocative language—were two directed to import licences for the fostering of trade with Communist countries. The paper reported that the Prime Minister was angry when seen and refused to be cross-examined.

Finally, on the 24th March 1959, there appeared still another article featured by large headlines which read: "This Ex-Russian's Import Licences should be investigated". It was claimed that a document which purported to be a statement of Mr. Freer's financial situation had been privately circulated since he left New Zealand and that included therein was a sum of £2,200 due to Freer from an unknown source which was described as "commission on a licence for £44,000". The writer of the article then went on to make the assertion that this licence was in the name of Judd whose real name it informed its readers was Hyman Yudt, a Russian by birth, who it said was preparing to leave the country. "Truth" demanded that the Government should take immediate steps to hold "a full, searching and impartial inquiry" into import and other dealings between Judd and Freer. Then having made a pointed reference to the "Lynskey inquiry" in England when "an adept operator named Sidney Stanley was shown to have had certain dealings with a British junior minister" the paper informed its readers that someone had seen Judd with the object of getting from him information about import procedure and had been told by Judd to "see Phil and Phil would fix it"; that Judd, however, warned him "whatever he did, not to let Mr Nash hear about it". The writer of the article did not leave it in doubt who "Phil" was for he added for the assistance of readers, "By Phil his caller understood him to mean the Hon. Philip North Holloway, the Minister of Industries and Commerce". The article ended on the note that there should be an inquiry which should extend to the actions of responsible Ministers and others including Mr Holloway, each of whom should be "asked for their explanations" and that "In Truth's view the New Zealand Labour Government should show itself no less meticulous in preventing any suspicion of under-the-counter dealings with Parliamentarians than did the British Labour Government when it dealt with Sidney Stanley."

Shortly after this last article appeared the respondent commenced these proceedings in which he claimed that the words "See Phil and Phil would fix it" were defamatory in that in their context they meant and were understood to mean that he was a person who had acted and was prepared to act dishonestly in connection with the issue of import licences. The appellant by way of defence made no attempt to justify the defamatory meaning attributed to the words by the respondent. In the nature of things the defence of fair comment was not open for substantially the offending article made allegations of fact. Therefore the appellant was left with only two defences. First that the words in question did not bear the defamatory meaning alleged by the respondent and secondly that in any event the occasion on which the words were published was privileged. As the second question raised a matter of law for the Judge it will be seen that the parties went to trial before the jury on the issue of libel or no libel in its simplest form. After a lengthy hearing during which

10

20

30

40

the respondent gave evidence and was subjected to a long and severe cross-examination both on matters directly relevant, and on collateral matters as well going only to credibility, the jury found in the respondent's favour and awarded him £11,000 by way of damages.

In the Court  
of Appeal  
of  
New Zealand

No.21

Reasons for  
Judgment  
(delivered  
by North J.)

16th November,  
1959.

(continued).

10 Before us the appellant did not contend that the words complained of were incapable of bearing the meaning put upon them by the respondent and so found by the jury nor did the appellant contend that the damages were excessive. The appellant's complaint was limited to two matters, first that contrary to the view entertained by the trial Judge the occasion on which the words were published was privileged. Secondly that the trial Judge misdirected the jury on several material questions of law. In view then of the limited nature of the appeal it is unnecessary to discuss in any detail the evidence given at the trial or the way the appellant elected to conduct its defence. It will be sufficient to say that the evidence before the Court which included the evidence of the head of the Department and the production of departmental files clearly showed that Judd had not received a licence of £44,000 as stated in the offending article. In fact he had received a licence for £10,000 which was later reduced by the Customs Department to £7,000 enabling him to import Czechoslovakian glass. It was quite true as stated that Mr. Freer had interested himself in the matter and had introduced Judd to the respondent who received him as an approved and accredited representative of the Czechoslovakian Government; and that as the result of a series of interviews the respondent had recommended to Cabinet that a bi-lateral trade agreement between Czechoslovakia and New Zealand should be entered into. It seems quite clear, however, that all the relevant facts were placed before Cabinet in the normal way and that Cabinet approved in principle of entering into a bi-lateral agreement up to £350,000 in each direction only after careful consideration of reports furnished not only by the respondent but also by the head of his Department. In our opinion nothing emerged during the trial which provided the slightest ground for inferring that the respondent throughout these negotiations had acted otherwise than with complete propriety and good faith. It so happened, however, that after matters had gone some distance Cabinet decided somewhat hurriedly that it would not at that time proceed any further with the proposal. This change in attitude displeased the Czechoslovakian authorities who threatened to withhold completing certain proposed purchases of New Zealand produce unless further progress was made in the negotiations. It was at this delicate stage that it was decided to issue Judd with a licence to import a small quantity of Czechoslovakian glass and so far as we are able to judge from a perusal of the relevant documents the licence was issued not so much for the personal benefit of Judd but because it was thought politic in some measure to placate the Czechoslovakian authorities. It should also be mentioned that the appellant did not prove that Freer had in fact received any money from Judd nor was it established that the document which the article said had been privately circulated had come from Freer or had been acknowledged by him. It will be seen then that by and large there was very little, if any, justification for the strong attitude adopted by the appellant in demanding an inquiry

20

30

40

With these preliminary observations we turn then to consider the first submission made by Mr Cooke, namely, that the occasion on which the offending article was published was privileged. The argument lacks nothing in boldness and originality but, with all respect to counsel, in our opinion is unsound and we think that the learned trial Judge was right in rejecting the submission. Counsel's contention was that as

In the Court  
of Appeal  
of  
New Zealand

No.21  
Reasons for  
Judgment  
(delivered  
by North J.)

16th Novem-  
ber, 1959.

(continued)

the granting or withholding of import licences affected the lives of everyone in the country it therefore followed that every section of the community had a common interest and concern in the working of the import licencing system; that this common interest and concern extended to such associated matters as the activities of Ministers and ordinary Members of Parliament in connection with its administration; that barter agreements and the development of trade with Communist countries were closely connected with the administration of the system; that the activities of Messrs Freer and Judd had unusual features calling for investigation and yet the respondent and other Ministers of the Crown had shown a strange disinclination to hold an inquiry or even to give "N.Z. Truth" and thus the community relevant information in response to its representative's inquiries; therefore the omission on the part of the Government to deal with the matter strengthened the view that "N.Z. Truth" and the rest of the community had a common interest in ventilating the matter and, although he contended that it was unnecessary for him to show that the newspaper was under a duty, the circumstances might reasonably be regarded as giving rise to a duty on the part of "N.Z. Truth" to make the facts known to the public generally. Accordingly, he argued that as the ultimate test for determining whether an occasion was privileged or not was the public interest the appellant was entitled to a ruling that the occasion was privileged for in his submission the general welfare of society required that "N.Z. Truth" should be free to speak in the way it did without the risk of being held responsible for defamatory statements made in good faith; that the subject-matter of the article was of substantial and legitimate common interest to every section of the community including the Press. He agreed that there was no case directly in point but he submitted that it had always been recognised that the circumstances that constitute a privileged occasion could never be catalogued or rendered exact; that as the rule was founded on the general welfare of society new occasions for its application would necessarily arise with continually changing conditions: see *London Association for the Protection of Trade v Greenland Ltd* 1916 2 A.C. 15, 22. He instanced and strongly relied on the judgment of the Privy Council in *Perera v Peiris* 1949 A.C. 1 as an example of a case where Their Lordships had not attempted to decide whether the case fell within some specific category but had rested their judgment on the wide general principle which underlay "the defence of privilege in all its aspects" namely whether the "common convenience and welfare of society" or "the general interest of society" required that the offending statement should be protected. But *Perera's* case has nothing in common with the present case save the fact that it was the proprietor of a newspaper who was sued in respect of material which he had published, and in respect of which he claimed privilege. What had happened was this: the newspaper had published a number of extracts from the Official Report of a Bribery Commission set up by the Governor pursuant to statutory authority to inquire into questions relating to allegations that "gratifications" had been offered, given or paid to certain members of the then existing State Council of Ceylon for the purpose of influencing their judgment and conduct in transactions in which they, as members of the Council, were concerned. The report was issued by the Government of Ceylon as a Sessional Paper, and as such was on sale to the public, but insufficient copies of the report were published to meet the public demand. Among the questions debated at the hearing was whether the publication of the report in the newspaper was privileged. Their

10

20

30

40

Lordships having pointed out that the wide general principle was the common convenience and welfare of society, went on to discuss reports of judicial and parliamentary proceedings and other bodies which were neither judicial nor parliamentary in character and said: "As regards reports of proceedings of other bodies the status of those bodies taken alone is not conclusive and it is necessary to consider the subject - matter dealt with in the particular report with which the Court is concerned. If it appears that it is to the public interest that the particular report should be published privilege will attach ..... On a review of the facts their Lordships are of opinion that the public interest of Ceylon demanded that the contents of the report should be widely communicated to the public. The report dealt with a grave matter affecting the public at large, namely, the integrity of members of the Executive Council of Ceylon, some of whom were found by the commissioner improperly to have accepted gratifications. It contained the reasoned conclusions of a commissioner who, acting under statutory authority, had held an inquiry and based his conclusions on evidence which he had searched for and sifted. It had, before publication in the newspaper, been presented to the Governor, printed as a Sessional Paper and made available to the public by the Governor contemporaneously with a Bill which was based on the report and which was to be considered by the Executive Council. The due administration of the affairs of Ceylon required that this report in light of its origin, contents and relevance to the conduct of the affairs of Ceylon and the course of legislation should receive the widest publicity. As regards the newspaper, the report was sent to it by the authorities in the ordinary course. Nothing turns on any implied request to publish - that would, in their Lordships' opinion, be relevant only if malice were in issue. Their Lordships take the view that the respondents as respects publication stand in no better and no worse position than any other person or body in Ceylon. A newspaper as such has in the matter under consideration no special immunity. But it would be curious to hold that either the editor or the proprietor of the newspaper was disqualified by the nature of his activities from having the same interest in the public affairs of Ceylon as that proper to be possessed by the ordinary citizen. In their Lordships' view the proprietor and printer of the newspaper and the public had a common interest in the contents of the report and in its wide dissemination. The subject-matter created that common interest. To this it may, perhaps irrelevantly in law, be added that the ordinary member of the community of Ceylon would indeed conceive it to be part of the duty of a public newspaper in the circumstances to furnish at least a proper account of the substance of the report. Taking that view of the facts of the case, and applying the general principle their Lordships have stated, their Lordships are of the opinion that the immunity afforded by privilege attached to the publication by the respondents of this report considered as a whole."

In our opinion Perera's case did not break new ground. What it did do was to emphasize that the mere fact that a particular case could not be fitted into an existing category did not mean that the publication was not privileged; that the wide general principle which underlay all the cases was whether the publication was necessary for the common convenience and welfare of society. Perhaps it will not be out of place to mention that very much the same approach was adopted by the Court of Appeal 60 years earlier in *Allbutt v The General Council of Medical Education* 2?

In the Court  
of Appeal  
of  
New Zealand

No. 21  
Reasons for  
Judgment  
(delivered  
by North J.)

16th November,  
1959.

(continued).

In the Court  
of Appeal  
of  
New Zealand  
No.21  
Reasons for  
Judgment  
(delivered  
by North J.)  
16th Novem-  
ber, 1959.

(continued).

Q.B.D. 400, where the Court was called upon to consider whether privilege attached to the publication of a report of the Medical Council that a practitioner had been removed from the register for infamous conduct. The judgment of the Court was delivered by Lopes L.J. who having made reference to the same line of authority as is referred to by the Board in *Perera's case* said; (p.410) "It seems to us, having regard "to the nature of the tribunal, the character of the report, the interests of the public in the proceedings of the Council, and the duty of the Council towards the public, that this report stands on principle in the same position as a judicial report. "It would be stating the rule too broadly, in our opinion, if it was held, that, to justify the publication of proceedings such as these, the proceedings must be directly "judicial, or had in a court of justice. We can find the law nowhere so broadly "stated, nor do we think that in these days it would be so laid down. The Court must "adapt the law to the necessary condition of society and must from time to time "apply as best it can, what it thinks is the good sense of rules which exist to cases "which have not been positively decided to come within them. We have said that we "can find no direct authority against holding this publication privileged." In contrast with both these cases is *Chapman v Ellesmere* 1932 2 K.B. 431 where the Court of Appeal reached the conclusion that the publication in a newspaper of the findings of a domestic tribunal at which the public were not entitled to be present was not privileged. To this line of authority may be added the wellknown case of *Adam v Ward* 1917 A.C. 309 which falls within the same general principle (*Gatley* 4th Ed. 255, 256)

But in our opinion the argument presented by Mr Cooke loses sight of the distinction which requires to be drawn between different functions performed by newspapers. One function is to provide its readers with fair and accurate reports of proceedings judicial and otherwise and of public meetings and the like. In this field clearly there is room for the application of the principles supplied in *Perera's case* and indeed the Defamation Act 1954 and its earlier English counterpart give statutory recognition to the right of a newspaper to carry out this task subject to certain safeguards to which it is unnecessary to refer. Another function performed by a newspaper is to provide its readers with news and even gossip concerning current events and people. It would not, we think, be an over-statement to say that some newspapers in particular acquire and hold their circulation by emphasizing this aspect of journalism. In this second field, in our opinion, there is no principle of law and certainly no case that we know of which may be invoked in support of the contention that a newspaper can claim privilege if it publishes a defamatory statement of fact about an individual merely because the general topic developed in the article is a matter of public interest. The proprietor of a newspaper is in a difficulty if he begins to speak of a "duty" to publish material because such an assertion immediately provokes the kind of caustic answer given by Lord Macnaghten in *Macintosh v Dun* 1908 A.C. 390,400, where he said "Is it in the interest of the community, is it for the welfare of society, "that the protection which the law throws around communications made in legitimate "self - defence, or from a bona fide sense of duty, should be extended to communications made from motives of self - interest by persons who trade for profit in the "characters of other people?" Once it is appreciated that the law does not recognise any special privilege as attaching to the profession of journalism; that in the case of

10

20

30

40



a journalist "the range of his assertions, his criticisms or his comments is as wide as and no wider than that of any other subject" (*Arnold v The King Emperor* 30 T.L.R. 462, 468) it seems to us to become manifest that a journalist who obtains information reflecting on a public man or a public officer has no more right than any other private citizen to publish his assertions to the world at large. His only right is to approach whoever is in authority over the person concerned and if he proceeds decorously in this way he will be protected (see *Harrison v Bush* 5 E. & B. 344 and the *King v Rule* 1937 2 K.B. 375).

10 In what we have described as the second field, we think the decision in Perera's case cannot be relied upon as affording privilege to a newspaper merely because the defamatory statement is made in the course of dealing with a topic of general public interest. It has been well established that in these circumstances no special privilege attaches to newspaper publications, and it cannot be thought that it was in any way intended in Perera's case to set aside this rule by implication only. In the Court below Hutchison J. cited a passage from the judgment of Latham C.J. in *Loveday v Sun Newspapers Ltd.* 59 C.L.R. 503, 513 which in our view, with respect, states the position correctly. To that statement there may be added the citation by Dixon J. in the same case (p.521) of the following passage from the judgment of Lord Hanworth M.R. in *Chapman v Ellesmere* (*supra*): "But

20 "though the vehicle of the public Press has been held to be a proper and protected "one, so as to defeat a claim for libel, where it has been used as the only effective mode' to answer a charge which had already received as wide a circulation "(see *Adam v Ward* and *Brown v Croome*), there is no authority which protects the "statement in the newspaper, where it is made not in answer, but as a fresh item "on which a general interest, as distinguished from a particular interest already "aroused, prevails. Buckley L.J. in *Adam v Ward* stated a proposition, which was "approved in the House of Lords in the following terms: 'If the matter is matter "of public interest and the party who publishes it owes a duty to communicate it "to the public, the publication is privileged, and in this sense duty means not a

30 "'duty as a matter of law, but, to quote Lindley L.J.'s words in *Stuart v Bell* " "a duty recognized by English people of ordinary intelligence and moral principle." "But these words must be taken in relation to the facts of the case. It appears to "me that the learned judge meant by the words 'matter is of public interest,' has " 'already become of public interest.' The duty cannot arise in respect of a matter "not yet made public to all."

40 One of the cases cited by Latham C.J. in the case last cited was *Davis v Shepstone* 11 A.C. 187. In our opinion this case is a clear and binding authority against the submission made by Mr Cooke. In that case the plaintiff was the resident Commissioner in Zululand and the defendants were the publishers of a newspaper which made serious allegations with reference to the plaintiff's conduct while in the execution of his office in the Reserve Territory. The information which formed the basis of the articles came from the Bishop of Natal and from a reporter who had interviewed certain Zulus on their way to convey a message from their King to the Governor of Natal. No attempt was made to prove that the defamatory statements were true but the defendants claimed that the occasion was privileged. Lord

In the Court  
of Appeal  
of  
New Zealand

No.21  
Reasons for  
Judgment  
(delivered  
by North J.)

16th November,  
1959.

(continued).

In the Court  
of Appeal  
of  
New Zealand  
No. 21  
Reasons for  
Judgment  
(delivered  
by North J.)  
16th Novem-  
ber, 1959.  
(continued).

Herschell, L.C. in delivering the judgment of the Board said: "There is no doubt  
"that the public acts of a public man may lawfully be made the subject of fair  
"comment or criticism, not only by the press, but by all members of the public.  
"But the distinction cannot be too clearly borne in mind between comment or criti-  
"cism and allegations of fact, such as that disgraceful acts have been committed,  
"or discreditable language used. It is one thing to comment upon or criticise, even  
"with severity, the acknowledged or proved acts of a public man, and quite another  
"to assert that he has been guilty of particular acts of misconduct." The conten-  
"tion that the publications were privileged as being a fair and accurate report of  
statements made by certain persons to the staff of the paper was summarily dismissed 10  
in these words: "It was insisted by the counsel for the appellants that the publica-  
"tions were privileged, as being a fair and accurate report of the statements made by  
"certain messengers from King Cetewayo upon a subject of public importance. It  
"has, indeed, been held that fair and accurate reports of proceedings in Parliament  
"and in Courts of Justice are privileged, even though they contain defamatory matter  
"affecting the character of individuals. But in the case of *Purcell v Sowler* the  
"Court of Appeal expressly refused to extend the privilege even to the report of a  
"meeting of poor law guardians, at which accusations of misconduct were made  
"against their medical officer. And in their Lordships' opinion it is clear that it  
"cannot be extended to a report of statements made to the Bishop of Natal, and by 20  
"him transmitted to the appellants, or to statements made to a reporter in the employ  
"of the appellants, who for the purposes of the newspaper, sought an interview with  
"messengers on their way to lay a complaint before the governor."

For these reasons we are of opinion that the occasion was not privileged and  
therefore the first submission made by counsel fails.

We turn then to consider the complaints that have been made with reference to  
the learned Judge's directions to the jury. In the Court below Mr. Cooke relied in  
all on eleven grounds of alleged misdirection. Before us these were reduced to  
eight, but even so we can find little or no substance in any more than three of these.  
Therefore it will be convenient if we proceed at once to consider the three grounds 30  
raised by Mr. Cooke which in our view require to be carefully considered. These  
were:

- (d) Directing the jury that on the question whether the passage complained of  
bore of the meaning alleged by the plaintiff the fact that the newspaper  
might have been asking for a general inquiry had no bearing at all.
- (e) Directing the jury that the case was properly to be dealt with as if the  
defendant itself had said "See Phil and Phil would fix it."
- (f) Directing the jury that they should find for the defendant if they thought  
that the words sued on did not mean what was alleged by the plaintiff, but  
might mean something less than that, that the Minister was bungling or 40  
incompetent or something of that sort, but refraining from specifically  
directing the jury upon request that they should find for the defendant

if they thought the meaning was that, in view of Judd's remarks, an inquiry should include the question whether or not the plaintiff had acted dishonourably in connection with import licences.

10 These three complaints are inter-related and in order that the precise point of criticism may be the better understood it is desirable first of all to make a short reference to the way the trial was conducted and the way the issue of "libel or no libel" was left to the jury. From the tenor of the summing-up it would seem clear that the case went to the jury exclusively on the basis that the respondent - the plaintiff - in order to succeed was obliged to satisfy the jury that the words complained of carried the meaning attributed to them in the innuendo which was pleaded. If we understood Mr. Leicester correctly he agreed that this was so and said that he was content that the case should be dealt with in this way. It is possible - we say no more than that - that counsel for the respondent was entitled to ask the Judge to direct the jury that even if they were not satisfied that the offending words bore the precise meaning attributed to them in the innuendo nevertheless the respondent was entitled to fall back upon the actual language of the article as being libellous without the innuendo: see 24 Halsbury 3rd Edn. pp.86 to 89 *Watkin v Hall* 1868 L.R. 3 Q.B. 396; *Brown v Crowley* 22 N.Z.L.R. 318. 331. However, this may be the result of the course taken necessarily

20 meant that the respondent was "pinned down" to the innuendo he had selected and could not invite the jury to adopt a fresh and modified construction which offered him a safer prospect of success; see *Gatley* 4th edn. 467 *Odgers Law of Libel and Slander* 6th edn. 109 and the cases there cited. Now it is in this situation that Mr Cooke complains that the way the learned Judge dealt with the "inquiry" aspect of the case and the way the Judge dealt with the "Judd" aspect of the case deprived the appellant of two of the principal supports for his contention that the words used meant something less than that the respondent had acted and was prepared to act dishonestly in connection with the issue of import licences. Now in order to determine what weight should be given to these

30 two complaints it is necessary to turn to the summing-up and to see precisely what the learned Judge did say and to notice the context in which his observations were made. After some preliminary remarks the judge proceeded to define the wrong of defamation saying, "It consists in the publication of a false and defamatory "statement concerning another without lawful justification." He then went on to instruct the jury as to the meaning of the different words used in the definition and said, "Now the defendant says that the words in their natural and ordinary "meaning are incapable of being defamatory of the plaintiff and that Mr Foreman "and gentlemen is common ground in this case and that is why I have already "said to you that the words in their natural and ordinary meaning are incapable

40 "of being defamatory of the plaintiff ..... so that you see that the issue here is "whether the words mean what the plaintiff says that they mean, whether in their "secondary or colloquial meaning taken from the context mean what the "plaintiff says that they mean. If they do not mean what the plaintiff alleges, then "they would not be defamatory, but if they do mean what the plaintiff alleges, you

In the Court  
of Appeal  
of  
New Zealand

No.21  
Reasons for  
Judgment  
(delivered  
by North J.)  
16th November,  
1959.  
(continued).

In the Court  
of Appeal  
of  
New Zealand  
No.21  
Reasons for  
Judgment  
(delivered  
by North J.)  
16th Novem-  
ber, 1959.  
(continued).

"might well hold them without any doubt to be defamatory if they are false and are "made without lawful justification." The Judge then pointed out that the question of falsity presented no difficulty as a plea of justification had not been raised. He then went on to deal with the words "without lawful justification". He first pointed out that a "lawful justification" could exist if the words were published on a privileged occasion but he said the jury were not concerned with this for that was a question of law and that he had ruled provisionally, with the agreement of counsel, that the jury should consider the matter on the basis that the occasion was not privileged. Then he discussed a rather curious submission that had been made that the fact that there was no person in New Zealand holding the office of Director of Public Prosecutions could be used as a ground for holding that the libel - if it was a libel - was published with lawful justification. Then he came to the passage which Mr. Cooke complains of. He said: "Going on from that, and still dealing with this "question of 'without lawful justification', the question of privilege, the fact that the "paper was calling for a general inquiry does not in itself justify a defamatory "statement that is made in the article unless indeed there is privilege. Whether "there should or should not be a general inquiry is not a matter for us here. It is "a matter for the Government, whose decision one way or the other might be criti- "cized in the House or might be criticized in the newspapers if they thought it proper "to criticize it, but it is not a matter for us here in a court of law to express any "view on at all. For your purposes, on the question as to whether the passage was "defamatory, in my direction to you, the fact that the paper was calling for a general "inquiry, is not an answer on the question of whether the passage was defamatory. "The fact that it was so calling may be a circumstance to be considered on the "question of damages if you come to the question of damages, but I will mention "that later, but my direction to you is that, on the question of whether the passage "that is complained of bears the meaning that the plaintiff alleges that it bears, the "fact that the newspaper might have been calling for a general inquiry, has no bear- "ing at all."

Now a great deal of what the Judge said in this passage was unexceptionable. The fact that the newspaper was demanding an inquiry into the circumstances referred to in the article certainly did not provide it with a lawful excuse for making a defamatory statement. As the Judge said, "It was not an answer on the question of whether the passage was defamatory". Then no exception could be taken to the learned Judge's statement that the fact that the newspaper was seeking an inquiry might be relevant to the question of damages. This, of course, was a helpful direction from the appellant's point of view. It is the concluding statement which might be open to criticism. If the newspaper's call for a general inquiry could reasonably be taken as enabling the jury to attribute to the words complained of some meaning which fell short of the meaning assigned by the innuendo (which in the absence of such a call for an inquiry might not be attributed to them) then it would not have been correct to say that the call for a general inquiry had no bearing when the jury came to consider whether the innuendo meaning had been made out. We shall later return to a consideration of this aspect of the matter. Then Mr. Cooke complained of the next passage in the summing-up which read: "I go back then to the question of

10

20

30

40

10 "whether the words mean what the plaintiff alleges. There are certain general  
 "matters in respect of that that I want to mention to you. The first is this - the  
 "article said that Judd said those words and that the article is reporting him. You  
 "were asked to consider whether in fact that was established, but I suggest to you  
 "that it does not very much matter for this reason - if you accept that those words  
 "were spoken by Judd, it is not a defence at all that a statement that might be de-  
 "famatory is put forward by way of report only. It does not help the defendant that  
 "the way that it is put is that Judd said 'See Phil and Phil would fix it'. The case  
 "is properly to be dealt with as if the defendant itself said 'See Phil and Phil would  
 "fix it'. And it does not matter either that Judd may have used the words, if he  
 "did use the words, in their primary meaning of merely arranging it and may not him-  
 "self in those words, if he said them, have meant or said anything defamatory of the  
 "plaintiff. The question is whether the words mean in this article what the plaintiff  
 "alleges they mean."

20 Mr. Cooke submitted that the fact that it was Judd speaking and not the newspaper  
 was of importance in determining whether the offending words had the meaning alleged  
 in the innuendo. We do not think that there is anything in this point. Conceding for  
 the purpose of considering the position that when Judd made the statement attributed  
 to him he was merely endeavouring to impress his visitor that he was on terms of  
 familiarity with the respondent, the substance of the matter is the use made of those  
 words by the newspaper in its rather sensational article. In other words it is the  
 "set-up" of the article which was of importance. Therefore it seems to us that for  
 all practical purposes the Judge was right when he told the jury that the case should  
 be dealt with as if the writer of the article had used these words himself.

Finally Mr. Cooke complained that when the Judge was asked to remove any possible  
 misconception arising from his earlier remarks he failed to do so adequately.  
 The typescript of the record of what transpired is this:

30 "Mr. Cooke: If the jury thought the meaning was, in view of Judd's remarks,  
 "that an inquiry should include the question whether or not the plaintiff has  
 "acted dishonourably in connection with import licences - if they thought the  
 "words bore that lesser meaning, a different meaning from the one assigned by  
 "the plaintiff, then the defendant would be entitled to a verdict?"

"Judge: I hope I have, and I think I have made that clear. I have told the  
 "jury that it is essential for the case of the plaintiff that it should be established  
 "by the plaintiff that the words bear the meaning alleged by him."

40 If the record is correct then it would seem to us that by and large Mr. Cooke gained  
 his point and in effect obtained a direction in the form he sought and any possible  
 harm arising from the way the Judge had dealt with the "inquiry" aspect at an earlier  
 stage was removed. Moreover he obtained an advantage which all counsel appreciate  
 namely he was able to make his point for what it was worth just before the jury retired.  
 However, the learned Judge has expressed a doubt whether he did express himself  
 exactly as recorded in the transcript for he has said that in his view a direction in  
 that form would have been too favourable to the appellant as he did not himself think  
 the meaning that Mr. Cooke had attributed to the offending passage was a possible

In the Court  
 of Appeal  
 of  
 New Zealand

No. 21  
 Reasons for  
 Judgment  
 (delivered  
 by North J.)

16th Novem-  
 ber, 1959.

(continued).

In the Court  
of Appeal  
of  
New Zealand

No. 21  
Reasons for  
Judgment  
(delivered  
by North J.)  
16th November,  
1959.  
(continued).

meaning. In the circumstances then it would seem that the proper course for us to adopt is to proceed on the basis that the Judge at this stage did no more than repeat that the respondent was required to establish that the words bore the meaning alleged by him in the innuendo.

Having we hope cleared the ground we now return to consider whether there really was error in the passage in the summing-up first mentioned. The proper approach was laid down by Bramwell L.J. in *Clark v Molyneux* 3 Q.B.D. 237, 243 in a passage which has often enough been cited with approval in these terms: "I certainly think that a summing-up is not to be rigorously criticized; and it would not be right to set aside the verdict of a jury, because in the course of a long and elaborate summing-up the Judge has used inaccurate language; the whole of the summing-up must be considered in order to determine whether it afforded a fair guide to the jury, and too much weight must not be allowed to isolated and detached expressions." Approaching the matter in this way the first observation that requires to be made is that the words which have been criticised occurred in a passage in the summing-up when the learned Judge was dealing with what constituted a lawful justification for publishing a defamatory statement and not with the meaning of the words used in the article. He seems only to have intended to repeat what he had earlier said, namely, that the fact that an inquiry was sought was not an answer to the question whether the passage was defamatory for he immediately proceeded to say, "I go back then to the question of whether the words mean what the plaintiff alleges". It does not seem to us then to be at all likely that the actual language as it appears in print was impressed on the minds of the jury in the way counsel now suggests was the case. Next, it must not be overlooked that the particular words in the article which it was claimed had the sinister meaning attributed to them in the innuendo were "see Phil and Phil would fix it". We think that the learned Judge was quite right when he said that these words could not possibly bear the meaning sought to be placed on them by Mr. Cooke.

The word "fix" may have a perfectly innocent meaning or it may have a distinctly sinister meaning. If it is said, "Phil will fix the waterpipe", the statement merely means that he will effect the necessary repairs. If, on the other hand, it is said, "Phil will fix the jury" it is reasonably plain that this infers that he will bribe the jury. While then it is perfectly clear that the meaning of the words "See Phil and Phil would fix it" in the article obviously depended on the context in which they appeared, we do not think that their meaning depended on the fact that "Truth" was demanding an inquiry. We think this is what the Judge had in mind in the passage in his judgment which Mr. Cooke said he could not follow. This read: "In my view it was not a possible suggestion, for the paragraph sued on was one of the paragraphs that stated matters of fact coming between the two parts of the article where an inquiry was being called for, the beginning and the end, and the suggestion seemed to me to attribute to the passage a meaning that I did not consider that the jury could possibly put upon it." In our opinion the furthest Mr. Cooke can take the matter is to say that the way the Judge put the matter rather left the impression that he was imposing some limitation on his general direction that the meaning of the

10

20

30

40

offending words depended on the context in which they were used. When, however, the summing-up is considered as a whole we have reached the clear conclusion that it provided the jury with a fair guide when they came to consider their verdict. The Judge emphasized more than once that the plaintiff was bound by the innuendo he had chosen and that unless he satisfied the jury that to the ordinary reader the words meant what the plaintiff said they meant, the action failed and he told the jury very clearly indeed, "Read the whole article carefully and come to your con-  
10 clusion giving due weight where you think it necessary to any submissions that "have been made to you by counsel." It seems to us that with that direction the jury would determine the question of libel or no libel upon a reading of the whole of the article which, of course, included the several references made by the writer to the need for a general inquiry.

We will deal with the remaining complaints in the order in which they appear in the particulars attached to the motion for a new trial:

- (a) Directing the jury that the explanation of the plaintiff of the return of directors made by the Secretary of Amalgamated Commercial Traders Limited in April 1958 was that there had been some mistake about the notice, and that the jury might think that a credible explanation.

20 In our opinion the learned Judge was perfectly right in the course he took in connection with this collateral matter which had nothing to do with the real issue before the jury and only went to the question of credit. The respondent had said in his evidence-in-chief that he had resigned from the directorate of a company with importing interests when he accepted his appointment as Minister of Industries and Commerce. In cross-examination he was confronted with a document which purported  
30 ed to be a copy of a document filed by the Secretary of the Company with the Registrar of Companies dated 14th March 1958 which showed that the respondent was on that date still a director of the company. The respondent replied that the Secretary must have made a mistake for he had indeed resigned his directorate in December 1957. Later in re-examination he said that the apparent discrepancy  
40 between his own evidence and the document could be explained on the ground that the new Companies Act 1955 which came into force on the 1st January 1957 requi-  
ed this return to be filed and that it meant no more than that he had been a director on the 1st January 1957. This alternative explanation it would seem was quite wrong but even so we fail to see any reason why it should be assumed that the respondent was endeavouring intentionally to mislead the Court and the jury. He was not a solicitor, and even if he had been it would be rather rash to conclude that a solicitor giving such an explanation was dishonest. We think that the Judge did what every Judge is required to do in a matter like this. It was his duty in the interests of fair play to see that neither counsel secured an advantage which  
he was not fairly entitled to. In any event we fail to see why Mr. Cooke should be aggrieved by the course taken by the Judge. Even if the respondent had told a lie on this collateral matter that circumstance could not properly be used in mitiga-  
tion of damages which seems to have been the only purpose which Mr. Cooke had in mind: see 24 Halsbury 3rd edn. p.106, para.196.

In the Court  
of Appeal  
of  
New Zealand

No.21  
Reasons for  
Judgment  
(delivered  
by North J.)  
16th November,  
1959.  
(continued)

- (b) Directing the jury that it is the right of gentlemen who undertake public positions, such as Ministers of the Crown, to be criticized only in a way that is not defamatory of them.

In accordance with usual practice in commencing his address to the jury the learned Judge made several introductory remarks, one of which was expressed thus: "This is a very important case and it calls for your most careful consideration. "For, on the one hand, we have the right of freedom of speech, which is one of the "fundamental freedoms, which right includes the freedom of the press to criticize "actions of Ministers of the Crown and other persons occupying public positions, "and, on the other hand, we have the right of gentlemen who undertake these public "positions, and the duties of these positions to be criticized only in a way that "is not defamatory of them but is a fair criticism of them in their public office, "every person having a right to retain his reputation untamished if he deserves to "do so. To maintain balance between these two rights which may compete with "one another, the law has laid down a number of principles, and to some of these "I will refer in the course of my remarks at different places. One is this, that a "newspaper is in precisely the same position for all the purposes of this case as anyone else would be. It has the same rights and is subject to the same obligations." Mr. Cooke agreed that usually a statement such as this would have been unobjectionable but he submitted that in the present case what the Judge said 20 even at this early stage may well have created a wrong impression in the minds of the jury. He said that during Mr. Leicester's final address he had objected to him using the words "a defamatory meaning" and had insisted that the only question was whether the words bore "the defamatory meaning" alleged in the innuendo. Therefore, he said, harm was done to his case when the Judge shortly afterwards spoke of the right of gentlemen who undertook public office to be criticized "only in a way that is not defamatory of them": for, he said, whatever might be the position of public men in general the respondent in this case could only complain of the particular defamatory meaning selected by him. With all respect it seems to us that counsel both in this and in the other matters as well 30 has been unduly sensitive. In our opinion there is no ground for concluding that the jury would be misled by what the Judge said in the passage we have cited. At this stage the Judge had not even defined "defamation" let alone discussed the particular approach that required to be adopted in the present case.

- (i) Directing the jury in substance that they should give a verdict against the defendant on proof of the sense ascribed to the publication in the statement of claim.

Hutchison J. in his judgment in the Court below discussed this contention in some detail and he has recorded the passages in his summing-up to which Mr. Cooke has taken exception. In our opinion there is no substance in this criticism either. The Judge did not tell the jury that they should give a verdict against the appellant on proof of the sense ascribed to the publication in the statement of claim. On the contrary he said no more than that the jury "would be justified in returning a verdict for the plaintiff" if they held that the words bore the meaning alleged in the innuendo and by way of contrast he coupled with this expression of opinion a clear statement that if they did not so hold that it bore that meaning 40



they "should hold for the defendant". In our opinion the Judge made it perfectly clear that he was merely giving the jury advice on the question and was not in any way taking from them the right to find as they thought fit. Nor do we think Mr. Cooke is entitled to call in aid that the Judge expressed the opinion, that if the defamatory meaning alleged was sustained, this was not a case where the jury should seriously consider giving only contemptuous damages. That, too, was only an expression of the Judge's personal opinion and was certainly not a direction which in any way bound the jury. In our opinion the law is correctly stated in 24 Halsbury 3rd edn. p.109 para. 202: "The proper course for the judge to adopt in

10 "civil or criminal proceedings for libel, where there is a case to go to the jury, is "to define what is a libel in point of law, and leave it to the jury to pronounce their "opinion as a matter of fact whether the particular publication falls within that "definition or not. The Judge may as a matter of advice express his own opinion "as to the nature of the particular publication, but he is not bound to do so as a "matter of law and it would be wrong for the Judge to direct the jury positively "that they must find that a particular publication is a libel or a slander." Over 100 years ago in *Parmiter v Coupland* 6 M. & W. 105 it was argued that the Judge was bound to state to the jury as a matter of law whether the publication complained of was a libel or not. Parke B. rejected this submission and said: "Whether the

20 "particular publication, the subject of inquiry, is of that character, and would be "likely to produce that effect, is a question upon which a jury is to exercise their "judgment and pronounce their opinion, as a question of fact. The Judge, as a "matter of advice to them in deciding that question, might have given his own "opinion as to the nature of the publication, but was not bound to do so as a matter "of law. Mr. Fox's Libel Bill was a declaratory act, and put prosecutions for libel "on the same footing as other criminal cases." Again in *Darby v Ouseley* 1 H. & N. 1, 13, Pollock, C.B. said: "First it is said that the learned Judge was wrong in "laying down that the question was one of damages only; but though he stated his "own view of the matter, he left it to the jury to say whether the publication was a

30 "libel." In our view nothing turns on the submission made by Mr. Cooke that the position is different now that s.22 of the Defamation Act 1954 applies to civil as well as to criminal proceedings whereas the Libel Act 1792, often referred to as Fox's Act, only applied to criminal proceedings. The short answer is that the Libel Act 1792 has always been regarded as being merely declaratory of the common law as will be seen from the passage we have cited from Parke B's judgment in *Parmiter v Coupland*.

- (j) Suggesting to the jury that this was not a case in which the jury ought seriously to consider the question of contemptuous damages, because if, in fact, the plaintiff was libelled by the defendant's article then the libel was not by any means a slight one.

40 Mr. Cooke made two points under this heading. First, that as the jury was entitled to award nominal or contemptuous damages even if satisfied that the offending words bore the grave meaning alleged in the innuendo the Judge was not entitled to express his own views on the topic of damages. We know of no authority which gives any support to this contention. No doubt after a jury has awarded

In the Court  
of Appeal  
of  
New Zealand  
No.21  
Reasons for  
Judgment  
(delivered  
by North J.)  
16th Novem-  
ber, 1959.  
(continued).

In the Court  
of Appeal  
of  
New Zealand  
No.21  
Reasons for  
Judgment  
(delivered  
by North J.)  
16th November,  
1959.  
(continued)

nominal or contemptuous damages there are difficulties in the way of a Court interfering with the verdict for the measure of damages is essentially a matter for the jury. See *Bekker v Wrack*, 1937 N.Z.L.R. 549. But while this is so a Judge certainly is entitled to express his own views to the jury so long as he makes it clear that the assessment of damages is their province and not his own.

Secondly that the Judge made the nature of the defamatory statement the exclusive test in determining the measure of damages whereas the jury was entitled to have regard also to the behaviour of the respondent in relation to the questions discussed in the newspaper article; that in other words the jury in their assessment of the damages could register their disapproval of the conduct of the respondent. No doubt this is so and if Mr. Cooke was within his rights in saying, as he seems to have said directly or indirectly on several occasions during the trial, that the libel was very nearly true, he certainly had no right to expect any commendation from the Judge for the bold course he took. It was entirely a matter for the learned Judge to decide for himself whether the facts which emerged during the trial made it desirable that he should add any words of his own to the criticisms advanced by the appellant's counsel. From what the Judge has said we would think that he did not altogether approve of the way the defence was conducted and that he thought that Mr. Cooke steered a very narrow course which at times brought him very close to saying things which he could not properly say in the absence of a plea of justification. However this may be the short answer to all that Mr. Cooke has said on this topic is that the jury in awarding no less than £11,000 by way of damages obviously were not thinking in terms of contemptuous damages at all and therefore even if there had been anything in Mr. Cooke's complaint it could not possibly be said that anything that the Judge said on the subject of damages had resulted in a miscarriage of justice.

(k) Intimating to the jury that they would probably not need to look at the exhibits.

This complaint does not deserve any detailed consideration. It certainly is not a direction on a question of law at all; what the Judge said in relation to the exhibits is in accordance with usual practice for experience has shown that justice at the hands of juries is best done when a jury looks at the matters they are required to consider in a broad way and are not diverted from their task by a mass of documents. The jury were told that they could send for any of the exhibits and therefore nothing was withheld from the jury.

For these reasons we are of opinion that a case for a new trial has not been made out. Therefore we dismiss the appeal with costs to the respondent on the highest scale with allowances of £21 for each of the additional days and £10: 10: 0. for second counsel for each day of the hearing.

Solicitors for Appellant: Alexander, J.H. & Julia Dunn, Wellington

Solicitors for Respondent: Leicester, Rainey & Armour, Wellington

FORMAL JUDGMENT OF COURT OF APPEAL

In the Court  
of Appeal  
of New Zealand  
No.22  
Formal Judgment.  
16th November,  
1959.

BEFORE:

THE HONOURABLE MR. JUSTICE GRESSON, PRESIDENT

THE HONOURABLE MR. JUSTICE NORTH

THE HONOURABLE MR. JUSTICE CLEARY

MONDAY THE 16TH DAY OF NOVEMBER, 1959.

10 This appeal coming on for hearing on the 21st, 22nd, 23rd and 24th days of  
September, 1959 AND UPON HEARING MR. Cooke of Counsel for the Appellant and  
Mr. Leicester with him Mr. Collins of Counsel for the Respondent THIS COURT  
DOTH ORDER that the appeal be and the same is hereby dismissed and that the  
Appellant do pay to the Respondent his costs of this appeal on the highest scale  
with an allowance of £21.0.0. for each of the additional days and £10.10.0. for second  
Counsel for each day of the hearing.

By the Court,

K. Seebeck

DEPUTY REGISTRAR

L.S.

In the  
Court of  
Appeal of  
New Zealand

No. 23

ORDER GRANTING FINAL LEAVE TO APPEAL TO THE PRIVY COUNCIL.

No.23

Order of  
Court of  
Appeal of  
New Zealand  
giving final  
leave to  
Appeal to  
Privy  
Council

BEFORE

THE HONOURABLE MR JUSTICE GRESSON, PRESIDENT.  
THE HONOURABLE MR JUSTICE CLEARY.  
THE HONOURABLE MR JUSTICE HUTCHISON.

THURSDAY THE 3rd DAY OF MARCH 1960

UPON READING the Notice of Motion filed herein and the Affidavit of James Hamilton Dunn sworn and filed in support thereof AND UPON HEARING Mr Cooke of Counsel for the Appellant and Mr Leicester and Mr Collins of Counsel for the Respondent THIS COURT DOTH ORDER that the Appellant do have final leave to appeal to Her Majesty in Council from the Judgment of this Honourable Court pronounced herein on the 16th day of November 1959.

10

By the Court,

L.S.

K. Seebeck

Deputy Registrar

PART II  
EXHIBIT G

ARTICLE IN N.Z. TRUTH, 27TH JANUARY, 1959.

Exhibits  
G  
Article in  
N.Z. Truth  
27th Jan-  
uary, 1959

# M.P.'s IRON CURTAIN TRIP; CREDITORS TAKE ACTION

10 A FEW DAYS AFTER he had narrowly avoided being involved in bankruptcy proceedings in Auckland, Mr. Warren Wilfred Freer, Labour M.P. for Mount Albert, left New Zealand in the Italian liner Fairsea on a six-month holiday trip which will take him behind the Iron and Bamboo Curtains.

*MR. FREER left a number of large, unpaid bills behind him, but settled other accounts with cheques drawn on the Mt. Roskill branch of the Bank of New Zealand. Some of these cheques are reported to have been dishonoured when presented for payment shortly after Mr. Freer's departure.*

20 MR. FREER got into financial difficulties after acquiring the lease of a largish area of Auckland Harbour Board land in Blockhouse Bay, Auckland, which he planned to sub-divide into a dozen or more building sections.

He spent considerable sums on a house in Halsey Drive, but was apparently unable to finance the roading and easements on the land he had acquired. He was thus unable to recoup himself by leasing or selling any building sites.

When the news of his proposed trip spread three of his creditors took legal action to obtain settlements of the amounts he owed them.

30 One tradesman who was owed about £300 filed a petition in Auckland Supreme Court to have Mr. Freer adjudged bankrupt, but had his account settled before the petition was served on Mr. Freer.

The member for Mount Albert also settled the accounts of the other two creditors before the bailiff served him with their petitions. As a

Exhibits

G  
Article in  
N.Z. Truth  
27th Jan-  
uary, 1959

(continued)

result, though Mr. Freer's name was called in the court, the original petition was withdrawn and an announcement made that the matter had been settled.

**Large Cheque**

A cheque for a substantial amount, drawn on the account of Mr. H. Judd, is understood by Truth to have been paid into Mr. Freer's account and this is believed to have enabled him to meet his more pressing creditors and to pay his passage money.

Shortly after this Mr. Freer sailed in the Fairsea on December 14 for Southampton via Papeete, Tahiti; Balboa, Cristobal, Panama; Curacao; and Lisbon, Portugal. He was accompanied by his wife, Mr. J. R. Burfitt, a member of the Mt. Albert Borough Council, Mrs. Burfitt and Mr. F. Newton, manager of the Mt. Albert Day Nursery. 10

The Auckland Star reported at the time that Mr. Freer had promised the Prime Minister, Mr. Nash, that he would never be more than a fortnight's travelling time away from Auckland in the event of a short session of Parliament being called.

Latest news of Mr. Freer is that he and his wife have arrived in London on their way to the Continent, Moscow and China. In the meantime, Mr. Freer's two sons are being boarded by friends of the family. 20

Asked by Truth to comment on suggestions that he had assisted Mr. Freer financially on the eve of his departure, Mr. H. Judd, manager of Griffin Paints Ltd., Penrose, denied having any financial dealings with Mr. Freer and said he had not paid him any money either by cheque or in cash.

So far as he was aware, said Mr. Judd, Mr. Freer's trip was at his own expense. He would return to New Zealand via China and was expected back early in June just before the next session of Parliament.

In China on his way back, Mr. Freer would, as is usual, be the guest of the Chinese Government, but would have to pay his own way to the point of entry and from the point of departure. 30

**Mr. Freer, he said, had done great work in attempting to develop reciprocal trade between the Peking Government and New Zealand.**

As the Government had not yet recognised Peking the establishment of trade relations between the two countries was "rather awkward." Mr. Freer, however, was doing a wonderful job in getting things on to a workable basis.

Mr. Judd said he was in no way connected with the Communist China's Chinese National Export Commission, but said he had taken a great interest in imports from China, primarily because he has imported a "fair amount" of Chinese wood oil for the manufacture of paint at his factory. 40

**Calls To China**

Because of Mr. Freer's overseas connections—his trips abroad included one to Red China in 1955—he is known to have had some very large toll accounts resulting from radio phone calls to far-off places.

On occasion, previous Postmasters-General have had their attention drawn to the fact that some of these accounts have remained unpaid for an unduly long time.

**Because of this Truth drew the attention of the present Postmaster-General, Mr. Moohan, to Mr. Freer's overseas phone calls and asked** 50

whether the debts he left behind him included a large unpaid toll account.

"I know nothing about it," said Mr. Moohan, averting his eyes. "You can't get calls on that basis."

Truth: But it is normal practice for a telephone subscriber to pay for his toll calls after he has had them.

Mr. Moohan: That is so.

Nevertheless Truth understands that the Post Office is among the unsatisfied creditors, for a substantial sum.

10 Truth was unsuccessful in obtaining any comment on Mr. Freer's trip from the Prime Minister, Mr. Nash. Truth's representative saw him briefly as he came out of Cabinet yesterday.

Mr. Nash smiled. He has already been questioned about Mr. Freer's affairs by the Auckland Press.

"I know what you want to see me about," he told Truth before a single question had been put, "and I have nothing to say."

Then he dashed off to an Australia Day reception preparatory to flying to Dunedin to speak at the Burns Society last night and going on to Oamaru to fulfil a number of engagements today.

20 These are the questions Truth wanted to ask Mr. Nash:

- Is Mr. Freer's present trip overseas an official mission?
- Did you send him a letter wishing him a successful trip before he left?
- Did Mr. Freer ask if he could draw a six-months advance on his Parliamentary salary before he left?
- Will Mr. Freer be able to return to New Zealand without delay in the event of Parliament being called together unexpectedly?

Mr. Nash may yet find it necessary to answer them.

Exhibits

G

Article in  
N.Z. Truth  
27th Jan-  
uary, 1959

(continued)

Exhibits

H  
Article in  
N.Z. Truth  
3rd Feb-  
ruary, 1959

## EXHIBIT H

ARTICLE IN N.Z. TRUTH, 3RD FEBRUARY, 1959.

# M.P. FREER'S HIGH-INTEREST BORROWINGS

**MR. WARREN WILFRED FREER, Labour M.P. for Mount Albert, appears to have been desperately short of money immediately before he left Auckland with his wife for a six months' tour of Britain, Europe, Russia and China. Just how desperate he was is illustrated by the fact that he borrowed £1000 at 9 per cent interest on the eve of his departure.** 10

**HE** borrowed this money by raising a mortgage on part of a block of about eight and a half acres of land he is leasing from the Auckland Harbour Board.

**He left Auckland in the Italian liner Fairsea on December 14, but the mortgage was not registered till December 16—two days after his departure.**

Five days after he had sailed an application for the declaration of Mr. Freer in bankruptcy was withdrawn when it came before Mr. Justice Hardie Boys in Auckland Supreme Court on December 19. The application was withdrawn (Truth last week) because the debt had been satisfied. 20

It is apparent that Mr. Freer settled his most pressing creditors in cash, that he gave worthless cheques to his less pressing creditors, and that he did nothing for those who, like the Post and Telegraph Department, did not press the point with him hard enough before he left.

One of Mr. Freer's dishonoured cheques is understood to have been for an amount of £800.

It has been suggested that the firm which received it has not pressed for the money because, as a potential tenderer for Government work, it does not want to embarrass the Government. 30

It is believed that Mr. Freer gave another firm a cheque for a similar amount with similar results; and that a third cheque for a sizeable sum was not met when it was banked by an Auckland clothing firm.

## **Earlier Loan**

The £1000 Mr. Freer borrowed on a portion of his Auckland property is not the only mortgage on it. Four months earlier he had borrowed £1200 on another section of his property at seven per cent interest.

**Both are second mortgages at high rates of interest. Aggregating £2200, both are to be repaid before the end of September this year—**



**£1200 by July 30, and £1000 by September 12.**

Exhibits

A first mortgage on a part of the property is held by the Bank of New Zealand. When the manager of the Mt. Roskill branch of the bank was asked to comment on the suggestion that Mr. Freer had obtained a bank advance of £2000 on his Halsey Drive home, he gave the expected --and proper--reply: "All matters affecting a bank and its clients are completely confidential."

H  
Article in  
N.Z. Truth  
3rd Feb-  
ruary, 1959

(continued)

10 Government concern about Mr. Freer's affairs is illustrated by the fact that the deputy-Prime Minister, Mr. Skinner, had a long conversation with the Government member for Mount Albert in London shortly before returning to New Zealand last week. This conversation was devoted to Mr. Freer's financial position.

**MOST INTERESTING ASPECT OF MR. SKINNER'S LONDON DISCUSSIONS WITH MR. FREER IS THAT THEY TOOK PLACE BEFORE TRUTH PUBLISHED THE INITIAL STORY OF MR. FREER'S FINANCIAL DIFFICULTIES BEFORE HE LEFT NEW ZEALAND.**

Mr. Skinner has given a full report of his conversations with Mr. Freer to the Prime Minister, but declines to discuss his colleague's financial affairs with the Press.

20 **Assets**

Government sources indicated to Truth, however, that Mr. Freer's assets will more than cover his liabilities.

**Other Government sources said that on previous visits overseas, Mr. Freer had been paid by businessmen to drum up business for them. He had cut his expenses to the limit, living on the ships in which he was travelling instead of staying at hotels.**

He also took advantage of what hospitality was offered to him in such countries as China, where the Peking Government met all his expenses.

30 The day after Truth disclosed Mr. Freer's financial difficulties last week the New Zealand Herald published details of the bankruptcy proceedings against Mr. Freer which were withdrawn--almost six weeks after the incident took place.

**Reaction**

Apart from that, the reaction of the daily Press was to supply an answer to Truth's billboard question: "Where is Freer, M.P.?" The sudden plethora of press messages concerning Mr. Freer's itinerary which resulted included one from London quoting Mr. Freer as saying that he was doing his trip on a "shoestring."

40 The cost of the Auckland-Southampton portion of that "shoestring" was £338. And it is a borrowed "shoestring" at that.

**Griffin Paints Ltd.**

[N last week's issue, Mr. H. Judd was described as manager of the above company. This statement was published in good faith and was confirmed by Mr. Judd.

Griffin Paints Ltd. state that Mr. Judd is not manager of the company, that he is not employed by the company, and that he is not and never has been a shareholder therein.

At the request of the company, Truth has published this statement and expresses its regrets for any inconvenience caused Griffin Paints Ltd.

Exhibits

H  
Article in  
N.Z. Truth  
3rd Feb-  
ruary, 1959  
(continued)

## **Mr. Nash Was Annoyed**

THE Prime Minister was angry when he saw Truth's representative among the newspapermen waiting for news of Cabinet's deliberations.

"I will not be cross-examined on that," said Mr. Nash when a reporter asked him if there was any further news of Mr. W. W. Freer, Labour M.P. for Mount Albert.

Then he turned to Truth, his face flushed slightly. "You can take your questions to where they should be answered," he said. "I would be ashamed to answer your questions. And you can report me on that." 10

"Anything that you can do underhand, you do. And report me on that."

*Here are the questions Truth asked Mr. Nash to answer:*

1. *Does the Government view with disapproval the action of Mr. Freer in leaving New Zealand on an extensive tour without making provision for the payment of his debts?*
2. *Does the Government view with disapproval the action of Mr. Freer in issuing cheques which were subsequently dishonoured?*
3. *If the answer to question 1 and/or 2 is in the affirmative, what steps are proposed to discipline Mr. Freer?* 20
4. *Is Mr. Freer engaged on any mission on behalf of the Government?*
5. *Did you or any other Minister of the Crown send Mr. Freer a letter of good wishes for a successful trip before he left?*
6. *Does the Government contemplate any action which will facilitate the payment of Mr. Freer's debts?*
7. *Do you, as leader of the Parliamentary Labour Party, regard Mr. Freer as a suitable representative of the party?*
8. *To what extent did the Reserve Bank make special financial provision for Mr. Freer's overseas expenses?* 30
9. *Was such provision from this country's depleted overseas funds?*
10. *Did the Labour Party caucus express disapproval of Mr. Freer's proposed trip?*
11. *To what extent is it proposed to issue import licences to foster trade with Communist countries?*
12. *To the extent that such licences are issued, will such licences prejudice importers who were in business in 1956?*

EXHIBIT A  
HEADING ON FIRST PAGE OF N.Z. TRUTH.  
24TH MARCH, 1959

---

Exhibits

A  
Article in  
N.Z. Truth  
24th March  
1959

**PROBE THIS EX-RUSSIAN  
IN FREER CASE!—P. 17**

## EXHIBIT A

ARTICLE IN N.Z. TRUTH, 24TH MARCH, 1959.

(Page 17)

Exhibits

A  
Article in  
N.Z. Truth  
24th March  
1959

(continued)

# This Ex-Russian's Import Licences Should Be Investigated

**THE GOVERNMENT should take immediate steps to hold a full, searching and impartial inquiry into import and other dealings between an Auckland importer of Czechoslovakian glass, one Harry Judd, of 160 Upland Road, Remuera, and Mr. Warren Freer, M.P., who is now, according to the latest reports, en route from Moscow to Peking where he intends to take part in the approaching May Day celebrations in the Communist Chinese capital.**

10

**IMMEDIATE steps will be necessary if an inquiry is to be held because Mr. Judd, whose proper name is Hyman Yudt and is a Russian by birth, is, so Truth understands, preparing to leave this country.**

**THE inquiry is necessary for a number of reasons, but chiefly because a document which purports to be a statement of Mr. Freer's financial situation, which has been privately circulated since Mr. Freer left New Zealand on December 12 last (Truth, January 27), shows a sum of £2200 due to Mr. Freer from an unnamed source. It is described as "commission on a licence for £44,000."**

20

## **Associate**

**Truth believes that this £44,000 licence is in the name of Mr. Judd, who is a close associate of Mr. Freer, and that it was Mr. Judd who**

**resolved some of Mr. Freer's money worries on the eve of his departure overseas, by paying him a sum of £800, plus a further undetermined amount.**

Mr. Judd has denied to Truth that he paid any money to Mr. Freer on this occasion. Truth, quite bluntly, does not accept that denial and considers that it should be tested to the fullest possible extent as part of an investigation into the dealings between Messrs. Freer and Judd.

Judd is known to have stated that he had Czechoslovakian glass to the value of about £40,000 on order and to have been actively canvassing for its sale. He is reported to have about 600 crates of Czech glass due in New Zealand in a month or two's time.

**The point immediately arises how Judd got an import licence for any such amount, if he did get an import licence.**

He was not, so far as can be ascertained, in the glass importing business in 1956, so that if the same rules have been applied to him as have been applied to other importers, he is not entitled to a licence.

### **Barter**

He has also spoken about bringing glass into New Zealand from Czechoslovakia under a "barter agreement."

Truth has been categorically assured by the authorities that there are no barter agreements operating except one between New Zealand and Japan under which New Zealand log timber is being sold to Japan in return for certain specified Japanese imports.

The sudden emergence of Mr. Judd into large-scale importing of glass and other dealings requires an explanation.

Mr. Judd's real name, as already stated, is Hyman Yudt, and he was born in Visegrod, Russia, in 1906. He is believed to have taken British nationality in the United Kingdom before he arrived in New Zealand in 1939.

He settled first in Christchurch where he was divorced and remarried in 1942. The following year he registered a company known as the Colonial Oil Refining Co. Ltd. in Wellington (Judd was then described as "oil refiner"), with a capital of £1400, of which Judd held half—500 shares being a free allotment because of his special knowledge and agreement to serve the company for two years.

In 1947 the name of this company was changed to the Colonial Oil and Chemical Co. Ltd. By that time Judd and his wife held all the shares (1400) and Judd was described as an "importer." The registered office was also moved to Auckland.

There was another change of name in 1954 when the Colonial Oil and Chemical Co. Ltd. became Colonex Paints Ltd. In the same year the company increased its capital to £7000 by the creation of a further 5600 shares issued to Judd and his wife. The following year Judd was appointed governing director. Subsequently he also commenced to operate another company known as H. Judd and Co. Ltd., glass merchants.

That, then, is roughly the business record in New Zealand of Hyman Yudt, commonly known as Harry Judd.

● But other things are known about him. He has stated that he acted as an "adviser" to the Czechoslovakian consulate in New Zealand on trade matters.

● He was active in the anti-compulsory military training campaign in 1949.

● He more recently displaced another Auckland firm as a trade representa-

Exhibits

A

Article in  
N.Z. Truth  
24th March  
1959

(continued)

Exhibits  
A  
 Article in  
 N.Z. Truth  
 24th March  
 1959

tive in New Zealand for Communist China, and he took a close interest in the recent Japanese trade delegation when it visited New Zealand.

### **Big Way**

These activities do not explain why Mr. Judd seems to have emerged in a big way as an importer of glass from an Iron Curtain country when he was not an importer in 1956. The official trade figures show that no glass at all was imported from Czechoslovakia in 1956, though about £500 worth was brought in from Poland. In 1947, £497 worth of glass was imported, mainly from Czechoslovakia.

(continued)

**These activities also do not explain why Mr. Judd, or Yudd, paid a large sum of money to Mr. Freer before the latter's departure on a world tour which was to include, among other Iron Curtain calls, a stay in Czechoslovakia.**

10

And it certainly does not explain why a document which has been circulated in an apparent effort to explain Mr. Freer's confused financial position to interested people, should show that Mr. Freer is owed a large sum of money as commission on a £44,000 licence.

If, in fact, Mr. Freer has been paid or is to be paid any commission whatever on an import licence for anyone, the Government has an absolute duty to inquire into the matter with the utmost strictness. It was operations such as this which touched off the famous Lynskey inquiry in Britain in the late forties when an adept operator named Sidney Stanley was shown to have had certain dealings with a British junior minister, Mr. John Belcher. The British Government overhauled all the dealings between Mr. Stanley and Mr. Belcher in minute detail. Mr. Belcher resigned and left public life. Mr. Stanley had taken the precaution of removing himself from Britain and has never returned.

20

### **Perturbed**

There is no doubt that Truth's references to the perturbation of some of Mr. Freer's creditors when the member for Mt. Albert suddenly departed overseas with his wife and a party of friends on December 12 last, profoundly affected Mr. Judd.

30

**He told a man who approached him some time subsequently about import procedure that he was "sick of things here" and that "25,000 smackers had just gone like that."**

He gave the impression that there was nothing doing (in the import field) for him any longer. He told the caller that he had come too late, that there was "no use talking" and that the Prime Minister, Mr. Nash, had put his foot down.

At a subsequent discussion with the same man, the disconsolate Judd told his caller to "see Phil and Phil would fix it." He warned him, whatever he did, not to let Mr. Nash hear about it.

40

By "Phil" his caller understood him to mean the Hon. Phillip North Holloway, the Minister of Industries and Commerce.

Judd, at this interview, described Mr. Freer as "a silly boy" and remarked: "He should have told us sooner about his troubles. If he had, things would have been different."

Judd confirmed to his caller that he was leaving the country though he did not say for how long or whether he intended to return. He said he was going to England.

50

**The caller, having obtained no satisfaction from Mr. Judd, took his**

proposition to the Czech Consulate in Wellington, where a Czech official (who locked the door before he started the discussion) gave it some further consideration.

To the caller's surprise, he said that "Harry Judd" was the man to see and that Judd was the man to "fix it up."

He told the caller that the "barter agreement" between New Zealand and Czechoslovakia was "in abeyance"—whatever that may mean, because if Industries and Commerce Department is to be believed there IS no barter agreement.

10 Finally he talked darkly about an "agent" who had charge or responsibility for any trade arrangements with his mother country in New Zealand, but would not disclose his identity.

So the man who had a proposition to develop trade with Czechoslovakia left with no satisfaction except the reflection that most roads seemed to lead to Mr. Judd and that Mr. Judd was apparently poised to take one of his own.

### **Inquiry**

20 Before he does this and departs for England or any other place, Truth considers that he should be brought before a properly constituted inquiry and asked to explain the source of the £1800 odd Mr. Freer used to settle with his most pressing creditors before his departure, how much Czechoslovakian glass he (Judd) has brought into this country in the last three years and what arrangements he made with the responsible Government departments which made it possible for him to import on these lines.

**The responsible ministers, including Mr. Holloway, and the responsible Government servants dealing with these matters should also be asked for their explanations.**

If, as Judd is reported to have said, Mr. Nash has "put his foot down" on Judd's operations, it should not be allowed to rest at that.

30 The Government must be prepared to show that there has been no chaffering in import licences and no undue preference given to anyone.

### **Desirable**

Quite a number of importers would like to trade with Iron Curtain countries if they could obtain licences to do so, or Government approval for barter agreements.

40 But it has been asserted quite categorically by the Department of Industries and Commerce that there is only ONE barter agreement (with Japan). Apart from that, the only trading of this sort permitted is where what is defined as "entirely new" trade is developed between New Zealand and the selling country.

If Mr. Judd's operations come under that heading, then it should be explained what "entirely new trade" Mr. Judd has built up with Czechoslovakia to entitle him to get into a lucrative importing business in a big way.

**In Truth's view the New Zealand Labour Government should show itself no less meticulous in preventing any suspicion of under-the-counter dealings with Parliamentarians than did the British Labour Government when it dealt with Sidney Stanley.**

Exhibits

A  
Article in  
N.Z. Truth  
24th March  
1959

(continued)

## EXHIBIT F

ARTICLE IN N.Z. TRUTH, 26TH MAY, 1959.

Exhibits

F  
Article in  
N.Z. Truth  
26th May,  
1959

---



---

## **Minister's Libel Action Next Week**

**A LIBEL ACTION brought by Philip North Holloway (Minister of Industries and Commerce) against Truth N.Z. Ltd., has been set down for hearing in Wellington Supreme Court next Tuesday, June 2.**

**T**HIS decision was made by Mr. Justice McGregor after he had heard an application for an adjournment by Truth's counsel (Mr. R. B. Cooke).

The case, said Mr. Cooke, had early been scheduled tentatively for hearing on Monday, May 25, subject to there being adequate time for the defendant company to inspect the relevant documents. However, the defendant was not quite ready to proceed as some of the files were long and bulky. 10

In this action, Holloway (for whom Mr. W. E. Leicester, with Mr. R. G. Collins appears) is claiming £15,000 from Truth. He alleges that an article published on March 24 entitled "This Ex-Russian's Import Licences Should Be Investigated" was false and malicious, that he had been seriously injured in character and reputation in the way of his office as Minister of Industries and Commerce, and that he had been brought into public hatred, ridicule and contempt. 20

The article dealt with the business dealings of a man called Harry Judd, and Warren Wilfred Freer, M.P. It advocated that an inquiry should be held by the Government into these dealings.

Truth, in a statement of defence, maintains that the words complained of by the plaintiff bear a natural and ordinary meaning and are incapable of being defamatory to him, and that in their natural and ordinary meaning they are true in substance and in fact. Alternatively, it is claimed, they were published in good faith for the information and benefit of the public and the publication therefore was privileged. 30

**In the course of his application Mr. Cooke commented that there had been a rumour to the effect that the case had been settled. He wished to make it perfectly clear on the defendant's behalf that the case had not been and would not be settled.**

Mr. Leicester said the plaintiff was most anxious at the earliest possible date to have the opportunity of vindicating his character in a matter of importance to him and to his department.



DOCUMENTS FROM EXHIBIT D  
DEPARTMENT OF INDUSTRIES AND COMMERCE  
FILE RE TRADE WITH CZECHOSLOVAKIA

---

Exhibits  
D

Documents  
from  
Department  
of Industries  
and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

Received  
6 Feb 1958  
Head Office  
Dept. of In-  
dustries &  
Commerce

Minister of  
5th Feb 1958  
Industries &  
Commerce

H. JUDD & COMPANY LTD

Merchants                  Importers

10

I. & C. 155  
7

February 4th 1958

Hon. P.N. Holloway,  
Minister of Industries and Commerce,  
WELLINGTON.

Dear Mr Holloway,

As promised when I met you in Auckland some two or three weeks ago, accompanied by Mr Warren Freer, I am setting out herewith details of the proposed trade agreements which could be made between the Czechoslovakian Government and the Government of New Zealand.

20

The Secretary  
Dept. of  
Industries  
and Commerce  
Referred -  
For Draft  
Reply  
P.N.H.  
5/2/58

You will recall that in our discussions I listed a number of items of heavy equipment urgently required for the capital development of this country which are now being manufactured in, and are freely available for export from Czechoslovakia. The Czechoslovakian Government some time ago endeavoured to negotiate a trade agreement with the New Zealand Government. At that time also the Czechoslovakian Government bought very large quantities of New Zealand butter. In the year 1955 - 6 they were indeed the second largest buyers of N.Z. butter with the view of promoting

Exhibits

D  
Documents  
from  
Department  
of Indus-  
tries and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

(continued)

mutual trade relations and having the wish of making a trade agreement between our two countries. The Czechoslovak Consulate then asked for a licence to import £200,000 worth of Skoda cars. The undertaking was given by Mr. Marshall of the Dairy Division that licences would be made available for that sum. That agreement, which was arrived at between the Consulate and the N.Z. Dairy Division, was not carried out by the last Government.

From discussions which I had whilst in Prague which were subsequently confirmed by the Czechoslovakian Consulate in Wellington I am in a position to assure you that the Government of Czechoslovakia is willing to purchase very substantial quantities of butter, meat, wool and tallow. 10

Final  
Proposal in  
letter 1/4/58

M

It will be of some interest to you to know that Czechoslovakia were buyers at the recent wool sales in Napier of approximately £600,000 worth of wool. That buying, without doubt, increased the overall price at the auction.

If a mutual trade agreement can be made much of our heavy capital equipment, which we so urgently need, can be obtained from Czechoslovakia. You are no doubt aware that the standard of their equipment and the quality of their engineering ranks with the best in the world. That equipment can be made available at competitive prices with very good delivery dates. This equipment includes diesel rolling stock, Caterpillar tractors, heavy earth moving equipment and heavy trucks, which are only available from the United States - in a word anything which our Government is buying for N.Z. capital needs as well as a wide range of other materials of extreme value to N.Z. national economy. 20

You are no doubt aware that there already exists substantial trader to trader importation from Czechoslovakia. I, myself have imported sheet glass from that country of a very high quality. I may mention that Czechoslovakia is the only large glass producing country that is not a member of, or is in any way connected with the world glass cartel. The distribution of glass in this country is by a local glass ring. We are underselling this price ring. This is the first time for twenty-five years that the buyers of glass, such as joiners and builders, are able to buy from a non-ring source.

The position which applies to glass also applies to very many other products as you are no doubt well aware. Our Government would have the opportunity of successfully attacking and destroying the various rings which are in being because there would be an independent source of supply which no ring or group of rings could intimidate. 30

FILE May I respectfully suggest that it would be to the advantage of New Zealand for your departmental officers to meet and discuss this position with the Czechoslovakian Consulate in Wellington. I would be glad to give any further information or assistance in helping to arrange such a discussion.

Yours faithfully,

H. JUDD & CO. LTD.

H. Judd

40

Minister of  
27 Feb 1958  
Industries &  
Commerce

P. O. Box 17,  
Penrose,  
AUCKLAND.  
27th February, 1958.

Exhibits  
D  
Documents  
from  
Department  
of Indus-  
tries and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

Hon. P.N.Holloway, M.P.,  
Minister Industries & Commerce,  
WELLINGTON.

Dear Sir,

(continued)

10 In confirmation of the discussion I had with you this morning, accom-  
panied by Mr. Warren Freer M.P., I wish to set out herein details of the proposed  
trading transactions between New Zealand and Czechoslovakia.

This proposal is submitted by myself as authorised agent for the  
Czechoslovakian Consulate, the Consul being Mr. K. Nejepinsky.

20 Czechoslovakia wishes to immediately buy from New Zealand butter  
to the value of £62,500, beef meat to the value of £62,500, tallow to the value of  
£125,000, and wool to the value of £250,000. This latter to be in addition to the  
wool purchases of approximately one million pounds already made this season. In  
return she wishes to sell certain goods to New Zealand, the bulk of which are of  
extreme value to our economy and at prices lower than those available from alterna-  
tive sources. As examples of this, may I give brief mention on the following items:

- 30
- (a) Sheet glass, both common window and plate, to the value of £50,000.  
This glass is already on the market and the quality is to BSS 952, and  
sells at approximately 50% less than any other available glass.
  - (b) Tractors of the crawler type, superior to the American Caterpillar D.2 are  
also offered. Specifications are submitted herewith. This machine sells  
in New Zealand for £900 less than the American model. In addition the  
hydraulic bull-dozer blade supplied for this machine is approximately  
half the price of the American blade, and the same applies to the winch  
and front-end loading equipment.
  - (c) Textile piece goods for the manufacture of shirts, pyjamas and similar  
items of apparel are offered at prices on a par with those quoted from  
Japanese sources.

All the articles listed for importation are at highly competitive prices.  
Further items can be offered in future for purchases of additional supplies of  
primary produce, and these would mainly consist of heavy industrial equipment.  
Several Government Departments are interested in the excellent purchases which  
can be made in this field, and an example is to be found in a large excavator

Exhibits  
D  
Documents  
from  
Department  
of Industries  
and  
Commerce  
file re  
trade with  
Czechoslovakia  
(continued)

offered to this country at £10,000. This has a greater capacity than the largest already in the country but would be substantially cheaper as the smaller unit now in use costs about £17,000.

In addition to the advantages resulting from lower prices it must be remembered that the Public Accounts benefit substantially from additional customs duties resulting from the origin of the imports themselves.

Further, the entry of another country into the market for both tallow and wool must have a stimulating effect upon local prices for these commodities. At the same time the placing of butter on this market can only assist in strengthening butter prices in the United Kingdom whilst at the same time establishing an additional butter market. Similarly Czechoslovakia is, as yet, a relatively untapped market for our meat and tallow.

10

Hereunder the list of articles offered by Czechoslovakia.

Tractors, agricultural and industrial	£35,000	
Sheet glass, common window and plate	50,000	
Textile piece goods	100,000	
Trucks, heavy duty	10,000	
Childrens shoes to BMA specifications	15,000	
Hat Hoods for manufacturing	15,000	
Paper other than manufactured locally	15,000	20
Machine Tools	15,000	
Graphic & printing machinery	10,000	
Typewriters	10,000	
Ball and roller bearings	10,000	
Motor-cycles and scooters (including spares)	30,000	
Cars, including spares	50,000	
Household textiles (tea-towels, etc)	10,000	
Domestic glassware	10,000	
Sewing machines, domestic & industrial	25,000	
Pianos and musical instruments	10,000	30
Industrial Rubber V belts	15,000	
Carburators	15,000	
Industrial driving chains	15,000	
Woodworking machinery	10,000	
Cameras & photokino equipment	15,000	
Imitation jewellery	5,000	
Beach rubber toys & rubber balls	5,000	

FILE

Awaiting your early decision.

Yours faithfully,

H. Judd.

40

H. JUDD & CO. LTD.

LAA:BS

Exhibits

27 February 1958

D

Documents  
from  
Department  
of Indus-  
tries and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

G. 3/3

Mr Gray :

BILATERAL TRADE ARRANGEMENT WITH  
CZECHOSLOVAKIA

The Minister handed me the attached correspondence this afternoon.

(continued)

10 He feels that this is the type of arrangement that should be further investigated and wants this one looked into urgently. He does not necessarily think that the full proposals of the writer are necessarily what we want but does think that we should consider a proposition that involved exports of, say, butter and meat from New Zealand, and possibly tallow, and the importation into New Zealand of one or two items that we will have to import anyway and which are clearly obtainable at considerably cheaper prices than from other sources - he instanced glass and tractors. He envisaged this as a possible arrangement along the same lines as the apples for tinsplate one with France - i.e., that the traders would carry through the transactions, the only assistance from Government required being the issue of licences for the imports into New Zealand.

20 Would you please get someone on to this immediately so that we can give the Minister a report.

L.A.A.

(L.A. ATKINSON)

FILE Mr. Broadbent.  
Pl. discuss after  
prelim. consideration.  
R.B.G.  
3/3  
Attachment:

Exhibits

155/1

D  
Documents  
from  
Department  
of Industries and  
Commerce  
file re  
trade with  
Czechoslovakia  
(continued)

New Zealand  
DEPARTMENT OF INDUSTRIES AND COMMERCE

P. O. Box 2492, Wellington, C.I.  
Cable and Telegraphic Address:  
"Tradbord, Wellington"

Received  
13 Mar 1958  
Head Office  
Dept of Industries and  
Commerce

6 March 1958 10

The Minister of Industries  
and Commerce

Minister of  
6 Mar 1958  
Industries & Commerce

BILATERAL TRADE ARRANGEMENT WITH  
CZECHOSLOVAKIA

1. Mr. H. Judd of Auckland wrote to you on 4 February regarding a possible trade arrangement with Czechoslovakia, and after an interview, wrote again on 27 February giving his proposals in more detail.
2. Mr. Judd has been in touch with the Department previously suggesting an increased flow of trade with Czechoslovakia. After his two week visit to Czechoslovakia in 1957 Mr Judd visited our London Office, and we subsequently received a brief report outlining his main impressions of trading conditions in that country. He had evidently discussed the question of a barter deal with several officials of State-controlled organisations, but it would be difficult to assess how much weight could be given to informal discussions of this nature. 20
3. It should also be recalled that after the war several approaches were made by Czechoslovakian officials concerning the provision of credit for the purchase of New Zealand wool, and finally in 1948 the New Zealand Government granted a £1 million credit at 2½ per cent. This was used and repaid on the due date, 30 June 1954. Since then additional approaches have been made by Czechoslovakian officials and agents through our London Office, the New Zealand Dairy Products Marketing Commission, the New Zealand delegation to GATT and this Department concerning additional credits and barter agreements. The Czechoslovakian authorities were advised that the New Zealand Government preferred to trade on a multilateral basis in keeping with our existing international obligations in GATT. Furthermore, they were advised that they should have no exchange problem or necessity to balance trade with New Zealand because of this country's membership of the sterling area. 30
4. The latest move was in August last year when Prevost & Company, wool-buyers, who act in New Zealand as somewhat limited agents for the Czechoslovakian authorities, were advised that they should have no exchange problem or necessity to balance trade with New Zealand because of this country's membership of the sterling area. 40

Secretary,  
Industries  
and  
Commerce.

Referred  
10/3/58  
P.N.H.

slovakian Government, approached the Treasury with a view to obtaining a credit for the purchase of wool and possibly tallow, hides and sheepskins. After discussions with this Department and the New Zealand Dairy Products Marketing Commission it was decided to inform Prevosts that the Government would be prepared to negotiate a credit of £3 million at the rate of £1.5 million a year for two years on condition that two-thirds of the money was used to purchase butter. The Czechoslovakian authorities were not prepared to accept credit under these conditions. They considered that even 50 per cent would be too high a proportion to have to spend on butter.

Exhibits  
D  
Documents  
from  
Department  
of Indus-  
tries and  
Commerce  
file re  
trade with  
Czecho-  
slovakia  
(continued)

10 5. It is against this background that we have studied this latest proposal. Mr Judd now advises that Czechoslovakia wishes to buy from New Zealand, butter, beef, tallow and additional quantities of wool, to a total value of £500,000. This is in addition to the wool purchases already made this season of a value of approximately £1 million. In return Czechoslovakia requests that New Zealand should purchase various goods to a total value of £500,000.

6. The details of Czechoslovakia's proposed purchases are:-

	Butter	£62,500
	Beef	62,500
	Tallow	125,000
20	Wool (additional)	250,000

The following figures show New Zealand's exports to Czechoslovakia in recent years:-

	Value of New Zealand's Exports to Czechoslovakia (£NZ 000)				
	<u>1953</u>	<u>1954</u>	<u>1955</u>	<u>1956</u>	<u>1957 (6 Mths)</u>
Wool	2,485	2,521	616	573	725
Butter	-	-	1,048	1,203	-
Total:	<u>2,485</u>	<u>2,521</u>	<u>1,664</u>	<u>1,776</u>	<u>725</u>

30 Beef and tallow have not been exported to Czechoslovakia in recent years, but on the other hand Czechoslovakia has been a regular market for New Zealand wool and in 1955 and 1956, an important market for butter.

7. Wool, the most important item in the proposals, already has a reasonably good market in Czechoslovakia. Moreover, it is an item for which there is a world market, and additional Czechoslovakian purchases from any source would ultimately tend to increase the demand for New Zealand wool. In these circumstances there is little advantage in giving any undertakings to achieve increased exports of wool to Czechoslovakia alone unless it could be proved that it would lead to an increase in the total wool consumption there. The value suggested for butter purchases is very small especially in the light of Czechoslovakia's

Exhibits

D

Documents  
from  
Department  
of Indus-  
tries and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

(continued)

- purchases in 1955 and 1956 and in relation to New Zealand's total exports of butter (£52 million in 1956). It is doubtful if additional sales to the value of £62,500 would have any appreciable effect on the price of butter on the United Kingdom market. Much the same considerations apply to beef for which the suggested purchases are £62,500 against New Zealand's total beef exports of £12.5 million in 1956. The suggested figure for tallow, on the other hand, represents a much larger proportion of New Zealand's exports in 1956 of £2.6 million.
8. The proposals do, however, offer the opportunity for some additional exports and although small in this instance, it may lead to further opportunities later on. These factors must be weighed against any disadvantages which may arise. 10
9. The cost to New Zealand would be the additional exchange and import provision that would need to be made available to meet the necessary purchases from Czechoslovakia. The attached table sets out Mr Judd's proposals showing New Zealand's imports of the commodities named from Czechoslovakia in 1956 (generally the base year for 1958 import licences) and the present import licensing category and policy for each item. Presumably the £500,000 suggested represents additional purchases through Mr Judd and considerable additional import provision would therefore be required to meet the Czechoslovakian requests. 20
10. However, I have already pointed out that New Zealand would probably not benefit from any arrangement which merely assured sales of wool to any one market. If, then, wool is deleted from the proposals New Zealand could possibly sell an additional £250,000 of beef, butter and tallow by assuring Czechoslovakia access to the New Zealand market for goods to a value of £250,000. This may or may not be satisfactory to Mr Judd but it is at least a possible basis for further negotiations.
11. If it is decided to proceed on this basis the most likely items to purchase from Czechoslovakia are textile piece goods, (woven), sheet glass and domestic glassware, hat hoods, motor vehicles and the various machinery items mentioned. Imports of these goods from Czechoslovakia were to a value of over £200,000 in 1956 and it should not be too difficult to arrange for additional licences of £250,000 for 1958. It must be remembered however, that Czechoslovakia is able to give a firm undertaking on actual purchases while, apart from the possibility of some Government purchases, the most that New Zealand can offer is access to this market by way of import licensing. This would need to be made clear to Mr Judd as the basis for further negotiations. 30
12. The main advantage to New Zealand from a special trade deal of this nature with Czechoslovakia is the opportunity it gives to sell primary products in a new market and so relieve pressure on the United Kingdom market. However, the amounts suggested are relatively so small as to raise doubt as to the 40



efficacy of such a diversion. Against this even a small foothold in the Czechoslovakian market might lead to more appreciable sales in the longer term, but even if this were the case, such additional sales would probably be required to be matched by additional purchases from Czechoslovakia at a level not so easy to achieve as the value of £250,000 now proposed. Moreover, discrimination in import licensing would be necessary and although the amount envisaged at present is small, there would be an unfavourable reaction from other importers as well as from New Zealand's other trading partners.

- 10 13. However, because of the present need to find additional markets for primary produce, even the small opportunity offered in the present case should be given full consideration. I would therefore suggest that Mr. Judd be advised that a proposal covering the sale of butter, beef and tallow to a value of £250,000 would be considered against the issue of licences for imports from Czechoslovakia of such items as textile piece goods, glass sheet and plate, hat hoods and some machinery items to a like value. The question of wool would depend on evidence that it would really represent additional Czechoslovakian purchases.
- 20 14. Mr Judd should be informed that he will need to give appropriate assurances to the Department that the exports to Czechoslovakia will, in fact, take place before any additional licensing provision is made. I therefore suggest that upon receiving your reply, Mr Judd be requested to get in touch with me to discuss detailed plans for carrying out his proposal.
15. I therefore submit the attached draft reply to Mr Judd for your signature if you approve.
16. You will presumably wish to discuss this matter with the Minister of Customs, and an additional copy of this memorandum is attached for reference to him accordingly.

L. A. Atkinson

(L.A. Atkinson)

Secretary

To Mr Atkinson,

Thanks. I do not intend to contact M. of Customs at this stage, but when final arrangements have been made with Mr Judd at the point when licence must be issued.

P.N.H.

Exhibits

D

Documents  
from  
Department  
of Industries and  
Commerce  
file re  
trade with  
Czechoslovakia

(continued)

FILE

Exhibits

D

Documents  
from  
Department  
of Indus-  
tries and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

(continued)

Signed and despatched  
7/3/58  
In Minister's Office

Mr. H. Judd,  
H. Judd & Co. Ltd,  
P. O. Box 75,  
PENROSE. S.E.6.

Dear Mr. Judd,

I have now studied the proposals, put forward in your letter of 27 February, for a trading arrangement with Czechoslovakia about which you originally wrote to me on 4 February. 10

You will appreciate that the type of arrangement envisaged presents some difficulties because of New Zealand's normal pattern of trade and our international commitments.

On the other hand, if it were possible, in the way you have suggested, to increase the flow of trade between Czechoslovakia and New Zealand I would be glad to render any assistance possible. The New Zealand Government does not enter into trade directly and I presume you would be prepared to handle the arrangement of both the export and import aspects of your plan. If this is so, it might be possible to arrange for import licences to be made available to you for a specified list of goods subject to satisfactory assurances from you in respect of sales to Czechoslovakia. 20

In considering the commodities to be traded, we of course would give top priority to butter, meat and tallow. The suggested purchases are not very great in relation to New Zealand's exports of these items but, because of the possibility of future increased trade, even these quantities are of interest. Wool, as you know, is sold at auction on virtually a world market and presumably Czechoslovakia obtains its full requirements in this way. It would appear difficult to prove that wool included in a special transaction such as this was, in fact, additional to normal purchases.

On the import side some of the items you suggest of a less essential character present difficulties in our present exchange situation. However, though there would be some problems in making additional import provision, something might be possible in items such as glass, machinery and textiles. 30

I would therefore suggest that you now get in touch with the Secretary of Industries and Commerce to reach agreement on the procedure to be adopted. I will, of course, be most interested to hear how you get on and trust that there will be an increased flow of trade between Czechoslovakia and New Zealand as a result of your efforts.

FILE

Yours faithfully

(sgd.) P.N. Holloway  
(P.N. Holloway)

Minister of Industries and Commerce

40

Dr Sutch rang.

Considers we shd check as to whether Judd is the best man to deal with.

We should see the Czech. Legation is aware of what we are doing so that we get full credit.

He mentioned also the question of Motor Scooters. We could probably put them the Czech way instead of to Germany. Mr Wright know about this.

R.B. Gray

11/3/58

Exhibits

D

Documents  
from  
Department  
of Indus-  
tries and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

(continued)

FILE

10

Mr Broadbent -

Could you discuss the Scooter one with  
Mr Wright?

R.B.G. 11/3

## MINUTE SHEET

Exhibits

D  
Documents  
from  
Department  
of Industries and  
Commerce  
file re  
trade with  
Czechoslovakia

Subject  
4.00pm

File

12-3-58

Mr Roy Lynds - Pacific Import Co.

(Prevost &amp; Co.)

(continued)

Has heard from Consulate of proposed deal.  
(Czech - Mach. Commercial Counsellor)

(1) Prevost's very upset and claim they made first approaches - were awaiting a propitious time - apparently Judd jumped the gun & sold idea he had the Govt's ear & that he alone would be heard!

10

(2) Prevost's now going to have a "go" at the Czech Consulate - & hope to put up a proposition also to Govt.

FILE

(3) Lynds will keep me informed.

A.B.

PLEASE WRITE CLEARLY - BE CONCISE - SIGN &amp; DATE

## MINUTE SHEET

Exhibits

D

Mr Atkinson		File	Documents from
		Mr Janak Acting Consul General	Department of Industries and Commerce
		Chargé d'	file re trade with Czechoslovakia
Mr Havell	)		(continued)
& Mr Ticochek	)	Czech Commercial Attachés	

Will call to discuss Judd's proposal at 4.0pm tomorrow (13th March)

File

A.W. Broadbent

- 10 Why did not come to us direct?  
 The blackmail on butter begins !  
 But the quantity is negligible !

BE CONCISE - WRITE CLEARLY - SIGN & DATE

Exhibits

Meeting with Czechs

D

Documents from Department of Industries and Commerce file re trade with Czechoslovakia

(continued)

- (1) Judd approved - not prepared to switch - want one firm handling all export & import arrangements.
- (2) Agree small deal but if successful may be larger ones.
- (3) Czech would export butter bought under this deal. Did not know where but not in our markets & would probably make a loss.
- (4) Another year larger purchases could be made from N.Z. (by choosing N.Z. butter over Danish or Dutch).

- Freer Said Minister wanted small deal - first place Min. suggested - officers to Prague { £4-5 m. in reciprocal trade. } 10
- Judd { Suggests Export Certificates } Problem of commodities to balance
- { Licences to Judd for distribution
- { Need to be in Govt purchases
- { ~~Exports pay for imports~~ X Inedible tallow
- { 21 Importers involved
- Wool ) Mr Marshall 20
- Tallow )
- Meat ) 5 or 6 quotes
1. Czech Exporters
2. Commerce (1) Danger of re-exports!
- additional trade
3. Czech List (2) Diversion of Danish or Dutch butter no advantage
- of importers
- with Czech (3) Problem of annoyance in trade if deal leaks & others want similar chance.
- Consul.
- X (4) Need for Secrecy
- (5) Blackmail on all further exports.
- (6) Why can't glass be sold now? Why not able sell now

155/1  
~~101/7~~  
 RT:TR:S

Exhibits  
 D  
 Documents  
 from  
 Department  
 of Indus-  
 tries and  
 Commerce  
 file re  
 trade with  
 Czecho-  
 slovakia

1 April 1958

The Minister of Industries  
 and Commerce

BILATERAL TRADE ARRANGEMENTS WITH CZECHOSLOVAKIA

(continued)

10 1. The special trade deal proposed to you by Mr H. Judd, of H. Judd and Co.Ltd, Auckland, as authorised agent for Czechoslovak Consul-General in New Zealand, has now been considered more fully than was previously possible. You will recall that Mr Judd stated that Czechoslovakia was willing to buy from New Zealand, butter beef, tallow, and additional wool, to a total value of £500,000 if New Zealand would take an equal value of additional imports from Czechoslovakia.

2. I have discussed Mr Judd's proposal with Messrs Havel and Tichacek, Commercial Secretaries in the Czechoslovak Consulate, who confirm that the firm of H. Judd and Co. Ltd is the approved agent for Czechoslovakia in New Zealand. The Czechs prefer to have one firm handling all import and export arrangements with New Zealand and are not prepared to bypass Mr Judd's firm.

20 3. A small deal would be acceptable to Czechoslovakia, but if this first one was successful they would expect that larger deals might result in future.

30 4. I have also been approached by Mr R. Lynds, of Prevost and Co. (N.Z.) Ltd, who has heard of Mr Judd's proposition from the Czech Consulate. Mr Lynds claims that his firm made the first approach to the New Zealand Government, and was merely awaiting a propitious time to pursue the subject. From papers on file here it seems that Mr. Lynds called on the Department of External Affairs at about the same time that Mr. Judd first wrote to you (4 February). Prevost's company have evidently in the past done most of Czechoslovakia's wool purchasing in New Zealand, while a subsidiary company, the Pacific Import Company Ltd., is the largest New Zealand importer of Czech goods. I understand that Mr. Judd would expect Prevosts to continue to handle such commodities under the proposal and the Czech Consulate have informed Mr. Lynds accordingly.

5. The details of his proposition have also been discussed with Mr. Judd who has made the following suggestions:—

(a) On receipt of export certificates for the agreed quantity of New Zealand exports, the New Zealand Government would issue import licences to an equivalent value for imports from Czechoslovakia.

(b) The import licences would be in the name of the firm nominated by the Czech Consulate but with a notification to Mr. Judd.

6. Mr. Judd believes that it would be possible within a few years to build up

Exhibits

the reciprocal trade with Czechoslovakia to £4-5 million per year.

D

Documents  
from  
Department  
of Indus-  
tries and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

(continued)

7. The main problem in entering an arrangement such as this is that it can not be certain that such trade in either direction would be in addition to normal trade. This is particularly the case with wool exports, since this commodity is sold in a world market which reflects the world-wide demand for wool; additional purchases of wool direct from New Zealand might, therefore, merely replace wool normally bought by Czechoslovakia by a third country. In these circumstances, there may be little to be gained from a barter deal involving wool as the main export from New Zealand, unless the Czechs can show that it will lead to an increased consumption of wool in that country. This has not so far been demonstrated. However, Mr Duncan (Chairman, Wool Commission) agreed that the immediate effect of an additional Czech purchase would be an initial stimulus to prices though not to the extent to put them out of line with world market prices. Mr Duncan would therefore agree to such a deal including wool but he was fearful of the effects when it becomes known by other Continental buyers. He felt it could lead to impossible demands for matched imports.

10

8. Czechoslovakia has not regularly imported the other products mentioned - butter, beef, and tallow - from New Zealand, although in both 1955 and 1956, New Zealand butter to the value of over £1,000,000 was exported to Czechoslovakia. Though the purchases now proposed are small - £62,500 in the case of butter and beef, £125,000 in the case of tallow - they do open, or reopen, a new market to New Zealand, with the prospect, already mentioned, of increased trade to follow.

20

We have been informed that Czechoslovakia would probably re-export this initial purchase of butter from New Zealand, perhaps at a loss because the import plan for this year has been filled. It is claimed that it would not go to New Zealand's traditional markets although the Czechs could not at present specify the exact destination. In future larger quantities of butter could be taken from New Zealand for consumption in Czechoslovakia, but it was explained that this would be at the expense of Continental butter (probably Danish and Netherlands). If New Zealand butter merely displaces Danish or Netherlands butter, these countries will probably divert an equivalent quantity to the United Kingdom market, with little overall advantage to prices in that market.

30

9. As regards New Zealand imports of Czech goods it should not be difficult for New Zealand to absorb an additional £250,000 to £350,000 in value of imports from Czechoslovakia in 1958; but in the long term, if a barter arrangement of the order of £4,000,000 were to be contemplated, New Zealand would find it difficult to match the exports with suitable imports. Moreover, if New Zealand enters upon such a barter deal with Czechoslovakia, that country is likely to expect more, or perhaps all, of New Zealand's exports to be matched by imports from Czechoslovakia.

10. On the other hand, Czechoslovakia, like other state trading countries, expects a quantitative assurance of trade, not merely an opportunity to trade with New Zealand, which, of course, she already enjoys along with other non-scheduled countries. It therefore seems that New Zealand, in order to increase exports to Czechoslovakia,

40



must make a special trade arrangement such as this to assure that country of a certain share of the New Zealand market. After careful examination I conclude that Mr Judd's proposals, which have been supported by the Czech Consular staff, do give an opportunity of some increase in New Zealand exports, at least of tallow and beef, and probably also of butter.

Exhibits

D

Documents  
from  
Department  
of Industries and  
Commerce  
file re  
trade with  
Czechoslovakia

(continued)

10 11. The list of goods suggested by Mr Judd as suitable for purchase from Czechoslovakia (additional to normal purchases) has also been carefully investigated. For various reasons, of the total value of £500,000 nominated by Mr Judd, I consider that particular items amounting to a value of £195,000 are not suitable from New Zealand's viewpoint, but on the other hand we could probably increase the figure for woven textile piece-goods by £35,000 and for sheet glass by £10,000. Allowin g for the increases in these two items, I consider that licences for imports of a total of about £350,000 could be authorised without disadvantage to New Zealand or undue administrative difficulty. A list of the items deleted from Mr Judd's list, with reasons in each case, is attached.

20 12. Since the procedural arrangements suggested by Mr Judd, as stated in paragraph 5 of this memorandum, appear to be satisfactory to New Zealand, I have worked out a 'package' deal, detailed in the attached draft reply to Mr Judd which, if accepted, would involve the export by New Zealand to Czechoslovakia of butter, beef, tallow and additional wool to the value of £350,000, with matching imports to the same value.

30 13. In summing up the proposal it is difficult to arrive at a firm measure of the advantages to be gained by New Zealand. On the positive side it would seem to give the opportunity for the development of some extra export trade with a prospect of more to come next year. On the other hand it must be realised that we have no means of being sure that truly 'additional' trade is being engendered. Then to achieve these extra exports we must exercise a measure of discrimination both in regard to the source of our imports (a course which is likely to be severely criticised by some of our normal suppliers such as the United Kingdom) and in regard to the New Zealand importers who will receive excess licences when others are going short. In this connection, the possible effects of such action on the United Kingdom must be kept in mind, particularly in relation to the forthcoming negotiations for the review of the Ottawa Agreement.

14. Having said all this I am inclined to the view that this proposal should be treated as a test case which can be justified in the light of our export difficulties at present, and because of the particular problems of establishing export markets in state trading countries. I accordingly recommend that you approve of the proposed deal and that you sign the attached letter to Mr H. Judd, authorised agent for the Czechoslovakian Consul-General.

40 15. Since the import licences to be issued will be special licences requiring the approval of the Minister of Customs, you may wish to obtain his views before writing

Exhibits to Mr Judd. An additional copy of this memorandum is therefore attached for refer-  
D ence to the Minister of Customs if you so desire.

Documents  
from  
De partment  
of Indus-  
tries and  
Commer ce  
file re  
trade with  
Czecho-  
slovakia

L.A.A.

(L.A. Atkinson)

Secretary

Atts.

sent 9.4.58. M

(continued) c.c. to Comptroller of Customs, Wellington

Original by hand 2/4/58

File

~~Return-T-R~~

I advised Minister on 3/4/58  
that I considered it advisable  
that the P.M. should be aware  
of this proposal. I understand  
it is likely to be placed before  
Cabinet today.

10

L.A.A.  
8/4/58

New Zealand

PRIME MINISTER'S OFFICE

WELLINGTON.

9 April 1958

Minister of  
9 Apr 1958  
Industries &  
Commerce

Copy to:

Minister of Housing

ExhibitsD

Documents  
from  
Department  
of Indus-  
tries and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

(continued)

10

BILATERAL TRADE ARRANGEMENT - CZECHOSLOVAKIACM (58) 18I & C 155  
7

At the meeting on 8 April 1958 Cabinet -

- (a) approved in principle the negotiation of a Bilateral Trade Arrangement between New Zealand and Czechoslovakia to cover the commodities outlined by you and invited you to place before the Prime Minister for his endorsement a formal minute to this effect:
- (b) Invited the Minister of Housing to investigate the question of using Czechoslovakian sheet glass for use in housing construction and to advise you accordingly.

Mr Gray –  
Broadbent

20

Secretary  
Industries  
& Commerce  
Referred

P.N.H.  
9 Apr 1958.

(Sgd.) R.L. Hutchens  
Secretary of the Cabinet.

Mr. Moriarty,

(1) Mr Black has arranged the formal minute. He hopes to have P.M.'s signature by tomorrow & possibly to get letter away to Judd also.

(2) Mr Gray & Bldg Section would be interested in (b)

A.W.B.

17/4

CONFIDENTIAL

155/1

Exhibits  
 D  
 Documents  
 from  
 Department  
 of Industries and  
 Commerce  
 file re  
 trade with  
 Czechoslovakia  
 (continued)

This paper is the property of the New Zealand Government. As it includes material for cabinet consideration it must be handled with particular care, and in accordance with the security classification assigned to it. The contents may be disclosed only to persons having a duty to receive the information.

C A B I N E T

CP (58) 276  
 Copy No.  
 18 April 1958

BILATERAL TRADE ARRANGEMENT BETWEEN NEW ZEALAND  
 AND CZECHOSLOVAKIA

10

In the attached memorandum the Minister of Industries and Commerce gives details of the proposed Bilateral Trade Arrangement between New Zealand and Czechoslovakia. This arrangement was approved by Cabinet on 8 April 1958

(Signed) R.L. Hutchens

Offices of the Cabinet,  
 Prime Minister's Department,  
WELLINGTON

DISTRIBUTION:

All Ministers

OFFICE OF THE MINISTER OF  
 INDUSTRIES AND COMMERCE  
 15th April, 1958.

20

MEMORANDUM for -  
 MEMBERS OF CABINET.

1. Members will recall that at the meeting of Cabinet on the 8th April, I raised orally the question of the negotiations for a Bilateral Trade Arrangement between New Zealand and Czechoslovakia, and Cabinet approved my proposal in principle, suggesting that I let the Prime Minister and Members have a formal minute.

2. The proposal for this Bilateral Trade Arrangement was made to me by an Auckland merchant, acting as the authorised agent for the Czechoslovak Consul-General in New Zealand. The Commercial Secretaries in the Czechoslovak Consulate confirm that this merchant is the approved agent for them in New Zealand and they prefer to have one firm handling all import and export arrangements with New Zealand and therefore are not prepared to by-pass this firm.

30

3. Czechoslovakia is willing to buy from New Zealand - butter, beef, tallow, and additional wool, to a total value of £500,000 if New Zealand would take an equal value of additional imports from Czechoslovakia. Import licences for the goods to be imported from Czechoslovakia would be issued through the normal trade channels on receipt of export certificates for the agreed quantities of New Zealand goods exported.

Exhibits

D

Documents from Department of Industries and Commerce file re trade with Czechoslovakia

(continued)

4. One of the main problems in entering such an arrangement is that we cannot be certain that such trade in either direction would be in addition to normal trade. It is obvious however that in this case there will be some increased trade.

10

5. Czechoslovakia has not regularly imported butter, beef and tallow from New Zealand although in both 1955 and 1956 New Zealand butter to the value of over £1,000,000 was sold to Czechoslovakia. New Zealand can easily absorb an additional £250,000 to £350,000 in value of imports from Czechoslovakia in 1958.

6. I am satisfied after considering these proposals that there are advantages in them.

7. Attached to the Prime Minister's copy is a list of those goods which it is proposed should be imported under this arrangement. In return for importing these items, Czechoslovakia will take the following goods from New Zealand:-

20

Butter	£ 62,500
Beef	62,500
Tallow	125,000
Wool (additional to purchases already made in New Zealand)	100,000
	<hr/>
Total:	<u>£350,000</u>

(P.N. Holloway)  
Minister of Industries and Commerce

Encl.

CONFIDENTIAL

New Zealand

Exhibits

D  
Documents  
from  
Department  
of Industries  
and  
Commerce  
file re  
trade with  
Czechoslovakia  
(continued).

Minister of  
23 Apr. 1958  
Industries &  
Commerce

Received  
24 Apr. 1958  
Head Office  
Dept. of Industries  
and Commerce

PRIME MINISTER'S OFFICE

WELLINGTON.

22 April, 1958.

I & C 155 10  
1

Minister of Industries and Commerce

Mr. Møriarty  
Mr. Brøadbent

Copies to:  
Minister of External Affairs  
Minister of Customs

BILATERAL TRADE ARRANGEMENT BETWEEN NEW  
ZEALAND AND CZECHOSLOVAKIA CM (58) 21

At the meeting on 21 April 1958 Cabinet:—

- (a) Approved in principle the negotiation of a Bilateral Trade Arrangement between New Zealand and Czechoslovakia involving commodities up to a total value of £350,000 in each direction; 20
- (b) Invited the Minister of Customs and you jointly to determine the administrative details of the arrangement.

(Sgd.) R.L. Hutchens  
Secretary of the Cabinet.

Secretary,  
Industries and Commerce.  
Referred  
P.N.H.  
23/4

30

CONFIDENTIAL

E. Post 29/4/58

## NO NEW TRADE AT BRITAIN'S EXPENSE

New Zealand would not seek new trade at the expense of Britain, said the Prime Minister (Mr Nash) last night when asked to comment on a report that Czechoslovakia had proposed a barter deal, exchanging manufactured goods for New Zealand butter.

Mr Nash, who is also Minister of External Affairs, said he had received no communication from Czechoslovakia on the subject. He added that the Government was interested in all possibilities of new trade, but would not develop trade at the expense of Britain.

10

Also New Zealand would only take up trade with other countries in accord with existing agreements on trade in strategic goods, Mr Nash said.

Exhibits

D

Documents  
from  
Department  
of Industries and  
Commerce  
file re  
trade with  
Czechoslovakia

(continued)

Exhibits

D

Documents  
from  
Department  
of Industries and  
Commerce  
file re  
trade with  
Czechoslovakia

(continued)

Received  
8 May 1958  
Head Office  
Dept. of Industries and  
Commerce

New Zealand

DEPARTMENT OF INDUSTRIES AND COMMERCE  
P.O. Box 2492 Wellington C.1  
Cable and Telegraphic Address:  
"Tradbord, Wellington"

Minister of  
7 May 1958  
Industries &  
Commerce

7 May 1958

10

The Minister of Industries  
and Commerce

TRADE ARRANGEMENT - CZECHOSLOVAKIA

1. Enclosed is a copy of letter to the Czechoslovak Consulate General outlining the details of the special Trade Arrangement as negotiated with the Czech officials and Mr Judd last week. This is in keeping with the draft to which you gave your oral approval.

2. Yesterday I received a call from Mr Freer advising me that the Czechs had been in touch with Prague, and had been requested to ask us for a revision of the allocation of Czech imports. The point in question is the contentious £20,000 allocated originally for motor cars. We had distributed this amount in negotiation with the Czechs as follows:

20

Additional motor cycles	£5,000
Bicycles	£5,000
Typewriters	£5,000
Unspecified item (to be agreed)	£5,000
	<u>£20,000</u>

They have now requested the following alternatives:

Motor Cars	£5,000	Motor cycles	£10,000
Motor cycles	£10,000	Bicycles	£10,000
Bicycles	<u>5,000</u>		<u>          </u>
	<u>£20,000</u>		<u>£20,000</u>

30

3. The Czechs attach great importance to the inclusion of an allocation for cars, and if this is not possible, want to increase the motor cycle and bicycle sections which are in an allied industrial group. We have given consideration to these alternative proposals but feel that we are unable to recommend that you accept either



request. The car position is too sensitive, while the £5,000 additional for motor cycles represents a considerable increase in our initial proposal on this item. Likewise, the increase of the bicycle figure to £10,000 would prove embarrassing having regard to the reduction in imports from normal suppliers.

I therefore feel that the offer that we have made should stand with the concession that the amount of £5,000 which has not been allocated to a specific item, be allowed to remain open for decision later on in the light of import needs.

4 In recommending this course of action it is realised that the Czechs may not accept the deal on this basis, but I feel that we should face up to the possibility of it falling through.

5. The nett advantage to us is likely to be very small when all the difficulties are taken into account. In mentioning this I have in mind the fact that there has been advice in the Press that the U.S.S.R. is purchasing 7,000 tons of butter immediately from Denmark. This suggests that the Eastern European countries are, in fact, importing butter in considerable quantities and the estimated 300 tons to be purchased under this arrangement is little more than a token purchase. The items we have suggested for imports represent very considerable concessions on our part, and it would be difficult to justify any further expansion of them.

6. I should therefore be glad of your approval for me to advise the Czechs accordingly.

20

Secretary,  
Industries and Commerce

Referred.

L.A. Atkinson  
(L.A. Atkinson)  
Secretary

I approve. We cannot continually change the basis of imports. I have already advised Mr Freer of the difficulties involved in further alterations.

P.N. Holloway

7 May 1958

Exhibits

D  
Documents  
from  
Department  
of Industries  
and Commerce  
file re  
trade with  
Czechoslovakia

(continued)

AWB:BG  
13 May 1958

Exhibits

D

Documents  
from  
Department  
of Industries  
and  
Commerce  
file re  
trade with  
Czechoslovakia

Mr. J. Tichacek,  
Commercial Secretary,  
Czechoslovak Consulate General,  
38 Roxburgh Street,  
WELLINGTON

Dear Mr Tichacek,

(continued)

Since I wrote to you on 1 May, Mr Freer has told me that you have been in touch with your Government in Prague and that they have requested re-allocation of the £20,000 originally specified for motor cars. You will recall that after our discussions we had proposed the following re-allocation of this amount: 10

Additional motor cycles	£5,000
Bicycles	5,000
Typewriters	5,000
Unspecified item (to be agreed)	<u>5,000</u>
	<u>£20,000</u>

I understand that you now have proposed the following alternatives:

Motor cars	£ 5,000	20
Motor cycles	10,000	
Bicycles	<u>5,000</u>	
	<u>£20,000</u>	

or -

Motor cycles	£10,000
Bicycles	<u>10,000</u>
	<u>£20,000</u>

We understand your desire to increase the allocations for the items listed, but, as we have explained to you, the inclusion of cars is quite impossible at present. At the same time we have given careful consideration to the possibility of increasing the provision for motor cycles and bicycles, but the provision already made for these items is, I am afraid, as far as we can go. We therefore feel that the proposition must remain as set out in my letter of 1 May. 30

One small point might be added, however, and that is that as far as the item for £5,000 still unspecified is concerned, it would be possible for you to leave this open until early next year. We would then be in a better position to know over which categories this sum might be spread.

10 In reviewing the proposition as a whole, I should stress again that as it now stands there is relatively little value in it for New Zealand because the quantities of items for which we are keen to find additional markets are relatively small, whereas the list of imports poses numerous problems for us. If this special trading arrangement is to proceed, it would appear desirable to reach early agreement, and I should be glad to hear from you as soon as possible.

Exhibits

D

Documents  
from  
Department  
of Industries and  
Commerce  
file re  
trade with  
Czechoslovakia

(continued)

Yours faithfully,

L.A.A.

(L.A. Atkinson)  
Secretary

The Comptroller of Customs,  
Customs Department,  
WELLINGTON

For your information

20

L.A.A.  
(L.A. Atkinson)  
Secretary of Industries and  
Commerce

12/5/58

DESPATCHED

13 May 1958

A.D.

Exhibits

LAA:BS.

D

Documents  
from  
Department  
of Industries  
and Commerce  
file re  
trade with  
Czechoslovakia

15 May 1958

Mr. J. Tichacek,  
Commercial Secretary,  
Czechoslovak Consulate General,  
38 Roxburgh Street,  
WELLINGTON

(continued)

Dear Mr Tichacek,

Thank you for calling yesterday to advise me of the latest views of your Government on the proposed bilateral trade arrangement between Czechoslovakia and New Zealand. 10

As I understand it, your Government insists on the inclusion of cars in the schedule of New Zealand imports or, alternatively, that there must be a reduction of 50 per cent in the value of New Zealand exports of butter which Czechoslovakia is prepared to take.

I wish to confirm the position already stated to you previously that it is quite impossible for the New Zealand Government to consider the inclusion of cars under existing circumstances. As far as the alternative proposal is concerned, to reduce the quantity of butter to be taken, I must also state quite definitely that this would make the proposition unacceptable to New Zealand. Perhaps it would not be inappropriate for me to record that our consideration of the whole proposal was based on an initial approach from Mr Judd, acting on behalf of the Czechoslovak authorities, in which he proposed a deal which would involve the purchase by Czechoslovakia of "substantial quantities of butter, etc." 20

When the values of the various items were specified later, we were disappointed at the relatively small amount of butter involved, but continued the negotiations in the expectation of a mutually advantageous addition to our trade. The suggestion that the butter should now be reduced would, if insisted upon, cancel any significant advantage to New Zealand.

I must therefore repeat that the proposal as made to you in my letter of 1 May must remain the final proposition as far as New Zealand is concerned. If this is unacceptable to your Government, then I fear the proposition must necessarily be dropped. 30

Yours faithfully,

L.A.A.  
(L.A. Atkinson)  
Secretary

The Comptroller of Customs:

Copy for your information.

L.A.A.  
(L.A. Atkinson)  
Secretary of Industries and Commerce.  
15.5.58

40

NOTE FOR FILE

Mr Atkinson L.A.A.  
Mr Moriarty

TRADE WITH CZECHOSLOVAKIA

Messrs Tichacek and Mach called this morning to discuss with Mr. Lockwood and myself the procedural arrangements for implementing the proposed trade arrangements. They were informed of the measure of agreement with their proposals in their letter of 23 May.

10 In reference to the amendments to the listing of the tariff items it was proposed that one-third of the value of the item for cameras and photographic material should be used for sensitised surfaces. However, it now appears that there is some doubt of the availability of this type of goods and they are awaiting confirmation from Prague. They were informed that the additional £150,000 would have to be the subject of separate arrangements. While we would agree that a formal exchange of letters was unnecessary for an arrangement such as this, it was our intention that the acceptance of it from our side would be by a Ministerial letter to the Consul-General and we would expect a confirmation in writing from the latter.

20 Most of the time was spent however, in discussing details of the procedure to be adopted in allocating the import licences for Czech goods. A draft outline of this procedure is attached for discussion within Industries and Commerce and Customs Department respectively and for combined consultation if necessary. The Czechs are in agreement with the procedure outlined but this should be confirmed in writing with them in due course.

At the close of our discussion the Czech officials asked for urgency to enable sufficient time for ordering on Czechoslovakia and the arrival of goods before the end of the year. No commitments were made in regard to dates, but we can expect increasing pressure for a final decision.

30 Note: copy of attached  
outline of procedure handed  
to Mr Gray for comment .

A.W.B.  
(A.W. Broadbent)  
10.6.58

Exhibits

D  
Documents  
from  
Department  
of Industries  
and  
Commerce  
file re  
trade with  
Czechoslovakia

(continued)

Exhibits

D

Documents  
from  
Department  
of Industries and  
Commerce  
file re  
trade with  
Czechoslovakia

(continued)

Following public announcement of the special arrangement with Czechoslovakia the following is the procedure outlined for handling the import side.

1 Calling for Applications

- (a) Notice in Customs House
- (b) Applications for specified list of items from Czechoslovakia
- (c) Applicants to give details of imports if any in 1956 and 1957 from Czechs
- (d) Applications to be lodged by (date specified)
- (e) Applicants to be advised that details of goods and prices may be obtained from the Czechoslovak Legation.

10

2 Action by Czechoslovak Legation

- (a) Czechs show range and quote prices
- (b) Czechs accept order on "pro forma" invoice
- (c) Czechs to show us list of firms interested giving details of
  - (i) provisional orders accepted (showing also amounts requested where these are more than order accepted.) and
  - (ii) orders not accepted
  - (iii) enquiries but orders not placed
- (d) Confirmation of acceptance of orders only after licence issued

20

3 Action by Departments (Suggest small inter-departmental committee)

- (a) Schedule applications received by tariff items
- (b) Compare with list supplied by Czechs
- (c) Consult with Czechs on basis of allocation
- (d) Issue licences
- (e) Stand by for trouble!

4 Procedure for 1959

The above procedure to be repeated after issue of 1959 Schedule for those items in respect of which some imports are to be extended into next year.

AWB/TR/MM

Confirmed with Minister's Office that this memo. not circulated to Ministers & letter to Jamak not sent.

F. 27/11/58

18th June 1958

The Minister of Industries  
and Commerce

---

Exhibits

D

Documents  
from  
Department  
of Industries  
and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

(continued)

TRADE WITH CZECHOSLOVAKIA

- 10 1. After further consultations with Czech officials we have now reached agreement at the official level on the basis for a special trade arrangement, subject to Ministerial approval. The substance of the arrangement as now reached is outlined in the attached draft letter to the Czech Consul-General.
- 20 2. As a result of our negotiations directly with the Czech authorities there have been a number of modifications in the original proposals as approved by Ministers. I have accordingly prepared additional copies of this memorandum and enclosures for submission to the members of the Economic Sub-Committee of Cabinet. In the first place, there have been some modifications to the Import Schedule and some new items such as motor cycles, typewriters, bicycles, childrens's shoes, etc., have been added with a consequent reduction in the amount originally shown for textile piecegoods. On the export side there has been a reduction in the amount of tallow and meat to be purchased with a consequential increase in the amount of additional wool.
3. In discussing the arrangements for both exports and imports it became apparent that it would be difficult to complete all the transactions involved by the end of 1958, and it has therefore been agreed that the date for completion of the special arrangement should be June 30, 1959 and both export and import allocations have therefore been apportioned between 1958 and 1959.
- 30 4. The most difficult problem in reaching agreement was to determine the actual procedure to be adopted in regard to handling imports under the arrangement. Agreement has, however, now been reached on the basis outlined in the attachment to this report after consultations between Industries and Commerce, Customs and Czech officials. The procedure has been designed to ensure the smooth working of the scheme to avoid, as far as possible, criticism from importers in New Zealand. It should be pointed out, however, that in any allocation of licences in a special arrangement of this nature some criticism may arise.

Exhibits

D

Documents  
from  
Department  
of Indus-  
tries and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

(continued)

5. It was with the intention of minimising public criticism that we had planned to complete the arrangement by means of an official Exchange of Notes. However, the Czech authorities have now said they do not wish such a relatively small trade arrangement to become the subject of an official exchange between the two countries, and sought only a final acknowledgement from the Department. We have considered this proposal but in all the circumstances, feel it is essential that the arrangement be finalised by a confirmation at the Ministerial level though not in the form of an exchange of Notes between Governments. It is considered that your confirmation to the Czech Consul-General here and his acknowledgement would be sufficient. At the same time, a Press statement could be made making a public announcement of the scheme, and by this means, some of the criticism that might arise may be fore-  
stalled.

10

6. So far, the position has been taken that no announcement of the conclusion of the deal with Czechoslovakia should be made while the Ottawa Agreement talks are still under way in London. On the other hand, the Czech officials are pressing now for a final decision to enable them to commence buying for export and to make arrangements for imports. If there is any likelihood of a decision in London being delayed it may be necessary for us to explain the circumstances to the Czechs or Government may decide to complete the deal and accept the necessity for an immediate public announcement.

20

7. The attached papers have therefore been prepared for distribution to the Ministers concerned together with the draft letter to the Consul-General for your signature if you approve.

L. A. A.

(L. A. Atkinson)

Secretary.



AWB/TR/MM

At Mr. Atkinson's direction

Sent by hand

A.W.B.

25 July 1958

The Minister of Industries  
and Commerce

---

Exhibits

D

Documents  
from  
Department  
of Indus-  
tries and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

(continued)

TRADE DEAL WITH CZECHOSLOVAKIA

- 10 1. As explained to you the other day, I am continually embarrassed by approaches from the Czechoslovak officials who are seeking some finality in their proposal for a bilateral arrangement between Czechoslovakia and New Zealand.
- 20 2. Might I first run through the history of the negotiations to date. After an initial interview with Mr. Judd and Mr. Freer in Auckland, Mr. Judd submitted to you a firm proposition on the 27 February. I reported to you pointing out some of the problems involved and suggesting that Mr Judd get directly in touch with the department to discuss details of his plan. Acting on this proposal, Mr Judd called with Czech Consulate officials, and I reported to you again on the 1 April suggesting a package deal which we could offer to the Czechs. This proposition involved some reduction in the level of the exchange proposed and modified the list of imports from Czechoslovakia that had been put forward.
- 30 3. On 8 April Cabinet approved in principle that you should negotiate on the basis of the Departmental proposals. Subsequently on 21 April Cabinet approved an actual deal to the value of £350,000 directing you, in consultation with the Minister of Customs, to determine the details and the method of operation. Then followed a period of negotiations directly with Czechoslovak officials involving numerous interviews and several exchanges in writing between myself and Mr. Tichacek, culminating in agreement on the list of commodities to be exchanged and in the proposed procedure. At this juncture, because of some changes the whole proposition was referred back to you on 18 June for Cabinet approval to proceed. At the same time, the question of whether the deal should be undertaken while the Ottawa Agreement talks were still under way was raised and Government decided to withhold action pending finality in London. You are familiar with the reasons for the delay in London and the particular emphasis the United Kingdom is placing on special undertakings in regard to the question on non-discrimination in import licensing.
4. In the meantime, the prospect of this deal has received considerable publicity which has been a source of embarrassment to us. I have told the Czech Consul General that we have been embarrassed in this way and that we think it unfortunate that it has been talked about here and overseas as much as it has.

40 Copy to Mr. Gale.

Exhibits  
D  
 Documents  
 from  
 Department  
 of Industries  
 and Commerce  
 file re  
 trade with  
 Czechoslovakia  
 (continued)

5. It is particularly difficult to assess the value of the deal to New Zealand. You will recall our disappointment that only a very small quantity of butter was included although the initial approach had been on the basis that Czechoslovakia was willing to purchase "very substantial quantities of butter, meat and tallow". Apart from butter, items such as tallow and meat are selling freely at present on world markets. In the case of wool, while we would welcome any support which additional purchases might afford, we have no way of proving that the purchases under the deal are, in fact, additional.

6. On the other hand, the Czechs claim that from their point of view, it is clearly additional trade. They state that their system of import and export Plans makes provision up to 12 months ahead for commodities required and any such deal as they have proposed to us is clearly in their netting additional trade. 10

7. Following up their numerous approaches to me I had a visit yesterday from Messrs Janak and Tichacek who were pressing for some action and stated that they have orders to buy wool and tallow in quite substantial quantities, but presumably under instructions from Prague, they are not permitted to proceed until some progress has been made in implementing the deal. They claim that the purchases they are ready to make are clearly additional.

8. As a method of overcoming the present impasse Mr. Judd, on behalf of Czechs recently suggested a piecemeal approach instead of implementing the formal agreement. The proposal is that instead of the public announcement of the special arrangement, New Zealand should proceed to issue licences to selected importers for limited quantities of the goods on the agreed list. For example, he gave the following list as an initial step:— 20

Glass	..	£15,000
Paper	..	10,000
Machine tools	..	10,000
Textiles	..	10,000
Motor cycles	..	<u>5,000</u>
		<u>£50,000</u>

30

If we commenced to implement the arrangement on this basis Czechoslovakia would proceed to buy wool and tallow. They would not insist on limiting their purchases to the immediate totals of additional licences granted by New Zealand. Their purchases of wool or tallow might be to the order of £150 - £200,000 initially. They would of course expect us to continue to issue licences in accordance with the agreed list until both parties had reached the total agreed upon.

9. It may be possible to avoid undue embarrassment with some of the import items provided the amounts are kept relatively small as suggested. However, the Customs Department have shown increasing concern at the prospects of putting this deal through because of the discriminatory nature of the licensing measures required. 40

Moreover, External Affairs Department has, as you know, expressed its fears at the possible political implications. Such fears have been heightened by the apparent strength of the United Kingdom reaction to this type of deal.

10. The Czechs are anxious to operate at the August crutching sales and I have promised to advise you of their latest proposals. Mr. Janak proposes to ask for an appointment with you to discuss the whole question next week.

11. I cannot but feel that in all the circumstances the "profit" from this proposed deal is so elusive that Government should consider whether we should not cancel it altogether. In any event, I feel that any proposition such as has now been put forward, should be considered by the Cabinet Sub-Committee on Economic Affairs, and I accordingly enclose additional copies of this memorandum for the Ministers concerned if you approve of this course of action.

10

(L.A. Atkinson)  
Secretary

Note

Value of New Zealand produce included in this proposal was £350,000 made up as follows :

Wool	£175,000
Meat	£50,000
Butter	£62,500
Tallow	£62,500
	<hr/>
	£350,000
	<hr/>

20

Exhibits

D  
Documents  
from  
Department  
of Industries  
and  
Commerce  
file re  
trade with  
Czechoslovakia

(continued)

Exhibits

D

Documents  
from  
Department  
of Industries and  
Commerce  
file re  
trade with  
Czechoslovakia

Copy for 155/1

C O P YDRAFT PRESS STATEMENT

"No specific instances of the 'hawking of licences' have been referred to me", said the Minister of Industries and Commerce, Mr. Holloway, in commenting on a report from Auckland that, as a result of a barter deal with Czechoslovakia, import licences were being hawked by traders at a 20 per cent premium.

(continued)

The Minister stated that, arising from our need to find new markets, there had been various proposals put to him for special trading arrangements, involving in many cases some form of barter deal. In general, this type of trading did not accord with New Zealand practice and involved some obvious difficulties. At the same time, Government was prepared to explore every avenue for the development of our export trade and the opening of new markets. 10

"In regard to the reference to Czechoslovakia in the reports from Auckland, I can say", said the Minister, "that there have been discussions on the possibility of a special arrangement with that country as a result of a proposal for the development of additional exports of New Zealand products, but no arrangement has so far been concluded, or is likely to be, at the present time".

"On the other hand," added the Minister, any licences available for imports from non-scheduled sources can, in the ordinary course, be used for goods from Czechoslovakia without any restriction, and it is possibly in relation to such normal licences that the malpractices alleged have occurred." 20

FILE

8 August 1958

FML:TR:MDL

Exhibits

D

Documents  
from  
Department  
of Indus-  
tries and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

(continued)

SUMMARY OF TRADE TALKS WITH CZECHOSLOVAKIA

1. Mr. Judd visited our London Office in 1957 after a visit to Czechoslovakia and subsequently made a brief report to the Department on his main impressions of trading conditions in that country. After an interview with Mr. Judd and Mr. Freer in Auckland, the Minister received a letter from Mr. Judd in February this year outlining a proposal for a barter deal with Czechoslovakia to the value of £500,000.

## Czechoslovak purchases :

	Butter	£62,500
10	Beef	62,500
	Tallow	125,000
	Wool	
	(additional to normal purchases)	250,000
		<hr/> £500,000 <hr/>

20 The suggested imports to be made by New Zealand included a wide range of capital and consumer goods. The recommendation made to the Minister by the Department at this stage, was for consideration of a reciprocal deal of £250,000 (covering the above items but excluding wool) in return for the issue of licences for textile piece goods, glass sheet and plate, hathoods and some machinery.

2. After further discussions had taken place with Mr. Judd, Messrs Havel and Tichacek of the Czechoslovak Consulate, and also within the Department on the suggested Czech imports, a memorandum was put up to the Minister on 1 April recommending the issue of licences for Czech imports to the value of £350,000. This covered sales of New Zealand products as set out in paragraph 1 but with only £100,000 worth of wool (which was to be additional to purchases normally made in New Zealand).

30 3. On 21 April Cabinet approved in principle the negotiation of a bilateral trade arrangement to a value of £350,000. The Minister of Customs and Minister of Industries and Commerce were invited to determine the administrative details of the arrangement.

4. On 1 May a letter was sent to Mr. Tichacek by the Secretary outlining the state of the talks between the two countries:— the £350,000 exchange of commodities was to be spread between 1958 and 1959; the arrangement would be confirmed by and Exchange of Notes: the trade would be additional to the normal flow between

Exhibits

D

Documents  
from  
Department  
of Indus-  
tries and  
Commerce  
file re  
trade with  
Czecho-  
slovakia

(continued)

the two countries. It was also stated that Customs Department would call for applications from regular importers (i.e. Mr Judd would not be used exclusively). Continuing consultations should be held during the currency of the arrangement. Mr. Tichacek was asked to confirm the position.

5. Meantime Mr. Freer advised the Department that Czechoslovakia had requested the inclusion of an import allocation for cars and that an additional sum of money should be allocated for motor cycles and bicycles. The Minister was informed of this development on 7 May and was advised that the position should not be altered due to the sensitivity of the car and motor cycle position in New Zealand. The Minister agreed and Mr. Freer was advised accordingly.

10

6. Mr. Tichacek was informed of this decision on 13 May. He was also advised that the proposition had relatively little value for New Zealand as regards exports and that the import situation presented numerous problems for New Zealand.

7. As a result of a visit from Mr. Tichacek a letter was addressed to him on 15 May stating that New Zealand could not agree to any arrangement which included cars, or, alternatively, which involved a 50 per cent reduction in the value of New Zealand butter exports. He was reminded that New Zealand initially only considered the proposal because Mr. Judd had mentioned the purchase by Czechoslovakia of "substantial quantities of butter etc." and if the position as set out in the letter of 1 May was not acceptable, the matter would have to be dropped.

20

8. A letter dated 23 May was received from Mr Tichacek acknowledging the recent letters from the Department and mentioning some modifications received from Czechoslovakia. These included a few alterations to the list of Czech exports, some procedures for issuing licences and the right to negotiate for the £150,000 difference between the original total of £500,000 suggested for the deal and the subsequent figure of £350,000.

9. After discussions with Czech officials a further Ministerial was written on 18 June outlining the position and enclosing a draft letter to the Acting Consul-General of Czechoslovakia, confirming the deal as shown in the attached schedules. This memorandum was not referred back to Cabinet for approval to proceed and the draft letter was not sent to Mr. Janak.

30

10. Meantime, in July, one of the Czech officials had suggested an additional deal through Prevosts for the export of £300,000 worth of wool for £100,000 worth of Czech textiles. Mr Judd also suggested a proposition for separate transactions outside any formal arrangement.

11. Action on the trade arrangement was eventually withheld pending completion of the trade talks on the Ottawa Agreement. The Czech officials were advised accordingly.

Exhibits

D

Documents  
from  
Department  
of Industries  
and  
Commerce  
file re  
trade with  
Czechoslovakia

(continued)

12. On 25 July a further Ministerial reviewed the position to date and advised the Minister of the numerous approaches made by the Czech officials in view of the orders they had for Czechoslovakia to buy wool and tallow. The Minister was also advised of a suggestion made by Mr. Judd on behalf of Czechoslovakia for a piecemeal approach to a barter deal instead of implementing a formal agreement, i.e. instead of the public announcement of a special arrangement, New Zealand should proceed to issue licences to selected importers for limited quantities of the goods on the agreed list. However, as both Customs Department and External were concerned anyway at the proposed arrangement and the difficulties of putting it into effect, the memorandum suggested that serious consideration should be given to cancelling it altogether. Extra copies were attached for Cabinet Ministers but subsequently it has been verified that they were not circulated.

13. On 8 August a draft Press Statement was prepared which referred to discussions which had taken place on the possibility of a special arrangement with Czechoslovakia. However, it continued, no arrangement had so far been concluded or was likely to be at that time.

14. Following a visit from Mr. Janak, the Minister advised him on 24 October of the reason for the delay in completing the trade arrangement. He stated that he could not agree to a deal including wool (except possibly to a very minor degree). On the other hand, he felt that there were possibilities of expanding trade between the two countries which could include other products not previously fully considered, i.e. hides and skins. Finally, the Minister suggested that Mr. Janak get in touch with the Department as soon as the new Ottawa Agreement was concluded with a view to working out a revised proposal for the 1959 Calendar year.

27 November 1958

Exhibits

C  
Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation  
(continued)

DOCUMENTS FROM EXHIBIT C  
DEPARTMENT OF INDUSTRIES AND COMMERCE  
FILE RE GLASS IMPORTATION

---

20/12/7

MR. L.A. ATKINSONSHEET GLASS (TARIFF ITEM 219 (1) )

When Mr.H. Judd called last week he made the following points:

- X (1) The price of sheet glass (at c.i.f.) 18 ozs. is 36/1d against the ring price of 57/6d.
- (2) Other prices, that is for 24 oz. glass etc. show that the ring prices are approximately 50% more than for Czechoslovakian glass. 10
- (3) The small people in the glass industry were being excluded in favour of the large merchants and there is more than ample scope for providing for their needs by means of small import licence.
- (4) He suggests that a licence for £15,000 be issued to his company, and he has returned to Auckland with the intention of making an application. He will give full particulars of his proposals in a letter attached to the application, a copy of which will be forwarded to this Department for our information.
- (5) In his proposals he will make provision for the small distributors which I have mentioned above of whom Phillips and Impey Ltd., Auckland, are the largest. 20

.....

CHEMICALS EX CHINA

From what he told me in a general outline of what he knew about China's proposals for increased trade with New Zealand I gathered that China could be a good source of supply for chemicals for New Zealand. The price in particular being most favourable. For instance, he quoted sulphur (grade 99.1) c.i.f. price for China as £10/10/- per ton as against U.S.A. £12/7/6 per ton.

We have already had some difficulty over D.D.T. - Commercial Grade - from China which is under offer in Auckland at the moment with delivery in 7 to 8 weeks' time. I have checked with Auckland and have found that Elliott and Beckett are 30



offering this Commercial Grade D.D.T. but have stated that so far they have not received a licence. In the case of D.D.T. Technical, licences would be granted to manufacturers and no doubt there will be a price advantage that might make purchase desirable to them. One recommendation to Customs Department for £15,000 that we know of has already gone through this office. Licences, of course, may be held by quite a number of manufacturers.

Exhibits

C  
Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation

(continued)

E.P. Doogue

E.P. Doogue

14.7.58

X Prices quoted should be viewed with considerable reserve.

208  
New Zealand

Exhibits

C

Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation  
(continued)

When replying  
please quote  
C.40/61

The Secretary,  
Department of Industries and Commerce,  
WELLINGTON

CUSTOMS DEPARTMENT  
Head Office,  
Wellington C.1 25 July 1958

I & C 20/12/7

Received  
30 July 1958  
Head Office  
Department of  
Industries &  
Commerce

10

IMPORT LICENSING - GLASS - NEW ZEALAND GLASS,  
PAINT AND WALLPAPER MERCHANTS' FEDERATION

Mr Dalmar

I refer to your memorandum of 19 June.

At present licences are not in general being issued in excess of the scheduled allocation.

If, however, definite evidence can be produced that there is an overall shortage of glass which would have a deleterious effect on essential building commitments, applications from normal and regular importers would be considered in the light of the demonstrable need for further imports and the general overseas exchange situation.

20

John Randal  
for Comptroller of Customs.

E.P.D.  
4/8  
Mr Doogue  
for comment pl.  
R.B.G. 31/7/58  
Records previous  
pos. pl. E.P.D. 1/8

Despatched  
1 Aug 1958

20/12/7  
CAP:BG:GS

30 July 1958

The Comptroller of Customs,  
WELLINGTON

Exhibits  
C  
Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation  
(continued)

TARIFF ITEM 219 (1) : GLASS : SHEET,  
COMMON WINDOW ETC.  
(EXCLUDING SAFETY GLASS)

10 Referring to my discussions on the subject of making additional provision for alleviating the shortage of window glass I enclose a copy of a letter dated 30 May from MacDermott and Duncan Limited, who are desirous of importing glass from Japan. You already hold a copy of a letter dated 12 June from the New Zealand Glass, Paint and Wallpaper Federation on the general question of shortage .

In considering making an increased provision, I feel, as I have mentioned earlier, that some opportunity should be given to those importers who wish to draw supplies from the countries whose prices are competitive but have been unable to do so because of little or no import history in 1956.

Mr. Paul 20 It is recommended that, rather than make a direct percentage increase on the present 75 per cent. of the 1956 imports, the item be changed to "C + 75 per cent." which will provide some elasticity as to the source of supply and at the same time ensure that any shortage which may develop can be met. Also, it is anticipated that provision can be made for smaller importers to purchase from Czechoslovakia or Japan.

In making this recommendation I have taken into account the possibility of some reduction in prices of glass from present sources in the event that those for glass from alternative sources are more competitive.

30 The circumstances of H. Judd and Company Limited have been discussed and it is recommended that a licence be made available under the recommended "C" provision to import window glass to the extent of £15,000 from Czechoslovakia. It is suggested that an additional licence could also be granted to MacDermott and Duncan Limited to enable the Company to import glass from Japan to the value of, say, £10,000.

L.A.A.  
(L.A. Atkinson)  
Secretary

Discussed with Mr Dalmer today - He says Mr L.A.A. has in hand & let run meantime.

R.N.G.  
Enclosure  
E.P.D.  
8/8  
A.W.B.  
30.7

Seen  
A.W.B. 8.8.

20/12/7

Exhibits  
C  
Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation

The Secretary,  
New Zealand Glass, Paint and Wallpaper  
Merchants' Federation,  
P.O. Box 1786,  
WELLINGTON

Dear Sir,

(continued)

In reply to your letter of 12 June in which you expressed concern with developments on the supply position of window glass, I would advise that a comprehensive review has been made of this question by the Customs Department in conjunction with my Department.

10

You will now probably be aware that as a result of this review, authority has been given to grant an increase of up to 10 per cent of importers' basic allocation.

It is hoped that in making this increased provision, the developments referred to by you have been arrested.

Yours faithfully,

(P.N. Holloway)  
Minister of Industries and Commerce

Hon. Minister of Industries  
and Commerce.

20

Original submitted herewith  
for your signature

(Sgd) R.T. WRIGHT  
.....

Secretary of Industries  
and Commerce

11 Sep 1958

REFERRED  
to Hon. the Minister  
11 Sept 1958

30

15 September 1958

Exhibits

The Secretary,  
N.Z. Glass, Paint and Wallpaper  
Merchants' Federation,  
P.O. Box 1786,  
WELLINGTON

I &amp; C 20/12/7

C  
Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation

Dear Sir,

(continued)

10 Since receiving your letter of 12 June about the supply of window glass, the Customs Department and the Department of Industries and Commerce have conducted a comprehensive review of the situation.

I understand that you already know that as a result of this review the allocation for imports has been increased by up to 10%. I hope that this increased provision will avoid the problems mentioned in your letter.

Yours faithfully,  
(Sgd.) P.N. Holloway

(P.N. Holloway)  
Minister of Industries and Commerce

MEMORANDUM -

20 The Secretary,  
Dept. of Industries and Commerce.

Referred in substitution for your draft reply. This letter should have been acknowledged before this.

P.H.  
15.9.58

Exhibits

C

Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation  
(continued)

AIRMAIL

Phone 53-242

Cable Address: "JUDRA"  
P.O. Box 17, Penrose

O'Rorke Road,  
Penrose, S.E. 6  
Auckland  
New Zealand.

H. JUDD &amp; COMPANY LTD

Merchants Importers

February 20th, 1959  
Office of  
Hon. P.N. Holloway  
23 Feb. 1959

10

Received

Hon. P. H. Holloway,  
Minister of Industries and Commerce,  
Parliament Buildings,  
WELLINGTON.

The Secretary,  
Department of Industries & Commerce  
Referred - for Draft Reply  
P.N.H. 24 Feb 1959

20

CZECHOSLOVAK SHEET GLASS

Dear Sir,

Our Company is the appointed New Zealand distributor for the Czechoslovak sheet glass industry. We would like to give you some facts relating thereto.

We manufactured and distributed Colonex paints and we needed glass for our business. We were not able to obtain an offer from either the United Kingdom or Western Europe, as we are not members of the Oil and Colour Merchants' Association either in paint or glass and we were never any party to any price fixation either in paint or in glass. The European Ring, known as the Brussels Convention, 30 of which Britain, France, West Germany and Belgium are members, will not deal with anyone other than members of the Oil and Colour Merchants Association - in a word, the New Zealand Ring.

In 1957 I went to Europe and among other countries visited Czechoslovakia. Here I negotiated prices which are approximately 35% cheaper than the landed Brussels Convention prices. We received our first sample shipment of Czechoslovak glass in October, 1957, from the "Karamea", and the second in December,

1957, from the "Perim".

Exhibits

The quality and prices of this glass met with ready acceptance. We booked substantial business between October and December, 1957 for which we received excess licences in 1958. For the first time on the New Zealand market we were offering a complete range of glass from an independent non-ring source. Here is a comparison of our selling prices as against the established prices.

C  
Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation.  
(continued)

18 oz. glass  
40 united inches

Our price

57/3 per 100 feet cut sizes, all duty  
paid, delivered F.O.R. main N.Z. ports.

10

Local Ring price

103/- per 100 feet - from stock price list.

The same difference applies right through the range of sizes. The overseas ring price to the N.Z. merchants who are authorized to buy from them was 57/8 per 100 square feet 18 oz. glass 40 united inches, C. & F. main N.Z. ports. Our price from Czechoslovakia C. & F., excluding duty, is 36/1 per 100 feet, 18 oz. glass 40 united inches. That difference applies right through the range of sizes to a more or lesser degree. In safety glass the margin of difference is somewhat less. Our landed cost, before duty, for laminate safety glass is 4/4d per square foot. The Ring price is 6/-.

20

There has been an increase in Ring prices by approximately 5% due to recent freight increases. Czechoslovakia has not raised its C. & F. price notwithstanding freight increase.

The licence that we have available is £10,000. Our position is an impossible one. The Ring, when import restrictions came in, stopped accepting indent orders and will sell only at the stock price of 108/- per 100 feet, 18 oz glass, 40 united inches. Their previous indent price was 66/- per 100 feet in minimum shipments of 2,000 feet per gauge. Our price, both stock and indent, for the same glass is 57/3 per 100 feet and we have no limitations as regards minimum quantity.

30

In addition the Ring are competing against the smaller glass people for general glazing and are thereby almost able to destroy their competitors. I believe there are a number of letters to that effect on the file of the Department of Industries and Commerce from various smaller glass people throughout the country. We have supplied these people with glass and we are endeavouring, within the framework of our licence, to keep them alive but this is not possible, situated as we are at present.

We have allocated our license as follows:-

£3,000	of glass to	Messrs. Moore & Crawford Ltd.,	Auckland
£2,000	" " " "	Henderson Glass Co. Ltd.,	Henderson
£2,000	" " " "	Riverlea Glass Co. Ltd.,	Hamilton

Exhibits  
C  
Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation.  
(continued)

This leaves us with a balance of only £3,000 with which to supply about 120 customers in the Auckland province. For example we supply the Onehunga Timber Company, who are in the Group Housing Building and their requirements are as follows:

18 oz glass	1,000 feet per month
24 " "	2,000 feet per month
32 " "	500 feet per month
Obscure glass	250 feet per month

Our prices give them a saving of about £18 per cottage even though they have to employ a glazing contractor who is charging them 9d per foot for glazing. The price of glass and glazing in New Zealand is far too high. Many of the smaller glass people would willingly cut their prices if they were assured of a supply of glass from an independent source. Czechoslovakia is that independent source and manufactures everything in glass. We cannot give such an assurance to them as we have not the licence to do it. 10

The Department of Industries and Commerce, Building Material Division recently investigated the glass position and checked our selling prices against the Ring selling prices.

We need a minimum of £50,000 license. H. Judd and Company Ltd would welcome the policy of granting licenses to the end users, small glazing firms and joiners etc. These people had previously no opportunity of obtaining licenses for the very good reason that the overseas Ring refused to supply them other than through the recognised local merchants. If the Department of Industries and Commerce is of the opinion, as we have already been told, that granting small licenses all around the country is unworkable, we give an undertaking that if we are granted the £50,000 license 20

- (1) we will distribute this glass equitably and honestly,
- (2) we will not be a shareholder or have any financial interest in any other glass or any glazing firm throughout the country, which is the practice of the large glass merchants. 30
- (3) we undertake to be no party at any time to any price fixation agreement, or be any party at any time to victimization of anyone because of their selling at reduced prices,
- (4) we will cooperate with the Department of Industries and Commerce to supply anyone with glass.

For instance we are now supplying the N.Z. Fruitgrowers' Federation with the glasshouse requirements for their members and showing them a very large saving per glass house.

If the Department requires any further safeguards to the effect that we will remain independent and competitive glass distributors we are willing to give them. 40



As is well known Czechoslovakia was a traditional supplier of glass to the N.Z. market for many years. Under their previous Government Czechoslovakia was a member of the Brussels Convention, but is not now. I offered this glass at much lower prices than those of the overseas Ring to the chairman of the local Association, Mr. Jack Redwood of the Auckland Glass Company. I pointed out the price difference and as the Auckland Glass Company were importers on a large scale of Czech glass before the war they know well enough the quality as they have handled many thousands of feet. That offer was point blank refused.

Exhibits

C

Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation.

(continued)

10 The only way this country can obtain reduced prices for glass with consequent lower building costs, is through independent distributors who are not members of any association for price agreements.

Our licence is now completely exhausted. After the arrival of shipments which are now on order in Czechoslovakia we will probably be in danger of being overdrawn. I would be most grateful if you would give this matter your kind consideration. At present the greatest help would be a minimum to go on with of £15,000.

Yours faithfully,  
H. JUDD & CO. LTD.

H. Judd

Exhibits  
C  
Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation.  
(continued)  
(continued)

Cable Address "JUDRA"  
P.O. Box 17, Penrose

Air-Mail  
Phone : 53-242  
H. JUDD & COMPANY LTD  
Merchants Importers

G.24/2

Mr Gray for comments please and  
draft reply. Could I see the Judd  
file? W.B.S. 23/2

O'Rorke Road,  
Penrose, S.E. 6,  
Auckland,  
New Zealand.

February 20th 1959 10

Dr. W.B. Sutch,  
Department of Industries & Commerce,  
WELLINGTON

E.D.G.25/2

Mr Doogue  
Could you pl  
have report  
& draft reply  
prepared  
quickly?

R.B.G.  
24/2

Mr Brooker  
24 Feb 1959  
Pl. E.D.G.

CZECHOSLOVAK SHEET GLASS

Dear Sir,

Our company is the appointed New Zealand distributor for the Czechoslovak  
sheet glass industry. We would like to give you some facts relating thereto.

We manufactured and distributed Colonex paints and we needed glass for our  
business. We were not able to obtain an offer from either the United Kingdom or  
Western Europe as we are not members of the Oil and Colour Merchants Association  
either in paint or in glass and we were never any party to any price fixation either  
in paint or in glass. The European Ring known as the Brussels Convention, of  
which Britain, France, West Germany and Belgium are members, will not deal with  
anyone other than members of the Oil and Colour Merchants' Association - in a  
word, the New Zealand Ring.

20

In 1957 I went to Europe and among other countries visited Czechoslovakia.  
Here I negotiated prices which are approximately 35% cheaper than the landed  
Brussels Convention prices. We received our first sample shipment of Czecho-  
slovak glass in October, 1957 from the "Karamea", and the second in December,  
1957 from the "Perim".

30

The quality and prices of this glass met with ready acceptance. We booked sub-  
stantial business between October and December 1957 for which we received  
excess licenses in 1958. For the first time on the New Zealand market we were offer-  
ing a complete range of glass from an independent non-ring source. Here is a  
comparison of our selling price as against the established prices.

Mr. Paul

18 oz glass

40 united inches

Our price

57/3 per 100 feet cut sizes, all duty paid, delivered  
F.O.R. main N.Z. Ports.

Local ring Price

103/- per 100 feet - from stock price list

40

The same difference applies right through the range of sizes. The overseas Ring price to the N.Z. merchants who are authorised to buy from them was 57/8 per 100 square feet 18 oz 40 united inches, C & F main N.Z. ports. Our price from Czechoslovakia C & F, excluding duty is 36/1 per 100 feet, 18 oz. 40 united inches. That difference applies right through the range of sizes to a more or lesser degree. In safety glass the margin of difference is somewhat less. Our landed cost, before duty, for laminated safety glass is 4/4d. per square foot. The Ring price is 6/-

Exhibits

C

Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation.

(continued)

10 There has been an increase in Ring prices by approximately 5% due to recent freight increases. Czechoslovakia has not raised its C & F price notwithstanding freight increase.

The license that we have available is £10,000. Our position is an impossible one. The Ring, when import restrictions came in, stopped accepting indent orders and will sell only at the stock price of 108/- per 100 feet., 18 oz glass, 40 united inches. Their previous indent price was 66/- per 100 feet in minimum shipments of 2,000 feet per gauge. Our price, both stock and indent, for the same glass is 57/3 per 100 feet and we have no limitations as regards minimum quantity.

20 In addition the Ring are competing against the smaller glass people for general glazing and are thereby almost able to destroy their competitors. I believe there are a number of letters to that effect on the file of the Department of Industries and Commerce from various smaller glass people throughout the country. We have supplied these people with glass and we are endeavouring, within the framework of our license, to keep them alive but this is not possible, situated as we are at present.

We have allocated our license as follows:

£3,000	of glass to Messrs Moore & Crawford Ltd. Auckland
£2,000	" " " " Henderson Glass Co. Ltd. Henderson.
£2,000	" " " " Riverlea Glass Co. Ltd. Hamilton.

30 This leaves us with a balance of only £3,000 with which to supply about 120 customers in the Auckland province. For example we supply the Onehunga Timber Company, who are in the Group Housing Building and their requirements are as follows:

18 oz glass	1,000 feet per month
24 " "	2,000 " " "
32 " "	500 " " "
obscure "	250 " " "

Our prices give them a saving of about £18 per cottage even though they have to employ a glazing contractor who is charging them 9d. per foot for glazing.

Exhibits

C  
Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation.  
(continued)

The price of glass and glazing in New Zealand is far too high. Many of the smaller people would willingly cut their prices if they were assured of a supply of glass from an independent source. Czechoslovakia is that independent source and manufactures everything in glass. We cannot give such an assurance to them as we have not the license to do it.

The Department of Industries and Commerce, Building Material Division recently investigated the glass position and checked our selling prices against the Ring selling prices.

We need a minimum of £50,000 license. H. Judd & Company Ltd would welcome the policy of granting licenses to the end users, small glazing firms and joiners etc. These people had previously no opportunity of obtaining licenses for the very good reason that the overseas Ring refused to supply them other than through the recognized local merchants. If the Department of Industries & Commerce is of the opinion, as we have already been told, that granting small licenses all around the country is unworkable, we give an undertaking that if we are granted the £50,000 license

10

- (1) we will distribute this glass equitably and honestly.
- (2) we will not be a shareholder or have any financial interest in any other glass or any glazing firm throughout the country, which is the practice of the large glass merchants,
- (3) we undertake to be no party at any time to any price fixation agreement, or be any party at any time to victimization of anyone because of their selling at reduced prices,
- (4) we will cooperate with the Department of Industries and Commerce to supply anyone with glass.

20

For instance we are now supplying the N.Z. Fruitgrowers' Federation with the glasshouse requirements for their members and showing them a very large saving per glass house.

If the Department requires any further safeguards to the effect that we will remain independent and competitive glass distributors we are willing to give them.

30

As is well known Czechoslovakia was a traditional supplier of glass to the N.Z. market for many years. Under their previous Government Czechoslovakia was a member of the Brussels Convention but is not now. I offered this glass at much lower prices than those of the overseas Ring to the chairman of the local Association, Mr. Jack Redwood of the Auckland Glass Company. I pointed out the price difference and as the Auckland Glass Company were importers on a large scale of Czech glass before the war they know well enough the quality as they have handled many thousands of feet. That offer was point blank refused.

The only way this country can obtain reduced prices for glass with consequent lower building costs, is through independent distributors who are not members of any association for price agreements.

Our license is now completely exhausted. After the arrival of shipments which are now on order in Czechoslovakia we will probably be in danger of being overdrawn. I would be most grateful if you would give this matter your kind consideration. At present the greatest help would be a minimum to go on with of £15,000.

Yours faithfully,  
H. JUDD & CO. LTD

H. Judd

Exhibits

C

Documents  
from

Department  
of Industries  
and Commerce  
file re Glass  
Importation.

(continued)

Exhibits  
C  
Documents  
from  
Department  
of Industries  
and Commerce  
file re Glass  
Importation.  
(continued)

The Secretary,  
Dept. of Industries and Commerce  
Referred - For Draft reply

I &amp; C

P.H.  
3 Mar 1959

2 March 1959

Received 4 March 1959  
Head Office, Dept.  
of Industries and Commerce

Office of  
Hon. P.N. Holloway

3 Mar 1959

10

Received

Mr H. Judd,  
H. Judd & Company Ltd,  
P.O. Box 17,  
Penrose,  
AUCKLAND

Dear Mr Judd,

I wish to acknowledge your letter of 23 February requesting that a further licence to import Czechoslovak sheet glass be made available to your Company.

20

Before arriving at a decision on this matter, I will discuss the whole position with my colleague, the Minister of Industries and Commerce.

After doing so, I will write to you again.

Yours faithfully,  
Ray Boord  
(Ray Boord)  
Minister of Customs

THE MINISTER OF INDUSTRIES AND COMMERCE

Referred. I would appreciate your comments please. If you agree, I think it advisable that an investigation be made into the stock price of glass of 108/- per hundred feet which the Ring are charging as against 66/- prior to the implementation of full import control.

30

Ray Boord

EXHIBIT E.CORRESPONDENCE BETWEEN PARTIES' SOLICITORSExhibits

E

Correspondence  
Between Parties  
Solicitors

LEICESTER, RAINEY &amp; ARMOUR

125 Featherston Street,  
Wellington, C.1., N.Z.

6th April 1959

The Editor,  
"New Zealand Truth",  
WELLINGTON

10 Dear Sir,

We act for Honourable Philip North Holloway, the Minister of Industries & Commerce in the present Government.

In the issue of "New Zealand Truth" of March 24th last, at page 17, there appears an article headed "This Ex-Russian's Import Licences should be investigated." It alleges that Mr. Warren Freer, M.P. has received commission and is to receive further commission from one Judd (or Yudt) for the grant to him of a licence for £44,000 to import Czechoslovakian glass. In the course of the article, and following a reference to the resignation and retirement from public life of Mr. John Belcher, a junior minister in the British Government, as a result of the Lynskey inquiry into improper dealings while in office, the following statements are made by your paper in regard to Judd (or Yudt):-

" He told a man who approached him sometime subsequently about import procedure that he was "sick of things here", and that "25,000 smacklers had just gone like that."

He gave the impression that there was nothing doing (in the import field) for him any longer. He told the caller that he had come too late, that there was "no use talking" and that the Prime Minister, Mr. Nash, had put his foot down.

At a subsequent discussion with the same man, the disconsolate Judd told his caller to "see Phil and Phil would fix it." He warned him whatever he did, not to let Mr. Nash hear about it. By "Phil" his caller understood him to mean the Hon. Philip North Holloway, the Minister of Industries and Commerce."

The article concludes with a further reference to the Belcher case:-

" In Truth's view the New Zealand Labour Government should show itself no less meticulous in preventing any suspicion of under-the-counter dealings with Parliamentarians than did the British Labour Government when it dealt with Sidney Stanley."

Exhibits  
 E  
 Correspondence  
 Between Parties'  
 Solicitors  
 (continuea)

The innuendo in this article is plain - that our client, the Hon. Mr Holloway, is a person who has acted and is prepared to act dishonourably in connection with the issue of import licences. Such an allegation of dishonourable conduct is calculated to bring and has brought him into hatred ridicule and contempt with the public of this country. It is in the highest degree defamatory and it is ruinous to his career as a Minister of the Crown. We are instructed that there is no foundation for the libel and that any reasonable inquiry would have elicited this fact : indeed, it is difficult to conceive of any libel more destructive than this one of the reputation and integrity of the person defamed.

On behalf of our client we request that you give prominence in the next issue of your paper to a full apology for and a retraction of the innuendo of which we have complained. Any question of compensation can stand over for later discussion.

10

We would add that, had it not been for the intervention of the Easter legal Vacation, this letter would have been sent to you immediately after publication of the article.

Yours faithfully,  
LEICESTER RAINEY & ARMOUR

W. E. Leicester

WEL:SMG

20



ALEXANDER, J.H. &amp; JULIA DUNN

8 Apr 1959

JHD/MC

Messrs Leicester, Rainey & Armour,  
Solicitors,  
P.O. Box 689,  
10 WELLINGTON

Dear Sirs,

Re: "TRUTH" (N.Z.) LIMITED AND THE  
HON. MR. P.N. HOLLOWAY

We have been instructed by the Editor of 'N.Z. Truth' to reply to your letter of 6th April written on behalf of the Hon. Mr. Holloway.

20 Our clients desire to make it plain that they do not suggest, and have at no time suggested, that your client has been guilty of any personal impropriety. There is evidence however that the Import Control Regulations have been administered in a manner not contemplated by the Licensing Schedules published for general information. The newspaper suggests and is entitled to suggest that your client as Minister of Industries and Commerce must accept political responsibility for this.

There have been for some time unanswered allegations that a certain Member of Parliament was involved in what appears to be a departure from accepted practice regarding import licensing. Your client as Minister of Industries and Commerce might reasonably have been expected to answer these allegations if an answer was in fact available. Our instructions are that he elected to say nothing.

30 Our clients take the view that the public are clearly entitled to know how controls such as the Import Control Regulations are administered, and in pursuance of that view the newspaper published certain allegations, the answers (if any) to which should be available for public information.

You say that "any reasonable enquiry would have elicited" the information that there was no foundation for the allegations. In fact very extensive enquiries were made and these were met by a refusal to make any comment whatever. The fact that the Customs Department, the Department of Industries and Commerce and the responsible Ministers refused to comment led the newspaper to urge that a public

Exhibits

E

Correspondence  
Between Parties'  
Solicitors

(continued)

P.O. Box 1904

A.P.A. Building,  
17 Grey Street,  
WELLINGTON, C.1., N.Z.

7th April, 1959

Exhibits

E

Correspondence  
Between Parties  
Solicitors

(continued)

enquiry into the matter was necessary in the public interest.

There is nothing in your letter which causes our clients to alter their opinion that the matter is one of public interest and that the public have a clear right to information as to the methods used in administering the controls. We are unable to accept your contention that the article bears the innuendo which you seek to place upon it, and can go no further than say that while our clients in no way intend to reflect upon the personal integrity of the Minister, they adhere to their view that he must accept political responsibility for the administration of his Department.

Yours faithfully,

ALEXANDER, J.H. & JULIA DUNN

J.H. Dunn

LEICESTER, RAINEY &amp; ARMOUR

125 Featherston Street,  
Wellington, C.1., N.Z.

10th April 1959

Exhibits  
E  
Correspondence  
Between Parties'  
Solicitors  
(continued)Messrs Alexander J.H. & Julia Dunn,  
Solicitors,  
17 Grey Street,  
WELLINGTON, C.1.

Dear Sirs,

10 Re: Hon. P.N. Holloway and  
"Truth" (N.Z.) Ltd.

We have to acknowledge your letter of the 7th instant and have conferred with our client in regard to it.

Whether or not the actions of Mr. Freer M.P. have been such as to warrant the criticism of "N.Z. Truth" or to justify its suggestion of a public enquiry are matters upon which it is unnecessary for us to comment. If Mr. Freer has in fact been guilty of any impropriety, and upon this issue neither we nor our client are fully advised, then the Minister is not responsible for such impropriety. He is fully prepared to accept political responsibility for the administration of his Department.

20  
30  
These considerations which you place in the forefront of your letter to us merely serve to avoid or side-step the real question between us. We reiterate what we said earlier - namely that the implication contained in the article of March 24th is that the Minister is a person who has acted and is prepared to act dishonourably in connection with the issue of import licences. The sting of the libel lies in the passages we have quoted, and it is no answer for you to say that "N.Z. Truth" did not intend to reflect upon the personal integrity of our client. The personal references to him and his "fixing" of licences are altogether unfounded and extraneous to the tenor of the article. They cannot be regarded as being made other than falsely and maliciously. He instructs us that he was never approached by your clients personally in regard to any licence issued to Judd nor were his secretaries; and, further, that no approach was made to the head of his Department.

Unless, therefore, your clients comply with the request for an apology and retraction as sought in the penultimate paragraph of our letter of the 6th instant, our instructions require us to issue a writ on behalf of the Hon. Mr. Holloway claiming damages for the libel - damages that in the circumstances cannot be other than substantial.

Yours faithfully,  
LEICESTER RAINEY & ARMOUR

W.E. Leicester

40 WEL:SMG

Exhibits  
E  
Correspondence  
Between Parties'  
Solicitors  
(continued)

ALEXANDER, J.H. & JULIA DUNN

A.P.A. Building,  
Cr. Featherston & Grey Sts,  
WELLINGTON, C.1.

13th April, 1959

JHD/MC

14 Apr. 1959

Messrs Leicester, Rainey & Armour,  
Solicitors,  
P.O. Box 689,  
WELLINGTON

10

Dear Sirs,

Re: "TRUTH" (N.Z.) LIMITED &  
HON. P.N. HOLLOWAY

We have your letter of 10th April, which does not appear to answer the matters set out in our letter of 7th April, 1959. As our clients see it the essence of the matter is this:

- (a) It has been alleged that Mr. Freer was paid a sum of money in connection with the issue of an import licence.
- (b) The public are entitled to know what action was taken by Mr. Freer to earn this money.
- (c) Your client's Department must have this information, or at least be in a position to say that Mr. Freer did nothing to earn the amount. 20
- (d) Your client, as the Minister concerned, has made no statement on the truth of the allegation, nor on any other aspect of the matter.
- (e) You now say, on your client's behalf, that he is not "fully advised" as to whether Mr. Freer has in fact been guilty of any impropriety, and you further say that if there was impropriety, you client is not responsible for it.

It has never been suggested that your client was personally responsible for Mr. Freer's actions, but in our clients' view, his professed lack of information on the matter strikingly illustrates the necessity for a full inquiry.

Our clients take it from the terms of your letter that the Hon. Mr. Holloway is not pressing for an inquiry, and does not propose to investigate the allegations on a Ministerial level. If this is a fair inference from your remarks, your client's attitude is not easily reconciled with your statement that your client is fully prepared to accept political responsibility for the administration of his Department. 30

We are unable to accept the contentions set forth in the third paragraph of your letter.

It is suggested that the meaning sought to be assigned to the references to your client in the article is quite unwarranted. Your letter quotes a phrase which was never published and says that that phrase is false and malicious. We prefer to confine our attention to what was published, and we desire to make it clear that the article was published in good faith and in the belief that it was true.

10 Our clients have had no cause to alter this opinion, but they are anxious to be perfectly fair to your client, and despite the fact that the Prime Minister refused to make any comment whatever on the subject, they will gladly make space in the newspaper available in order that your client may fully explain the matter in so far as it affects his Department and himself.

There are other matters in your letter to which we could address ourselves, but there seems to be little point in a detailed examination of your client's allegations, and we do not propose at this stage to refer to them.

If the Hon. Mr. Holloway desires to take advantage of this offer, will you please let us have the material for publication at any early date.

Yours faithfully,  
ALEXANDER, J.H. & JULIA DUNN

20

J. H. Dunn

Exhibits

E

Correspondence  
Between Parties'  
Solicitors

(continued)

Exhibits LEICESTER, RAINEY & ARMOUR

E

Correspondence  
Between Parties'  
Solicitors

(continued)

125 Featherston Street,  
WELLINGTON, C.1., N.Z.

17th April 1959

Messrs. Alexander J.H. & Julia Dunn,  
Solicitors,  
17 Grey Street,  
WELLINGTON

Dear Sirs,

Re: Hon. P.N. Holloway and  
"Truth" (N.Z.) Ltd

10

We have to acknowledge your letter of the 13 instant and note its contents.

We are unable to agree with you that what your clients see as the essence of the matter is the essence of the matter at all.

It is clear, however, that your clients have no intention of complying with our request for an apology and a retraction as sought in the penultimate paragraph of our letter of the 6th instant. Accordingly, our instructions require us to issue the writ to which we referred in our letter of the 10th instant; and it is proposed to issue and serve a writ for £15,000 damages during the coming week.

Yours faithfully,  
LEICESTER RAINEY & ARMOUR

20

W.E. Leicester

WEL:SMG

ALEXANDER, J.H. &amp; JULIA DUNN

A.P.A. Building,  
Cr. Featherston & Grey Sts,  
Wellington, C.1. N.Z.

Exhibits  
E  
Correspondence  
Between Parties'  
Solicitors  
(continued)

27th May, 1959.

JHD/MC  
REF: 10,299

10 Messrs. Leicester, Rainey & Armour,  
Solicitors,  
WELLINGTON

Dear Sirs,

re: "TRUTH" (N.Z.) LIMITED &  
HOLLOWAY

We send you herewith a copy of the "statement of financial affairs of Warren Freer M.P."

With reference to the documents discovered by the plaintiff we think that the following files, which are presumably held by the Department of Industries and Commerce, are relevant to the matters in issue in this action.

- 20
1. A file relating to a barter agreement between New Zealand and Communist China. Our information is that Mr. Judd was also concerned in the negotiation of this arrangement.
  2. A file relating to proposals for the importation of borax from the United States and its subsequent re-export to China.
  3. A file relating to proposals for the dismantling of unsafe artillery ammunition and the sale of the components to Japan.

We appreciate that it is not easy to forecast the relevancy of various matters in an action of this type and we do not of course suggest that the plaintiff was in any way at fault in not referring to these files in his affidavit.

30 We should however, like to have an opportunity of inspecting these files and we should appreciate your assistance in making them available to us.

Yours faithfully,  
ALEXANDER, J.H. & JULIA DUNN

J.H. Dunn

Encl.

Exhibits  
E  
Correspondence  
Between Parties'  
Solicitors.  
(continued)

LEICESTER, RAINEY & ARMOUR

125 Featherston Street,  
WELLINGTON, C.I. N.Z

28th May, 1959.

Messrs Alexander, J.H. & Julia Dunn,  
Solicitors,  
A.P.A. Building,  
WELLINGTON

29 May 1959

Dear Sirs,

re: "Truth" (N.Z.) Limited and  
Holloway

10

We acknowledge receipt of your letter of the 27th instant. We thank you for forwarding the copy of the "statement of financial Affairs of Warren Freer M.P."

With reference to the other matters mentioned in your letter, we have the following comments.

1. We have obtained a file relating to trade with China which is possibly the file you have in mind. On this file there are only three papers which might be considered relevant and these we are able to make available to you for perusal. We are also able to show you the whole file but we are under very strict instructions that the file cannot be made publicly available or produced for the reason that it contains papers and material which are strictly classified in the security sense. 20
2. There is no file relating to borax and we are unable to find any material to which your inquiry may relate. We are instructed that the Minister has never considered, and would not consider, any proposal for the importation of borax from the United States and its subsequent re-export to China and we are further instructed that borax is on the list of strategic materials, the exportation of which is prohibited by the United States to Communist countries.
3. There is no file relating to proposals for the sale of ammunition components to Japan. There are some quite recent papers relating to similar proposals which we have permission to show you but they do not appear to have any possible relevance to the present proceedings and this will be our attitude in relation to them. 30

Yours faithfully,  
LEICESTER, RAINEY & ARMOUR

R.G. Collins

RGCMJH



EXHIBIT ILETTER FROM PLAINTIFF TO L.S. HANCOCK

New Zealand

Mr L.S. Hancock,  
Main Road,  
Maori Bank,  
UPPER HUTT.

OFFICE OF THE MINISTER OF  
INDUSTRIES AND COMMERCE  
WELLINGTON

31st July, 1958

Dear Mr. Hancock,

Your letter of the 21st July received, and I have had the matters claimed by you investigated.

10 Your information regarding licences issued to Judd and Co., Ltd., Auckland, is very much away from the facts. Judd and Co. Ltd., have small licences based on their importations of sheet glass in 1956, but these are very much smaller than the ones you mention.

I note that you state that goods imported from Czechoslovakia in 1956 were £350 in value but you omitted the three 000's from the end, as the total value was £350,000 whilst the value of exports to that country in that year was £1,800,000.

With reference to imports from France. Under the present licensing system it is open for any person holding a licence for sheet glass to use all of their licence value, if they so wish, to import from any country in the sterling area. This includes both France and Czechoslovakia, or of course, the United Kingdom.

20 I hope that this will clarify the position for you.

Yours sincerely,

P. N. Holloway  
(P. N. Holloway)

Exhibits

I

Letter from  
Plaintiff to  
L.S. Hancock  
31st July, 1958.

Exhibits

1

Article in

The Standard

26th May, 1954.

EXHIBIT 1

ARTICLE IN THE STANDARD, 26TH MAY, 1954.

POLITICS AND PEOPLE

By Philip North

.....  
.....

**The Clever Mr. Algie**

Mr Algie believes that the Christian philosophy must be the supreme truth. Mr. Algie evidently has different grades of truth, perhaps depending on to whom he is talking. No member of the National Party is more unctious or more condescending than Mr. Algie when he casts his wisdom upon the waters. He hopes that one day comparative theology would be presented to students as a compulsory subject. "Our your educators could have religious philosophy presented to them by the scholars of the age," he says. 10

Under that classification no doubt Mr. Algie has his lecture series already prepared. From the dizzy heights of attainment as Minister of Education Mr. Algie has forgotten that "Veritas simplex oratio est" (the language of truth is simple) and that "Truth is the object of philosophy but not always of philosophers."

EXHIBIT 2EXTRACT FROM NEW ZEALAND PARLIAMENTARY DEBATES (HANSARD),  
DATED 31ST AUGUST, 1955

MR. HOLLOWAY (Heretaunga) - Sir, I wish to invoke the provisions of Standing Order 160 in order to make a statement in relation to an allegation made by the member for Ashburton, which I feel has impugned my character.

THE DEPUTY SPEAKER - Is it the pleasure of the House that the Honourable Member have leave accordingly? There would appear to be no objection.

10 MR. HOLLOWAY - Just before the tea adjournment this evening when I was absent from the House the member for Ashburton, I understand, made a statement in which he alleged that I had approached the National Party in an attempt to become a candidate for the National Party in either the 1949 or 1946 election - I am not sure which. In 1938 I first joined the Labour Party. In February 1946 I returned to New Zealand after 5 years service in the Army, and I rejoined the Labour Party. I was immediately elected a member of the Miramar Branch. In the ensuing 2 or 3 months I addressed several groups of people in Wellington on my war experiences which some people found interesting. In those 2 or 3 months a gentleman in the City, who is still a resident here, approached me with a request that I give a talk to a group of people whom he knew. I said I would. Three weeks later I met him again and he said,  
20 "What about addressing that meeting?" He said it was a meeting of the National Party in the Otaki Electorate. I told him I was sorry that I would have to refuse the engagement, because in the meantime I had been selected as the Labour party candidate for Manawatu. That is the sum total of my association with the National Party then or at any other time I thank the House, and you, Sir, for your indulgence.

Exhibits

2

Extract from  
New Zealand  
Parliamentary  
Debates  
(Hansard)

31st August,  
1955

CERTIFICATE OF REGISTRAR OF COURT OF APPEAL  
AS TO ACCURACY OF RECORD

I, GERALD RONALD HOLDER, Registrar of the Court of Appeal of New Zealand, DO HEREBY CERTIFY that the foregoing 233 pages of printed matter contain true and correct copies of all the proceedings, evidence, judgments, decrees and orders had or made in the above matter, so far as the same have relation to the matters of appeal, and also correct copies of the reasons given by the Judges of the Court of Appeal of New Zealand in delivering judgment therein, such reasons having been given in writing: AND I DO FURTHER CERTIFY that the appellant has taken all the necessary steps for the purpose of procuring the preparation of the record, and the despatch thereof to England, and has done all other acts, matters and things entitling the said appellant to prosecute this Appeal. 10

AS WITNESS my hand and Seal of the Court of Appeal of New Zealand this 6th day of April, 1960.

L.S.

G.R. Holder  
REGISTRAR.

**In the Privy Council.**

No. of 1960

ON APPEAL FROM THE COURT OF APPEAL OF  
NEW ZEALAND

---

---

BETWEEN

"TRUTH" (N.Z.) LIMITED Appellant

AND

PHILIP NORTH HOLLOWAY Respondent

---

---

**RECORD OF PROCEEDINGS**

---

---

Wray, Smith & Co.,  
1 King's Bench Walk,  
Temple,  
London, E.C.4.

Solicitors for Appellant

Oswald Hickson, Collier & Co.,  
Cromwell House,  
6-9 Surrey Street,  
Strand,  
London, W.C.2.

Solicitors for the Respondent