

1967/26

IN THE PRIVY COUNCIL

No. 17 of 1966

ON APPEAL FROM THE SUPREME COURT OF NEW
SOUTH WALES

B E T W E E N:

WOOLWORTHS LIMITED (Defendant) Appellant

- and -

STIRLING HENRY LIMITED (Plaintiff) Respondent

B E T W E E N:

STIRLING HENRY LIMITED (Plaintiff) Appellant
(By Cross-Appeal)

- and -

WOOLWORTHS LIMITED (Defendant) Respondent
(By Cross-Appeal)

RECORD OF PROCEEDINGS

VOLUME I

Pages 1 - 340

OSWALD HICKSON COLLIER & CO.,
6, Surrey Street,
London, W.C.2.
Solicitors for Woolworths Limited

LINKLATERS & PAINES
59, Gresham Street,
London, E.C.2.
Solicitors for
Stirling Henry Limited

(i)

IN THE PRIVY COUNCIL

No. 17 of 1966

ON APPEAL FROM THE SUPREME COURT
OF NEW SOUTH WALES

B E T W E E N:

WOOLWORTHS LIMITED (Defendant) Appellant

- and -

STIRLING HENRY LIMITED (Plaintiff) Respondent

B E T W E E N:

STIRLING HENRY LIMITED (Plaintiff) Appellant

(By Cross-Appeal)

- and -

WOOLWORTHS LIMITED (Defendant) Respondent

(By Cross-Appeal)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

DOCUMENTS INCLUDED IN THE RECORD

PART I

No.	Description of Document	Date	Page
1	Writ of Summons	16th December 1963	1
2	Amended Issues for Trial with amendments underlined	6th December 1965	3
3	Application to Amend Points of Claim, to file amended Issues and Eric William Cooper on Subpoena duces tecum	6th December 1965	10

(ii)

No.	Description of Document	Date	Page
4	<u>PLAINTIFF'S EVIDENCE</u>		
	<u>Adrian Johnson Stopford</u>		
	Court Notes of Legal Argument prior to Witnesses Evidence	7th December 1965	24
	Examination	7th December 1965	43
	Recalled, Further examination	8th December 1965	54
	Cross-examination	8th December 1965	102
5	<u>John Alfred Morelli</u>		
	Examination	9th December 1965	131
	Cross-examination	9th December 1965	133
	Re-examination	9th December 1965	136
6	<u>George Patrick Fahey</u>		
	Examination	9th December 1965	137
	Cross-examination	9th December 1965	138
7	<u>Adrian Johnson Stopford</u>		
	Recalled, Further cross- examination	9th December 1965	139
	Re-examination	9th December 1965	154
	Re cross-examination	9th December 1965	161

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
18 MAR 1968
25 RUSSELL SQUARE
LONDON, W.C.1.

91433

No.	Description of Document	Date	Page
8	<u>William Alexander Scougall</u>		
	Examination	9th December 1965	163
	Cross-examination	9th December 1965	174
	Re-examination	9th December 1965	177
9	<u>Lyel John Murrell</u>		
	Examination	9th December 1965	181
	Recalled, Further examination	10th December 1965	191
	Cross-examination	10th December 1965	198
	Re-examination	10th December 1965	208
	<u>DEFENDANTS' EVIDENCE</u>		
	Court notes of Legal Argument prior to Witnesses Evidence.	13th December 1965	213
10	<u>Robert Geoffrey Millist</u>		
	Examination	13th December 1965	217
	Cross-examination	13th December 1965	233
	Re-called - further cross- examination	13th December 1965	
11	<u>Eric William Cooper</u>		
	Examination	13th December 1965	252
	Recalled, further examination	14th December 1965	287
	Cross-examination	14th December 1965	290
	Recalled, further cross- examination	14th December 1965	333
	Re-examination	14th December 1965	337

(iv)

No.	Description of Document	Date	Page
12	<u>Ralph Howard Fleming</u> Examination	14th December 1965	341
	Cross examination	14th December 1965	348
	Re-examination	14th December 1965	365
13	Reasons for Judgment of His Honour Mr. Justice Collins	15th February 1966	367
13A	Judgment	17th November 1966	393
14	Notice of Motion to leave to appeal to Her Majesty in Council, containing grounds of appeal	1st March 1966	394
15	Notice of Motion for leave to Cross-appeal to Her Majesty in Council containing grounds of appeal	1st March 1966	396
15A	Order of Court of Appeal granting conditional Leave to Appeal to Her Majesty in Council	21st March 1966	397
16	Order of Court of Appeal granting final leave to appeal to Her Majesty in Council	14th June 1966	400

PART II - EXHIBITS

Exhibit Mark	Description of Document	Date	Page
	<u>PLAINTIFF'S EXHIBITS</u>		
A	Agreed List of Documents	Undated	
	Letter from Woolworths Limited to Stirling Henry Limited	10.5.55	401
	Letter from Dawson Waldron Edwards & Nicholls to Walter Linton & Bennett	21.11.55	403
	Letter from Walter Linton & Bennet to Dawson Waldron Edwards & Nicholls	23.11.55	404
	Agreement between Stirling Henry Limited and Woolworths Limited	30.11.55	405
	Letter from Stirling Henry Limited to Woolworths Limited	8.12.55	408

(v)

Exhibit Mark	Description of Document	Date	Page
A	Letter from Walter Linton & Bennett to Dawson Waldron Edwards & Nicholls	6.2.56	409
	Letter from Dawson Waldron Edwards & Nicholls to Walter Linton & Bennett	10.2.56	409
	Letter from Walter Linton & Bennett to Dawson Waldron Edwards & Nicholls	13.2.56	410
	Interim Certificate of Insurance Steeves, Agnew & Co. (Aust) Pty. Limited	21.3.56	411
	Letter from Woolworths Limited to Stirling Henry Limited	22.3.56	412
	Letter from Stirling Henry Limited to Woolworths Limited	23.3.56	413
	Promissory Note No. 1 from Stirling Henry Limited to Woolworths Limited	31.3.56	414
	Promissory Note No. 4 from Stirling Henry Limited to Woolworths Limited	31.3.56	415
	Promissory Note No. 5 from Stirling Henry Limited to Woolworths Limited	31.3.56	416
	Promissory Note No. 6 from Stirling Henry Limited to Woolworths Limited	31.3.56	417
	Promissory Note No. 7 from Stirling Henry Limited to Woolworths Limited	31.3.56	418
	Promissory Note No. 8 from Stirling Henry Limited to Woolworths Limited	31.3.56	419
	Promissory Note No. 10 from Stirling Henry Limited to Woolworths Limited	31.3.56	420
	Letter from Stirling Henry Limited to Woolworths Limited (under seal)	23.3.56	421
	Letter from Stirling Henry Limited to Woolworths Limited	26.3.56	422

Exhibit Mark	Description of Document	Date	Page
A	Letter from Walter Linton & Bennett to Dawson Waldron Edwards & Nicholls	24.4.56	422
	Letter from Walter Linton & Bennett to Dawson Waldron Edwards & Nicholls	7.6.56	423
	Letter from Woolworths Limited to Stirling Henry Limited	4.2.57	424
	Letter from Stirling Henry Limited to Woolworths Limited	7.2.57	425
	Letter from Woolworths Limited to Stirling Henry Limited	8.4.57	426
	Letter from Stirling Henry Limited to Woolworths Limited	11.4.57	427
	Letter from Stirling Henry Limited to Woolworths Limited	3.7.57	428
	Letter from Woolworths Limited to Stirling Henry Limited	10.12.57	429
	Letter from Stirling Henry Limited to Woolworths Limited	25.3.60	430
	Letter from Woolworths Limited to Stirling Henry Limited	31.3.60	431
	Woolworths Limited Order No. 50702	2.2.61	433
	Woolworths (Q'land) Limited Order No. 38761	2.2.61	434
	Letter from Woolworths Limited to Stirling Henry Limited	10.7.61	435
	Woolworths Limited Contract No. 6090 to Stirling Henry Limited	10.7.61	437
	Woolworths Limited Contract No. 6091 to Stirling Henry Limited	10.7.61	438
Woolworths Limited Contract No. 6092 to Stirling Henry Limited	10.7.61	439	
Woolworths Limited Contract No. 6093 to Stirling Henry Limited	10.7.61	440	

Exhibit Mark	Description of Document	Date	Page
A	Woolworths Limited Contract No. 6094 to Stirling Henry Limited	10.7.61	441
	Woolworths Limited Contract No. 6095 to Stirling Henry Limited	10.7.61	442
	Woolworths Limited Contract No. 6096 to Stirling Henry Limited	10.7.61	443
	Woolworths Limited Contract No. 6097 to Stirling Henry Limited	10.7.61	444
	Letter from Stirling Henry Limited to Woolworths Limited	27.7.61	445
	Letter from Woolworths Limited to Stirling Henry Limited	1.8.61	447
	Letter from Stirling Henry Limited to Woolworths Limited	9.8.61	448
	Letter from Stirling Henry Limited to Woolworths Limited	12.9.61	450
	Letter from Stirling Henry Limited to Woolworths Limited	4.10.61	451
	Letter from Woolworths Limited to Stirling Henry Limited	13.10.61	452
	Letter from Woolworths Limited to Stirling Henry Limited	13.10.61	454
	Letter from Stirling Henry Limited to Woolworths Limited	16.10.61	457
	Woolworths Limited Contract No. 6112 to Stirling Henry Limited	20.10.61	458
	Woolworths Limited Contract No. 6113 to Woolworths Limited	20.10.61	459
	Woolworths Limited Contract No. 6114 to Stirling Henry Limited	20.10.61	460
	Woolworths Limited Contract No. 6115 to Stirling Henry Limited	20.10.61	461
	Woolworths Limited Contract No. 6116 to Stirling Henry Limited	20.10.61	462
	Woolworths Limited Contract No. 6117 to Stirling Henry Limited	20.10.61	463
Letter from Stirling Henry Limited to Woolworths Limited	17.1.62	464	

Exhibit Mark	Description of Document	Date	Page
A	Letter from E.W. Cooper to Stirling Henry Limited	26.1.62	465
	Letter from Stirling Henry Limited to Woolworths Limited	1.3.62	466
	Letter from Woolworths Limited to Stirling Henry Limited	9.3.62	468
	Woolworths Limited Contract No. 6165 to Stirling Henry Limited	9.2.62	471
	Woolworths Limited Contract No. 6166 to Stirling Henry Limited	9.2.62	472
	Woolworths Limited Contract No. 6167 to Stirling Henry Limited	9.2.62	473
	Woolworths Limited Contract No. 6168 to Stirling Henry Limited	9.2.62	474
	Woolworths Limited Contract No. 6169 to Stirling Henry Limited	9.2.62	475
	Woolworths Limited Contract No. 6170 to Stirling Henry Limited	9.2.62	476
	Letter from Stirling Henry Limited to Woolworths Limited	13.3.62	477
	Letter from Woolworths Limited to Stirling Henry Limited	3.5.62	478
	Letter from Woolworths Limited to Stirling Henry Limited	16.5.62	479
	Woolworths Limited Contract No. 6197 to Stirling Henry Limited	14.5.62	480
	Letter from Stirling Henry Limited to Woolworths Limited	22.5.62	481
	Letter from Woolworths Limited to Stirling Henry Limited	24.5.62	482
	Letter from Woolworths Limited to Stirling Henry Limited	26.7.62	483
	Woolworths Limited Contract No. 6208 to Stirling Henry Limited	18.7.62	484

Exhibit Mark	Description of Document	Date	Page
A	Letter from Woolworths (Qld) Limited to Stirling Henry Limited	11.9.62	485
	Letter from Stirling Henry Limited to Woolworths Limited	9.10.62	486
	Letter from Woolworths Limited to Stirling Henry Limited	2.11.62	487
	Woolworths Limited Contract No. 6223 to Stirling Henry Limited	1.11.62	488
	Letter from Stirling Henry Limited to Woolworths Limited	7. 3.63	489
	Letter from Woolworths Limited to Stirling Henry Limited	12.3.63	490
	Woolworths Limited Contract No. 6251 to Stirling Henry Limited	11.3.63	492
	Letter from Woolworths Limited to Stirling Henry Limited	1.5.63	493
	Woolworths Limited Contract No, 6255 to Stirling Henry Limited	30.4.63	494
	Letter from Stirling Henry Limited to Woolworths Limited	1.8.63	495
	Schedule of Cost, Selling Price and Gross Profit	1.8.63	496
	Schedule of Contracts Placed and Adjustments to Prices and cash terms etc. since early July 1961	2.8.63	497
	Letter from Stirling Henry Limited to Woolworths Limited	12.8.63	498
	Letter from Woolworths Limited to Stirling Henry Limited	13.8.63	499
	Letter from Stirling Henry Limited to Woolworths Limited	19.8.63	501
	Letter from Woolbris Warehouse to Stirling Henry Limited	23.8.63	504
	Letter from Woolworths Limited to Stirling Henry Limited	29.8.63	505

(x)

Exhibit Mark	Description of Document	Date	Page
A	Woolworths Limited Contract No. 6280 to Stirling Henry Limited	29.8.63	506
	Letter from Walmsley Cowley & Co. to Woolworths Limited	6.11.63	507
	Hosiery Costing Review year ended -	30.6.63	510
	Statement of Manufacturing Trading Distribution and Administration Costs for year ended -	30.6.63	511
	Letter Priestley & Morris to Stirling Henry Limited	7.11.63	512
	Letter from Priestley & Morris to Walmsley Cowley & Co.	11.11.63	514
	Letter from Stirling Henry Limited to Woolworths Limited	12.11.63	515
	Letter from Woolworths Limited to Stirling Henry Limited	12.11.63	516
	Letter from Woolworths Limited to Stirling Henry Limited	14.11.63	518
	Letter from Stirling Henry Limited to Woolworths Limited	20.11.63	520
	Letter from Woolworths Limited to Stirling Henry Limited	27.11.63	524
	Copy of Telegram from Mr. Wainberg to Mr. Theo Kelly	28.11.63	527
	Letter from Stirling Henry Limited to Woolworths Limited	29.11.63	528

Exhibit Mark	Description of Document	Date	Page
A	Letter from Dawson Waldron Edwards & Nicholls to Woolworths Limited	9.12.63	529
	Letter from Woolworths Limited to Stirling Henry Limited	9.12.63	534
	Letter from Woolworths Limited to Stirling Henry Limited	10.12.63	535
	Telegram from Mr. Wainberg to Mr. Theo Kelly	12.12.63	536
	Letter from Stirling Henry Limited to Woolworths Limited	12.12.63	537
	Letter from Stephen Jaques & Stephen to Dawson Waldron Edwards & Nicholls	12.12.63	538
	Telegram from Mr. Theo Kelly to Mr. Wainberg	13.12.63	539
	Letter from Dawson Waldron Edwards & Nicholls to Stephen Jaques & Stephen	30.12.63	540
	Letter from Stephen Jaques & Stephen to Dawson Waldron Edwards & Nicholls	28.1.64	542
	Letter from Stirling Henry Limited to Woolworths Limited	6.2.64	543
	Stirling Henry's Limited Stock List as at	6.2.64	544
	Letter from Woolworths Limited to Stirling Henry Limited	20.2.64	551
	Letter from Stephen Jaques & Stephen to Dawson Waldron Edwards and Nicholls	2.9.64	552
	Letter from Dawson Waldron Edwards & Nicholls to Stephen Jaques & Stephen	29.12.64	554

Exhibit Mark	Description of Document	Date	Page
A	Schedule Hosiery Mill Plant and Machinery Purchases	Undated	556
	Letter from Dawson Waldron Edwards & Nicholls to Stephen Jaques & Stephen	11.2.65	559
	Letter from Stephen Jaques & Stephen to Dawson Waldron Edwards & Nicholls	9.3.65	560
	Letter from Stephen Jaques & Stephen to Dawson Waldron Edwards & Nicholls	5.4.65	562
	Dependents List of Documents for Discovery	Undated	562
	Letter from Dawson Waldron Edwards & Nicholls to Stephen Jaques & Stephen	20.4.65	566
	Plaintiffs List of Documents for Discovery	Undated	566
	Letter from Stephen Jaques & Stephen to Dawson Waldron Edwards & Nicholls	28.4.65	572
	Letter from Dawson Waldron Edwards & Nicholls to Stephen Jaques & Stephen	30.4.65	573
	Letter from Dawson Waldron Edwards & Nicholls to Stephen Jaques & Stephen	30.4.65	573
	Letter from Dawson Waldron Edwards & Nicholls to Stephen Jaques & Stephen	30.4.65	575
	Letter from Dawson Waldron Edwards & Nicholls to Stephen Jaques & Stephen	30.4.65	576
	Letter Dawson Waldron Edwards & Nicholls to Stephen Jaques & Stephen	5.5.65	576

Exhibit Mark	Description of Document	Date	Page
A	Schedule of Depreciation Net Profit or Loss indirect manufacturing expenses selling distribution and administration expenses and gross Profit or Loss	Undated	580
	Letter Stephen Jaques & Stephen to Dawson Waldron Edwards & Nicholls	3.6.65	581
	Extracts of Minutes of Board Meetings of Defendant &	15.11.55 22.11.55	582 583
	Letter from Stephen Jaques & Stephen to Dawson Waldron Edwards & Nicholls	16. 6.65	584
	Letter from Dawson Waldron Edwards & Nicholls to Stephen Jaques & Stephen	10.11.65	585
	Letter from Dawson Waldron Edwards & Nicholls to Stephen Jaques & Stephen	23.11.65	586
	Letter from Stephen Jaques & Stephen to Dawson Waldron Edwards & Nicholls	1.12.65	587
	Letter from Priestley & Morris to Stirling Henry Limited	1.12.65	589
	Letter from Priestley & Morris to Stirling Henry Limited	1.12.65	589
	Letter from Priestley & Morris to Stirling Henry Limited	1.12.65	590
	Letter from Priestley & Morris to Stirling Henry Limited	1.12.65	590
	Schedule of Depreciation as per Books and as per Income Tax Returns of the Plaintiffs	Undated	591
	Letter from Dawson Waldron Edwards & Nicholls to Stephen Jaques & Stephen	1.12.65	592

Exhibit Mark	Description of Document	Date	Page
A	List of Amendments to Points of Claim	Undated	592
	Letter from Stephen Jaques & Stephen to Dawson Waldron Edwards & Nicholls	2.12.65	595
B	Auditors Certificate with Statements 1 - 3	8.12.65	596
C	Standing Charges Sheet	Undated	603
D	Profit Basis Sheet	Undated	604
E	Margin on Turnover Basis Sheet	Undated	605
F	Calculations - Basis "B" - based on Sales	Undated	606
G	Statement of Estimated Manufacturing Trading Distribution & Administration Costs for year ended 30th June 1964 assuming total production 86,000 dozen FF Hosiery	Undated	607
H	Statement of Estimated Manufacturing Trading Distribution & Administration Costs for year ended 30th June 1964 assuming total production 75,000 dozen FF Hosiery	Undated	608
J	Copies of Letters and Memoranda		
	Letter Mr. A.J. Stopford to Mr. Devereux	3.12.63	609
	Letter Mr. A.J. Stopford to Mr. F. Munn	3.12.63	610
	Letter Mr. A. Wainberg to Mr. F. Munn	3.12.63	611
	Memorandum Mr. A. Wainberg to Mr. A.J. Stopford	3.12.63	612
	Memorandum Mr. A. Wainberg to Mr. P.D. Bennett	3.12.63	613

Exhibit Mark	Description of Document	Date	Page
J	Letter Mr. A. Wainberg to Mr. Devereux	3.12.63	614
	Memorandum Stirling Henrys Limited Melbourne Office to Mr. A.J. Stopford	5.12.63	615
	Letter Stirling Henrys Limited Brisbane Office to Sydney Office	6.12.63	616
	Hosiery Survey Sheet	6.12.63	617
	Letter Stirling Henrys Limited Brisbane Office to their Sydney Office	17.12.63	619
	Hosiery Survey Sheet	17.12.63	620
	Letter Mr. P.D. Bennett to Mr. A. Wainberg	13.12.63	622
	Memorandum Stirling Henrys Limited Melbourne Office to Mr. A.J. Stopford	13.12.63	624
	Memorandum Stirling Henrys Limited Melbourne Office to Mr. A. Wainberg	13.12.63	625
	Memorandum Stirling Henrys Limited Melbourne Office to Mr. A.J. Stopford	13.12.63	626
K	Buyers Advice Note	8.1.62	627
	Buyers Advice Note	8.2.62	628
L	Memorandum E.W. Cooper to Woolworths Limited South Melbourne	1.6.62	629
<u>DEFENDANTS' EXHIBITS</u>			
1	Memorandum of Agreement Woolworths Limited and Stirling Henry Limited	10.7.61	631
2	Schedule of Statistical information obtained from Commonwealth Bureau of Census and Statistics	Undated	632

Exhibit Mark	Description of Document	Date	Page
3	Fully fashioned hosiery purchased by Woolworths Limited and the estimated value by them for a period 4th December 1962, 3rd December 1963, 3rd December 1963 to 1st December 1964, and 1st December 1964 to 5th October 1965	Undated	633
4	Comparison between prices paid by Woolworths Limited to Stirling Henry Limited and other suppliers for fully-fashioned hosiery	Undated	639
5	Woolworths Limited Stock Control records of purchase of fully-fashioned hosiery and gloves	Undated	642

DOCUMENTS NOT TRANSMITTED TO THE PRIVY COUNCIL, AND THEREFORE
NOT INCLUDED IN THE RECORD

PART I

No.	Description of Document	Date
1	Notice of Appearance	16th December 1963
2	Summons for Entry of Action as Commercial Cause	31st July 1964
3	Affidavit in Support of Summons for Entry of Action as Commercial Cause - Robert Duncan Somervaille	30th July 1964
4	Order for Entry of Action as Commercial Cause	17th August 1964
5	Points of Claim	21st August 1964
6	Points of Defence	5th February 1965
7	Replication	6th April 1965

No.	Description of Document	Date
8	Issues for Trial	2nd June 1965
9	Consent to Trial by a Judge without a Jury	2nd June 1965
10	Affidavit of Arthur Neil Dakin	30th November 1965
11	Affidavit of Stanley Joseph Howard	1st March 1966
12	Affidavit of Arthur Neil Dakin	1st March 1966
13	Notice of Motion for final leave to appeal to Her Majesty in Council	8th June 1966
14	Affidavit of Stanley Joseph Howard	8th June 1966
15	Certificate of Compliance of the Prothonotary	27th May 1966

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT REPRODUCED

Description	Date
Certificate of Prothonotary of the Supreme Court of New South Wales verifying transcript record	15th July 1966
Order of the Court of Appeal granting Conditional Leave to Appeal	21st March 1966

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES

B E T W E E N

WOOLWORTHS LIMITED (Defendant)

Appellant

- and -

STIRLING HENRY (Plaintiff)

Respondent

B E T W E E N :

STIRLING HENRY (Plaintiff)

Appellant
(By Cross-Appeal)

10

- and -

WOOLWORTHS LIMITED (Defendant)

Respondent
(By Cross-Appeal)

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

IN THE SUPREME COURT OF NEW SOUTH WALES

No. 11364 of 1963.

In the
Supreme Court
of New South
Wales

No. 1

Writ of
Summons 16th
December
1963

B E T W E E N :

STIRLING HENRY LIMITED a Company
duly incorporated and having its
registered office at The Crescent
Flemington Plaintiff

20

- and -

WOOLWORTHS LIMITED a Company duly
incorporated and having its
registered office at 80 Market
Street, Sydney. Defendant

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

30

to WOOLWORTHS LIMITED of 80 Market Street,
Sydney.

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

WE command you that if you desire to
contest his claim you do, within ten (10) days
after service of this writ upon you, file in
the office of the Court a notice of appearance

In the Supreme
Court of New
South Wales

in the form prescribed by the rules of the
Court and serve a copy thereof of the plaintiff
or his solicitor.

No. 1
Writ of Summons
16th December
1963
(Contd.)

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

10

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

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

For the Prothonotary
(Sgd) J. LIEPINS L.S.
Clerk of the Supreme Court

20

This writ was issued by Dawson Waldron Edwards
& Nicholls, of 44 Martin Place, Sydney

The address for service of documents is c/-
Dawson Waldron Edwards
& Nicholls, 44 Martin
Place, Sydney.

The Plaintiff claims Two hundred thousand pounds
(£200,000.0.0.) and Sixteen pounds ten shillings
(£16.10.0.) for its cost together with the fees
properly paid for service of this writ upon you
and if those sums be paid to it or its solicitor
within the time above limited for your
appearance further proceedings in this action
will be stayed.

30

J.H. Plaintiff's Solicitor.

NO. 2

AMENDED ISSUES FOR TRIAL

In the Supreme
Court of New
South Wales

IN THE SUPREME COURT OF NEW
SOUTH WALES
IN COMMERCIAL CAUSES

No.11364 of 1963

No. 2

Amended Issues
for Trial
6th December 1965

B E T W E E N:

STIRLING HENRY LIMITED

Plaintiff

- and -

10

WOOLWORTHS LIMITED

Defendant

AMENDED ISSUES FOR TRIAL

WRIT ISSUED

16th December, 1963

APPEARANCE entered

17th December, 1963

POINTS OF CLAIM filed

21st August, 1964

1. The plaintiff is a duly incorporated company and as such is entitled to sue in its corporate name. At all material times the plaintiff has carried on business as a textile manufacturer.

20

2. The defendant is a duly incorporated company and as such is liable to be sued in its corporate name. At all material times the plaintiff has carried on business throughout Australia as a chain store retailer.

3. Prior to the year 1955 the plaintiff did not manufacture ladies stockings and did not have the plant and machinery to do so.

30

4. During the year 1955 it was agreed by and between the plaintiff and the defendant that the plaintiff would purchase the necessary machinery and plant and would erect and establish a mill for the production of ladies fully fashioned nylon stockings and it was further agreed that the plaintiff would produce the stockings

In the Supreme
Court of New
South Wales

—
No. 2

Amended Issues
for Trial
6th December
1965
(Continued)

exclusively for the defendant and that the defendant would buy from the plaintiff at fair and reasonable prices the whole of the production of the said mill in such sizes, colours, styles and qualities as the defendant should from time to time specify and it was further agreed that the said agreement should be determinable upon reasonable notice in that behalf given by the defendant to the plaintiff and not otherwise.

10

4A. In the alternative to the allegations contained in paragraph 4 hereof the plaintiff says that in or about the month of May 1955 a contract was made between the plaintiff and the defendant the terms of which were contained in a letter from the defendant to the plaintiff dated 10th May 1955. The plaintiff craves leave to refer to the said letter when produced as if the same were fully set forth herein.

4B. The contract referred to in paragraph 4A hereof was varied later in 1955 when at the Defendant's request the plaintiff increased the manufacturing capacity of its new mill and purchased additional machinery therefor. The terms of the said variation are contained in a written contract bearing date the 30th November 1955. The plaintiff craves leave to refer to such contract when produced as if the same were fully set forth herein.

20

5. The plaintiff purchased the necessary machinery and plant and erected and established the said mill and until the defendant repudiated the said agreement as hereinafter alleged, the plaintiff produced stockings exclusively for the defendant and the defendant bought the whole of the production of the said mill in sizes, colours, styles and qualities which it from time to time specified and paid fair and reasonable prices therefor, or in the alternative the defendant paid for such goods the prices fixed by the contract evidenced by the letter of 10th May 1955 as varied from time to time.

30

40

5A. In the alternative to the allegations contained in paragraph 4, 4A and 4B hereof the plaintiff says that in or about the months

of July and August 1961 the existing contract between the parties was varied by a contract or in the alternative was replaced by a contract the material terms of which (inter alia) were as follows:-

In the Supreme
Court of New
South Wales

No. 2

Amended Issues
for Trial
6th December
1965
(Continued)

- 10 (a) The defendant would henceforth purchase seventy-five per centum (75%) of its requirements of fully-fashioned women's hosiery from the Plaintiff at market prices.
- (b) If seventy-five per centum (75%) of the defendant's requirements in any year fell below fifty thousand (50,000) dozen the defendant would purchase from the plaintiff at least fifty thousand (50,000) dozen pairs of stockings.
- 20 (c) With regard to the remaining twenty-five per centum (25%) of the Defendant's requirements the plaintiff would have the right of first refusal to supply to the defendant fully fashioned hosiery at any prices less than market prices at which other manufacturers might offer such goods to the defendant.

30 The terms of such contract are contained in letters passing between the parties dated 10th July 1961, 27th July, 1961, 1st August 1961, and 9th August 1961. The plaintiff craves leave to refer to such letters when produced as if the same were fully set forth herein.

6. At all material times the plaintiff was ready, willing and able to perform on its part the contract between the parties.

7. All things happened all times elapsed and all conditions were fulfilled necessary to entitle the plaintiff to performance by the defendant on its part of the contract between the parties.

40 8. In or about October, November and December 1963 the Defendant repudiated its contract with the plaintiff and refused to be further bound thereby.

In the Supreme Court of New South Wales

No. 2

Amended Issues for Trial
6th December 1965
(Continued)

9. The plaintiff has lost the profits it otherwise could and would have earned pursuant to the contract between the parties from the sale to the defendant of the production of the said mill and the said mill and the machinery therein have become of no use or value to the plaintiff.

POINTS OF DEFENCE filed 5th February 1965

1. The defendant admits the statements in paragraphs 1 and 2 of the Points of Claim.

2. The defendant denies the statements in paragraphs 6 and 8 of the Points of Claim. 10

3. With reference to paragraph 4 of the Points of Claim the defendant admits that during the year 1955 it was agreed by and between the plaintiff and the defendant that the plaintiff would purchase the necessary machinery and plant and would erect and establish a mill for the production of Ladies' Fully-fashioned Nylon Stockings and would produce the said stockings exclusively for the defendant but the defendant says that neither the terms nor the effect of the agreement made between the parties is correctly set out in paragraph 4 of the Points of Claim and that the said agreement was as set out in a letter from the defendant to the plaintiff dated the Tenth day of May 1955 as follows :- 20

"This will confirm our discussion of the 6th May to the effect that you will import and set up machinery to produce ladies' F/F Nylon Stockings exclusively for Woolworths Limited. 30

"As discussed, it is anticipated this plant will be installed, and commence production early in 1956, and be capable of manufacturing 50,000 dozen in the first year of operation, and as indicated, we are prepared to place with you contracts for 12 months production on the following basis.

30 denier, 51 gauge 18,000 dozen
15 denier, 60 gauge 32,000 dozen.

"The prices ruling for the first six months to be as follows:- 40

30 denier, 51 gauge	71/- per doz.
15 denier, 60 gauge	79/- per doz.

In the Supreme Court of New South Wales

and thereafter, as we agreed, the price to be:-

30 denier, 51 gauge	62/- per doz.
15 denier, 60 gauge	71/- per doz.

No. 2
Amended Issues for Trial
6th December 1965
(Continued)

10 "The basis for subsequent contracts is that each six months a new contract to be placed, and at that date, all outstanding balances to be cancelled, so that you will be holding a twelve months cover for production.

"Orders will be placed from time to time drawing stocks ex contract when colour and size proportions will be detailed.

"Should you wish to submit this letter, or a copy of same to the Authorities to support your application for an import licence covering the necessary plant and machinery, it is quite in order for you to do so.

20 "I would like to record my appreciation of the manner in which our discussions were carried out, and thank you for your co-operative spirit in the course of our negotiations."

3A. The agreement between the plaintiff and the defendant as set forth in paragraph 3 of the Points of Defence was and is void for uncertainty and created no enforceable rights and/or obligations.

30 3B. Alternatively to paragraph 3A the said Agreement referred to in paragraph 3 of the Points of Defence created no enforceable rights and/or obligations after the first period of twelve months therein referred to and insofar as it purported to create any rights and/or obligations thereafter was void for uncertainty.

4. In the month of July 1961 the agreement between the plaintiff and the defendant hereinbefore referred to was varied or alternatively rescinded by an agreement which provided as follows:-

In the Supreme
Court of New
South Wales

No. 2

Amended Issues
for Trial
6th December
1965
(Continued)

- (a) The defendant would henceforth purchase seventy-five per centum (75%) of its requirements in fully-fashioned womens' hosiery from the plaintiff at market prices.
- (b) If 75% of the defendant's requirements in any year fell below 50,000 dozen the percentage of the defendant's purchases would rise to ensure that the plaintiff received orders for not less than 50,000 dozen and in the event of the defendant's total requirements falling below 50,000 dozen the defendant would purchase from the plaintiff its said total requirements. 10
- (c) Contracts to be placed for six months' requirements and the price to be firm for six months but quantities to be reviewed each three months thereby giving to the plaintiff a six months' cover at any one time; 20
- (d) The plaintiff to have the opportunity of quoting special prices for the residual twenty-five per centum (25%) requirements of the defendant;
- (e) The plaintiff to have the right to sell upon the open market and not to be compelled to confine its production to the defendant.
5. At all relevant times the defendant was ready willing and able to perform the agreement between the parties made in May 1955. 30
6. At all relevant times the defendant was ready willing and able to perform the agreement between the parties made in July 1961 and hereinbefore referred to.
7. The plaintiff refused and failed to supply to the plaintiff goods in accordance with the requirements of the agreement between the parties made in July 1961.
8. By reason of the said refusal and failure of the plaintiff the defendant became and was discharged from performance of the agreement by its part. 40

In the Supreme
Court of New
South Wales

No. 2

Amended Issues
for Trial
6th December
1965
(Continued)

10 9. Alternatively the defendant says that if
(which is denied) the agreement between the
parties made in May 1955 was not varied or
discharged by an agreement made between the
parties in July 1961 the first mentioned
agreement provided that each six months a
new contract for the purchase of stockings
by the defendant from the plaintiff was to be
agreed upon and that prior to the date when
the defendant ceased to purchase the stockings
from the plaintiff and at all times since and
at all material times the plaintiff and the
defendant were unable to and did not agree
upon the terms of such contracts.

20 10. With reference to paragraph 5 of the
Points of Claim the defendant denies that it
repudiated the said agreement and says that the
prices paid and subsequently offered by it to
the plaintiff from time to time were in
accordance with the agreements between the
parties.

11. The defendant does not know and cannot
admit the statements set out in paragraph 9 of
the Points of Claim.

REPLICATION filed 16th April, 1965.

The plaintiff joins issue with the defendant on
its Points of Defence herein except in so far
as the same contains admissions.

DATED this Sixth day of December 1965.

30

J.H. Dawes
Solicitor for the Plaintiff
44 Martin Place,
SYDNEY

In the Supreme Court of New South Wales

No. 3

Application to Amend Points of Claim, To File Amended Issues and Eric William Cooper on Subpoena duces tecum 6th December 1965

NO. 3

APPLICATION TO AMEND POINTS OF CLAIM, TO FILE AMENDED ISSUES AND ERIC WILLIAM COOPER ON SUBPOENA DUCES TECUM

IN THE SUPREME COURT OF NEW SOUTH WALES
IN COMMERCIAL CAUSES

CORAM: MANNING J.
Monday, 6th December 1965

STIRLING HENRY LIMITED v. WOOLWORTHS LIMITED

MR. BOWEN Q.C. with MR. SAMUELS Q.C. and MR. HANDLEY appeared for the plaintiff. 10
MR. MEARES Q.C. with MR. YELDHAM and MR. CALLOWAY appeared for the defendant.

MR. BOWEN: Your Honour, there are some amended points of claim and defence and I have been informed that the slightly amended issues for trial are coming up in a moment.

(Mr. Bowen opened to His Honour)

HIS HONOUR: I grant leave to file new issues as presented by Mr. Bowen. 20

(Mr. Bowen, on subpoena duces tecum, called the secretary of Woolworths Ltd. to produce all of the defendant's records showing qualities and quantities of fully-fashioned hosiery purchased by the defendant otherwise than from the plaintiff during the calendar years 1961, 1962 and 1963 and in the first six months of 1964, together with prices paid therefor including any discounts allowed or allowable together with all documents and memoranda recording the prices at which manufacturers other than the plaintiff were prepared to supply fully-fashioned hosiery to the defendant during such periods and the qualities and quantities involved. Mr. Eric William Cooper, an officer of Woolworths Ltd., answered the subpoena) 30

MR. BOWEN: You are an officer of Woolworths Ltd., the defendant?

MR. COOPER: Yes. 40

MR. BOWEN: What is your position?

MR. COOPER: I am buying manager.

MR. BOWEN: In relation to fully-fashioned hosiery, you are concerned in the buying of that, are you?

MR. COOPER: Yes.

MR. BOWEN: And you have been for going back how long?

MR. COOPER: About 13 years.

10 MR. BOWEN: And do you yourself keep any buyer's records for the past years?

MR. COOPER: I have kept some records, yes.

MR. BOWEN: Would these show quantities and prices paid from particular manufacturers?

MR. COOPER: Yes, those records.

MR. BOWEN: All these records that you yourself keep, are they amongst those which have been produced on subpoena?

MR. COOPER: Yes.

20 MR. BOWEN: Those are the amounts which are in the photostats?

MR. COOPER: I did not keep those. They are office records kept by our officers.

MR. BOWEN: The other ones that have been handed over are your records, are they?

MR. COOPER: They are records I have kept for as far back as that yes.

MR. BOWEN: These are monthly schedules?

MR. COOPER: Monthly sheets.

30 MR. BOWEN: And they go back only to January 1963?

MR. COOPER: Depending on the date on the sheet.

In the Supreme
Court of New
South Wales

No. 3

Application
to Amend Points
of Claim, To
File Amended
Issues and Eric
William Cooper
on Subpoena
duces tecum
6th December
1965

(Continued)

In the Supreme
Court of New
South Wales

No. 3

Application
to Amend Points
of Claim, To
File Amended
Issues and Eric
William Cooper
on Subpoena
duces tecum
6th December
1965
(Continued)

MR. COHEN: The earliest appears to be January 1963. I thought you might have known.

MR. COOPER: I think that would be correct.

MR. BOWEN: Did you keep records of this type before 1963?

MR. COOPER: I may have. These are working sheets, really, and I have thrown out any older ones.

MR. BOWEN: Anything older than this, you have thrown them out? 10

MR. COOPER: Yes. I have not got them. They are not available.

MR. BOWEN: From what original record would you make up this monthly sheet?

MR. COOPER: From estimates forwarded by each State warehouse to me as to their requirements ahead.

MR. BOWEN: So that this records, really, your estimates of future requirements?

MR. COOPER: They are summaries of the totals from each State. They are summaries. 20

MR. BOWEN: They are not a summary of supplies actually obtained?

MR. COOPER: They are the estimates, plus the figures shown below, of quantities we placed on other suppliers as the result of those estimates at that time and the suppliers' name is shown usually and the quantities for each delivery date. They are summarised at the bottom of each sheet. 30

MR. BOWEN: Relating to quantities but not to prices?

MR. COOPER: That is correct.

MR. BOWEN: You yourself did not keep any other record?

MR. COOPER: No.

MR. BOWEN: You have not got a record now that you have kept?

MR. COOPER: No, apart from our Commonwealth issues from each particular warehouse in each State. We get these records each month from each State warehouse and it shows the issues to all our branches in total and they are summarised.

10 MR. BOWEN: They are summaries of what stock you issued?

MR. COOPER: What stock we issued of each particular type of stock.

MR. BOWEN: These are different records, are they?

MR. COOPER: Yes.

MR. BOWEN: In response to the subpoena, what appear to be ledger cards have been produced.

MR. COOPER: Yes. They are copies of record cards.

20 MR. BOWEN: And they go back to March 1963 apparently.

MR. COOPER: In some cases to a date in 1962.

MR. BOWEN: That is 3rd October 1962, is it? (Showing document).

MR. COOPER: That is correct.

MR. BOWEN: These ledgers would be made up from what original record?

30 MR. COOPER: They are advices I would send to the records section regarding any alterations of costs, terms, selling prices etc.

MR. BOWEN: When you say "alterations", the person compiling this record would have something more than just a memorandum from you about alterations.

In the Supreme Court of New South Wales

No. 3

Application to Amend Points of Claim, To File Amended Issues and Eric William Cooper on Subpoena duces tecum 6th December 1965

(Continued)

In the Supreme
Court of New
South Wales

No. 3

Application
to Amend Points
of Claim, To
File Amended
Issues and Eric
William Cooper
on Subpoena
duces tecum
6th December
1965
(Continued)

MR. COOPER: No. That would be corrected, and they would bring it on to those records and then that information would be relayed to a similar record in each State warehouse for the payment of various invoices and so on when they came in from various suppliers.

MR. BOWEN: And do these records show your retail selling price from time to time?

MR. COOPER: Yes.

MR. BOWEN: In relation to different lines?

10

MR. COOPER: Yes, that is correct.

MR. BOWEN: They do not show buying prices, do they?

MR. COOPER: Yes. Terms are all recorded beside each supplier's name, on the same line.

MR. BOWEN: They do not show quantities?

MR. COOPER: No, not quantities.

MR. BOWEN: And is this the position that the records which would relate to a period before October 1962 would have been destroyed?

MR. COOPER: That is correct.

20

MR. BOWEN: Do you know when they would have been destroyed?

MR. COOPER: I would not know. I made inquiries from everybody I could in the place, but we cannot find them and I have been informed that they have been destroyed. These are a new form of records that were instituted in about December 1962 and the old ones were destroyed.

MR. BOWEN: Take the present case, you have at present in existence, in your possession, contracts and correspondence relating to the various dealings with Stirling Henry, the plaintiff?

30

MR. COOPER: Yes.

MR. BOWEN: You have had these going back to 1955. Where you bought from other suppliers is there any correspondence - or you call them contracts, orders - going back to earlier than 1962?

In the Supreme Court of New South Wales

No. 3

MR. COOPER: No.

Application to Amend Points of Claim, To File Amended Issues and Eric William Cooper on Subpoena duces tecum 6th December 1965

(Continued)

MR. BOWEN: Stirling Henry is the only one in respect of which you have kept records?

10 MR. COOPER: Stirling Henry is the only one we have had contracts with as such. We may have had others at various times but no continuity to give a full picture.

MR. BOWEN: You would have had correspondence with other suppliers.

MR. COOPER: Not a great deal. Very little. At times we did have some.

MR. BOWEN: Would you have destroyed all the correspondence with the others except for Stirling Henry?

20 MR. COOPER: No. We have had correspondence and we have been through correspondence files. Most of these negotiations with other suppliers were done directly with them or through the Melbourne Office and a lot was done through inter-office memos.

MR. BOWEN: Does that mean there may be correspondence or memos in Melbourne which you have not had an opportunity of looking at?

MR. COOPER: No. We should have copies in Sydney if they are still available.

30 MR. BOWEN: Are you able to tell us whether or not there is any such correspondence or memo available in relation to any supplier other than Stirling Henry?

MR. COOPER: Prior to this date?

MR. BOWEN: Going back from the present time, any correspondence at all? You appreciate none has been produced?

In the Supreme
Court of New
South Wales

No. 3

Application
to Amend Points
of Claim, To
File Amended
Issues and Eric
William Cooper
on Subpoena
duces tecum
6th December
1965
(Continued)

MR. COOPER: That is right. We have some letters.

MR. BOWEN: You have got some?

MR. COOPER: Yes.

MR. BOWEN: You would be able to get those
together for production, would you?

MR. COOPER: Whatever we have we could. We have
got three that I know of. Approximately
three.

MR. BOWEN: Would there be any memoranda relating
to supplies from other suppliers? 10

MR. COOPER: You mean within our organisation?

MR. BOWEN: Looking at it from Woolworths outwards
to other suppliers, would there be any other
memoranda or correspondence, invoices, delivery
dockets or contracts?

MR. COOPER: There would be invoices but they
would be in each State warehouse in four
separate States. These invoices are all filed
and I understand from our accounts people they
are filed back for seven years and they could 20
be available but it would be a tremendous job
to try to decipher them all from various people
who are making deliveries every few days,
perhaps, in some cases, and to try and total
quantities as to what they were delivering over
a period.

MR. BOWEN: When were you first asked to prepare
the documents? Or were you at any time brought
into the obligation of preparing documents for
discovery in this case? 30

MR. COOPER: Yes.

MR. BOWEN: When were you asked first to assist
in this search?

MR. COOPER: I think about April or May.

MR. BOWEN: Could you get the letters and any
invoices relating to those matters for us?

MR. COOPER: It might take a tremendous length of time to do so because, as you can appreciate, they are filed in each State, Brisbane, Perth, Melbourne and Sydney and the number of documents involved would be thousands, I would say.

MR. BOWEN: Since May of this year has any step been taken to get this information?

10 MR. COOPER: I inquired as to the feasibility of getting it but it seems such a tremendous task that it did not seem possible to be able to assemble all this information. I can possibly help you another way in this, in that the difference between what Stirling Henry sold us and the quantities that I kept the record of going back over the years, the difference between the two would give us approximately what we bought from other people in total in each line.

20 MR. BOWEN: Is there any record which shows this? Or is this your monthly record?

MR. COOPER: There would be some on these, and it would be some other sheets which we have, copies of other sheets which we have which would give you this.

MR. BOWEN: Are these sheets in your possession?

MR. COOPER: Yes, we have them here.

30 MR. BOWEN: Those appear to be within the ambit of the subpoena. Do you have any objection to producing them?

MR. COOPER: No.

HIS HONOUR: Mr. Cooper now has some more documents, Mr. Bowen.

MR. COOPER: These sheets are a summary of the Commonwealth drawings of each line from each warehouse going back over the years. If you deducted the quantity Sterling Henry delivered to us over those years the difference between the two would represent

In the Supreme Court of New South Wales

No. 3

Application to Amend Points of Claim, To File Amended Issues and Eric William Cooper on Subpoena duces tecum
6th December 1965

(Continued)

In the Supreme
Court of New
South Wales

No. 3

Application
to Amend Points
of Claim, To
File Amended
Issues and Eric
William Cooper
on Subpoena
duces tecum
6th December
1965
(Continued)

approximately the total we purchased from
other people.

MR. BOWEN: When are these prepared?

MR. COOPER: Monthly.

MR. BOWEN: These three sheets were prepared
when?

MR. COOPER: They were copied last week.

MR. BOWEN: What is the original record from which
these were compiled last week.

MR. COOPER: I have them in a book which I keep 10
myself.

MR. BOWEN: That shows the amounts you have
purchased from other people.

MR. COOPER: No.

MR. BOWEN: The same figures.

MR. COOPER: Exactly those figures. They are
just a total figure each month of our issues
to all our branches.

MR. BOWEN: Could you make those original records 20
available to us?

MR. COOPER: Yes, I think so. It appears they
are not here with us but they are available.

MR. BOWEN: You can bring them up to us.

MR. COOPER: Yes.

HIS HONOUR: Mr. Bowen, I do not think you can
go much further. I think if you go much
further you had better put Mr. Cooper in the
witness box and have him sworn. This is
possibly stretching the limits of somebody
appearing on subpoena duces tecum. 30

MR. BOWEN: I think the way in which it has
come out has forced me in a sense to do this.
I do not want to call him really.

HIS HONOUR: Perhaps Mr. Meares does not mind if you go a little further

MR. MEARES: I would fully agree with it. My friend is entitled to our documents.

MR. BOWEN: These ledger sheets, as they appear to be, they all have such notations as "re-written 18th February 1965".

MR. COOPER: Yes, that would be so.

10 MR. BOWEN: This is a re-writing of the sheet. Where would the sheet be from which they were re-written?

MR. COOPER: This is re-written when the space has been filled up on the sheet. This goes to the 22nd September 1964 and before this is filed away from the current records they have written on there that it has been rewritten on the 18th February 1965.

MR. BOWEN: Meaning the information has been transferred to a clean sheet.

20 MR. COOPER: Yes. This entry would possibly be carried on to the last sheet.

MR. BOWEN: This is still the original one and not the rewriting of it?

MR. COOPER: No.

MR. BOWEN: Do you have only this list of ledger cards. You have no journal or ledger relating to these customers or these suppliers?

30 MR. COOPER: Our accounts department would have those in each State.

MR. BOWEN: Showing the suppliers, the quantities and prices?

MR. COOPER: It would not show the quantities. Only their invoices would show the quantities delivered at any one particular time.

MR. BOWEN: In your notes you referred to what

In the Supreme Court of New South Wales

—
No. 3

Application to Amend Points of Claim, To File Amended Issues and Eric William Cooper on Subpoena duces tecum 6th December 1965

(Continued)

In the Supreme
Court of New
South Wales

—
No.3

Application
to Amend Points
of Claim, To
File Amended
Issues and Eric
William Cooper
on Subpoena
duces tecum
6th December
1965
(Continued)

appear to be folio pages, line E55.

MR. COOPER: These are quantities which were submitted to me by each State and these are summarised quantities for each State.

MR. BOWEN: What is E55; they look like folio references.

MR. COOPER: These are rough workings, they were kept by myself to facilitate my work.

MR. BOWEN: E77; E55. You do not know what that means?

10

MR. COOPER: I cannot remember. Down here we show the quantities we actually got.

HIS HONOUR: What Mr. Bowen wants to know is this: Is there any significance in what appear to be folio references on the sheets you made?

MR. COOPER: Yes, in some cases. Line "S.H." means "Sterling Henry" or "B.M" means Beau Monde.

MR. BOWEN: Beyond that they do not refer to any other record.

20

MR. COOPER: No.

MR. BOWEN: Do you recall what "E55" would stand for?

MR. COOPER: I cannot recall that one.

MR. BOWEN: Could you, if His Honour grants me time, in the interim, obtain correspondence, memoranda and any of this other material you have spoken of?

MR. COOPER: I will get that but it would take some hours to go through all these files to extract those.

30

HIS HONOUR: This should have been done weeks ago. It is all very well to come to Court on the morning of the hearing and say. "I have not

produced all these documents, it will take me a while to get them". That does not seem satisfactory to me.

MR. BOWEN: It makes it difficult to conduct the case and on the other hand I am very conscious of the time schedule and I am doing my best to get it done.

10 MR. MEARES: If it were necessary I would be prepared to argue the relevance of a lot of these documents that have been called for and to submit the subpoena was too wide.

HIS HONOUR: In a case like this I would have hoped that in this Court whatever documents were required to elucidate any problem would be produced without question.

MR. MEARES: I appreciate that.

HIS HONOUR: What do you suggest, Mr. Bowen?

20 MR. BOWEN: I am very conscious of the fact that I am the person who is in difficulty as a result of this. Various things have been mentioned, correspondence, memoranda and this other book that Mr. Cooper referred to, and certainly invoices in Sydney I would think could be obtained and I would ask him to endeavour to have that by two o'clock and we will see what the position is by then. This would come at a later stage in my case. This case would take a number of days and
30 it would not be in the first day of my case I would not think, so it gives us some elbow room.

HIS HONOUR: Can't you see, and Mr. Meares would appreciate this, if for instance you want an invoice I do not doubt there are hundreds of thousands of invoices and the speed with which you want certain ones to be produced depends upon the toning up of the relevant ones.

40 MR. BOWEN: As far as the invoices are concerned I think two o'clock can be left out of that

In the Supreme
Court of New
South Wales

No. 3

Application
to Amend Points
of Claim, To
File Amended
Issues and Eric
William Cooper
on Subpoena
duces tecum
6th December
1965

(Continued)

In the Supreme
Court of New
South Wales

—
No.3

Application
to Amend Points
of Claim, To
File Amended
Issues and Eric
William Cooper
on Subpoena
duces tecum
6th December
1965
(Continued)

question. I would ask Mr. Cooper to produce this other material that has been mentioned.

MR. MEARES: This will be done and there will be no go-slow tactics adopted.

HIS HONOUR: I do not suppose you would for one moment permit any go-slow tactics.

MR. BOWEN: We have agreed on a list of documents. I would hand that up to Your Honour.

MR. MEARES: I think insofar as it is stated this list of documents has been agreed, we were handed this list at five minutes to ten so it would be unwise to say they were agreed. 10

MR. BOWEN: These are mutual discovery documents and agreed in principle but they might need a further check. I understand my friend is raising objection to some difficulty if he felt there was a document later on.

(Above mentioned list of documents tendered and marked Ex.A subject to objection). 20

(Hearing adjourned until 2 p.m.)

.....

ON RESUMPTION

MR. BOWEN: I have had further material delivered to me in response to the subpoena this morning, in particular three files with information at 12.28 p.m. to my chambers and in the circumstances I find myself obliged to ask for another short adjournment till 10 o'clock tomorrow to consider this material. In addition I believe Mr. Cooper may have some further material which he has brought to Court this afternoon. If that is so perhaps I could momentarily defer my application until that was put in. 30

MR. MEARES: I do not think, with respect, that any of these documents that are produced will be of any help but I have further letters to some of these wholesales additional to what has been produced.

HIS HONOUR: That together with the other material comprises the whole.

MR. BOWEN: Yes.

HIS HONOUR: I suppose it is very hard not to give Mr. Bowen an opportunity to look at it.

MR. MEARES: I respectfully agree.

MR. BOWEN: May I have the custody of it over the period?

10 MR. MEARES: I would object to that. I would like to have a look at these myself. I repeat, it may well be my friend is not entitled to look at some of these things. The mere fact he issues a subpoena does not entitle him to dredge our documents.

HIS HONOUR: If Mr. Bowen is entitled to look at the material it is I who should decide and I do not think I am sufficiently informed of the questions in dispute to make a judgment at this stage.

20 MR. MEARES: I hope my friend and I can approach this matter in a sensible fashion. Perhaps we can go through these together and have such assistance from Mr. Cooper and if my friend wants to take them away we can make arrangements suitable to both of us.

30 MR. BOWEN: Normally this would have been on discovery. I would have had an opportunity of conferring with my own accountants and so on and it is rather a limited time and I have accountants coming at 4 o'clock in relation to another matter.

HIS HONOUR: The best thing I can say is I will leave you two gentlemen together and inspect the files now produced together with the other material.

40 MR. BOWEN: My request for temporary custody was to make the best out of the time available. The Court would not object, provided Mr. Meares and I agree, to our taking them to our chambers?

In the Supreme
Court of New
South Wales

No. 3

Application
to Amend Points
of Claim, To
File Amended
Issues and Eric
William Cooper
on Subpoena
duces tecum
6th December
1965

(Continued)

In the Supreme Court of New South Wales

No.3

Application to Amend Points of Claim, To File Amended Issues and Eric William Cooper on Subpoena duces tecum 6th December 1965 (Continued)

Plaintiff's Evidence

No.4

Adrian Johnson Stopford 7th December 1965 Court Notes of Legal Agreement prior to Witness's Evidence.

HIS HONOUR: Certainly not. I have always taken the view it is proper in these matters as between Counsel they should be exchanged on the usual undertaking they do not go from Counsel's Chambers. I adjourn the further hearing till 10 o'clock tomorrow morning.

(Further hearing adjourned to 10 am Tuesday, 7th December, 1965).

PLAINTIFF'S EVIDENCE

NO. 4

ADRIAN JOHNSON STOPFORD

10

CORAM: COLLINS J.

Tuesday, 7th December 1965

MR. BOWEN Q.C. with MR. SAMUELS Q.C. and MR. HANLEY appeared for the plaintiff.

MR. MEARES Q.C. and MR. YELDHAM appeared for the defendant.

MR. BOWEN: Your Honour, there have been points of claim and points of defence filed. They were amended. It might be convenient to go through the amended points of claim and defence. As to the points of claim, No. 1 is admitted. No. 2 "The defendant is a duly incorporated company ... a chain store retailer." That is admitted. No. 3 "Prior to the year 1955 ... plant and machinery to do so." There is no specific reference to it. It is 20

just not denied. I do not think anything turns on it although some evidence will be led on it. 4 "During the year 1955 ... to the plaintiff and not otherwise." Perhaps I should take Your Honour to paragraph 3 of the points of defence, where a letter is set out verbatim. They do not agree with our statement of the contract. The points of defence, para. 3, has a reference to para. 4 of the points of claim. (Read). "This will confirm our discussion ... for Woolworths Ltd." It may be convenient to go to points 3A and 3B of the points of defence. (Read). I would now refer Your Honour to the points of claim. (Para. 4 read). (Para. 4A and para. 4B of points of defence read). (Para. 5 read). There is an alternative as to what was the price basis. One allegation is that it was fair and reasonable, the other that it has varied from time to time by agreement between the parties. The earlier 1955 agreement was whole production, a minimum of 50,000 dozen a year. This is 75% of the defendant's total requirements. (Paras. 5A and 5B read). I will be taking Your Honour to the points of defence, where a slightly different account of the 1961 amendment is given, but it is made in writing. (Paras. 6, 7 and 8 read). That is not dealt with in the points of defence, but they have denied the ready and willing. That is denied. (Para. 9 read). They do not and cannot admit that that is the position.

Then as to the points of defence, I have already mentioned that in one or two they have admitted paras. 1 and 2 in the points of claim and denied 6 and 8. I have read the point of defence para. 3, which set out verbatim the 1955 contract, and they are alternative claims that it was void or did not operate more than 12 months, in 3A and 3B. I come to para. 4 of the point of defence. We agree on that one. As to (B), this has been amended. I think Your Honour has an amended (B). (read). Those last three lines do not appear in our account of it, but they are not really in dispute between us. (Sub-paras. C and D read). We are at variance on that, but I think we will both have to go to the letters. We say it is the balance

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence.
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence.
(Continued)

of 25% and not initially, and I think this is a clear error. And in addition, we claim the agreement was first refusal, not quoting special prices. Nothing much will turn on this. This is not the area in which the dispute will develop. I mention that only to clear up something Your Honour will see later in the letters. (Sub-para. 3 read).

Your Honour will recall the 1955 agreement bound us exclusively to sell our production to Woolworths, the defendant. This is not in our account of the 1961 agreement. Such an offer was at one time made and treated as an offer of waiver and not accepted, that being in 1961. Para. 5 is in issue. (Paras. 6, 7, 8 and 9 read). That is in issue. It refers back to May 1955 agreement. (Para. 10 read). That is in issue. I have already mentioned that that we do not know and cannot admit. The replication was a joinder of issue, as I indicated as I went through.

10

20

Now I tender an agreed list of documents. It is, I think, with the Court, because it has been tendered. We did start before Mr. Justice Manning, but it was discontinued. It was Exhibit A there, and it will be Exhibit A before Your Honour, I take it.

HIS HONOUR: Yes.

MR. BOWEN: It is very lengthy. It is a question of the best way of proceeding. Your Honour may prefer to adjourn and read it, and then I would open. Or Your Honour may prefer me to take Your Honour through it in full, whatever is the most convenient course.

30

HIS HONOUR: I think that if I adjourned and read it, I would not be aware of the significance of some parts and the insignificance of other parts. I would prefer if you would take me through it. What about the transcript of yesterday?

40

MR. BOWEN: At this stage, I do not think I need bother Your Honour with it. I think it might be the best course if I open to Your

Honour, now, referring to the various documents throughout, rather than just read through it.

HIS HONOUR: I am having your opening transcribed.

10 MR. BOWEN: The first reference is a letter dated 10th May 1955 from Woolworths Ltd. to Stirling Henry Ltd., which was referred to in the points of claim and defences, pp.1 and 2 of Exhibit A. Perhaps I should refer to certain aspects of it. In the first paragraph, they refer to the important fact that the arrangement was that the plaintiff would import and set up machinery for the purpose of producing ladies stockings exclusively for Woolworths Ltd. and no one else. Then in the next paragraph, after referring to when they anticipate commencing production, they deal with the capacity. They say "As discussed, it is anticipated ... following basis." I think the evidence will show that when they refer to contracts, and there are some of these in the file, they are referring in effect to orders, that they will place orders in the written form, for example, as is set out on p.57 of the exhibit. That is headed "Contract." Mr. Bowen read contract No. 6112 as appearing on p.57 of Exhibit A). It is a kind of order or sub-contract in a sense. This is the sort of thing they had in mind when they said

20 "Please forward contract for 12 months production on the following basis." Now the basis is for 30 denier, 51 gauge, 18,000 dozen; 15 denier, 60 gauge, 32,000 dozen. That was the basis for 12 months, totalling 50,000. They said "The prices ruling for the first six months to be as follows - (Mr. Bowen reads p.1 of letter of 10th May 1955 from "The prices ruling ... to 71/- per dozen"). It continues "The basis for subsequent contracts ... in

30 the course of our negotiations." That is, as it were, a sub-contract again. There is a head contract, there are orders for contracts to be placed for the supply and then as they order the quantity they specify what length or what colour. Some of these have rather exotic names, Tahitian Tan and others like that. They specify these. They are the orders placed specifying colour, size and so on.

40

In the Supreme Court of New South Wales

Plaintiff's Evidence

No.4

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

The next step was the making of the agreement, following that, in November 1955. There will be evidence that we had never made stockings before this, that is to say, we understood we had to establish a mill and to import machinery to do so, involving the building of a building and the installation in it of machinery and equipment to make stockings. We had never done that before in the plant. Now we come to the agreement of 30th November 1955, which appears on p.5 of Exhibit A. This was put in the form of a formal agreement drawn up by solicitors, because it involved two things. They wished us to increase our capacity beyond what had been arranged in the letter of 1955 and for that purpose to import additional machinery and equipment to do this. It involved the expenditure of a good deal of money, so we had either to buy yarn that was in bond and a lot of money was tied up in this yarn. They agreed to take over 12,000 lb. of this yarn at a cost of 54/- per lb., and then we would only draw it out of bond by buying lots of not less than 1,000 lb. weight at a time from them. It relieved us from having too much tied up in stock.

Secondly, they lent us £45,000 at 5½% interest. We gave them promissory notes for that spread over a period, the last one being 30th January 1957. Perhaps I should read the agreement of 30th November 1955 between the plaintiff and the defendant.

HIS HONOUR: Hasn't the Stamp Duties Commissioner obliterated the month from the document?

MR. BOWEN: No, I have seen a copy in which he does, but I am reading from a brief copy of part of Exhibit A.

HIS HONOUR: It is November, is it?

MR. BOWEN: Yes. (Mr. Bowen reads agreement dated 30th November 1955 between plaintiff and defendant). Promissory notes were given for those. Those promissory notes which are now available form part of this exhibit.

(Page 15 onwards). I do not think anything turns on it. Three of them are missing, but there is no dispute that this money was advanced as promise and repaid as promise. Everything was carried out on the document by both parties in accordance with those terms, as I understand it. I understand that was so. I do not think anything turns on it. Mr. Meares suggests there was some variation in regard to the payment of the bond warrants later, but I do not think anything turns on it. (Pages 5, 6 and 7 of Exhibit A read by Mr. Bowen).

In the Supreme
Court of New
South Wales

Plaintiff's
evidence

No.4

Adrian Johnson
Stopford
7th December
1965

Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

The insurance cover appears on p.12 of the exhibit. I do not think I need trouble Your Honour at length on the detail of it, but it covered them for both their interests. The significance which I get from this agreement and what was done is the fact that it was very much at the request of Woolworths that we were increasing our production to sell exclusively to them. (Page 11 of Exhibit A read, being letter dated 13th February 1956). Evidence will be given first of the cost of erection of the building, which was £22,520/6/6. I will be leading evidence on that; it is not in the exhibit. And then there was machinery and equipment, a total cost, both of the original and the additional machinery - I will be leading evidence that it amounted to £177,542/4/7. I understand that that fact was admitted. The correspondence is in the file, but it was admitted subject to a certificate from the auditors, which I understand has been obtained. I refer Your Honour to pp.186 and 187 of Exhibit A, the certified figures for the cost of the building, which I have stated, and the cost of plant and machinery, which I have stated. On those certificates being obtained, there was no dispute between us on those items. The letter to which I refer about asking for the certificates is at pp.184 and 185, just immediately before that.

MR. MEARES: I do not want to interrupt my learned friend but I do not want him to be under some false impression. The only difficulty we have about that certificate is

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

to the meaning as at 30th June 1964 in both cases. As far as the £177,000 is concerned, my impression is that in 1957, you provided or you built or installed very much more plant, and whether this £170,000 is for the initial lot or the additional lot or whether the £22,000 is what the building cost you, I do not know, but we can agree on this.

MR. BOWEN: There were 48 machines. Twenty-four were purchased under the original letter of 10th May 1955 and the remaining 24 under the agreement of November 1955. These did not all come forward at the same time; they were coming forward, sometimes six at a time, therefore they do not fall into the year 1955 entirely. 10

Now next they started to go into production and to operate this system of placing contracts, and it operated fairly smoothly up to 1961 but there were, during that period, two changes in prices, to which perhaps I should draw attention. (Mr. Bowen referred His Honour to letter dated 8th April 1957 from Woolworths Ltd. to Stirling Henry Ltd.) May I mention this as an aside, that denier, as Your Honour possibly knows, is the thickness of the yarn. 15-denier is thinner than 30-denier, 30-denier being twice as heavy as 15. The gauge is the number of needles per two inches, that is to say, 51 gauge is 51 needles every two inches. They have to express it in two inches to avoid half a needle. Sixty gauge would be 60 needles to two inches. So that you get a closer or wider mesh according to the number of needles. There was a letter accepting that, dated 11th April 1957, which is the next letter on the file. (Mr. Bowen reads letter dated 11th April 1957 from Stirling Henry Ltd. to Woolworths Ltd.) Perhaps it might be convenient, as there is a letter of 3rd July 1957 on the next page, if Your Honour would allow me to digress. (Letter dated 3rd July 1957, p.30 of Exhibit, read). My understanding is that those were the last 12 of the additional 24 ordered following that agreement of November 1955. The total list of machinery appears at p.150 of the exhibit. Then one goes to the 25th January and then the 2nd March 1956. (Read). Then 20 30 40

we go down to 23rd May 1956, 24th May 1956, another 6. Again on the 19th there is an additional 12, which brings us to 36. Then we go down to 30th October 1957, 12th December 1957. (Read). Now that made 48, and that is the lot. It is because those last two lots of six were not coming until towards the end of 1957, I think, that one gets the impression that there were perhaps more in 1957, but that was the total amount, 48 in all.

10

I said there were two changes in price in the interim between the coming into operation and 1961. I have mentioned the first change referred to in the letter of 8th April 1957. (Letter dated 10th December 1957, appearing on p.31 of Exhibit A, read). Now just commenting on that, Your Honour will see that the two main lines here where the bulk of production is, are Fairyweb 15-denier 51-gauge and 15-denier 60-gauge and Captivation 30-denier 51-gauge. The 15-denier are called Fairyweb and the 30-denier Captivation. At that point, the Captivation was still above the thereafter price. The thereafter price was 62/-. But the Fairyweb had come down below the thereafter price; the thereafter price was 71/- whereas we find it is down to 67/6d. The special 60s boxed were just special orders and the mediums of all lines means that in any run of production there would be a proportion of less than perfect and they would be sold at a lower price as mediums. This would be the general thing in the trade. The parties would fix a separate price for the mediums. Now during 1961 there was a modification made to the six machines at the request of Woolworths, to enable them to make mesh stockings. I will be leading some evidence of a conversation on 7th June 1961 where it was recorded that it had been done. I only mention this. I do not think anything in particular turns on mesh stockings. The disputes which developed were not over mesh stockings, because Your Honour will see a separate price fixed for mesh stockings from time to time after about the middle of 1961.

20

30

40

Now the next matter bearing on price, I think, was a letter dated 10th July 1961.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

(Mr. Bowen reads letter dated 10th July 1961 from Stirling Henry Ltd. to Woolworths Ltd., appearing on p.37 of Exhibit A). Before 10th July 1961, there had been a number of meetings at which price had been discussed. There had been some agreed changes in price at these meetings. I will be leading evidence about that. It becomes largely historical, but I mention that there were some meetings before this letter of 10th July and in 1961, and the question of price was discussed. I think probably it is safe to say that there were some changes made. In this letter of 10th July 1961, Woolworths wrote to the plaintiff "Re hosiery orders and contract." Now they give the contract numbers. The first contract, No. 6090, is for 21,500 dozen of B.33 15-denier 60-gauge Fairyweb and the cost per dozen, that is, the price to Stirling Henry, 56/6d. Your Honour will recall that 15-denier previously was 67/6d. So, there has been a reduction there. Contract No.6091 was for 10,500 B.56 30-denier 51 Captivation, 60/- per dozen. The last price to which I referred Your Honour was 67/6d. There had been changes in the interim. It was not a drop from the last one I mentioned to Your Honour to this one. There had been conversations and interim changes, and this is what they came to at 10th July 1961. Your Honour will see that those first two items are the great bulk of the production. On these mesh machines they were making 15-denier 51-gauge Fairyweb mesh. The code number given to it was B.29. Then there is 3,000 B.80 15-denier 51-gauge Famous Maker 51/6d. That is a name which occurs from time to time. They are a much smaller quantity generally. Contract No.6094 was for 4,000 XN T.B.A. 15-denier 51-gauge Famous Maker again. I do not know the difference there. (Contract 6095, 6096, 6097 read). The letter continues "Orders are now being prepared ... fully-fashioned hosiery elsewhere." If one adds up the quantities, this is for six months, as listed, they come to 43,850 but in addition to that there are 4,000 in the next paragraph, perhaps one could say 47,850 dozen for a half year, that would be something over 95,000 dozen for a year. That is just to

10

20

30

40

50

give Your Honour a picture of the kind of demand. They were well above the 50,000 minimum, and indeed one might expect that since they were asked to put in the additional machines to cope with the additional production.

10 The next point is that it will appear from these conversations which took place, that they were now instead of meeting six-monthly going to meet quarterly to fix six months ahead, instead of being half yearly to fix a year ahead for contracts. The same notion of overlap was still employed. The other comment is that in the last paragraph they refer to the fact that they were bound exclusively to them but they were offering a waiver. I will take Your Honour to the reply, where we did not take up that waiver. I think I should refer Your Honour to the 20 contracts which follow on in the exhibit following the numbers which have been listed in the letter of 10th July. I will give Your Honour an idea of how these work. (Mr. Bowen referred His Honour to p.38 of Exhibit A). Your Honour will see the contract number is 6090. F.I.S. is free into store. Your Honour will recall that orders had to be given specifying colours and sizes after this. Then there are 30 conditions of contract. I do not think anything turns on them. The item number is B.33 (Read). There is a note on the contract "The total of ... new shade Tahiti Tan." This note is dealing with the overlapping period. I do not know that I can completely explain its effect, but I do not think anything will turn on it. Where there is some point of doubt in relation to the existing orders, which were being picked up into this six-months period, there would 40 be a comment on it. Contract 6091 is the next contract. (Read). And so it goes on. The next one is mesh B.29. (Read) And then there is the 15-denier Famous Maker and then the 15-denier T.B.A. item, and then the mediums. There are three contracts dealing with mediums at 44/- per dozen pairs. Following on the exhibit is the letter of

In the Supreme Court of New South Wales

Plaintiff's Evidence No.4.

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

27th July 1961. (Mr. Bowen reads letter dated 27th July 1961 from Stirling Henry Ltd. to Woolworths Ltd., appearing on pp.46 and 47 of Exhibit A). Well, that is really referring back to the agreement where they would take full production.

Your Honour will recall in the pleadings a reference to taking 75% of the requirements. This now comes into the picture. I refer Your Honour to the next letter on the file, on p.48 of the exhibit. (Mr. Bowen reads letter dated 1st August 1961 from Woolworths Ltd. to Stirling Henry Ltd.). There was no answer to that. I think the next letter was dated 12th September 1961. (Mr. Bowen reads letter dated 12th September 1961 from Stirling Henry Ltd. to Woolworths Ltd., appearing on p.51 of Exhibit A).

10

The next letter is dated 4th October 1961. Your Honour will recall that they had arranged a meeting for 2nd October to fix the price for the ensuing period. (Letter dated 4th October 1961 from Stirling Henry Ltd. to Woolworths Ltd., appearing on p.52 of Exhibit A read).

20

HIS HONOUR: Does that mean the meeting had not taken place?

MR. BOWEN: No, it had not taken place. The meeting took place on 9th October 1961. I think I will be calling some evidence on it. It is probably sufficient to say that there was a further change in the prices. There was a letter dated 13th October 1961, from Woolworths Ltd. to Stirling Henry Ltd. (Letter on p.53 of Exhibit A read). There is also this letter of the same date. (Letter dated 13th October 1961 from Woolworths Ltd. to Stirling Henry Ltd., appearing on p.54 of Exhibit A, read). That should be "Our normal terms" because as will appear from the conversation with Woolworths, it was said "We want the price of cartons to be included in the figure we quote, so we want a discount of 2 $\frac{1}{2}$ % for payment within seven days, and these are our normal terms." As

30

40

10 against that, Stirling Henry agreed to include the cartons in the price and this would be taken into account in fixing the price, and then as far as the terms are concerned they suggested not putting on the 2½% discount but changing it from seven days to 30 days. This was being agreed to in this letter. "This is quite contrary to the Company's current policy ... it will be necessary to review this at a later date." I may say that whatever the company's current policy elsewhere was it was something new injected into the situation between these two. It continues "Mr. Stopford will confer with the writer ... during the difficult period we have both been through over the past nine months."

20 May I refer Your Honour to a letter from Stirling Henry dated 1st March 1962. (Mr. Bowen reads letter dated 1st March 1962 from Stirling Henry Ltd. to Woolworths Ltd., appearing on p.65 of Exhibit A). One comment I would make perhaps is that that quantity is for a quarter. It adds up to 20,000 and it is only for those three lines. That would be running at the rate of 80,000 dozen a year, still well above the 50,000 quantity, and if one took mediums and others and so on into account, that probably would increase. I refer Your Honour to the letter dated 9th March 30 1962. (Mr. Bowen reads letter dated 9th March 1962 from Woolworths Ltd. to Stirling Henry Ltd., appearing on p.66 of Exhibit A). The contracts are set out and the figure is arrived at which is called surplus to contracts. I do not think anything turns on that. That is the kind of way in which they dealt with existing orders. The letter goes on "We are endorsing these contracts ... if 40 that date is acceptable to you." The contracts then follow. I do not think I need take Your Honour through them.

I now refer Your Honour to a letter dated 3rd May 1962 which follows on these contracts. (Mr. Bowen reads letter dated 13th March 1962 from Stirling Henry Ltd. to Woolworths Ltd., appearing on p.74 of Exhibit A.). They begin to talk at some stage about a depression in the fully-fashioned hose market.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

In the Supreme Court of New South Wales

Plaintiff's Evidence

No. 4

Adrian Johnson Stopford 7th December 1965 Court Notes of Legal Agreement prior to Witness's Evidence (Continued)

The next letter is dated 3rd May 1962. (Mr. Bowen reads letter dated 3rd May 1962 from Woolworths Ltd. to Stirling Henry Ltd., appearing on p.75 of Exhibit A). I now go to the letter of 26th July 1962. (Letter dated 26th July 1962 from Woolworths Ltd. to Stirling Henry Ltd., appearing on p.80 of Exhibit A read). I may say that the break occurred in 1963.

HIS HONOUR: Did you say February 1963? 10

MR. BOWEN: No, 1963. The points of claim mentioned three months. I would say November 1963 was the final break. I refer Your Honour to p.82 of Exhibit A. (Letter dated 11th September 1962 from Woolbris Warehouse to Stirling Henry Ltd. read). (Letter dated 7th March 1963, from Stirling Henry Ltd. to Woolworths Ltd., appearing on p.86 of Exhibit A read).

HIS HONOUR: What significance has the word "altered" there? 20

MR. BOWEN: Well, at the discussions that must have been agreed to for the first time.

HIS HONOUR: I remember the earlier letters foreshadowed it.

MR. BOWEN: Then I would refer to the letter dated 12th March 1963. (Letter dated 12th March, 1963, from Woolworths Ltd. to Stirling Henry Ltd., appearing on p.87 of Exhibit A read). The next letter is dated 1st May 1963. (Letter dated 1st May 1963 from Woolworths Ltd. to Stirling Henry Ltd., appearing on p.89 of transcript read). There was a meeting of 24th July 1963, a discussion between the parties in respect of the contracts for the period 1st October to 31st December 1963. As forecast, orders were to be placed for 12,000 dozen Fairyweb, 30-denier stockings, 60-gauge; 4,000 F/F nylon 30-denier Fairyweb and 1,500 15-denier 51-gauge ladderless mesh Fairyweb. This is a conversation about which I will be calling evidence. This would give a quarterly production of 17,500 without mediums. (Those prices were not acceptable. 30 40

At the stage when the meeting broke up, there had been an offer to split the difference, and an arrangement made to meet on 30th July, or rather Woolworths said they would advise us by approximately the following Tuesday, 30th July, whether they would accept the splitting the difference between what they suggested and what had been mentioned, with a meeting to be held in
 10 October. The next letter will be one dated 1st August.

HIS HONOUR: What do you say the legal issues will be?

MR. BOWEN: It is said there is no contract, it is void, it was too uncertain. There is another issue as to ... so it becomes a dispute on the prices ... we had to close the mill down and dismiss the staff. There will be evidence that you cannot sell the machinery,
 20 except for scrap value. We will be going on to the issue of damages.

(Luncheon adjournment)

AT 2 P.M.

MR. BOWEN: May I refer to p.91 of Exhibit A. (Letter dated 1st August 1963 from Stirling Henry Ltd. to Woolworths Ltd., appearing on p.91 of Exhibit A read). There was a meeting on 2nd August. I will call evidence on this. (Mr. Bowen outlined proposed evidence to be
 30 called). Then there was a letter dated 12th August 1963. (Letter dated 12th August 1963 from Stirling Henry Ltd. to Woolworths Ltd., appearing on p.94 of Exhibit A read). Prices not being agreed, there was a meeting that day, 12th August, attended by Messrs. Cooper, Millist, Stopford and Wainberg. I will call evidence as to that. (Mr. Bowen outlined proposed evidence). There was a letter dated 13th August 1963, signed by Mr. Millist. (Letter dated 13th August 1963 from Woolworths
 40 Ltd. to Stirling Henry Ltd., appearing on pp.95, 96 and 97 of Exhibit A read. There were a number of meetings, about which I will call evidence. There was one on 22nd August 1963, at which Messrs. Millist, Cooper,

In the Supreme Court of New South Wales

Plaintiff's Evidence

No.4

Adrian Johnson
 Stopford
 7th December
 1965
 Court Notes of
 Legal Agreement
 prior to
 Witness's
 Evidence
 (Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

Stopford and Wainberg were present.
(Proposed evidence outlined by Mr. Bowen).
On 26th August 1963 there was a letter.
(Letter from Woolbris Warehouse dated 26th
August 1963 to Stirling Henry Ltd., appearing
on p.100 of Exhibit A read). I will be
calling evidence of another conversation of
28th August 1963. It was a fairly long
discussion. (Terms of proposed evidence
outlined by Mr. Bowen). Then on 29th August
there was another letter. (Letter dated
29th August 1963 from Woolworths Ltd. to
Stirling Henry Ltd., appearing on p.101 of
Exhibit A read). There was still a
substantial demand. Then on 2nd October 1963
there was a meeting at which there was
present Mr. T. Kelly, Mr. Millist and Mr.
Withycombe, of Messrs. Walmsley Cowley &
Co., Woolworths' auditors and Messrs. Wainberg,
Stopford and Mr. Cooper and Messrs. Priestley
and Morris' representative, Stirling Henry's
auditors.

10

20

At p.103 of Exhibit A there appears the
report of all the auditors, dated 6th November
1963. (Read). (Page 106 of Exhibit A read).
(Mr. Bowen reads p.104 of Exhibit A). Then
there is a report by Priestley and Morris
dated 7th October 1963. (Page 108 of Exhibit
A read).

MR. BOWEN: I think the next is a letter of 12th
November 1963 at page 112 from Woolworths to
Stirling Henry. I should mention it was
attended by Mr. Millist for Woolworths, Mr.
Wainberg and Mr. Stopford for Stirling Henry,
the day before. Then on p.113 there is the
letter of Woolworths to Stirling Henry on the
next day. The next matter is not in the
exhibit file, Your Honour. There was a
meeting on 14th November at which were
present Mr. Millist, Mr. Wainberg and Mr.
Stopford. Mr. Millist was told Stirling
Henry were not happy with the proposition
put forward in the letter of 12th November.
Then some costs were suggested, and they
were increased by 5d. a dozen on account
of an extra week's holiday pay would have
to be included. It was mentioned that

30

40

Stirling Henry claimed the agreement existing between the two companies should be adhered to as far as supply and delivery. It was felt that the auditors having arrived at a proper costing there was a yardstick which ought to be used on that aspect as a basis for fixing prices for the future. That meeting appears to have been adjourned.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

10 Then there was a meeting with Mr. Theo Kelly, Mr. Millist of Woolworths, Mr. Wainberg and Mr. Stopford of Stirling Henry on the 14th November at a later part of the day. Mr. Kelly asked them if the proposition in the letter of the 12th instant was acceptable or not and Mr. Wainberg said as it stands it was not acceptable. He said as far as the prices they would have to assess the prices as based on the costing of their auditors plus ten per cent. and 5d. per dozen due to recent increases in cost of labour, that being the extra week's leave, and it was suggested that in the future if that be taken as a basis, with the labour or raw materials affecting the price, the price be varied. I think there was a good deal said but we need not perhaps trouble Your Honour with it at this stage. It was pointed out they were making a loss on some lines and, at the end of the discussion, Mr. Kelly said they would vary their proposition by a reshuffle of figures but the final answer would be the same. I mentioned earlier in my opening that if one line was selling at a profit, you would shift some of that profit by transferring it to some of the others and you might be able to produce a profit on every line.

20

30

40 Following that there was a letter dated 14th November 1963. (read). The next letter is that of 20th November 1963 from Stirling Henry to Woolworths. (Read). Then on 27th November 1963, at p.120, there is a letter from Mr. Kelly to Stirling Henry. (Read). Then on p.122 there is the telegram of 28th November 1963 from Stirling Henry to Mr. Kelly.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
7th December
1965

Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

There was a telephone conversation between Mr. Millist and Mr. Stopford on 29th November 1963. On p.123 there is a letter from Stirling Henry to Mr. Theo Kelly. (Read)

HIS HONOUR: Was the meeting before or after that letter?

MR. BOWEN: Before that letter, Your Honour. The letter refers to it but refers to a portion of a conversation. It was a telephone conversation, not a meeting. 10

HIS HONOUR: The letter does not refer to the fact of the lower cost?

MR. BOWEN: No. It is not referred to in the letter. The effect of the conversation was the offer had been withdrawn, they should get Woolworths to repeat the letter or write through their solicitors and suggest in any case that he could only negotiate on a lower price, 39/-, if he was negotiating.

There was a meeting on 2nd December 1963, of which I will be calling some evidence, between Mr. Millist and Mr. Stopford, and Mr. Stopford told Mr. Millist that Stirling Henry had asked him to come to see Mr. Millist firstly to see if they could come to some arrangements whereby the two companies could continue with the business of the fully-fashioned hosiery and pointed out the difference in the net price and the counter offer. (Read). Mr. Stopford's suggestion was that possibly Woolworths would be prepared to come half-way on this and Stirling Henry could bear the other half. Mr. Millist said the market price had fallen still further, 15 denier 39/- net 38/-, 61 gauge 37/-, net 36/2d., 48, 48/- net 46/10d. I take it the net is after the 2½%. He said that he had no authority to buy fully-fashioned hosiery above this price but was prepared to place the position before his Managing Director, Mr. Theo Kelly. Then there was a meeting between Mr. Kelly and Mr. Millist and Mr. Stopford on 2nd December. 20 30 40

The other meeting was at 1.30 and this second one at 2.15, and Mr. Kelly stated Mr. Millist had submitted to him a counter proposition made to him by Mr. Stopford and stated that he was unable to accept. He had made it very clear that he emphatically stated that the offer in the last letter was final and he had felt that he had gone further than he should have gone to enable Stirling Henry's to continue to manufacture fully-fashioned hosiery without loss. He did not consider there was any moral or legal obligation from Woolworths to Stirling Henry. Mr. Stopford pointed out there was an agreement in existence and subsequently confirmed by letter of 13th August 1963. The prices were considerably lower. Mr. Kelly said the position stated by him was definitely final as far as Woolworths was concerned.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

10

20

When there is the letter of 9th December 1963.

HIS HONOUR: That is from the solicitor. I suppose it is mainly recapitulation. I think we can leave that one.

30

40

MR. BOWEN: On the last page (129) perhaps the last two paragraphs I might refer to. (Read). At p.130 there is a bit of information about current orders which still had to be worked out. I do not think anything turns on it; one from the bulk store, Victoria, on p.131. Then on p.132 there is a telegram from Stirling Henry to Mr. Kelly, Woolworths. (Read). On p.133 there is the letter from Stirling Henrys to Woolworths confirming that telegram and on p.134 there is a letter from Stephen Jaques & Stephen of December 12th. It answers the other Solicitor's letter and in the third paragraph, on the first page it says "Notwithstanding these commitments, our client would be prepared, in the spirit of the letters to your client, to purchase the five thousand dozen stockings referred to on page 5 of your letter. This offer is to purchase for delivery in February at prices equivalent to those which it is now paying to other suppliers. Please let us know immediately whether your client accepts this offer, as it

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
7th December
1965
Court Notes of
Legal Agreement
prior to
Witness's
Evidence
(Continued)

is made in an endeavour to assist your client and must not be taken in any way as an admission of any obligation or liability on the part of our client." Then on p.136 - (Read).

There was an unwinding of some of the current orders and a talking over of some stocks on that basis, but the staff were lost at that stage and the mill closed down, and has remained closed down.

10

On the question of the loss or damage suffered, perhaps I could just make some general remarks at this stage: It would depend to some extent on the basis upon which liability, assuming it to be held, is found, whether, for example, it was thought, taking a figure of 3 or 4 years over which the machinery would still be required to be written off, that would be a material factor in determining reasonable notice, whatever that period was. One basis upon which I would be offering evidence would be on a net profit basis over the period of reasonable notice and that profit will be calculated on endeavouring to project forward all information of what would have been a fair profit over that period, plus what I think insurance people sometimes call standing charges, that is to say the depreciation and rates and insurance during that period will be charges which would go on and could not be got rid of even when the thing has been closed down, and I will be offering some evidence along that line. As a check against that, it is proposed to offer some evidence based on a notion of trading with a profit mark-up on the costs arrived at in the auditor's sheets, that is to say having a look at it from the basis that if you took those costs and put a mark-up on it, what would that produce projected over the period of notice? But I do not think it is necessary to go into detail into that aspect of the matter in opening. Perhaps it is rather more a matter of accountancy.

20

30

40

There would be a few documents in that file

that I have not actually taken Your Honour to directly but I think probably my learned friend or myself could call Your Honour's attention to them.

In the Supreme Court of New South Wales

HIS HONOUR: I will read them in any event.

Plaintiff's Evidence

MR. BOWEN: I think at this stage that would give Your Honour the general picture of the course of the events and I would proceed to go on to oral evidence, and I call Mr. Stopford.

No.4

Adrian Johnson Stopford 7th December 1965

10

Court Notes of Legal Agreement prior to Witness's Evidence (Continued)

Adrian Johnson STOPFORD SWORN.

Adrian Johnson Stopford 7th December 1965 Examination

MR. MEARES: Before this witness is examined, I have and would ask leave to stay in Court, Mr. Cooper as the company's representative. He is selected on the basis, I should imagine, that he would have had more dealings than any other employee in the company, and I do not know whether it was necessary for me to make that application since there has not been an order for witnesses.

20

HIS HONOUR: There has not been an order for witnesses.

MR. MEARES: But I do observe that Mr. Wainberg is in Court and, if Mr. Wainberg is going to give evidence, since undoubtedly if that be the case, substantially the evidence given by this witness will relate to matters which Mr. Wainberg could give evidence as to, I suggest that he should not be in the Court.

30

HIS HONOUR: What about Mr. Cooper? Any objection to his remaining?

MR. BOWEN: Your Honour, I would be inclined to agree that both these witnesses would have been

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
7th December
1965
Examination
(Continued)

at these conversations, Mr. Wainberg and Mr. Cooper, and Mr. Cooper is not an executive of my learned friend's company. I think they both should go out, really, if the question be raised.

HIS HONOUR: There should be somebody to take the place of the defendant who, by tradition, is permitted to remain in court. I am not impressed by an order for witnesses. It does not keep the witness in court 24 hours a day. 10

MR. BOWEN: There is this about it: The area for dispute is pretty narrow. I think I will not trouble about it. If my friend wants Mr. Wainberg to leave the Court, I will ask him to go. I will not persist in my objection so far as Mr. Cooper is concerned, Your Honour.

(At this stage Mr. Wainberg left the Court)

MR. BOWEN: Q. Your full names are Adrian Johnson Stopford? A. Yes.

Q. And you live at No. 9 Nicholson Street, Balmain East? A. Yes. 20

Q. And you are merchandise manager of Stirling Henry Ltd.,? A. Yes, Sir.

Q. And you have held that position for the past - something over 13 years? A. Approximately.

Q. And I think that you joined Stirling Henry Ltd. about 17 years ago? A. Yes, Sir.

Q. And you were first of all manager of the Victorian branch? A. Yes.

Q. Then Sales manager and then merchandise manager, the position which you now occupy and have done for upwards of 13 years? A. Yes. 30

Q. Before you joined Stirling Henry I think you were in business with Sargood Bros. in 1912 in the Hosiery Dept.? A. Yes.

Q. Until you went to the first World War? A. Yes.

- Q. You returned to Sargoods in 1919 until 1923, where you remained in the Hosiery Dept. and Underwear Dept., ultimately as assistant manager; is that right? A. Yes.
- Q. And I think in 1923 you went to Golds Hosiery Mills, manufacturer of men's hosiery, 1926 manager and buyer in the Hosiery Dept., and remained in that position until 1931? A. Yes.
- 10 Q. In 1931 you went to Holeproof as sales manager, first in Melbourne, and in 1938 in Sydney, as manager as Holeproof's Sydney office? A. Yes.
- Q. You were in charge of plant manufacture, both fully-fashioned circular hosiery, and for Holeproof Mr. Wainberg used to do the dyeing for that firm and in that way you met him at that time? A. Yes.
- 20 Q. In 1940 you left Holeproof and until 1948 were with the Underwear and Hosiery Dept. of D. & W. Murray? A. Yes.
- Q. And it was in 1948 you joined Stirling Henry Ltd. as, first, Melbourne Manager, and then later moving as I have stated? A. Correct.
- Q. The business of Stirling Henry Ltd., when you joined it, was that of textile manufacturing? A. That is right.
- Q. And before May 1955 did Stirling Henry Ltd. Manufacture stockings? A. No.
- 30 Q. They did not manufacture women's stockings? A. No stockings at all.
- Q. (Ex.A shown to witness). Will you have a look at the letter of 10th May 1955, p.1. You have seen that letter before? A. I have seen that letter, yes.
- Q. And following on that letter are you able to tell us what steps were taken by the company, just in a general way? A. Following on that letter, after the interview with Mr.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
7th December
1965
Examination
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
7th December
1965
Examination
(Continued)

Wainberg, with Woolworth's representative,
Mr. Wilson, Mr. Wainberg spoke to me with
reference to the manufacture of hosiery.

- Q. Do not tell us what Mr. Wainberg told you,
but what action did the company take as
regards plant and machinery or building, or
anything like that? A. The company took
action to obtain machinery from England
straight away and commenced negotiations for
a building to house that machinery. 10
- Q. And they subsequently went on and erected the
building? A. That is correct.
- Q. And then they subsequently obtained the machines
from England? A. They did.
- Q. And, just shortly, what machines did they get?
A. They got four header fully-fashioned machinery
from Mella Bromley.
- Q. How many? A. They came in in batches of six,
24 in the first issue.
- Q. Look at p.5 of Ex.A. There is the agreement of 20
30th November 1955. I think you are familiar
with that agreement under which Woolworths were
going to lend £45,000? A. £45,000. I am
familiar with that, yes.
- Q. And, following on the making of that agreement,
what action did the company take? A. The
company ordered further machinery from England.
(Objected to.)
- MR. MEARES: If they ordered it, it depends, I
suppose, on some document? 30
- HIS HONOUR: I imagine it would, but does that
make it inadmissible.
- MR. MEARES: Yes, I submit, without any question.
If there is an order or something, then the only
evidence that can be given consistent with the
order is to produce the document. I am not here
to take technical objections but I am mildly
interested, if I can put it that way, as to
this advance of £45,000, as to when the first

24 and the second 24 machines - I think that was the totality - were in fact ordered.

HIS HONOUR: Can you give the precise date?

MR. BOWEN: I can give the dates of deliveries. These are in the admitted portions. As to the dates of the orders, that would have to be obtained.

MR. MEARES: I will accept this from my friend, if he gets them, but as long as he checks.

10 MR. BOWEN: Q. What happened, did you get any machinery from England? Did any arrive to you, or not? A. Yes.

Q. And what happened to it?

HIS HONOUR: I am not upholding Mr. Neares's objection.

MR. BOWEN: I was only trying to get a bit of background, Your Honour.

WITNESS: There were a further twelve machines came.

20 MR. BOWEN: A further twelve machines? A. Yes. At a later date, another twelve on top of them came in, making a total altogether of 48 machines.

Q. Can you recall what happened with those? Did they go into production or what happened to them? A. They came in in batches of six and were put into operation as soon as each six had been erected.

30 Q. Then would you just tell us what staff is necessary to operate the hosiery mill? Then, at that time, what staff did you have to get together? A. We had to get together knitters, one knitter for six machines, and I could not at the moment tell you the exact number of mechanics, and then in the finishing end, where you have to have the seamers, pre-boarders, pressers, dyeing, grading, pairing and boxing, I could not give you the actual number of those employees that were required.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
7th December
1965
Examination
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
7th December
1965
Examination
(Continued)

- Q. But you had to gather those classes of employees? A. I had to gather all those classes of employees.
- Q. And you did that and when would you say you were in full production with all 48 machines? At what time? A. I would have to check that but it would be somewhere, I would think, late in 1957.
- Q. For the initial period you were the merchandise manager and you therefore dealt with the question of the contracts for the sale of the stockings; is that right? A. I did. 10
- Q. And the price specified in that letter of 10th May 1955 which I showed you was initially 71/- per dozen for 30 denier and 79/- for 15 denier, 60 gauge, with a reduction suggested after six months. In fact, what was done? A. The first prices that were charged were in accordance with this letter of 71/- and 79/- but, some date later - I could not say for certain when but I could get the actual date - negotiations were entered into and prices came down not quite as much, due to the fact - (Objected to). 20
- MR. MEARES: I have here, if it is any assistance to my learned friend and the Court, our records showing when prices changed, right from the commencement until the end, and I have had it done in the dozen form and if my friend, after having a look at it, agrees with it, it might save us both a lot of time. 30
- HIS HONOUR: You might consider that, Mr. Bowen, during the adjournment
- MR. BOWEN: Yes, I will consider it.
- HIS HONOUR: If we can have the precise evidence, then imprecise evidence would not assist.
- MR. BOWEN: In fact, in the details in the correspondence, I have pinpointed most of them.
- HIS HONOUR: I think Mr. Meares is at least implying not completely. 40

MR. BOWEN: That may be the suggestion, Your Honour. I was just trying to develop the course of events, more in a quick and narrative form rather than out of the mouth of this witness, the precise dates.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
7th December
1965
Examination
(Continued)

- 10 Q. Would you look at p.92 of Ex.A. Is there a letter on p.91 dated 1st August 1962 from Stirling Henry to Woolworths saying "It attaches the sheet which is self-explanatory"? That is a letter which you wrote and signed to Woolworths, is it? A. It is.
- Q. And did you prepare the list of dates and changes of prices and other information on the attached sheet? A. I did.
- Q. And does that set out correctly the various changes from time to time? A. It sets out the correct changes in price, yes.
- Q. In price from time to time? A. Yes, in price.
- 20 Q. From the start of production up to January 1963? A. Correct.
- Q. You will notice on that sheet that mesh figures start in June 1961? A. Yes.
- Q. Could you just explain why don't they appear before that date? A. Prior to that we were making 15 denier on 60 gauge machines and 30 denier, which is Captivation, on the 51 gauge machine, and Woolworths informed us that they - (Objected to)
- 30 Q. There was a conversation? A. A conversation.
- Q. Do not tell us what it was about at the moment. Were you present at those discussions? A. I was present at those discussions.
- Q. Can you tell us when they took place, about the mesh? A. I would have to refer to the file.
- Q. Leave them for the moment, and tell us what happened and when. I will ask you about those conversations later. A. I could not

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
7th December
1965
Examination
(Continued)

give you when, the date, until I referred to the notes, because I could not be expected to remember the dates of all these conversations but we were asked to -

- Q. Do not give us the conversation yet. Just tell us what you did. A. We made mesh on some of the machines that we were making Captivation on.
- Q. On the Captivation machines? A. That is correct. 10
- Q. They were 51 gauge? A. They were 51 gauge.
- Q. Before you could make mesh, what had to be done to those machines? A. They had to be altered and different parts used for the manufacture of mesh.
- Q. Did you have all or some or none of these necessary parts here? A. We had some necessary parts here and we had to secure extra parts from England.
- Q. To convert in order to make mesh? A. To convert the machines in order to make mesh. 20
- Q. You have told us these were price changes from the time you first started production. Can you also tell us whether you sold all your production to Woolworths Ltd. or whether you were selling to other buyers? A. We sold all our production to Woolworths.
- Q. I want you, if you would not mind, to tell us what is denier and what is gauge? A. Denier is the thickness of the yard. 15 denier is finer yarn. 30 denier would be approximately twice the density and as the denier increases in number so it increases in weight. Gauge is the gauge of the machine and 51 gauge is equivalent to 51 needles to every two inch; 60 gauge is equivalent to 60 needles for every two inch. On the 60 gauge we get a much finer stocking than you do on a 51 gauge. 30
- Q. As you produced and sold to Woolworths, what 40

happened regarding colour and size and that type of thing, with your orders? A. We received orders from Woolworths giving us the colours and the sizes required and the quantities required in each colour and size.

Q. All this related to the contracts which had been placed? A. They were portion of the contracts that had been placed.

Q. Which were current? A. Yes.

10 Q. These contracts being for periods from time to time? A. Correct.

Q. In the first instance, what was done about packages? Were they charged for, or were they inclusive? Was the price inclusive of that? A. May I ask a question? Packaging - do you mean outside packaging or the normal packaging of the stockings themselves? They are packed in envelopes and then in small boxes and then they go into cartons, the whole of which is called packaging. The envelopes and boxes were secured by us and paid for by us, the cartons were secured and paid for by us and we charged the cartons to Woolworths.

20

HIS HONOUR: Q. How many packets in a carton? A. Approximately 40 dozen stockings. They were packed in half dozen boxes, Your Honor.

MR. BOWEN: Q. And in the initial period there was no question of 2½%? A. Terms were net, 7 days.

30 Q. There is another phrase that is used occasionally of "transfer" in relation to stockings? What does that mean? A. Transfer is a paper transfer that you put on the welt of the stocking by hot iron, which indicates the size and the maker's number and the gauge of the stocking. This is so you can see it through the cellophane or polythene bag, whichever it is enclosed in.

Q. And these names that were put on - Fairy Web and Captivation - could you just indicate to what they applied and how they came about? A. Fairy Web and Captivation were Woolworth's names, and the design of the envelopes for

40

In the Supreme Court of New South Wales

Plaintiff's Evidence

No.4

Adrian Johnson
Stopford
7th December
1965
Examination
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
7th December
1965
Examination
(Continued)

those names were supplied to us by Woolworths.

Q. Both Fairy Web and Captivation? A. Both Fairy Web and Captivation.

Q. Could you tell us the order of events in producing a stocking. It is first the knitting, and then up to delivery to Woolworths. A. There are four heads on a machine and the fully-fashioned stocking is knitted flat - it is not circular - and the machine is adjusted to narrow the stocking down at the calf, which gives it the name of fully-fashioned, and comes down and narrows again at the heel of the foot, and shapes the foot. The stocking is then finished off and it goes through for inspection first and then it is seamed. It has to be seamed right through.

10

Q. When is that seam put on? A. After the knitting. Knitting has a separate section, the finishing section, and then it goes for pre-boarding, for dyeing.

20

Q. Pre-board? A. Yes. Nylon hosiery has to be pre-boarded.

Q. What does that mean? A. Nylon is set. It is more or less a setting process. It is applicable to nylon and not applicable to pure silk. And then it is dyed, dried and pressed again, it goes through then for examination, grading. By grading you have to see that the stockings, when they are graded and paired to the right length, that the height of the heel in both stockings is the same, otherwise in a pair of stockings you would have a woman walking along with one heel at the back higher than the other; that is the reinforcement of the heel. From there it goes for boxing - I should say for packing in envelopes and then into boxing.

30

Q. I want to ask you about mediums. What is this phrase used for? A. Mediums are stockings that have some slight flaw in them that does not appear in the panel of the stocking and they, therefore, have some slight flaw. There might have to be a little mend in the toe or the foot or in the welt. Though no flaw appears in the panel of the stockings,

40

you make a grading of mediums and they are sold at lower prices because they cannot be sold as first quality.

In the Supreme
Court of New
South Wales

Q. When you say the panel, you mean the part that shows? A. No. The panel of the stocking is the full nylon part of the stocking minus the welt and the reinforced foot and heel.

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
7th December
1965
Examination
(Continued)

10

Q. With mediums, you would always get some mediums in a run of production, or what is the general position? A. Well, you must always get some mediums in the run of production. It would be a manufacturer's wish and godsend if they could get production without any mediums.

Q. This applies to all manufacturers, does it? A. It applies to all manufacturers.

20

Q. There is a reference from time to time to seamless, competing with fully-fashioned seamed. Could you just give us an indication of the difference? A. Seamless are made on a different type of machine. It is a cylinder. They are knitted in circular form like a stove-pipe. There is actually no narrowing in them. They are pre-boarded and the nylon are pressed into shape.

Q. They are pressed at that stage into shape? A. Yes.

30

Q. If you buy machinery and equipment for fully-fashioned seamed stockings, can this machinery be converted to make seamless stockings? A. No. Only by boiling it down for scrap and re-building from scrap.

(Further hearing adjourned until 10 a.m.
on Wednesday, 8th December, 1965)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

ADRIAN JOHNSON STOPFORD

Sworn previously - on former oath:

MR. BOWEN: Q. You appreciate you are on your former oath? A. Yes.

Q. Would you tell us who, during the period from 1955 onwards, have been the main manufacturers of stockings in Australia? A. It would be Hilton, Holeproof, Prestige, Beaumonde, Kayser, Kolotex, and a number of smaller ones.

Q. And these manufacturers - we have seen that Stirling Henry Limited was tied by the agreements in evidence to Woolworths? A. Yes. 10

Q. As regards the other manufacturers, did they have proprietary lines, or what did they do? A. They had proprietary lines as well as supplying other styles.

Q. And the proprietary lines, how would they be put out in the trade? A. Proprietary lines would be marketed through the different stores under the manufacturer's own name. 20

Q. It might be through Myers or David Jones? A. They are the main departmental stores in the city and country and suburbs.

Q. As far as, say, Woolworths and Coles were concerned, what is the practice throughout this period, that they would stock some proprietary lines? A. They did have proprietary lines on their counters, yes.

Q. But apart from that, you told us yesterday that the Fairyweb and Captivation were Woolworth's own names? A. Own names. 30

Q. And what was the position as regards the main manufacturers during this period in respect of, say, Woolworths selling stockings under a Woolworths' name; were they in this trade at all or outside it, or what was the position? A. I would say that they would supply Woolworths under their Woolworths' brand, if they had stock available.

Q. That is to say, surplus to their proprietary line? (objected to)

In the Supreme
Court of New
South Wales

Q. There is a phrase that is used in some places called averaging; could you tell us what that is in relation to manufacture of silk stockings? A. Well, averaging would be to enable a manufacturer - (objected to).

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

10 MR. MEARES: As I understand my learned friend's opening, there was an obligation upon Woolworths to pay for these stockings a price which my learned friend says is equated on a consideration of three factors, as I understood him, first of all profit to Stirling Henry -

MR. BOWEN: That is one of the factors. I do not think I put that firstly.

20 MR. MEARES: Secondly the mark-up to Woolworths and thirdly the market price. I submit, with respect, this question as to averaging has little to do with any of those three aspects, unless it is led on the question of market price.

HIS HONOUR: I think it is being asked of him as an expert to explain a technical term used in the silk stocking industry. You are giving the question too much importance.

30 MR. MEARES: I may be and I may not be, but, with respect, we have no need to go into technical terms unless they are relevant.

HIS HONOUR: I will admit it; if it is irrelevant I will ignore it. I think it may be relevant.

40 MR. BOWEN: Q. Would you tell us in this trade what is meant by averaging? A. The term averaging price is generally considered when a manufacturer sells a portion of his production at normal full price and he has a surplus of production, that he either has to discontinue manufacturing after that or sell at a lower price, and by taking the quantities that are

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

sold at a lower price with the quantity sold at a higher price, he gets an average price for a certain type of stocking. And if you do not have a full production of 100%, well, your overhead, it has to be portion of that production you are making. Whereas, if you have full production then your overhead is pretty evenly - it maintains your profit rate on that portion of your production that you are selling at full price. 10

- Q. By carrying some of the overhead? A. Yes.
- Q. There were, from time to time, meetings between representatives of Woolworths and Stirling Henry to fix prices for the period looking forward? A. Yes.
- Q. Whether it was originally 12 months then six months, I think you had quarterly meetings to fix it at three-monthly periods in the latter part of this period? A. That is correct.
- Q. Now who would ordinarily be present at those meetings to fix prices? A. Firstly, Mr. Cooper from Woolworths. 20
- Q. And you from Stirling Henry Limited? A. From Stirling Henry Limited, and then if there was anything more contentious that we could not arrange, other people from the companies came in. Mr. Wainberg would be brought in and latterly Mr. Miller, Mr. Millist and Mr. Kelly from Woolworths.
- Q. I want to take you to the period 15th March 1961; do you recall there was a meeting of this type around about that time? A. We had a number of meetings around about that time. 30
- Q. You have difficulty in giving precise dates of precise meetings from your own unaided recollection at this time? A. I would not say my memory would be reliable now, to go back four or five years and say exactly what took place.
- Q. Did you make any note of what took place at these meetings? A. I did make a note of 40

what took place at these meetings.

- Q. What procedure did you follow? A. On prices, I made rough notes at the time.
- Q. At the time of the discussion? A. At the time of the discussion.
- Q. You jotted those down? A. And if there was some more important point. I thought was more important, I would make a short note of that and as soon as possible after the meeting, I wrote a report of the meeting more fully, setting the prices and the different points that occurred at that meeting out.
- Q. And in the main those you wrote out in your own hand? A. I wrote out in my hand. On a couple of occasions I dictated them.
- Q. On a few occasions, I think you came in and dictated notes and they were typed? A. Yes, I did.
- 20 Q. After the notes were completed, I think you followed a practice of reading them over and signing them, did you? A. I read them in conjunction with my managing director.
- Q. Where he had been present? A. Where he had been present.
- Q. Where he had been present, you also got Mr. Wainberg to read them over for his recollection of what took place at the meeting? A. Yes.
- 30 Q. And he signed them, too? A. He signed them as well.
- Q. Do you have these notes? A. I have not got the notes, no.
- Q. They are here. (produced) You told us you made them when you returned to the office; could you tell us a little more precisely how this would occur? A. Well, if there was sufficient time when I returned to the office, I made a note the same day. If not, the first available occasion, the next day.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

- Q. If you got back from long, extended meetings in the late afternoon, it might be the next day? A. Well, some of the meetings occurred in the afternoon.
- Q. And if it was on a Friday, sometimes the note may have been made on Monday? A. Made on Monday.
- Q. Have you in front of you the record you made of the meeting of 15th March 1961, recorded in the way you have described; do you have that there? A. Yes, I have it. 10
- Q. Can you tell us to the best of your recollection, refreshed by that note you made, who was present and what took place at the meeting? A. At the meeting, there was Mr. Miller from woolworths, Mr. Wainberg and myself from Stirling Henry.
- Q. What was Mr. Miller's position? A. I think his official position would be Merchandise Controller. I think he was Merchandise Controller, Mr. Miller. Mr. Miller stated that Mr. Kelly said that it was his opinion that there was no obligation over six months; it was limited to six months, any obligation of either company. 20
- Q. Mr. Miller said that at the meeting? A. Mr. Miller said that, which was not received by us at all - (objected to)
- Q. Could you tell us what was said? A. Mr. Wainberg said that he denied that point emphatically. 30
- Q. And what was said then; you can refer to your notes? A. Mr. Miller said that future purchases were to be made at regular market value and these values to be assessed at the prices Woolworths were able to purchase regular merchandise and not based on clearance or job prices. And then the discussion on prices took place and the prices were fixed from 30th September to the end of March 1962. No prices were fixed up to the end of September, first of all, and then from 40

September to March 1962, and the proposed prices from 1st April, new prices from 1st April 1962.

In the Supreme
Court of New
South Wales

Q. Were also fixed? A. Were also fixed.

Plaintiff's
Evidence

Q. What were those prices? A. The price until 30th September 1961, that is for the three months July, August and September, would be 60/2d. for Fairyweb and 60/- for Captivation, and from 1st September 1961 to 31st March 1962, both lines were to be 58/6d.

No.4

Adrian Johnson
Stopford
8th December
1965

10

Q. That probably ought to be 1st October, oughtn't it? A. I think you are right. I think it should be 1st October. And then from 1st April 1962, both lines were fixed at the same price of 58/6d., but there was an alteration in the price for mediums.

Examination
(Continued)

Q. That is from 1st April 1962? A. Yes.

20

Q. No end date specified? A. No end date specified. It was mentioned that if necessary that price would have to be reviewed again.

Q. What was the price? A. 56/6d. That was an alteration of 2/-d.

30

Q. What occurred after that? A. Then the discussion took place on the quantity that we were producing, and Mr. Miller stated that there would not be any difficulty in Woolworths taking the total production of 15 denier over this period as their requirements may not be quite the same as the previous year, that we may have to stockpile portion of these goods until they called for them. The stockpile could be of approximately 10 weeks' duration. Then as regards 30 denier Captivation at the present rate of consumption by Woolworths, he considered that they could take our full production anyhow but any falling off of Woolworths' sales would mean a slight alteration in the number of dozens produced, and if necessary we may have to stockpile some 30 denier in the same manner as was suggested for 15 denier.

40

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

- Q. What else? A. Then Mr. Miller said that he would prepare a plan showing an estimate of what Woolworths' forward drawings would be, and of course it was arranged then that they would supply the necessary details covering sizes and colours so that we could have an uninterrupted flow of production.
- Q. Then I think there were further meetings; on 24th March 1961 there was one, was there not? A. That was a Friday, 24th March. 10
- Q. Have you got a record of that? A. I have a record of that.
- Q. Are you able to tell from your record when you made it? A. I made the record of this one on the Monday morning, for the simple reason that it was held fairly late that Friday afternoon, and in a lot of these cases you got home very late for meals and put it off till the next day.
- Q. Can you tell us who was present and what happened at that meeting? A. Mr. Miller and Mr. Cooper from Woolworths, and Mr. Wainberg and myself from Stirling Henry Limited. 20
- Q. What happened; what was discussed? A. The Fairyweb 60 gauge was again mentioned, and stated that full production could be consumed by Woolworths, but also that stockpiling would be necessary for a period of eight to ten weeks. Then the question of 30 denier Captivation cropped up, and Mr. Miller stated that they considered that the approximately 750 dozen weekly that we were producing was considered too high and the yearly surplus over and above what they estimated their requirements would be was 12,000 dozen, and Mr. Miller said they would not purchase Captivation hosiery from any other supplier until they had absorbed any possible production of Stirling Henry. Then the discussion came on the estimated surplus of 12,000 dozen, and it was suggested that 6,000 dozen of this could be taken under the Famous Maker brand and at a price of 51/6d. and the balance of 40

6000 dozen could be taken in mesh, and we agreed to arrange conversion of a certain number of machines to make mesh hosiery, and we had to purchase further parts for this conversion.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

Q. How many machines? A. Six machines.

Q. Was there anything else dealt with then?
A. Only the price of Famous Maker was stated at 51/6d.

10 Q. Well, that is lower than the price which had been fixed for 30 denier Captivation?
A. It was lower than the price which had been fixed for 30 denier Captivation and lower than the price which had been fixed for 15 denier. Famous Maker was a 15 denier stocking, which would be made on 51 gauge machine.

20 Q. And is Famous Maker Woolworths' name or your name, or what? A. It is Woolworths' name.

Q. What about the price for mesh? A. The price for mesh was given at 65/-d.

Q. Anything else said? A. Only that the price for mesh mediums was to be arranged.

Q. And was there any other comment on prices made?
A. Not at that meeting.

30 Q. Would you just look at your record there. (Witness refers to notes). Not prices in figures? A. I thought you were referring to the figures. It said the prices were subject to market prices ruling for regular supplies. I thought you referred to figures.

Q. There was nothing else said at that meeting?
A. No.

Q. Then there was a meeting on 8th April 1961?
A. Yes.

Q. And you have a record of that? A. I have a record of that.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

- Q. Will you tell us who was present and what was said? A. Mr. Fleming from Woolworths was present, and Mr. Wainberg and myself.
- Q. What was Mr. Fleming's position - he was a director, wasn't he? A. No. They had so many changes there that at different times it was hard to keep up with them, sometimes. He was Merchandise Manager of the Softgoods Section, I think of the Textiles. I would not like to be quoted as to what his official position was at that exact moment. 10
- Q. That was your impression, was it? A. Yes.
- Q. And what was said at that meeting? A. Mr. Fleming said that he wanted to confirm remarks made by Mr. Miller, that as far as Woolworths were concerned there was no moral obligation to Stirling Henry as regards purchase of hosiery.
- Q. But there was no moral obligation? A. No moral obligation, and that any alteration in trading problems would be met by six months' notice to be given by either party. 20
- Q. What else was said? A. Naturally, there was disagreement. We disagreed. Mr. Wainberg said that six months' notice, at any rate, would be an insufficient time, that under the present conditions in the trade it would take at least three years to build up a clientele to absorb the production of Stirling Henry. Mr. Wainberg suggested that perhaps Woolworths would like Stirling Henry to sell some of their production elsewhere, but this remark was ignored. 30
- Q. What, to other customers? A. To other customers, yes.
- Q. What reply was made to that? A. Mr. Fleming stated there was no intention of Woolworths, on Woolworths' part to make any alteration. He considered that production could be 40

absorbed and would be taken as long as the demand continued, providing that the goods were delivered on the required dates appearing on their official order.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

- 10 Q. What was said then? A. Then Mr. Fleming requested - we had an order for 3,000 dozen Famous Maker brand - and he asked that the delivery date be delayed. The orders were given for May delivery, and four to six weeks delay was requested. The official orders we had with us, and they were produced and the alterations were made on the orders.
- Q. On those orders, as he asked? A. Yes.
- 20 Q. Anything else at that meeting? A. Mr. Wainberg then raised the point of the storage of these goods that had to be stock piled, and Mr. Fleming said that he would see if delivery could be accepted in their warehouse providing that invoices were dated according to the delivery requested on their official order.
- Q. And that finished on that point? A. Yes.
- Q. Then I think there was a meeting of 7th June 1961? A. Yes.
- Q. Do you have a record of that? A. Yes.
- 30 Q. Who was present and what was said? A. The same three, Mr. Fleming, Mr. Wainberg and myself. Mr. Fleming opened again by saying that Woolworths' obligation was limited to six months and was only a moral one.
- 40 Q. What was the reaction to that? A. Well, the same reaction as previously. We disagreed on it. Then the production, this was given as 1250 dozen 60-gauge, and Mr. Fleming considered that the production of 60-gauge, 1,250 dozen weekly could be absorbed, but remarked that stockpiling was necessary over a period of approximately eight to ten weeks. 51 gauge production probably 750 weekly, and Mr. Fleming said Woolworths would purchase their total requirements of 30 denier from Stirling

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

Henry but this would not consume the total production, and again that the surplus of 12,000 dozen was estimated to be surplus. It was absorbed in the same manner, the Famous Maker brand, 6,000 dozen at 51/6d. and 6,000 dozen of mesh stockings at 65/-d.

- Q. Was there anything said after on this question of mesh? A. It was stated about the mesh that the parts for the conversion of the six machines were to be ordered and to be flown out. 10
- Q. From where? A. From England.
- Q. And anything else? A. Production details were to be given, roughly, size and colour, so that there would be no interruption to production, then it was stated about prices that they would be arranged regularly according to market prices ruling for regular supplies and not subject to job or special purchases. Then Mr. Fleming said that any alteration to existing arrangements could be made by six months' notice to be given by either party, and Mr. Wainberg objected again. 20
- Q. What did he say? A. As it would take, under present conditions, three years to secure a clientele to absorb production -
- Q. It was almost a repeat performance? A. Mr. Wainberg then suggested that we should endeavour to sell a portion of the production and Woolworths to take the balance, but Mr. Fleming disagreed with this. 30
- Q. Anything else? A. Then Mr. Fleming stated it was not Woolworths' intention to make any alteration, he considered that production could be absorbed and would be taken as long as the demand continued, goods to be delivered to the required dates appearing on the official orders. Mr. Wainberg again raised the question of deliveries and Mr. Fleming said he would investigate to see whether delivery could be accepted providing the invoices were dated according 40

to the deliveries on the orders.

Q. I think the next meeting was 14th June; do you have a record of that? A. 14th June, that is correct.

Q. Who was present and what was said? A. Mr. Kelly and Mr. Fleming were present from Woolworths, and Mr. Wainberg and myself from Stirling Henry.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

10 Q. That is Mr. Kelly, the Managing Director?
A. Mr. Kelly, the Managing Director. Mr. Kelly opened the meeting. Mr. Kelly stated there was no legal obligation on Woolworths' side and if we disagreed on this point that it would have to be settled before any further negotiations would be entered into. He did consider that there was an ethical obligation up to 50,000 dozen. Mr. Wainberg replied to that, that he did not know if there was any legal obligation, as he had not
20 sought any advice on the point. Mr. Kelly then said he had read the summary notes that Mr. Wainberg had handed to Mr. Miller on June 13th. He also was reading a document at the moment, and Mr. Wainberg asked him what this document was. Mr. Kelly said it was a copy of Mr. Willson's letter from Stirling Henry, that is a letter of 10th May 1955, and he also mentioned that he had spoken to Mr. Wilson on the subject.

30 Q. Of that letter? A. Yes.

Q. What was said then? A. Mr. Kelly said that he did not consider that we should continue to work two full shifts when other factories were partly closed down. Well, there was a long talk on that, and economical production is only possible by full production.

40 Q. Right throughout there were two shifts of how long each? A. Two 12-hour shifts in the knitting section; the finishing section covered the two shifts production in one shift.

HIS HONOUR: Q. One 12-hour shift? A. No, one eight hour shift, with actually a little overtime if we got into a bit of a back log.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

- MR. BOWEN: Q. In the finishing section?
A. Mr. Kelly stated the prices would be reviewed every six months to arrange a correct market price, and it was stated that Woolworths would place orders for six months' requirements and as long as demand existed would absorb the full production, and it was said that Woolworths would give full consideration to purchasing any excess stocks at special prices. 10
- Q. What is that? A. If they did not take the full production at regular prices, we would have the opportunity of having consideration of the excess stock being bought at special prices, and Mr. Kelly said Stirling Henrys had the right to offer production over the 50,000 dozen annually to any other client. He also said they would absorb production up to December 1961, and he considered they should have better prices from us on account of our working full time. 20
- Q. That is two shifts? A. That is two shifts. He mentioned that they had been offered up to 40,000 dozen at 45/6d. due to the depressed state of the trade.
- Q. Were any details given as to the type of stocking? A. Not at that time, but it was taken to be against 15 denier stockings.
- Q. I think the next meeting was on 28th June, wasn't it? A. Yes, 28th June. 30
- Q. Have you made a record of that? A. Yes. At that meeting Mr. Miller and Mr. Cooper were there from Woolworths and Mr. Wainberg and myself from Stirling Henry. Mr. Miller gave us the estimated requirements of Woolworths to the end of December 1961, which were to be mesh 4,850 dozen, Fairyweb, that is 15 denier 60 gauge; 15,000 dozen Captivation, 51 gauge, 30 denier 8,000 dozen Famous Maker, 51 gauge 15 denier, 3000 dozen and a further quantity of Famous Maker of 4,000 dozen, 51 gauge 15 denier, which were required for their February Bonanza. 40

- Q. What is a February Bonanza? A. Well, they have sales at certain times of the season and they used to call them Bonanzas. But the latter quantity of 4000 dozen had to be made before Christmas, delivered in January, charged as February, as their goods would not be required till February, and the quantities of those requirements were in excess of any official orders we were already holding for goods.
- 10
- Q. The orders you were still holding were to stand; these were additional? A. Yes. On top of these quantities, Mr. Miller stated that it was their intention to purchase 5,300 dozen hosiery from other makers.
- Q. Did he indicate what denier that would be? A. No.
- Q. What else was said? A. The next thing was the discussion on prices, and it was stated that the official orders on hand would be at the existing rates, which were Fairyweb 60/2d., Captivation 60/-d. and Famous Maker 51/6d, that was present prices at which the existing orders which were held by us would be delivered. New prices for the period for Fairyweb were to be reduced to 56/6d., Captivation 60/-d., mesh 59/3d., Famous Maker 51/6d., and they were to be operative until 31st December 1961.
- 20
- Q. Do you recall, there had been a mention of 40,000 at 45/6d., I think? A. Yes.
- 30
- Q. 40,000 dozen at 45/6d.? A. Yes.
- Q. It was not suggested that that was the applicable price? A. Woolworths, Mr. Miller said then that they had been offered 20,000 dozen at 44/-d. and 20,000 dozen at 45/6d. and 10,000 dozen at 40/-d.
- Q. Well, those were different figures? A. They were different to the 40,000 dozen at the previous meeting, at 45/6d.
- 40
- Q. Mr. Miller said that, did he? A. Yes.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965

Examination
(Continued)

- Q. Did he indicate what gauge those were or what denier? A. It was taken that they were 15 denier.
- Q. And what was said about them? A. Then Mr. Wainberg objected to the purchase of goods from other makers until Stirling Henry's production was absorbed, and said he considered Stirling Henry should have the first refusal to meet special offers. We were then offered 4,000 dozen at a special price of 44/-d., and we accepted that quantity. 10
- Q. 4,000 dozen at 44/-d.? A. 4,000 dozen at 44/-d. Mr. Miller said that he would prepare a contract covering the points discussed and submit them by June 30th to Mr. Wainberg.
- Q. When the prices were fixed for the period up to 31st December at Fairyweb 56/6d., Captivation 60/-d., was it suggested that the prices ought to be for all that production, 45/6d. or 44/-d.? A. No. 20
- Q. I think the next meeting which you attended was one on 9th October 1961, is that right?
- MR. MEARES: The letter of 10th July 1961, appearing on p.37 of Exhibit A, seems to be the summation of prices ultimately agreed on as a result of these numerous meetings that you have been referring to.
- MR. BOWEN: I had better go to the letter of 10th July with this witness. Could the witness have Exhibit A, or could I supply a copy of Exhibit A to the witness. (Witness shown Exhibit A). 30
- Q. You see there a letter from Woolworths Limited to Stirling Henry Limited dated 10th July 1961? A. Yes.
- Q. Would you just mind reading that to yourself for the moment? A. Yes.
- Q. Have you read that? A. Yes.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

Q. Does that record really the result of the discussions of which you have given us an account, in fixing quantities and prices?
A. It does, with the exception that the quantities have been increased. It was originally discussed, Fairyweb 15,000 dozen that was increased to 21,500 dozen; captivation 8000 dozen, is increased to 10,500 dozen. The mesh remained the same. The two lots of Famous Maker are the same. The paragraph after those quantities - (read).

10

Q. There is also a reference to "orders totalling 2175 dozen 15 denier ladderless mesh Fairyweb Tahiti tan are enclosed."
A. They were all the details, colour and size details.

Q. That is not in addition to the order? A. That is a reference to a contract that we had.

20

Q. Then there is a suggestion that on 2nd October you had your next meeting to discuss prices and requirements, is that right?
A. That is correct.

Q. I want to take you back for the moment to the last four contracts listed there, the first one is XN. T.B.A.; what does that represent - contract 6094? A. The only thing I would say that would interest us in that regard was the 15 denier 51 gauge, the quantity and the price. XN.T.B.A. is possibly their reference number. I could not answer that. All those first numbers as a rule are Woolworths' reference numbers, they have them down the page.

30

MR. MEARES: XN. is the prefix number and T.B.A. is "to be advised".

MR. BOWEN: Q. Then in the last paragraph of the letter they repeat, as you have indicated what had been said at the last one or two meetings - (objected to; withdrawn).

40

Q. Would you go to the letter of 27th July 1961, (p.46). This is a letter that you wrote in reply to the letter of the 10th, which we just referred to? A. Yes.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

- Q. You see that? A. Yes.
- Q. And you acknowledge receipt; I wonder if you could just read the last two paragraphs on the first page and then I will ask you a question. (Witness reads letter). You confirm the arrangement you made to meet on 2nd October? A. On 2nd October.
- Q. And in the last paragraph of that page you refer to being unable to secure business elsewhere in view of the past history, if that summarizes what you say in the letter? A. Yes. 10
- Q. Is what you say in that letter there correct, in accordance with the facts? A. It is correct.
- Q. You wrote this? A. I wrote it.
- Q. Would you go to the letter dated 1st August 1961. (p.48 of Exhibit A) That acknowledges the receipt of your letter, which I have just referred to; it expresses surprise? A. Yes. 20
- Q. You remember that letter? A. I remember that letter.
- Q. You wrote a reply on 9th August 1961, which you signed. (pages 49 and 50 of Exhibit A)? A. Yes.
- Q. If you read the last paragraph on the first page, you say that is correct as far as the facts stated in it are concerned? A. Yes.
- Q. And then the last paragraph sets out what you say was the position regarding the 25%? A. About the 25% 30
- Q. Do you recall the letter of 12th September? A. Yes.
- Q. That was a special order, was it? A. That was a special purchase, which was offered.
- Q. A special purchase which was offered to you

and which you had accepted? A. Had accepted.

Q. Now I think there was another meeting on 9th October 1961; do you have a record of it? A. Yes. Present at that meeting were Mr. Cooper, Mr. Wainberg and myself.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

10

Q. What took place there? A. Mr. Cooper told us that Woolworths required a line of fully-fashioned hosiery to sell at 5/11d. to meet competition from Coles. It was intended to reduce Fairyweb to this price as soon as the stock position was in order; they expected this to be early in February 1962, and Mr. Cooper stated they were able to buy 60 gauge 15 denier at 48/6d. a dozen and 51 gauge lower, at 45/6d. and 44/6d., 30 denier, 51 gauge, that is Captivation, was still available; it was available at 56/6d.

Q. He said that? A. Yes.

20

Q. What else was said? A. Mr. Cooper then stated that it was Woolworths' policy that prices would cover cartons and would be subject to 2½% cash discount.

30

Q. What was the reaction to that? A. Well, naturally, cartons and cash discounts, they mean a reduction of your profit position, and after discussion we finally agreed that cartons would not be charged, but we could not agree to the 2½% cash discount, and at that time payment was made nett 7 days and we suggested that that should be extended to nett 30 days. And then the discussion went on prices. Mr. Cooper said Woolworths were prepared to pay after the completion of the present contracts, that meant the new contracts, Fairyweb at 50/-d., Captivation at 56/6d. and mesh at 59/3d. The medium prices were also quoted at 40/- for Fairyweb, 42/- for Captivation and 44/- for mesh.

40

Q. Those are mediums? A. Yes. And then it was arranged that contracts from January to March 31st would be forwarded, and the quantity agreed upon was Fairyweb at 12,800 dozen, Captivation 6,000 dozen and Mesh 1760 dozen.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

- Q. Those prices you told us were to run on from 1st January in the same way as those quantities you have just given us run January to March 31st? A. Yes.
- Q. I do not think you stated the period for the prices? A. After the completion of the present contract, it would be for the new contract.
- Q. With no limit on the other end? A. No.
- Q. What else was said? A. And then there was the contract No. 6094 for 4000 dozen Famous Maker at 51/6d., would be satisfied by delivering 4000 dozen Fairyweb at 51/6d., delivery of that was to commence after the completion of a contract we were holding for 21,500 dozen Fairyweb. 10
- Q. That was really a substitution for a contract you already held for Famous Maker? A. That was a substitution of the 4000 dozen of a contract we held, yes. 20
- Q. What else? A. And Mr. Cooper said they would require some extra quantity of Fairyweb and Captivation for delivery up to Christmas 1961, and the quantities given were 1300 dozen Fairyweb and 3000 dozen Captivation.
- Q. And they were at what price? A. At 50/- and 56/6d.
- Q. Being the new prices? A. New prices.
- Q. A Christmas order; anything else? A. And we also said that we have a further quantity of 500 dozen mesh available. 30
- Q. I do not think I need take you to the letters that followed on that. Now, I want to take you to part of Exhibit A, the letter of 1st March 1962, which appears on p.65. Would you just look at that letter? A. Yes.
- Q. That is a letter which you wrote to Woolworths on 1st March? A. Correct.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

- Q. Do you have any record of that meeting that that refers to? A. No, there is nothing of any contentious nature. It was only fixing quantities.
- Q. I think there is a letter that follows it, at p.66 of Exhibit A, from Woolworths Limited to Stirling Henry's Limited, which confirms those quantities and also gives the prices, showing the prices were unchanged? A. That is correct.
- Q. And then if you would look at the second page of that letter, the top paragraph? A. Yes.
- Q. It reads "We are endorsing these contracts as being fully covered and feel sure you are pleased that we have exceeded the quantities contracted for and kept your mill working to maximum capacity." At this time in 1962, had there been any falling off in demand by Woolworths for the lines in total? A. No, our production was being taken up.
- Q. And what was the position onwards, 1962, 1963, until the break came; was the demand varying? A. The demand was sustained. I refer you to p.74 of Exhibit A? A. There is no page between 73 and 77.
- Q. Perhaps we could hand you another copy of Exhibit A? A. Yes. (Copy of Exhibit A handed to witness). In reply, you have stated in the third paragraph "We are indeed pleased that your sales, as you mention, exceeded our production capacity but we never doubted your selling potential which must be considerably increased by the fruits of your constant expansions, and it certainly confirms our previous contentions." You make comment on prices, which they had commented on in the letter of the 9th? A. Yes.
- Q. Can you make any comment on that, the relevance of the mark-up in the price that was arranged between the parties? A. The comment referred to their paragraph where they said in their letter of the 9th

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

March that ".....in the near future when you may have to accept the fair market price," and we pointed out that we had been offering an equitable price and we qualified that by pointing out the rate of profit that Woolworths were able to get on the prices that we were giving them in comparison with the selling prices that they were offering in their store.

- Q. In this trade it is customary for stockings to sell at 6/11, 7/11 - never at the round shilling? A. It has been the custom to sell stockings for many, many years at 2/11, 3/11, right up, always on the elevenpence, with the exception that sometimes it is 12/6d., but recently there has been a slight alteration in it. 10
- Q. Because of decimal currency being fore-shadowed? A. Prior to that. There was a 5/6d. price which formerly was not in the trade. 20
- Q. And as far as negotiating the price between manufacturer and retailer in relation to, say, 8/11, 7/11, 6/11, there were certain recognised supply prices? A. There were certain recognised supply prices that were necessary to give the retailer the profit margin that he demanded. For instance, a 5/11d. stocking would normally be purchasable at 48/- per dozen - (objected to; admitted subject to objection). 30
- Q. And what about at 6/11, 7/11? A. At 6/11 it would be purchased at approximately 56/-d.
- Q. Giving what sort of a mark up? A. 50% mark-up.
- Q. And, of course, one can negotiate a different figure from that? A. Yes, that was the recognised price for selling at those retail prices.
- MR. MEARES: I object to this evidence on the same basis. 40
- MR. BOWEN: Q. From 1955 onwards to 1963, was that

the position, or was there some earlier period you are speaking about, or what was it? A. No, it was the same except for the period when price control was on.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

Q. Would you mind looking at the letter of 3rd May 1962, which maybe the next letter in Exhibit A? A. Yes.

10 Q. That is the letter from Woolworths to Stirling Henry Limited. In the first paragraph it says "We are prepared to give you contracts....." That 48%, is there anything magic in that? A. That was the figure that Mr. Cooper said that his company asked to show, 48%. (Page 75 Exhibit A).

Q. Where you have got lld., it is not always possible to get a precise 50%, is that so? A. No, it is fractional, a tolerance.

20 Q. And then in the last paragraph "As we indicated to you our main opposition dropped the price of 15 denier mesh perfects from 7/11 to 7/6d. a pair and 15 denier plain perfects from 5/11 to 5/6d. a pair on 23rd March. If we decide to meet these prices we confirm your willingness to lower your costs immediately to permit us to maintain our mark-up margin of 48%. So far they have not dropped the price of 30 denier from 6/11 a pair, but the same will apply to this line if we have to drop the price." Do you see that? A. Yes.

30 Q. I think I would ask you first whether you had expressed the willingness to lower your costs to permit them to maintain the mark-up if that drop occurred? A. Not in the sense of expressing willingness. We would be willing to discuss the position.

40 Q. Tell me, as regards that drop that is suggested there, I think you made some check of Coles' figures? A. Yes, the mesh perfects according to our check were not reduced to 7/6d. There was some mistake as to date. We purchased at Coles and still have the invoices.

MR. BOWEN: Q. Would you look at the letter of 26th July 1962, a letter from Woolworths to Stirling

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

Henry at p.80 of Exhibit A. That fixes quantities and prices, the price for the 15 denier and 30 denier being unchanged for that period from the previous period. You have no record? A. I did not take any note of meetings because the only things that were discussed were practically quantities, ultimately confirmed by contract.

- Q. Then I take you to a letter of 2nd November 1962, which appears at p.84 of the Exhibit, a letter from Woolworths to Stirling Henry fixing quantities and the prices. You will notice the 15 denier price, which formerly was 48/9d. was down to 46/6d. The 56/-d. for the 30 denier was unchanged? A. Correct. 10
- Q. You have no record of your preliminary discussion on that occasion? A. No. It was dependent on that decrease of price of 5/6d.
- Q. The retail selling price having dropped to 5/6d. for what type of stocking? A. For the 15 denier 60 gauge. 20
- Q. As a result, the price between you and Woolworths dropped to 46/6d. What mark-up does that give? A. About 42%.
- Q. I take you to a letter of 7th March 1963, p.86. That is a letter you signed stating quantities and referring to discussion between yourself and Mr. Cooper of 13th February. You have no record of that particular discussion at all? A. No. We wrote that because at that meeting the terms were changed to 2½%, 30 days. 30
- Q. But the prices of 46/6d. and 56/-d. remained unchanged? A. Yes.
- Q. This appears in a letter of 12th March, at p.87? A. Yes.
- Q. Did you make a memorandum of a meeting on 24th July 1963? A. Yes.
- Q. Who was present? A. Mr. Cooper and myself commenced the meeting, and later I asked Mr. Wainberg to join us. 40

- Q. Can you tell us what happened? A. The reason for that was a further reduction in price mentioned of Fairyweb 15 denier 60 gauge, reduced from 46/6d. to 44/-d., and mesh from 66/6d. to 63/6d., to be effective for the contracts from October 1st. Captivation remained at 56/-d., unchanged.
- Q. That was the suggestion? A. Of Mr. Cooper.
- 10 Q. What about quantities? A. There was no discussion on quantities. They were fairly reasonable.
- Q. How many Fairyweb? A. 12000 dozen.
- Q. Captivation? A. 4000 dozen. The mesh were then 1500 dozen.
- Q. You mentioned a difference between you and Mr. Cooper developed on the prices for Fairyweb mesh. You then called in Mr. Wainberg?
A. Yes.
- 20 Q. What happened then? A. It was suggested instead of taking the whole they meet us part way. Instead of giving us 46/6d. down to 44/-d. it should be 45/3d.; and with reference to the mesh, instead of coming from 66/6d. to 63/6d. it should be 65/-d.
- 30 Q. What happened? A. Mr. Cooper was not prepared to accept our suggestion and said he would have to confer with Mr. Millist and he would advise us as near as possible by the 30th July. Then we arranged the next meeting would be held in October.
- Q. You wrote a letter of the 1st August, Exhibit A p.91, attaching a list of calculations - from Stirling Henry to Woolworths? A. Yes.
- Q. In this schedule you set forth over the period of your production and supply to Woolworths from the beginning the changes in price, changes in the retail selling price and the retail profit mark-up? A. Correct.
- Q. Then you compared that with the proposed

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

alterations suggested by Mr. Cooper and the retail mark-up which they would give? A. That is right.

- Q. Is that 56/-d. for 30 denier selling at 6/11d. 48%? A. Selling at 6/11d., it is normally looked upon as a price to show approximately 50%, but to be nearer correct we marked it approximately 48%. It is 48 point something.
- Q. That was followed by a meeting of 2nd August 1963. Did you keep a record of that? A. Yes. 10
- Q. Would you tell us who was present and what took place? A. Mr. Millist and Mr. Cooper from Woolworths and Mr. Wainberg and myself from Stirling Henry. The meeting was arranged because we had not received any word from Woolworths as regards the suggestions by Mr. Cooper and our alternative suggestions. At this meeting Mr. Wainberg pointed out how Stirling Henry prices had been regularly reduced by Woolworths since the inception of the agreement, and particularly since 1961, and that letter of the 1st August was handed to Mr. Millist showing the reduction in prices paid to Stirling Henry and at the same time increasing the profits of Woolworths. 20
- Q. That is the letter I just referred to? A. Yes. It was also pointed out that such things as terms and packing costs had been altered and they resulted in benefit to Woolworths, reducing the yield to Stirling Henry. It was mentioned originally cartons were chargeable and payment of a 7-day nett basis. Alterations had been made at different times so that cartons were now free and payment went from 7 days nett to 30 days nett and then to 2½% 7 days and finally 2½% 30 days. 30
- Q. Was anything said about market price? A. Mr. Cooper then said that due to the present condition he was being offered lower prices than they were paying Stirling Henry and he said he had been offered only last week prior to this meeting 15 denier 60 gauge at 39/6d., because the manufacturer mentioned to him that he wished to keep his plant going and so 40

10 prevent machines deteriorating through non-usage and rust. I said that the original idea was to sell to Woolworths at reasonable prices and not distressed prices. Mr. Cooper pointed out that distressed prices were possible as when manufacturers - I withdraw that. I pointed out that distressed prices were possible as when manufacturers had many outlets for their production on branded and unbranded sales which permitted them to average their selling price.

Mr. Wainberg then stated that at regular quarterly meetings with Mr. Cooper, Mr. Cooper regularly drew our attention to the alleged calling off in popularity of fully-fashioned hosiery and the fact that they could purchase elsewhere at lower prices than we were selling at.

20 We had at this time been short of final orders giving colour and size details. We had had to make many contacts with Mr. Cooper so that our production could keep on without interruption.

Q. That was pointed out to Mr. Cooper? A. Yes. We also mentioned that at that time we made a check and we had found that quite a large number of stockings on Woolworths' counters in their different stores had brands on them that were not supplied by us.

30 MR. MEARES: I do not think there will be any issue about this, that we were selling other stockings.

HIS HONOUR: We will have the evidence.

MR. BOWEN: Q. How could you tell? A. On the transverse welt of the stocking is the maker's number which is given by Woolworths to different manufacturers. Besides that, there was the gauge of the mesh and the denier and the size. The number given to the manufacturer indicates the manufacturer concerned.

40 Q. They had been taking your full production?
A. They were taking our full production at this period but orders were not coming in

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

sufficiently large enough -

- Q. In speaking of orders, what do you mean - orders were not given? A. The contracts are for total quantities. The orders give us that details of colour and size and delivery date. We have to have those orders early so that the correct size range can be knitted on the machine, and also we have to have the colours so that these goods come through and there is continuity of work in the finishing section. 10
- Q. You were saying that these orders had not been coming forward promptly and a check on their stores showed they were selling other manufacturers' lines? A. Yes.
- Q. What else was said? A. Mr. Cooper admitted that they were buying stockings elsewhere.
- Q. Anything else? A. Then Mr. Wainberg reiterated that we could not reduce the price any further than he suggested to Mr. Millist on 24th July, that it would be necessary to have a word with Mr. Kelly and let us know early this week of their decision. 20
- Q. I take you to Exhibit A, a letter of 12th August which you wrote to Woolworths. It is p.94. Do you say that you wrote that letter? A. Yes.
- Q. You are asking for these orders and suggesting the next meeting for the first week in October? A. That is right. 30
- Q. Was that written before or after the meeting you just told us about? (question withdrawn)
- Q. There was a meeting on 12th August? A. There was a meeting on 12th August, yes. At the meeting on the 12th August Mr. Millist and Mr. Cooper were present, and Mr. Wainberg and myself. At that meeting Mr. Millist said that he had changed his mind, he was only prepared to pay us what they call market prices, which according to him at the present time were: 40

15 denier Fairyweb, 41/-d.; 30 denier Captivation 48/-d.; 15 denier Mesh 48/-d. And these would take effect from 1st October 1963.

In the Supreme Court of New South Wales

Plaintiff's Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

- 10 Mr. Millist then said that if we considered that these prices were not economical he asked us to supply them with an auditor's statement of cost. Mr. Wainberg stated the prices were not acceptable and he also rejected the idea of giving Woolworths details of our internal business. Mr. Cooper then stated that his purchases and deliveries during 1963 from other mills were approximately: 15 denier, 15,000 to 18,000 dozen, and from 7000 to 8000 dozen similar lines at distressed prices Mr. Millist was going to notify us in writing within a day or so after this meeting of his suggested prices at 41/-, and 48/- for the two other lines.
- 20 Q. Those prices compared with your prices in what way? A. They were considerably lower.
- 30 Q. 30 denier Captivation 56/-d. compared with 48/-. 15 denier, Mr. Cooper's suggestion was 44/- and Mr. Millist, 41/-. For 30 denier, Mr. Cooper's price was 56/- and Mr. Millist's 48/-. For 15 denier mesh, Mr. Cooper 63/6d.; Mr. Millist 48/-d. Would you look at Exhibit A, p.95. There is a letter from Woolworths to Stirling Henry dated 13th August 1963, signed by Mr. Millist. The first part just sets out a record of Woolworths' view of the 1961 agreement. At p.2 they say "We have advised you that we wish to operate on this basis and that our assessment of the current market price of hosiery being supplied by you was -" Then they have stated those figures you have given us from the meeting put up by Mr. Millist. Then they say "In view of the fact that you intimated that in your opinion such prices were unreasonable, we put the proposition to you that if you would be prepared to supply either us, or if you prefer our auditors with an audited statement showing that our transactions over the last two or three years had been uneconomical, and that future supply at the prices indicated would be unprofitable, we would
- 40

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

undertake to review the position to ascertain what action should be taken." You were aware of that letter coming in at the time?
A. Yes. It was discussed by me.

- Q. Would you look at the reply from your company, Stirling Henry, signed by Mr. Wainberg and sent to Mr. Millist on 19th August 1963 - p.97. This refers to a problem being one of price. In the third paragraph it reads "There is, of course, no 'market' in the technical sense in this business, since all sales and purchases are made by direct negotiation between buyer and seller and the final price is affected by a whole variety of factors special to the manufacturer and his purchaser. Market price as used in your letter can only mean the reasonable price which will allow a fair profit margin to both parties."

10

Can you tell me in the nature of this business would purchasers such as Woolworths and Coles chain stores buy from wholesale houses in this field? A. No, direct from the manufacturer.

20

- Q. How long would that have been the practice - covering the period we have been talking about, 1955 to 1963, or has it changed at all?
A. No, that would be the position that they would normally buy regular supplies from manufacturers.

- Q. There is a statement here, "There is no market in the technical sense." What does that refer to? A. It refers to the fact that the manufacturer is able to average his prices and has a certain proportion of his production that he is prepared to sell at a lower price than normal to allow the production of his factory to continue at full capacity. Therefore, negotiations are made between the supplier and the purchaser which are relative to the position at that time.

30

40

- Q. To that particular manufacturer? A. Yes.
Q. What if the purchaser is buying the bulk of supplies from one manufacturer? What is the

position? A. It would depend. If he was taking the output from the manufacturer or if he was buying only the largest portion.

In the Supreme
Court of New
South Wales

Q. In the case of a tied house, is the market the same as in the case of a free house, if I may use that expression? A. No.

Plaintiff's
Evidence

No. 4

10 Q. What is the difference? A. The difference is that a tied house with one customer means he has no other market whereby to sell goods at a higher figure and has no possibility of averaging his prices.

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

MR. MEARES: Could this evidence be subject to the same objection?

HIS HONOUR: I think your objection is that it is argumentative rather than factual. It is still arguable.

20 MR. BOWEN: I thought I should get evidence in this field. There are certain authorities on this.

HIS HONOUR: I admit the evidence.

30 MR. BOWEN: Q. What were you saying? A. I say when the manufacturer is tied to one customer, has only one market, he is only able to supply and keep in production provided he is able to make a reasonable rate of profit, whereas a manufacturer who is not tied has markets where he can sell branded styles or different styles at higher prices and so average his costs.

Q. What are distressed prices? A. Distressed prices would be with a view to clearing a surplus when the manufacturer has had difficulty in disposing of them.

40 Q. Would this permit averaging? A. There could be an average, too, for the simple reason that surplus stocks would be accumulated by keeping the mill production at full capacity and selling a portion either at cost or below cost to enable the manufacturer to maintain his normal rate of profit on the balance of this production.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

Q. It would carry a part of the overhead?

A. It would carry overhead, yes.

Q. What are the factors, in your opinion, that operate to affect the market where you have a situation that one purchaser is taking the whole of one manufacturer's production?

A. The price that the retailer would require to sell the article at to give him his nominal rate of profit, at the same time to see if that price would give the supplier a reasonable 10 rate of profit also.

Q. Would the availability of other stockings from manufacturers who were not tied be a factor contributing to that price being fixed? A. Yes, it would.

Q. Can you indicate in what way that operates on price? (Objected to).

MR. MEARES: No doubt that is a statement that could be made to your Honour, but unless this witness has particular knowledge of such a case, and it has not yet been stated, I object to it. 20

MR. BOWEN: He had been fixing prices in this trade for very many years. He had been in the trade half a century. I submit I can ask him how that affects the price.

HIS HONOUR: Somewhat dubiously I will accept it subject to strong objection as being expert evidence, but it does not bind you in any way. 30

MR. BOWEN: I would still have to bring myself within a position in the legal situation.

Q. How does the availability of the stockings of a manufacturer who is not tied affect the market, if at all, between the purchaser and the manufacturer who is tied? A. It is very different to purchasing a total production and only purchasing a certain quantity that the manufacturer would be prepared to supply at a lower price. That 40

quantity would still allow him to average his costs so that he makes a reasonable profit.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

- 10 Q. Would that have any bearing, if that was known to the purchaser of the total production of the manufacturer - would that have any bearing on the price they fix between each other? A. Only the fact that notification would be given that they could buy at a lower price. They would naturally try to get the price down as much as possible.
- Q. Does it have any bearing on the retail price? A. No.
- 20 Q. Would you go to the second page of the letter of the 19th August. There is a comment there on the prices that Mr. Millist has offered - 41/-, 48/- and 48/-. The opinion is expressed that these are distressed prices, not market prices. Did you at the time consider that and did you have any view on it yourself? A. I considered that they were distressed prices, as in the case of the 15 denier mesh, 48/-, when they were being retailed at 7/11d at this time.
- 30 Q. What mark-up does that give? A. It gives them just on 100 per cent mark-up. In the case of the 30 denier, 51 gauge, 48/-, they were being retailed at 6/11d, which is just under 75 per cent. The 15 denier 60 gauge, 41/- were retailed at 5/6d and it would give them roughly 60 per cent - I am not a mathematician.
- 40 Q. There was a meeting on the 22nd August 1963. Do you have a memorandum of that? A. 22nd August, yes. At that meeting Mr. Millist and Mr. Cooper were present, Mr. Wainberg and myself. This meeting was held at our mill. Mr. Millist said he had come to discuss prices for contracts for hosiery for the period October to December 1963. This referred to the previous prices that were submitted by Mr. Cooper and were not acceptable to us. Our suggestion to the

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

meeting was halfway, and Mr. Millist's final suggestion of the 41/- for the 15 denier and 48/- for the other two lines - Mr. Millist stated that Woolworths could not continue to pay existing rates or those suggested by Mr. Cooper. They could not pay more than the market price as assessed by Woolworths, which he claimed was 41/- and for two lines at 48/-.

Mr. Wainberg claimed that these were distressed prices and not market prices, and manufacturers were able to offer these prices to maintain their production, and the same thing on account of selling portion of their production to other customers at higher prices, they were able to average their selling price and get a higher average than the prices offered to Woolworths. Mr. Wainberg stated that the latest suggested prices by Mr. Millist were not acceptable and would certainly result in a trading loss for this section.

10

20

Mr. Millist suggested then that we supply an audited statement of our profit position for this section for the past two years and an audited statement of the position based on his new suggested prices and should this latter show a loss then Woolworths would consider the position to see if slightly increased prices could be paid for these lines.

Mr. Wainberg objected strongly to the suggestion and said he would look into the matter.

30

- Q. Who said he would look into the matter?
A. Mr. Wainberg. Mr. Wainberg objected to the suggestion and Mr. Millist said he would look into the matter and contact us later.
- Q. The next meeting was held on 27th August 1963?
A. Yes.
- Q. Can you tell us who was present? A. Mr. Millist and Mr. Cooper, Wainberg and myself. Mr. Millist came to the point straight away and stated Woolworths had to buy on the best market and the prices he gave as fair market prices were the only ones he could offer for

40

the contracts, October to December 1963.

Mr. Wainberg replied that they were unacceptable to Stirling Henry and could only result in the closing down of the plant as sales at this figure would be unprofitable. He felt it was first necessary to interview Mr. Kelly.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

10 Q. This is what he said? A. Yes. Mr. Millist stated Mr. Kelly was going overseas on 29th August for a couple of weeks. We pointed out we only had a contract for one month instead of six months as arranged and as Mr. Millist stated the suggestion he made was final as far as he was concerned, it was imperative to see Mr. Kelly before he went overseas. An attempt was made then to see Mr. Kelly and an appointment was made at nine o'clock next morning, 28th August.

20 Q. Did you have a meeting at nine o'clock on 28th August? A. Yes.

Q. Who was present and what took place? A. Present at that meeting were Mr. Kelly and Mr. Millist Mr. Wainberg and myself. Mr. Kelly opened by saying that he was well aware of the past history and did not want a resume covering it. Mr. Kelly said that the original letter - that would be the letter of 10th May 1955 - was given to enable us to use it to acquire an import licence for the necessary machinery.

30 Mr. Wainberg stated this letter covered terms of the agreement made between Woolworths and Stirling Henry and was not required for import licence purposes. Mr. Wainberg also reminded Mr. Kelly that there was another document covering the particulars of an advance of money to Stirling Henry for the purchase, at Woolworths' request, of extra machinery in order that increased production could be secured to meet Woolworths' requirements.

40 Mr. Kelly mentioned that he considered the prices Mr. Millist gave were fair market prices as they were the ones Woolworths could purchase their requirements for. He also said that he would not be agreeable to

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

paying any higher prices than these as these prices were available to opposition stores.

Mr. Wainberg stated that he considered these prices were distressed prices and if accepted by us could only result in the closure of the plant.

Mr. Kelly said they had never been responsible for any manufacturers closing down on account of the business transacted with Woolworths. 10

After a deal of discussion of the various factors, Mr. Kelly said it was necessary to reach finality on the question. It was an impossible position to be wrangling over various points every three months.

Mr. Wainberg pointed out that we were in a different position to other manufacturers as, owing to our agreement, we only had one customer, as we made exclusively for Woolworths. 20
On account of this, we were unable to average our prices, and so were at a distinct disadvantage. Mr. Wainberg handed to Mr. Kelly a copy of our letter of 19th August 1963 and drew to his attention that this letter explained the full position.

Mr. Kelly said he had already this letter. Mr. Kelly then said that as long as they were able to buy hosiery from us he would guarantee we would not be placed in the position of having to manufacture hosiery which would result in a loss on this section. He stated we should agree to Mr. Millist's suggestion of the audited statement on the position for the previous two years' trading and one showing the effect should the present market prices suggested by them - that was 41/- for the 15 denier and 48/- for the other two lines - be arranged. 30

Owing to the shortage of time available, I suggested that contracts from October to December be placed at Mr. Cooper's suggested figures of 44/-, 56/- and 63/6d respectively 40

and that we would then have time to find a solution to the problem and any new prices arranged would take effect from January 1, 1964. I pointed out that by this means we would have contracts for the period under discussion and the effect on Woolworths would not be very great and the delivery of those contracts would not take effect until early November.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

10 After further discussion, this suggestion was agreed to on the understanding that any outstanding balances on the contract would be subject to the revised price to be arranged from January 1, 1964. It was arranged that after Mr. Kelly's return from overseas we would hold a further meeting which would be attended by the auditors of both parties. At this meeting the position would be explained to the auditors, who would assess the cost prices in relation to the new proposed selling prices.

20

On this basis Woolworths would consider - Mr. Kelly said - the possibility of subsidising the prices to ensure some profit to the manufacturers. Mr. Kelly then said we should not tell the auditors the history of the agreement, and by doing so we would avoid any sympathy being created in their minds; that they should only be instructed as to what was actually required from them.

30 Q. There was a letter of the 29th August from Woolworths to Stirling Henry, which is at p.101 of Exhibit A. Is that a letter which simply stated quantities and prices in accordance with your suggestion at that meeting which was agreed to? A. That was for the contracts covering the period from October to December at the prices as suggested originally by Mr. Cooper and as suggested at the meeting by me that they should be placed.

40 Q. On the 2nd October, when Mr. Kelly returned, there was another meeting at Woolworths. Have you a record of that? A. I have not got it.

Q. Will you look at this document that I show you. I think it is out of your file. Is that a

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

memorandum with your signature on it?

A. Yes, it is a memorandum with my signature on it.

Q. That is a memorandum relating to the meeting of the 2nd October? A. 2nd October.

Q. Who were present? A. Mr. Kelly and Mr. Millist were present from Woolworths. Mr. Withycombe of Walmsley Cowley & Co., Woolworths' auditor; Mr. Wainberg and myself from Stirling Henry and Mr. Cotter from Priestley & Morris, Stirling Henry's auditors. The auditors were instructed at that meeting to ascertain the cost of hosiery produced by Stirling Henry Limited for the year ending - the auditors for both parties were instructed to ascertain the cost of hosiery produced by Stirling Henry Limited for the year ended 30th June 1963.

10

Mr. Kelly then said that it was not their intention to send any manufacturer bankrupt but as they must buy hosiery at what their executives considered to be market values it might be prepared to subsidise purchases made through Stirling Henry. Mr. Wainberg said that all the necessary records would be available to the auditors of both parties. It was arranged that the auditors of both companies would meet as soon as possible on a date suitable to themselves.

20

Q. The auditors for Woolworths, Walmsley Cowley & Coy., made a report on 6th November 1963 which is in Exhibit A. from p.103 onwards. Attached to it is a schedule which I would ask you to go to. I will not trouble you to read the report through. At p.106, for the year ended 30th June 1963, that shows the costs and then below it shows costs per dozen of stockings of various types you had been supplying on a number of different bases? A. Yes.

30

Q. You were aware of these figures being prepared at that time? A. I was.

40

Q. You considered those. In this the position,

that you regarded them, when prepared, as correctly stating costs in respect of your manufacture of those lines on that basis stated? A. Regarded them as very correct, yes.

Q. There is a note on depreciation. There was a meeting on the 11th November 1963, after that report was available. Have you a record of that? A. Yes.

10 Q. Who was present? A. Mr. Millist from Woolworths came to the mill, and Mr. Wainberg and myself were present. Mr. Millist said they had studied the auditors' report and were prepared to pay Stirling Henry prices for the year 1964 equivalent to 5% on the current market price, namely, 15 denier 60 gauge 42/-; 30 denier 51 gauge 50/5d; 15 denier 51 gauge mesh, 50/5d; 15 denier 51 gauge, 41/-.

20 Q. That is what Mr. Millist said? A. Yes.

HIS HONOUR: Q. Do those figures include 5% or not? A. Those figures were 5% on what they said were current prices.

Q. They do include the 5%? A. Yes.

30 MR. BOWEN: Q. In other words, if one added 5% to what Mr. Millist had previously offered it would give those figures? A. That is correct. Then he stated that these were for 1964 only, that after 1964 the prices would be at current market prices.

Q. That is what he said? A. Yes. Mr. Millist then gave his definition of current market prices as those at which Woolworths could purchase their requirements from reputable manufacturers.

40 Q. What happened then? A. Mr. Wainberg pointed out that the prices offered by Mr. Millist for Woolworths would mean losses. Mr. Wainberg also pointed out that Woolworths' interest in having our costs checked by Woolworths' auditors, to his disadvantage, and referred to the statement made by Mr.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

Kelly that Woolworths did not want to send any manufacturer bankrupt and if the audited costs would show the necessity then Woolworths would be prepared to subsidise. The audit was completed -

Q. Was that what was said? A. That was said. The audit was completed and Mr. Wainberg stated he was not prepared to sell goods at a loss and was very surprised at Woolworths' attitude in this respect in view of Mr. Kelly's statement that the price should be as found by the auditors plus a reasonable margin of profit, 10%. Mr. Wainberg suggested the price should be subject to the rise and fall in price according to variations in labour and raw material costs. As a matter of fact, the price should immediately go up proportionately in view of the added liability this year of one extra week's pay when the annual leave was increased from two to three weeks. 10 20

Mr. Millist then stated that Woolworths estimate requirements for 1964 would be:

15 denier	60 gauge	55,000 dozen.
30 "	51 "	17,000 "
15 "	51 " (mesh)	8,000 "
15 "	51 "	6,000 "

That gave a total of 86,000 dozen. Mr. Millist said that if the sales reached that estimate they would take 86,000 dozen but if sales were less than this estimate they would guarantee to take: 30

15 denier	60 gauge	47,000 dozen
30 "	51 "	15,000 "
15 "	51 " (mesh)	7,700 "
15 "	51 "	5,500 "

That makes a total of 75,200 dozen. To this Mr. Wainberg replied that he was not prepared to change the existing agreement in this respect, which provides for Woolworths not to purchase full-fashioned hosiery from any other source until they first absorb all the output of Stirling Henry. 40

Mr. Millist said that he would put this proposition in writing.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

Q. Would you go to Exhibit A., to a letter of yours of 12th November 1963 to Woolworths, at p.112. That is just drawing attention to the fact that you have not received the contract. A. We had not received any contracts and we should have them for a six months' period.

10 Q. Woolworths did write on 12th November 1963, p.113, and they referred to their prices offered, but if you read that first large paragraph you see they refer to a price plus 7½% on all orders, then they state the prices and underneath that they put terms "F.I.S. each State less 2½% 30 days."
A. Yes.

20 Q. At the meeting the figure you mentioned was 5%. What is the explanation of that? A. 7½% was put in to allow 2½% cash discount. There is no difference in the final result.

Q. 2½% operates over the whole price? A. It brings the 5% basis to about 4¾% or 4⅞%.

Q. You see the figures have in fact alongside the prices plus 7½%, a figure which appears to be 41/11d in one case? A. The figures are not readable on my copy.

Q. "F.I.S." mean free in store? A. Yes.

30 Q. Was there something else in that letter you wanted to mention? A. Also the fact that they mentioned that these prices were for delivery in 1964. Delivery in 1965 was stated - "Priority of consideration will be given to your company provided your prices are competitive." We presume that meant distressed prices.

40 Q. That is the price that any other untied manufacturer would offer. You would have to compete with that. That is what you took that to be? A. Yes.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

Q. Then there was a meeting on the 14th November 1963? A. Yes, 14th November. Mr. Millist of Woolworths and Mr. Wainberg and myself. Mr. Wainberg told Mr. Millist that we were not happy with the proposition contained in their letter of the 12th November for the purchase of full-fashioned hosiery but he considered a proposition based on the costs as found by Woolworths' auditors plus 10% would give a reasonable profit. Since these costs had been arrived at they were increased by 5d. a dozen on account of one extra week's holiday pay having to be included. Mr. Wainberg also mentioned that he considered that the agreement existing between the two companies should be adhered to as regards supply and delivery of hosiery and he found now the auditors had arrived at a proper costing we had a yardstick for the basis of fixing prices for the future.

10

20

Q. The same day of that meeting there was a further meeting? A. There was a further meeting on the same day, a little later, when Mr. Kelly and Mr. Millist were present, Mr. Wainberg and myself. Mr. Kelly asked if their proposition as outlined in their letter of 12th November was acceptable or not, to which Mr. Wainberg replied that as it stands the proposition is not acceptable. He said that as far as the prices go we have to insist on the prices as based on the costing of their auditors plus 10% and also plus 5d added costs per dozen due to the recent increase in cost of labour. Also, that in future the basis should be that if labour or raw materials varied the prices paid by Woolworths should rise and fall accordingly. He also went on to say that as far as the general terms of supply of hosiery to Woolworths were concerned, we relied on our original agreement.

30

40

Mr. Wainberg drew Mr. Kelly's attention to the fact that at his suggestion, Mr. Kelly's suggestion, Woolworths' auditors were asked to ascertain the cost of production and this to be used as a measuring stick, as Mr. Kelly said that he had enough of haggling every three months about prices. Mr. Kelly said

that he was not interested in individual costing; what he required was the over-all cost position to enable them to make an offer for the purchase of hosiery so that Stirling Henry by an average price would not be working at a loss.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

10 Mr. Wainberg mentioned that the amount of profit, namely approximately £4,600, was unreasonable when taking into consideration that a turnover of approximately £200,000 was involved and it would be quite easy for this supposed profit to be turned into a loss. Mr. Wainberg drew his attention to the fact that it would be better for us to manufacture two lines only and by doing this we would show a profit of approximately £8,800, whereas by making all the lines the average profit was only approximately £4,600.

20 Mr. Kelly said that the basis of the proposition was on a payment of 7½% above what Woolworths considered was the market price today.

30 I pointed out that the market price being offered today could not be considered as the correct one because these manufacturers used a percentage of their turnover in order to keep their machinery working and had the opportunity of averaging their prices by sales of approximately 75% of their production at higher prices to outside sources. Unfortunately, Stirling Henry with only one customer, namely Woolworths, had no opportunity of averaging prices.

Mr. Kelly said that they were not prepared to vary their proposition in any way whatsoever and requested an answer, whether it was acceptable or not.

40 Mr. Wainberg stated that the proposition in its present form was not acceptable. Mr. Kelly then turned around to Mr. Millist and instructed him to make arrangements for making purchases elsewhere. Mr. Wainberg said this was a hasty decision and said that Mr. Kelly should think it over, to which Mr. Kelly

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

replied that he would not budge an inch.

Mr. Wainberg suggested that the ball was in our corner and that they should wait for our reply by letter before taking any other action. Mr. Wainberg said it was not reasonable to him to purchase raw material and manufacture articles that he knew would be selling at a loss. Mr. Kelly said they would vary their proposition by reshuffling the figures, but that the final answer would be the same.

10

Q. Just a couple of points in what you have told us. The figure that you mentioned of £4,600 approximately on a turnover of £200,000 was worked out on the auditors' figures? On the cost of stockings worked out by the auditors?
A. The cost of stockings worked out by the auditors plus 5d. + 5% and taking into consideration the varying quantities for respective sales.

Q. Taking all that into account, this 5d was an addition in respect of an extra week's leave calculated at a cost per dozen stockings?
A. Yes.

20

Q. Applied to each line or kind of stocking?
A. The cost taking into consideration of the total production.

Q. It came out at 5d per dozen, each kind of stocking? A. Yes.

(Luncheon adjournment.)

At 2.00 P.M.

30

MR. BOWEN: Q. Would you look at Exhibit A, a letter of the 14th November 1963 at p.115. In that case you had given us an account of the meeting on the 14th November at which Mr. Kelly was present. This letter followed on that and at the end of that there was some question of revising so as to average your prices. What does averaging mean in that context? A. It was suggested that Woolworths would alter the proposition so that the actual result of the approximate profit would be the same. They

40

would allow a percentage on the auditors' cost price instead of on the market price.

In the Supreme Court of New South Wales

Q. This letter of the 14th November indicates a revision of the prices for each line so as to show on the auditor's figure some profitability on each line? A. Yes.

Plaintiff's Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

10

Q. I had mentioned that they readjusted that in relation to the auditors' figures and you said that was correct. But is it also correct that what they were readjusting were the prices they had previously offered so that overall they would still pay in total a similar amount? A. In total, taking the quantities into consideration at these prices, the total of the profit would be similar to what was proposed originally, over the average.

20

HIS HONOUR: Q. The total profit or the total purchase price paid - it would be the same?
A. The profit rate referred to before was approximately £4,600 and with this juggling of the prices it would still be approximately £4,600.

MR. BOWEN: Q. The letter of 20th November 1963 from Stirling Henry to Woolworths, in the first large paragraph it is stated:

30

"It is not possible for us to average out our selling prices among various buyers and by selling at a profit to other to sell at distressed prices to you. It is for that reason and because of our long-standing agreement which we have always carried out to the letter that it is not realistic to use your interpretation of a market price as a yardstick against which to measure the prices you now offer us."

You say:

40

"The position as we see it is that you are offering us the following effective net prices (give and take fractions)."

What does that represent? A. Two and a half per cent off.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

Q. There are various calculations on the next page of that letter which show a readjustment. I go to the three-line paragraph on the second page. That would correctly show on a net result the margin of profit that would be available to your company on the revised figures, would it? A. Yes.

Q. There is a letter from Mr. Kelly dated 27th November 1963 at p.120 of Exhibit A. In his third paragraph he mentions discussions which had been imprecise and no agreement exists. You have mentioned in your account of the conversations some occasion on which this was put forward by Mr. Kelly to your representatives. Is that what they were referring to there? A. That emphasises any agreement. Whenever that was said we always contended there was an agreement. 10

Q. There is mention in the second-last paragraph of the letter, on the second page, yarn stocks. Would you indicate how that was tidied up and what was done about that? -- 20

MR. MEARES: I do not mind you leading on this. I think we took all they had at prices agreed on. Is that right?

MR. BOWEN: Q. Some yarn was taken over? A. No, they took finished stockings only.

Q. But not yarn? A. No.

Q. Then the mill was closed down. Are you able to give us the date when the manufacturing section of the mill closes? A. When we closed down for the Christmas vacation, I would say, on approximately 23rd December 1963. 30

Q. You mentioned yesterday that the staff comprised people who attended to the knitting machines? A. Yes.

Q. And others dealing with dying, seaming, finishing of various kinds. Are you able to tell us what the staff was? A. Yes. There were 17 knitters. Yesterday I said eight knitters but that was for one shift. There 40

were eight knitters in each shift and one spare knitter; that is 17 knitters. There were two mechanics, one mechanic for each shift. There was a foreman for each shift and there was one cleaner. That comprised all the staff in the knitting section. Then in the finishing section there were 12 seamers, that is for seaming the stockings. There were six examiners; they examined the stockings for flaws. There were seven in the dying section. There were 25 finishers.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

10

Q. What did the finishers do? A. The stuff has to be graded, sorted and packed and transfers put on them.

Q. They put transfers on with the iron? A. Yes. That is a total staff of 72.

20

Q. It was those who were directly concerned with the knitting machines who were terminated about the 23rd December? A. It was the knitting section only, yes.

30

Q. What about the others? A. The others had to finish the hosiery that was in the stock. Although stockings are produced up to a certain time as far as knitting is concerned, they cannot be the finished product on the same date. There is a period of time when they have to go through the dying processes and things like that. It took up till approximately some time in February - I am not quite sure without checking it - before the finished stock was completed and packed ready for despatch.

Q. In February 1964 the balance of the staff was dismissed? A. Yes.

Q. Since that date has this machinery, plant and equipment been used for any purpose at all? A. Not used for any purpose at all.

40

Q. There were some meetings I had overlooked. Perhaps I could return and complete those. Was there a telephone conversation which you had on the 28th November 1963 with Mr. Millist? A. There was a telegram on the 28th November.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

- Q. Will you look at these memoranda I show you. That is your signature on each of those? A. Yes.
- Q. Is this a typewritten memorandum you made at the time, in each case? A. Yes. On the 28th November I phoned Mr. Millist first of all but he was not available. I left word asking him to phone me back. In the afternoon Mr. Millist phoned back and I suggested that he and myself should meet again with a view to trying to find some intermediate course that could be satisfactory to both parties. Mr. Millist said he would contact first thing on Friday morning, 29th November. 10
- Q. He phoned you on the 29th? A. Mr. Millist phoned me on the 29th at approximately nine o'clock - a correction, I phoned Mr. Millist at approximately nine o'clock and asked him if the suggestion made yesterday could be put into effect as early as possible because Friday was a particularly busy day. Mr. Millist was temporarily engaged and said he would phone me back later. 20

About ten o'clock Mr. Millist phoned back and he said he could not consider a conference as the whole matter was in the hands of the managing director. Mr. Millist said that it was his function to purchase goods at the lowest possible price and he felt that the only course left open to Stirling Henry was for Mr. Wainberg to write a letter to Mr. Kelly suggesting that Woolworths' last offer be repeated and that Stirling Henry would accept such an offer. He felt that failing this the only other course would be for Stirling Henry to communicate with Woolworths through Woolworths' solicitors. Mr. Millist also said that as Mr. Kelly's offer had been withdrawn in his recent letter, he could only negotiate purchases from us at a further reduced price of 15 denier 60 gauge at 39/- and he mentioned that they had already placed some commitments for next year at a lower figure than 39/-. 30 40

- Q. There was another telephone conversation

on the 2nd December? A. On the 2nd December Mr. Millist phoned me and suggested he would like to see us at 1.30 in his office. I told him I would be at Mr. Millist's office at 1.30 on the 2nd December.

In the Supreme Court of New South Wales

Plaintiff's Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

10 Q. You had a meeting with him there at 1.30 on 2nd December. Would you tell us what happened? A. I told Mr. Millist my company had asked me to come and see him firstly with a view to seeing if we could come to some arrangement whereby the two companies could continue with the business of full-fashion hosiery. He pointed out -

20 Q. Who is "he"? A. I pointed out that the price difference between the net price as offered by Woolworths and the counter-offer by Stirling Henry was 3/1d on one line, 3/6d on another, 4/1d on mesh and 3/1d on the 30 denier 51 gauge. I suggested that possibly Woolworths would be prepared to come halfway on this and that Stirling Henry would bear the other half.

Mr. Millist then said that the market price of hosiery had fallen still further to those mentioned at our previous meeting and he had purchased at the following prices:

15 denier	60 gauge	39/-
15 "	51 "	37/-
30 "	51 " Mesh	48/-
30 "	51 "	47/-

He said he had no authority to buy fully-fashioned hosiery above those prices but was prepared to place the position before his managing director, Mr. Kelly.

Mr. Millist then left me at his office and he went to see Mr. Kelly. I was then taken up to see Mr. Kelly, and Mr. Kelly and Mr. Millist were both there when I came up.

40 Mr. Kelly said Mr. Millist had submitted to him a counter-proposition I made and he regretted being unable to accept. He stated he had made it very clear that he

In the Supreme Court of New South Wales

Plaintiff's Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Examination
(Continued)

emphatically stated that the offer contained in his last letter was final and he felt that he had gone further than he normally would have gone to enable Stirling Henry to continue production of fully-fashioned hosiery without loss. This offer was withdrawn by letter but Mr. Millist had instructions that he could purchase fully-fashioned hosiery from Stirling Henry Limited at the new market price previously mentioned by Mr. Millist and he did not consider there was any moral or legal obligation on behalf of Woolworths to Stirling Henry Limited.

10

I pointed out that we had an agreement existing which was confirmed in a letter by Mr. Miller dated 1st August 1961 and subsequently confirmed by Mr. Millist in a letter dated 13th August 1963, and that prices were considerably lower than our cost, as obtained by their auditors.

20

Mr. Kelly then stated that the position was definitely final as far as Woolworths were concerned.

Cross-examination

CROSS-EXAMINATION

MR. MEARES: Q. Could I have the notes from which you have been refreshing your memory?
(Produced by witness)

Q. Do you make a habit of making diary entries of all business conversations? A. No.

Q. Did you make the entries that you have refreshed your memory from on Mr. Wainberg's instructions? A. No.

30

Q. Did you discuss with Mr. Wainberg the signatures of yourself and him on the diary entries?
A. I discussed with Mr. Wainberg my notes on these meetings.

Q. Would you just try to answer the question. Did you discuss with Mr. Wainberg the signing by him or by you of these diary entries?
A. Yes.

40

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

- Q. When did you discuss them? A. When I discussed with him the notes of the meeting when they were made.
- Q. May I take it that you and he signed these diary notes shortly after they were taken, in each case? A. Yes.
- 10 Q. Was that done for a purpose? A. In the first meeting, when Mr. Kelly stated that there was no obligation, I felt that as it was an important part of our organisation I should begin to keep notes.
- Q. I think I asked you was the signing done for a purpose - the signing of these diary notes by you and Mr. Wainberg? A. It was only a signing of the correctness as we saw it at the time.
- 20 Q. Have you ever made diary entries of business conversations at which you and Mr. Wainberg have been present, other than these diary entries? A. No.
- Q. Let us take the position: I suppose you have attended many conferences apart from these problems in relation to Woolworths at which Mr. Wainberg has been present? A. No, Mr. Wainberg was not present at many.
- Q. I suppose you have attended many conferences concerning business matters outside of this trouble with Woolworths at which Mr. Wainberg was present? A. No, not many.
- 30 Q. Did you make any diary entries of those conversations? A. No.
- Q. Can you tell us why you adopted this unusual practice? A. I first - on the first meeting that I kept a note about, Mr. Kelly said that they had not any obligation as far as Woolworths - Woolworths were the only company that we had an agreement with, with anything to do with merchandise, and it was for that reason I kept the notes.
- 40 Q. But you were keeping notes prior to that, were you not? You were keeping notes prior

In the Supreme
Court of New
South Wales

— — —
Plaintiff's
Evidence

— — —
No. 4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

- to that conversation with Mr. Kelly? A. Could I have the first meeting note?
- Q. Did you keep any notes prior to that conversation with Mr. Kelly? A. No.
- Q. Thereafter you kept notes, did you, of every meeting that you had with representatives of Woolworths, with the exceptions that you have told Mr. Bowen of? A. No. There were a few meetings when I did not keep any notes.
- Q. You have given evidence about what manufacturers in the hosiery trade do, but the fact is, is it not, that you have been with Stirling Henry since 1948? A. Yes. 10
- Q. And from 1948 until 1955 they were not concerned in the hosiery trade? A. Correct.
- Q. From 1955 onwards they were only concerned in the hosiery trade in selling to Woolworths? A. Yes.
- Q. Your experience of the hosiery trade since 1948 has been limited to your activities in relation to the agreements you made with Woolworths? A. Yes. 20
- Q. You have spoken of distressed prices. You have used this expression more than once. Firstly, would you agree with me that in regard to over-all costs your company was in a much more advantageous position than your competitors? A. No.
- Q. First of all, in 1955 you started with modern up-to-date machinery? A. Correct. 30
- Q. The best you could buy? A. Yes.
- Q. Secondly, you did not have to uphold a brand did you? A. We did not have to uphold a company brand. We had to uphold a retailer's brand.
- Q. In regard to the output of your stockings, you sold them to only one person. Is that correct? A. Sold them to one retailer, correct.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

Q. So that in that connection you did not have to employ any salesmen? A. No.

Q. Secondly, you did not have the problem of delivering to a large number of persons and companies throughout the city and country? A. No.

10

Q. You did not, moreover, have the problem of having to package separately and make small deliveries to a large number of small retailers? A. No.

Q. You did not have the problem of having to go to the four corners of the Commonwealth through salesmen to sell your products? A. No.

Q. Moreover, you incurred no expenses whatsoever in advertising? A. No.

20

Q. Would you not agree with me in the question I initially put to you that in so far as over-all costs were concerned you were in a much more advantageous position than your competitors? A. No, I would not agree.

Q. Do you not agree that, first of all, your competitors advertised? A. I will agree with that, yes.

Q. You would know that advertising in the hosiery trade in these days can be upwards of 10% of turnover? A. I would not be prepared to say that.

30

Q. You do not have that expense, do you? A. We do not have to increase the price to allow for it.

Q. You do not have that expense, do you? A. We do not have any advertising expense.

Q. You also do not have the expense of deliveries and salesmen? A. We did not have the expense of salesmen. We had certain expenses for delivery.

Q. They were not comparable with the expenses that would be experienced if you were selling

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965

Cross-
examination
(Continued)

like your competitors, in effect, to
all and sundry? A. No.

Q. Would you not now agree with me that in so
far as your over-all costs were concerned
you were in an advantageous position compared
to your competitors? A. No.

Q. Why not? A. As far as advertising was
concerned, the different prices that lines
are sold at, so they have a varying advert-
ising cost allowed for them. 10

Q. May I interrupt you - I do not want to be
rude but I am only speaking about your over-
all costs, not your over-all receipts. Now
I put to you again that in so far as your
over-all costs are concerned you would be in
an advantageous position compared to your
competitors. What is your answer? --

Q. Do you follow what I am putting? I am not
worrying about what they get for their
products, that is another side of it. I am 20
trying to suggest to you that over-all it
would cost your competitors more to sell
their goods because of the costs of
advertising, small deliveries, salesmen,
vehicles and the like. Would you not agree
with that? A. I did agree that it would
cost more for small deliveries.

Q. Would you answer my question. Would you not
agree with me that compared with your
competitors you were in an advantageous 30
position in regard to costs, over-all costs.
Would you not agree with that? A. Over-all
costs takes such a variety of things.

Q. Let us put it another way. Can you give
me one instance of where your costs would in
any way be increased as a result of having
to sell to Woolworths, so that I may put
it fairly to you? A. No.

Q. Can you give me any example of where your
costs would be less selling to Woolworths 40
than if you were selling through the trade?
A. Costs of selling would be less.

Q. They would be less, and they would be less, would they not, because you were not advertising. That would be correct?
A. Correct.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

10

Q. Secondly, because you did not have to employ salesmen. That would be correct? A. Yes, that would be correct, but there are other people to be employed beside the salesmen. They just do not get orders without somebody having to do something about it, which is a cost as well.

Q. Do you want to deny that you would be in a better position than your competitors in regard to saving money for salesmen, or would you agree with me? A. We did not have actual salesmen's costs.

20

Q. You would also be in a better position than your competitors in regard to over-all costs because of the method of deliveries by your company? A. It would cost us less, yes.

Q. Delivery problems in regard to manufacturers otherwise than yourself involve deliveries right throughout the Commonwealth, in the city and the country, don't they? A. It depends on their method of trading.

30

Q. So I suppose for that reason you would, overall, be able to sell to Woolworths at a lower price than your competitors. What is your answer? A. Could I have that question again, please?

Q. You would be able to sell to Woolworths with advantageous at a lower price than your competitors could sell to them. Do you feel some problem in answering it? You might like to think on it. If you do, then say so and I will come back to it? A. Yes, there is a problem.

40

Q. You have spoken of distressed prices but may I assume that the average manufacturer who is experienced and who is sensible has two basic problems - you please correct me if you do not agree. The first problem he has is to be able to produce a product in such a

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965

Cross-
examination
(Continued)

- volume as to permit him to sell at attractive prices? A. Yes.
- Q. I do not suppose, if I may suggest it to you, that volume will of necessity mean cheaper prices, will it? A. Not of necessity.
- Q. You had 36 of these machines? A. No, 48.
- Q. I suppose if you had been using 24 of them you would have had half the staff? A. Half production.
- Q. And you would have employed half the staff to work 24 as compared with the number employed to work 48? A. Not necessarily. 10
- Q. What do you think? A. Because you have two different sections employed.
- Q. What do you think, do you think you could have done with half the staff, approximately? A. No, you would require more than half the staff. You would only require half the staff knitting. In the finishing you would probably require - 20
- Q. One or two more? A. Probably 10 or 15 per cent - 15 per cent more approximately.
- Q. I suppose the second problem is for the manufacturer to plan his output and also to plan his selling programme? A. Yes.
- Q. You, with your experience, would appreciate, would you not, that what the stocking manufacturers do is to have a production programme determined twice or sometimes four times a year? A. It would have to be determined periodically, yes. 30
- Q. The object of the exercise is to be able to equate output with orders, to be able to say: We will manufacture 50,000 and in regard to this 50,000 we think we can sell them here, there and elsewhere. That is the object of the exercise, is it not? A. The object is to

- sell the production, yes.
- Q. A very important selling outlet is the chain stores? A. Yes.
- Q. It is not uncommon - if you do not know, say so - for manufacturers to discuss the matter with chain store buyers as to what their future requirements will be? A. Yes.
- 10 Q. So that they can have some idea as to what the chain stores may probably purchase from them? A. That is right.
- Q. In regard to a number of manufacturers, they will sell the greater proportion of their hosiery products to chain stores? A. No.
- Q. You sold the lot of yours? A. We had one company.
- 20 Q. Would it surprise you to know, or are you prepared to deny that there are hosiery manufacturers who are selling 60% and more of their hosiery to chain stores? A. I would not be prepared to deny it or to agree.
- 30 Q. If a manufacturer can sell 100,000 dozen in one order to a chain store then he, in relation to that order, saves quite an amount of overhead, does he not, in the way of salesmen, deliveries and the like? A. He saves in the way of salesmen and deliveries.
- Q. I suppose that is a reason why you would expect a wholesaler to offer to a chain store a price lower than if he was selling for argument's sake, a dozen pairs to a draper in Artarmon? A. Yes.
- 40 Q. If he sells a dozen pairs to a draper in Artarmon, more often than not he has got to put them in an attractive box? A. He has to put them in an attractive box.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

Q. I assume you would be aware that your company made a complaint to the Court, if I may use that expression, in which it alleged that it relied on an agreement dated May 1955. A. Yes.

Q. You are also aware, are you not, that Mr. Wainberg maintained that position right up till the end. Is that correct? A. Correct.

Q. You have related to the Court conversations that he had in November in which he maintained that Woolworths were bound under the agreement of 1955 to take the whole of Stirling Henry's production? A. Yes.

10

Q. Are we to understand that as far as this gentleman was concerned he never in any way moved from that attitude from the inception of the agreement until its alleged repudiation? (Objected to.)

HIS HONOUR: It is impossible in a case like this to make a firm statement that something is relevant and something else is not relevant until the whole of the evidence is in and both counsel have addressed. In a case such as this there are a tremendous number of questions asked by both sides in chief and in cross-examination which are superficially argumentative, although that may be so. I think it is unavoidable, and I allow the question.

20

MR. MEARES: Q. May I take it - you tell me if I am wrong - that Mr. Wainberg maintained this position constantly right from the date the agreement was made in 1955 until it was allegedly repudiated? A. Yes.

30

Q. I want you to think of that question again. Do you still answer it Yes, that he maintained that Woolworths were bound by the agreement of May 1955 right throughout the piece, from the time it was made until the time of the trouble - I am not trying to trap you. A. (No answer).

40

Q. Then may I take it another way did he ever agree, to the best of your knowledge, that

that agreement had been varied? (Objected to allowed)

In the Supreme Court of New South Wales

Q. Do you agree with me that Mr. Wainberg never at any time agreed that this agreement had been varied - that is the agreement of May 1955? A. Only in relation to price.

Plaintiff's Evidence

No.4

Q. Only in relation to price - is that your considered answer, that the original agreement was only varied in relation to price?

Adrian Johnson
Stopford
8th December
1965

10

A. The original agreement that Woolworths would take all Stirling Henry's production, I do not consider that was varied.

Cross-examination
(Continued)

Q. You do not consider that was varied, nor did Mr. Wainberg - is that so? To the best of your knowledge. A. To the best of my knowledge.

Q. But you know by what conversations took place that Mr. Wainberg agreed that it was varied as to price? A. Yes.

20

Q. Did you agree that it was varied as to price? A. There was a variation in price, right, from after the first letter, finished prices had been gradually coming down; a variation of prices all the time.

Q. Would you agree that an agreement was reached in 1961 that the prices that you would be entitled to were the market prices. Was that ever agreed to? A. That is dependent on the market price.

30

Q. Do you ever recollect the words "market price" being used? A. Yes.

Q. By the Woolworths' representatives in 1961, or you? A. Woolworths' representatives, yes, they used the term "market price" several times.

40

Q. I put it to you that in 1961 you and Mr. Wainberg, on your company's behalf, agreed that from shortly after the middle of that year the price to be paid by Woolworths for your stockings was to be the market price. Do you agree with that or don't you?

In the Supreme Court of New South Wales

Plaintiff's Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Cross-examination
(Continued)

A. I agree the price was to be the market price, as we understood the market price.

Q. It was to be, you say, the market price as you understood it? A. Yes.

Q. You are a business man, of course, what did you understand the words "market price" to mean? A. The market price would be the price that would allow us to make a reasonable rate of profit.

Q. Do you suggest that that is the usual meaning of "market price" or don't you? A. "Market price" is one of those difficult things to define. 10

Q. Do you agree with me that that is the usual meaning of "market price"? A. I would say that "market price" would normally be the price that would allow a person to make a reasonable profit, yes.

Q. You put that seriously, do you? A. I do put that seriously. 20

Q. No matter what other people are selling particular goods at? (no answer)

Q. No matter what other people may be selling the goods at? A. Conditions have to be taken into consideration.

Q. However, this would be the position, would it not, that right from the first price agreed to for the first six months of the agreement, from time to time your company negotiated with Woolworths and agreed upon prices for different periods? A. Correct. 30

Q. Those prices, generally speaking, were gradually getting less and less? A. They were.

Q. For a great period of the time they were well underneath the price mentioned for the second six months in the agreement? A. They were.

MR. MEARES: Q. And may we take it that throughout the greater part of the agreement the question of prices was a matter of negotiation between Stirling Henry and Woolworths? A. Yes.

Q. And I suppose - and you stop me if I am wrong about it - that Woolworths tried to drive a hard bargain? A. We consider so.

10 Q. And I suppose you did the best for yourself? A. We did.

Q. And I suppose from time to time there were compromises between you and a splitting of the difference between what Woolworths were offering and what you were suggesting? A. Yes.

20 Q. And may I suggest - in fairness to Woolworths - that as far as these conferences were concerned between your representatives and Mr. Cooper and Mr. Millist and Mr. Fleming and Mr. Kelly, that you were dealt with courteously? A. We were dealt with courteously.

Q. And the negotiations were negotiations between decent business people? A. Yes.

Q. Of course, may I suggest to you that a difficulty with your company was that your machinery was not designed to make circular hosiery? A. No, it was not designed to make it.

Q. And it could not make circular hosiery? A. No, it cannot.

30 Q. And a problem was, wasn't it, that with the change of feminine fashions - if I may suggest it to you - in 1955 there were about ten times as much fully-fashioned sold as there were circular; would you agree with that? A. I would agree there was more, but as to the amount I could not say.

Q. Well, would that surprise you? A. No, it would not surprise me.

40 Q. And may I suggest to you further more that by the year 1963 to 1964, there was 6 to 7 times

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965

Cross-
examination
(Continued)

more circular hosiery sold in the Commonwealth that there was fully fashioned? A. That is quite possible.

- Q. And if I put these figures to you, would you be prepared to deny them, that in the Commonwealth for the year 1954-1955 there was 2,050,000 dozen fully fashioned hosiery sold, whereas in the year 1963-1964, it had dropped to 490 thousand. If you do not know, say so? A. Well, I do not know, but I presume they are there, statistics. 10
- Q. However, if I may put it this way, the pendulum, the scales moved right up with fashion hosiery on the top over that period of nine years to circular hosiery right on the top, is that right? A. The demand for circular hosiery did increase.
- Q. Well now, I suppose you appreciated this position, did you? A. We did.
- Q. And would you agree with me that on more than one occasion Woolworths pointed this problem out to you? A. They did. 20
- Q. And you agreed, did you not? A. Yes.
- Q. And did absolutely nothing to meet the demand for circular hosiery, did you? A. We did not purchase any plant to make circular hosiery.
- Q. Now furthermore, Woolworths told you on many occasions that the market for fully fashioned hosiery was falling? A. Yes.
- Q. And you agreed with that? A. Yes. 30
- Q. And you will agree with me, will you not, that the market for fully fashioned hosiery has continued to fall in 1964 and 1965? A. I have not any records of it.
- Q. Now you had it pointed out to you by my learned friend, a statement made in one of Woolworths' letters that in fairness to you, Woolworths were prepared to allow you to sell

in the open market, is that right? A. Yes.

- Q. That is the letter dated 10th July 1961, which appears on p.37 of Exhibit A. And did your company ever try to sell one pair of fully fashioned hosiery other than to Woolworths?
A. I do not know what date it was, but after one occasion, yes we did.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

- 10 Q. Now I am referring to a letter of 10th July 1961. (Witness referred to letter on p.37 of Exhibit, the last paragraph)? A. Yes.

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

- Q. "In view of the impact that seamless hosiery is having on the fully fashioned market, we feel that in all fairness we must today give you the right to sell fully fashioned hosiery elsewhere." Do you remember that? A. Yes.

- Q. Did you ever spend a penny piece on establishing a brand for your hosiery? A. No.

- Q. Did you ever employ any salesmen? A. We have salesmen.

- 20 Q. To sell hosiery? A. At one period, we had our own normal salesmen approach the trade.

- Q. Now for how long was that done? A. Not for any lengthy period. I would not like to say off-hand.

- Q. What, for a matter of a week or a fortnight?
A. It could have been a fortnight. We had no production to sell.

- 30 Q. Is that the reason why you did not try and sell?
A. We tried to. We made contact with the trade with a view to offering fully fashioned hosiery, the sample trade and certain buyers in the trade, and we were told there was sufficient for fully fashioned hosiery and they had sufficient suppliers and they were not interested in us as we had in some cases refrained from offering supplies when they had asked at the beginning of the arrangement.

- 40 Q. May I take it that your efforts to sell fully fashioned hosiery after that letter of 10th July 1961 were limited to about two weeks? A. I would

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

like to check when we did that in the trade.

Q. Well, would you like to do that? A. I would

HIS HONOUR: There is a letter of yours on p.46
of Exhibit A, dated 27th July 1961, the last
paragraph on the first page.

MR. MEARES: Q. You see that letter? A. Yes.

Q. "In reference to the last paragraph of your
letter - since we received it we have approached
several likely hosiery buyers and have found
that at present it is almost impossible to
secure business, in fact we were asked how we
could expect business now when trade is
difficult, when we had not been prepared to
solicit orders when conditions were favourable"?
A. That is correct.

10

Q. And that was 17 days after the letter giving
you the right? A. 17 days, yes.

Q. And may I put it to you that no further attempts
were made to sell after that date, namely, 27th
July? A. No.

20

Q. And not a penny piece was spent at any time
by you in advertising your hosiery products?
A. We could not advertise them -

Q. Will you please answer my question?

WITNESS: No.

MR. MEARES: Q. And having made these vain attempts
for some 17 days or part of that time, during
the credit squeeze, you never made attempts
thereafter? A. No.

Q. And may I take it that when this dispute arose
between you which could not be resolved to your
satisfaction, that at that time or at any time
afterwards, you never made any attempts to
sell one pair of fully fashioned hosiery? A. We
did not have any -

30

MR. MEARES: Please answer my question.

WITNESS: No.

MR. MEARES: Q. You never made one attempt, did you? A. No.

Q. And was the machinery, which you had at that time, in good condition? A. In good condition, excellent.

Q. Did you make any attempts whatsoever to sell it? A. There were attempts made to sell it, yes.

10 Q. What attempts? A. I did not have the handling of that, of those attempts. I would have to check what attempts were made.

Q. Well, who had the handling of it; who made the attempts to sell it? A. I think letters went -

Q. But who was in charge of it from Stirling Henry? A. Well Mr. Wainberg.

20 Q. Now, would you agree with me that you and Mr. Wainberg had a most important discussion with Mr. Kelly and Mr. Fleming relating to your relations that you have not told us about, on or about 7th July 1961? A. I would not like to stretch my memory back to that time.

30 Q. You see, you may take it that in your notes, from which you have refreshed your memory, there is no mention or note of any meeting in July 1961; you may take that; and you may assume that the closest to that date you told my learned friend of was a meeting in June, on 28th June 1961, and that the next meeting was October 9th? Are you prepared to deny that a meeting did take place on or about 7th July 1961 between Mr. Kelly and Mr. Fleming, and you and Mr. Wainberg? A. I would not be prepared to deny or affirm, because my memory is fairly good, but to remember dates and when the meetings were held, there were so many at different periods, I could not be expected to remember any particular one. If I
40 remember the gist of the meeting, perhaps I could then cast my mind back.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965

Cross-
examination
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

- Q. Do you recall any correspondence received by your company in which it was suggested by Woolworths that such a meeting had taken place and what its result was? (Objected to).
- Q. Would you have a look at a letter on p.95 of Exhibit A? (Witness refers to Exhibit A)
A. Yes.
- Q. Now I want to read it with you? A. Yes.
- Q. "With reference to our discussion held yesterday, regarding fully fashioned hosiery, this letter will set out in brief detail the propositions put to you by the writer" and that was Mr. Millist, you will find on the next page, do you agree? A. Yes. 10
- Q. "..... and Mr. Cooper, for the basis for future conduct of our purchases of fully fashioned hosiery from Stirling Henry Ltd.?"
A. Yes.
- Q. Now do you remember getting that letter?
A. Yes. 20
- Q. It goes on "We referred to the arrangements made at a meeting held in July 1961, between yourself and our managing director, the details of which were as follows -". Do you remember now receiving that letter? A. Yes, I remember receiving the letter.
- Q. And that letter alleged that Mr. Millist and Mr. Cooper had referred at a conference you had with them to the arrangements made at this meeting in July. You see that? A. Yes. 30
- Q. And was that true? A. Yes, but I do not know the date in July.
- Q. No, I appreciate this. Now what Woolworths say the arrangements that were made between you, Mr. Wainberg - between the two companies in July 1961, I shall read to you "In fully fashioned women's hosiery we would draw 75% of our requirements from Stirling Henry at market prices"? A. Yes. 40

- | | |
|---|---|
| <p>Q. Now do you admit that that agreement was reached in July 1961, or not? A. In 1961, at the meeting there, there was a reference to 50,000 dozen.</p> | <p>In the Supreme Court of New South Wales</p> |
| <p>Q. Please, I asked you that question specifically. Do you agree that in July 1961 that agreement was made, that I have just read out, "In fully fashioned women's hosiery we would draw 75% of our requirements from Stirling Henry at market prices". A. I agree that they mentioned that 75%, but I do not agree that it was an agreement.</p> | <p>Plaintiff's Evidence</p> <hr style="width: 10%; margin: 0 auto;"/> <p>No.4</p> |
| <p>10 Q. You say you agree that they mentioned 75%.
A. Yes.</p> | <p>Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)</p> |
| <p>Q. But you see this letter says "We referred to the arrangements made at a meeting held in July 1961", and you understand the meaning of the word "arrangements" don't you? A. Yes.</p> | |
| <p>20 Q. Now do you deny that such an arrangement was made? A. I agree that the 75% was mentioned at the meeting.</p> | |
| <p>Q. Do you deny that in July 1961 such an arrangement was made? A. Yes, I do deny that.</p> | |
| <p>Q. You deny it? A. Yes.</p> | |
| <p>Q. And have you always been clear in your mind that such an arrangement was never made? A. I am clear in my mind that it was mentioned.</p> | |
| <p>Q. No, that such an arrangement was never made? A. I do not think the arrangement was made.</p> | |
| <p>30 Q. And when you say you do not think the arrangement was made, you do not think it was made at any time, either in July or before or after, is that what you say? A. May I explain, myself?</p> | |
| <p>Q. No, I want you to answer me? A. It was arranged at one period that Woolworths would purchase 75% of their requirements from us. Yes, I agree.</p> | |
| <p>Q. Now, first of all, we will deal with that.</p> | |

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965

Cross-
examination
(Continued)

Would you agree that that arrangement was made sometime in July 1961? A. Yes.

Q. And it was, wasn't it, a variation of the previous arrangement between you whereby Woolworths would take all your production, is that correct? A. It is difficult to answer that without an explanation.

Q. It may be, but I would like your answer?
A. 75% of Woolworths' requirements, by Woolworths, does not necessarily mean -

10

Q. You would agree that at this time you expected to vary the agreement by them taking 75% of their requirements from you? A. The matter of agreement was never raised at these meetings.

Q. Now would you tell me what you thought the three lines before that meant "We referred to the arrangements made at a meeting held in July 1961, between yourself and our managing director, the details of which were as follows -" What did you think that meant? A. Well, the arrangement was what was discussed at the meeting.

20

Q. But you as a business man, you know the immense difference between what is discussed and what is arranged, don't you? A. Also -

Q. No, you would know that difference, wouldn't you? A. Yes.

Q. And you knew that in 1963 Woolworths were alleging an arrangement made in July 1961; you knew that, didn't you? A. Yes.

Q. Did you ever deny that arrangement in a letter?
A. Not to my knowledge.

30

Q. And you read the letter? A. I read the letter.

Q. And would you agree that that letter, on its first page, fairly sets out the arrangement made in July 1961? A. It sets out the arrangement.

Q. And that arrangement was never varied, was it? A. I could not say that, because I do not

know whether the orders placed would be 75% of their requirement.

In the Supreme
Court of New
South Wales

Q. Well, have you got any knowledge of any conversations or any record of any conversations whereby that arrangement was ever varied? A. No.

Plaintiff's
Evidence

No.4

Q. Well now, let us have a look at it: in the first place, Woolworths undertook to take stockings from you at market price did they not? A. Yes.

Adrian Johnson
Stopford
8th December
1965

Q. But Mr. Wainberg and yourself were maintaining right up to the end that what you had to be paid was costs plus something; that is what you maintained, didn't you, costs plus something? A. It was arranged that we would get a price that would give us a reasonable profit.

Cross-
examination
(Continued)

Q. Well, put it into my words, costs plus something? A. Yes.

Q. You asked for costs plus 10%, did you not? A. In the latter stages, yes.

Q. But you were prepared to settle for something between that and 2½%, is that right? A. Something between that and 5%, I think.

Q. Have you made any calculation of what the percentage would have been profit-wise for you if the difference had been split as suggested by you; you reached a figure of 2¼ or 2½% on your calculations after taking into consideration additional costs? A. That was the price -

Q. That was on Woolworths' prices? A. On Woolworths' prices, but not on auditors' prices.

Q. Now can you tell us, or have you made any calculations of what this splitting the difference would have meant to you profit-wise, or not? A. We did make some calculation at the time, but I would not be prepared to say offhand what they were.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

Q. You see, that arrangement contains six terms?
A. Yes.

Q. Do you see it there? A. Yes.

Q. And then would you turn over the page. You will see "We have advised you that we wish to operate on this basis and that our assessment of the current market price of hosiery being supplied by you was -" such-and-such. Do you see that? A. Yes.

Q. And you read that? A. I read that. 10

Q. Now notwithstanding what Woolworths maintained the arrangement was and what they were entitled to do, they still said to you that they would consider the matter from your point of view, if you could present some figures to show that this production was uneconomical; that is so, isn't it? A. That is so.

Q. They maintained that they could buy at current market prices; they told you what the current market prices were, but they said that notwithstanding this arrangement, if you cared to go into figures with them to show it was uneconomical to you, they would see in effect what they could do? A. That is correct. 20

Q. I suppose you agree with me that assuming that that was the arrangement, no company could have been more reasonable? A. No, I do not agree with that altogether.

Q. It is the attitude of a company which has made an arrangement and they are prepared to offer you something over and above that? A. It was the attitude. 30

Q. Isn't that correct? A. They were prepared to offer us something over.

Q. But notwithstanding this offer, your Mr. Wainberg most resolutely refused to disclose his figures, didn't he? A. At first, yes.

Q. Well, he maintained that attitude for a period of two months, didn't he? A. I do not know the period of time. 40

- Q. Now having received that letter, let me in fairness deal with your answer of the 19th August, on the next page. Have you got that? A. Yes.
- Q. "Referring to your letter, we do not see any purpose from other suppliers"? A. Yes.
- 10 Q. "The present problem is that of price." Then in the third paragraph you see there is, of course, no market in the technical sense, in this business, all sales and purchases are made by direct negotiation between buyer and seller? A. Yes.
- Q. You see that? A. Yes.
- Q. And then you go on to say "Market price as used in your letter profit margin to both parties." You see that? A. Yes.
- 20 Q. But you see, you never suggest that that was what was agreed or arranged, do you; you never suggest in that letter that that was the arrangement that was made? A. No.
- Q. You were confronted with an allegation by Woolworths, that they agreed with you in July 1961 to pay you the market price; that is so, isn't it? A. That is so.
- Q. And you never denied that agreement, did you, that arrangement? A. We have not denied the arrangement.
- 30 Q. And all you did say in that letter, to claim that there was no market in the technical sense and that the words "market price" can only mean the reasonable price which will allow a fair margin of profit to both parties, is that right? A. Yes.
- 40 Q. Well, what would the position be if by any chance you got a position in which a fair margin of profit that one person receives resulted in the other person making a loss? A. It would not be a fair market price with people making a loss.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

Q. And what would the position be in regard to an incompetent manufacturer, if he was manufacturing at a price which was miles above the price at which his competitors could manufacture and sell for; what would the position be then?
A. The position in regard to that is that due to circumstances of the sale, whether they were market prices or -

Q. And of course this organisation, which is controlled by Mr. Wainberg, Stirling Henry Limited, am I right? A. Yes. 10

Q. Lost about £444,000 in 1964, didn't it?
A. We lost money.

Q. £444,000, didn't you? A. Correct, that is right.

Q. And £150,000 for the year ending 30th June 1965, is that right? A. Yes.

Q. And, of course, notwithstanding that catastrophic loss in 1964 - it was half your capital, wasn't it; your capital is £857,000, isn't it, paid up? A. Paid up. 20

Q. You come here complaining of substantial losses of profits and damages amounting to £200,000 in respect of hosiery; that is so, isn't it? A. That is so.

Q. Now you, of course, have made a great deal in your correspondence - and again I do not put this offensively - of what Woolworths' mark-up was and what Woolworths' percentage mark-up was, have you not? A. I have. 30

Q. But, of course, I suppose another way of looking at it would be to consider how much Woolworths makes out of each dozen pairs of Stirling Henry hosiery itself; would that be another way of looking at it; how much do they make out of each dozen pairs of your stockings they sell?
A. Gross or nett?

Q. Gross? A. Yes.

Q. Now would you turn to page 92? A. Yes.
(Refers to page 92 of Exhibit A). 40

Q. And before I come to that, if I may interpose it, the fact is, isn't it, that you disclose profits made out of this contract with Woolworths for the years ending 1957 to 1963 inclusive of £285,545; would you deny that, out of the hosiery mill, nett profit?
A. I have not seen those figures.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

10 Q. Now would you come and have a look at p.92; I wonder if you would be good enough to do two small sums for me, and we will go through the whole of the list if you wish. You see, in 1956 we were paying you 79/-d.? A. Yes.

Q. And we were selling at 8/11? A. Yes.

Q. Will you agree with me that that disclosed that on every dozen of your stockings we were making 28/- a dozen; you might make a note of that for me, 28/- per dozen? A. Yes.

20 Q. I am sorry, I speak of 15 denier. And for the period April 1957 their profit on one dozen of your stockings was 31/-; you might like to make a note of that. And by January 1963, which was your last figure, their profit on every dozen pairs of stockings of yours they sold was 19/6d., is that so? A. That was so.

30 Q. Well then, I suppose you will agree with me that, in fairness to Woolworths, there are two ways of looking at profit, are there not, two ways of looking at gross profit, namely, the gross percentage mark-up on the one hand as compared with gross profit that you are making out of a quantity on the other, would you agree with that? A. Yes.

40 Q. And you would agree, of course, I suppose, you being a business man, and no doubt Mr. Wainberg being of that capacity also - you have made a great point of this gross profit mark-up percentage-wise, but you never thought fit in your correspondence to deal with the question from the actual profit in pennies and shillings that they were making out of each dozen pairs of your stockings, have you? A. No.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

- Q. Now then, you make the point under 15 denier that in October the suggested cost was 44/-d. and the price was 5/6d., and the point you make is that the mark-up is 50%. But I am suggesting all they would have made in one dozen pairs was 22/-d. as compared to 28/-d. and 31/-d. in the first two six-monthly periods. You might care to make a note of that and contradict me if you want to. You see that figure? A. The figure is the same, and 19/6d. in 1962. 10
- Q. And the profits to which I refer you, which I suggest you had made, you may find on p.176 of the document prepared by your accountant. Do you see them there? A. Yes.
- Q. But, of course, notwithstanding these specific profits, you and Mr. Wainberg, right throughout the agreement, were complaining that Woolworths were cutting you down too much, that is so, isn't it? A. Yes. 20
- Q. Now, may I turn to some other earlier correspondence in regard to this question of what may be termed the July arrangement. Do you see Woolworths' letter of 1st August 1961? A. Yes.
- Q. P.48? A. Yes.
- Q. Now, that is in August 1961? A. Yes.
- Q. Now may I turn to your letter of 27th July, which I read to you half an hour ago? A. Yes.
- Q. Your last paragraph, on p.47, reads, "It seems to me that we must continue to rely on you for absorption of our production and rely on our agreement that you will not purchase elsewhere any fully fashioned hosiery that we are able to produce until all our production has been absorbed by you. After all, you have been purchasing very large quantities of fully fashioned hosiery besides our own production and also your organisation is constantly growing, so under these circumstances we feel we can look forward to doing business together as in the past." You see that? A. Yes. 30 40

- Q. Do you remember reading Woolworths' letter in reply to that, of 1st August? A. Yes.
- Q. Now those arrangements you may take it was something - that no mention at all is made of in the claim you initially made to the Court - your company did - have a look at the letter "It was indeed a great surprise to us to receive your letter which, in effect, if accepted by us would reopen the whole question of the supply of fully fashioned hose"? A. Yes.
- 10 Q. You see that? A. Yes.
- Q. "This matter was discussed at length by Mr. A. Wainberg, your managing director" and yourself with our managing director, Mr. Kelly, and merchandise manager, Mr. Fleming. This talk lasted for some time and all aspects of the matter were thoroughly discussed." You see that? A. Yes.
- 20 Q. "In brief, it was resolved that we would purchase 75% of our requirements from you at market prices, total purchases to be not less than 50,000 dozen per annum unless the situation arose whereby our total requirement was less than this figure. We would give you the opportunity of quoting on the 25% balance of our requirements." A. Yes.
- 30 Q. Now this letter was written to you shortly after these discussions that you and Mr. Wainberg had with Mr. Kelly and Mr. Fleming? A. Yes.
- Q. "We would purchase 75% of our requirements from you at market prices". You see that? A. Yes.
- Q. ".....total purchases to be not less than 50,000 dozen per annum unless the situation arose whereby our total requirement was less than this figure." You see that? A. Yes.
- 40 Q. "We would give you the opportunity of quoting on the 25% balance of our requirements"? A. Yes.

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

Q. "You must, therefore, be clear that we cannot accept the proposals as outlined in your letter under discussion, particularly those referred to in the past paragraph of your letter on the second page." You see that?
A. Yes, I saw it.

Q. Now, do you agree with me that that letter of 1st August 1961 truly set forth the arrangement that was made between you and your managing director and the chairman and merchandise manager of Woolworths, some few weeks before?
A. It was stated that they would purchase 75% of their requirements.

10

Q. No, what you stated in that letter that was read to you; will you admit that that arrangement was made?
A. Coming back to your previous question, the same thing on the 1963 letter -

20

Q. Do you admit that arrangement was made, as contained in that letter?
A. Yes.

Q. And it was never varied, was it?
A. I could not say that.

Q. Not to your knowledge?
A. To my knowledge, I do not know what 75% of their requirements were.

Q. To your knowledge, those arrangements were never varied; that is my question, to your knowledge? Do you have difficulty with answering that?
A. No, I am just trying to think the correct answer to give to it.

30

Q. Have you any doubt about what to answer?
A. The thing is the definition of market price, that is what was worrying me.

In the Supreme
Court of New
South Wales

Q. Now, you have hesitated for some three or four minutes; you now say the thing there is what?
A. The definition of market price.

Plaintiff's
Evidence

No.4

Q. But you see, it is stated in that letter there quite unequivocally, isn't it, market price?
A. It is stated in that letter, yes.

Adrian Johnson
Stopford
8th December
1965

Cross-
examination
(Continued)

Q. And you never denied that arrangement, did you?
A. We replied to that letter.

Q. You never denied that arrangement; could you speak to me, tell me without looking at notes at this stage?
A. I do not think we wrote a denial of the 75%, no.

20 Q. No, what is set out in that letter of the 1st August, that I have read to you. "This matter was discussed at length by Mr. A. Wainberg.....market prices"?
A. Yes.

Q. Now you never denied that arrangement, did you?
A. No.

Q. And to the best of your knowledge that arrangement has never been varied, has it?

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No.4

Adrian Johnson
Stopford
8th December
1965
Cross-
examination
(Continued)

It has not, has it?
A. No, I do not think so.

(At this stage further hearing
adjourned to 10.0 a.m. on
Thursday, 9th December 1965)

PLAINTIFF'S EVIDENCE

No. 5

JOHN ALFRED MORELLI

THIRD DAY: THURSDAY, 9th DECEMBER, 1965

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 5

John Alfred
Morelli
9th December
1965

Examination

MR. BOWEN: I seek Your Honor's leave to interpose two short witnesses on the question of disposing of the machinery. My learned friend, Mr. Meares, would not object if Your Honor allowed me to interpose them.

10

JOHN ALFRED MORELLI.

Sworn, and examined as under:

MR. SAMUELS: Q. What is your full name? A. John Alfred Morelli.

Q. Where do you live? A. 8 The Crescent, Lane Cove.

Q. And I think you are employed by a company called Brown and Dureau Limited? A. That is correct.

20

Q. And you are the senior salesman in the company's Sydney Office? A. In the textile supplies division of the company's Sydney office.

Q. I think you joined the company in 1939, did you not? A. That is correct.

Q. And apart from war service, you have been with them ever since? A. Yes.

Q. And I think in fact you were one of the founders of this division of Brown and Dureau, were you not? A. Yes.

30

Q. And during your employment with the company, you have been engaged have you not, in the sale of various types of textile machinery? A. Yes.

Q. And Brown and Dureau carries on business as representatives of manufacturers of such

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 5

John Alfred
Morelli

9th December
1965

Examination
continued

machinery, doesn't it? A. That is correct.

Q.And during your employment, you have been engaged in the sale, amongst other things, of hosiery knitting machines? A. Yes.

Q.Both full fashioned and circular? A. Yes.

Q.Is it a part of your job to acquaint yourself with the requirements of hosiery manufacturers, of machinery? A. Yes.

Q.And that has been part of your job ever since you have been with the company? A. Yes, Q.I think that in 1955 you negotiated the sale to Stirling Henry Limited of a number of Mellor Bromley fully fashioned hosiery knitting machines, did you not? A. Yes.

10

Q.At the moment, is there any demand in Sydney for full fashioned hosiery machines? A. No.

Q.Was there any demand in December 1963 for such machines? A. No.

Q.And between December 1963 and the present time, has there been any demand? A. No.

20

Q.And as at the moment, would you assume that Stirling Henry Limited has a number of these Mellor Bromley full fashioned hosiery knitting machines, which were landed in Australia between approximately December 1955 and December 1957. Do you follow me? A. Yes.

Q.Now what are the prospects of finding a buyer for such machinery in Sydney? A. I would think none whatsoever.

Q.And what was the situation in this respect in December, 1963? A. Just the same.

30

Q.And in the intervening period? A. Just the same.

Q.Now I have specifically asked you about Sydney; does this apply over a wider area? A. Yes.

Q.To Australia generally? A. Throughout Australia generally.

Q.I think that you, at the request of Stirling Henry Limited, in June of this year, made some specific inquiries in the trade in Sydney, did you not? A. That is right.

Q.In an effort to find a buyer for these machines? A. Yes.

10 Q.What was the result? A. No inquiries at all, no result at all.

Q.Did you also make specific inquiries at that time of your company's Melbourne office? A. Yes, I contacted our chap in Melbourne in a similar capacity as myself, and he investigated and he had no inquiries whatsoever.

Q.And can these fully fashioned machines be converted, for example, to make circular hosiery? A. Definitely not.

CROSS-EXAMINATION:

20 MR. MEARES: Q.Have you any record of the orders your company received from Stirling Henry Limited in relation to the purchase of any machines for making fully fashioned hosiery. A. We did have it on record. Whether it is still on record or not now, it would be a little difficult for me to say.

30 Q.What did you say? A. We did have it on record in the form of a contract, but whether it is still on record now would be a little difficult for me, at the moment here, to say.

Q.Are you able to remember the number of machines that the order dealt with? A. I am a little hazy on that. I think in the first instance it may have been twenty, if I remember rightly.

MR. MEARES: If the witness cannot remember, it is wasting Your Honor's time. I do not think I should seek imperfect evidence.

In The Supreme Court of New South Wales

Plaintiff's Evidence

No. 5

John Alfred Morelli

9th December 1965

Examination continued

Cross-examination

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 5

John Alfred
Morelli

9th December
1965

Cross-
examination
continued

Q. Now we may assume, as you have I understand, that these machines are in good order and that they are capable of manufacturing fully fashioned hosiery? A. Yes.

Q. Now are you presently agents for any manufacturers selling fully fashioned hosiery machines? A. No.

Q. When was it that you had any such agency? A. Up until approximately 1957.

Q. And who were your principals? A. Mellor Bromley. 10

Q. And was the agency terminated by mutual consent or by you or by Mellor Bromley, or how? A. By Mellor Bromley and mutual consent.

Q. Did they appoint other agents? A. In that instance, they had an existing agent, who was handling other of their equipment, and it was thought better that the one agent take over the whole of their equipment.

Q. And who was that person or company? A. W.C. Jackson. 20

Q. W.C. Jackson Limited? A. I think it is "and Company Proprietary Limited".

Q. So, we may take it that since 1957 you or your company have had no occasion to offer to the trade a fully fashioned hosiery machine? A. Amongst the agencies that Brown and Dureau represent are Kovo of Prague; in their range of equipment they have or had fully fashioned equipment. 30

Q. But when did they cease having fully fashioned equipment? A. Again, I think around about 1960.

Q. So that since 1960 you have had no source of supply for fully fashioned hosiery equipment? A. Apart from second hand equipment, no.

Q. Well now, do you sell second hand equipment? A. When the occasion warrants it, yes.

Q. Here we have equipment that is capable of making efficiently fully fashioned hosiery, and you tell me that there is no market for it. Well, may I suggest to you that the reason for there being no market is that since before 1960 there has been a very substantial decrease in the demand for fully fashioned hosiery? (Objected to)

MR. SAMUELS: I object on the basis that it does not go to any issue in the case.

10 HIS HONOR: It might go to the issue of damages. You are not objecting is not qualified are you?

MR. SAMUELS: I do not know whether he is or not.

HIS HONOR: I will allow the question.

MR. MEARES: Q. What is your answer? A. Would you reframe the question, please?

20 Q. (As read by Court Reporter) May I suggest to you that the reason for there being no market is that since before 1960 there has been a very substantial decrease in the demand for fully fashioned hosiery? A. I am a machinery salesman. I am not a hosiery salesman. Hosiery, I think, in my opinion, comes in the category of fashion trends, so that I would find it difficult to answer that. But my present opinion is that there has been a decrease in the sale of fully fashioned hosiery.

30 Q. Well, being a salesman of hosiery machinery, surely you would know the chances you had of selling machinery and the reasons for those chances; you would know that, wouldn't you? A. I can only act on the enquiry that I received, and I have had no enquiries for fully fashioned equipment since 1957 - 1958.

Q. Now that being the case, you were asked, were you, as to whether you could dispose of this equipment in June of this year? A. That is right.

Q. And having been asked that question, what action did you take as representing your company,

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 5

John Alfred
Morelli

9th December
1965

Cross-
examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 5

John Alfred
Morelli

9th December
1965

Cross-
examination
continued

to dispose of it? A. I contacted the hosiery
manufacturers here, personally.

Q.The hosiery manufacturers? A. Manufacturers.

Q.Did you contact them all? A. Yes. Do you want
their names?

Q.No. What answer did you get? A. Not interested
at all.

Q.And you made some enquiries of your Melbourne
counter part, did you? A. Yes.

Q.And asked him to try the Melbourne market?
A. Yes.

10

Q.And that is all you did? A. Yes.

Q.Since 1962, have you sold any second hand
circular hosiery machines? A. Second hand
circular?

Q.Yes. A. No.

Q.Have you ever sold a second hand circular
machine? A. It would be a long time ago. I have
sold them, but it would be a long time ago, and
I could not recall.

20

Q.How long ago? A. It would have been immediately
after the war.

Re-examination

RE-EXAMINATION

MR.SAMUELS: Q.Are there any stocking manufac-
turers in Australia outside Sydney and Melbourne?
A. No, Sydney and Melbourne.

Q.In the course of your job, do you get
enquiries from stocking manufacturers for
machinery of a type which you do not, yourself,
represent? A. We have had them, and we do at
times get them.

30

(Witness retired)

PLAINTIFF'S EVIDENCE

No. 6

GEORGE PATRICK FAHEY:
Sworn and examined as under:

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 6

George
Patrick Fahey

9th December
1965

Examination

MR. BOWEN: Q.What is your full name? A. George Patrick Fahey.

Q.You reside at 84 Vernon Avenue, Eastlakes?
A. Yes.

10 Q.You are the metals purchasing manager of Albert G.Sims Ltd. of Sydney? A. Correct.

Q.I think you have held that position for the past 4 years? A. Yes.

Q.And you have in fact been in the employ of that company for the past 10 years? A. Correct.

Q.Albert G.Sims Limited are metal merchants and refiners, and would be the biggest purchasers of scrap metal in Australia? A. Yes.

20 Q.Is it part of your duties, as metals purchasing manager, to inspect and make quotations in respect of machinery for which the company may make an offer? A. Any metals at all.

Q.I think this covers various types of machinery, including machinery used in the textile trade?
A. Yes, all redundant material that they are going to scrap.

Q.And I think you, yourself, have dealt with machinery from Bonds Industries, for example, knitting machinery? A. Yes.

30 Q.Would this be over a period of time, or what sort of thing? A. I think we cleared them twice this year of machinery that has become redundant. They got us in. We put our demolishers in and broke it up.

Q.And other firms in the textile making field as well? A. They mostly called on us for a

In the Supreme Court of New South Wales
Plaintiff's Evidence

No. 6

George Patrick Fahey

9th December 1965

Examination continued

quotation, yes.

Q.I think you were asked to inspect the knitting machines and equipment and plant at the hosiery mills of Stirling Henry Limited? A. That is right.

Q.And you went out there on 30th November this year and made an inspection of the knitting machines, equipment and plant at that hosiery mill? A. That is correct.

Q.And you then placed a value upon it for scrap purposes; could you tell us what that value was, in your opinion? A. £8 per ton, that is where lying, we would demolish it.

10

Q.And then you made an estimation of the number of tons which would be available? A. Approximate weight, yes. About 200 tons. It would exceed that - 20 tons either way. I just looked at it and I thought 200 tons, but it could be 220, but I still think there would be over the 200, really.

20

Q.With an upper limit of 220 tons? A. Yes.

Q.So, that would be a value of approximately £1600, a maximum of £1760? A. Yes. We would pay on the weights.

Q.And you might just indicate what you would do? A. Well, in this case we would put our demolishing crew in. They would smash it up. You could not get cranes in there, the building is too low. Then we would put our big murrell units outside and the castiron would be segregated from the steel and put into some tins and we would take it away and put fresh bins there until it was cleared.

30

Cross-examination

CROSS-EXAMINATION:

MR. MEARES: Q.And who was it that pointed out to you the machinery in question? A. Mr.Scaugall I think was his name.

HIS HONOR: Q.You are not interested in spare parts? A. No. We usually give an undertaking that most of it goes into scrap.

(Witness retired)

In the Supreme Court of New South Wales

Plaintiff's Evidence

No. 6

George Patrick Fahey

9th December 1965

Cross-examination continued

No. 7

ADRIAN JOHNSON STOPFORD

On former oath: Cross-examination continued.

No. 7

Adrian Johnson Stopford

9th December 1965

Cross-examination continued

10

MR. MEARES: Q.The prices ruling for the first six months would be 71/- for the 30 denier 51 gauge and 79/- for the 15 denier 60 gauge under the agreement, were they not? A. I have not got that.

Q.Well, you may take that to be the case? A. Yes.

Q.And thatafter the first six months, the prices were to be 62/- for the 30 denier 51 gauge? A. Yes.

Q.And 71/- for the 15 denier 60 gauge? A. Yes.

20

HIS HONOR: I think it would be better if the witness were given a copy of Exhibit A. (Copy of Exhibit A handed to witness).

MR. MEARES: Q.Now would you also have a look at p.92 of Exhibit A? A. Yes.

Q.Would you agree with me that until June 1957 you were receiving above 71/- per dozen for the

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

15 denier 60 gauge? A. Yes.

Q.And that although after the first six months the price was to be 71/-, in truth you were paid very much more than that until June 1957? A. We had our teething troubles -

Q.No, would you answer my question? A. And we were paid more.

Q.And you started manufacturing, did you not, in February 1956, approximately? A. Approximately.

Q.So that you never got down to the 71/- until about 17 months after you started manufacturing?
A. We only had portion of the plant.

10

MR. MEARES: Would you answer my question.

WITNESS: Yes.

MR. MEARES: Q.Now I want to take you to 30 denier 51 gauge and to assume your figures are correct on p.92; those figures establish, do they not, that it was not until November 1959 that you got down to the price or below it, referred it to as applying after the second six months? A. In March 1959 we came down to 62/6.

20

MR. MEARES: Would you answer my question.

WITNESS: In November we came down to 60/-, the price came down to 60/-.

Q.So that right up until November, 1959, you were receiving a higher price for 30 denier 51 gauge than applied under the agreement for the second 6 months, that is so isn't it? A. Yes.

Q.Did you protest about that? A. It was by arrangement.

30

Q.It was by arrangement? A. Yes.

Q.Well, Are we to understand that from time to time Woolworths sought to bring you down to the prices specified for the second six months, that

from time to time they sought to bring you down to the prices specified for the second 6 months, is that correct? A. We came down by steps.

Q.I know you did. I am asking you, did not Woolworths, from time to time, before you actually came down to the price, seek to bring you down to that price? A. It is a memory test -

Q.Well, I do not want to be unfair; if you cannot remember, say so? A. I do not remember.

10 Q.Well, would have have a look at the document on p.28? A. Yes.

Q.Now do you see in that document, which is a letter from Woolworths of 8th April 1957, the second paragraph, "we would like to make it clear, however, that our object is to get down to the prices originally given to you by Mr. Wilson in your early discussions with him". Does that help your memory or not? A. Yes. They gave us an interim price first of all.

20 Q.Yesterday, I was asking you some questions about this arrangement that I suggest to you was made in July, 1961, and I want to take you to the letter I was asking you about, on p.48 of Exhibit A, in which Woolworths expressed surprise at your letter and stated "In brief, it was resolved that we would purchase 75% of our requirements from you at market prices." You remember that letter? A. Yes.

30 Q.And that was a letter that you, yourself, answered it? A. I did.

Q.On 9th August, as appears on p.49, is that so? A. That is so.

Q.And after Woolworths had mentioned this arrangement in this letter, you wrote the reply on 9th August and said, "We are unable to see any really contentious points." A. Yes.

40 Q.Now one of the points they made in their letter was that the agreement was to purchase at market prices; that is so, isn't it? A. That is so.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

Q. And nowhere in the letter of 9th August did you deny that? A. No, except in the last paragraph.

Q. In the last paragraph, you said, "In connection with this 25%, you were to give us the first refusal to supply to you full fashioned hosiery which may be offered to you by other manufacturers at prices lower than market prices, and not merely give us the opportunity to quote for the supply of same." That is what you claim? A. Yes, correct.

10

Q. Now, would you turn to p.95 of Exhibit A, a letter I asked you about yesterday. In that letter, written by Mr. Millist to Mr. Wainberg, it says "We would give you - this company - the opportunity of quoting special prices for the 25% requirements referred to earlier." (Para. 5) A. Yes.

Q. I am putting to you that on 12th August, 1963, Mr. Millist and Mr. Cooper had a conference with you and Mr. Wainberg at your mill; would you agree with that? You have already said it - naturally you might not remember - there was a conversation on that day. You have already said it, that you had a conversation with them on that day, 12th August. Would you like to have a look at your notes? I will read part of this out to you "Mr. Millist stated that he changed his mind and he was only prepared to pay us what they call market prices, which are according to him at present -" and then the prices are stated - "This to take effect from 1st October"? A. Yes.

20

30

Q. "He also mentioned if we considered these prices are uneconomical we are to supply them with an auditor's statement of cost. To that, Mr. Wainberg replied categorically that these prices are not acceptable and he rejected the idea of giving Woolworth's details of our internal business." Do you remember that? A. I remember that.

40

Q. And there are other notes you have made, which I do not propose to read to you. Now I put to you that on 12th August, 1963 Mr. Millist on that

day showed you and Mr.Wainberg a memorandum in identical terms to clauses 1 to 6 of the arrangement referred to in the letter of 13th August 1963. (P.95). What do you say? A. I do not recall seeing a document.

Q.Would you deny it? A. I would neither deny nor affirm it.

10 Q.And I furthermore put to you that Mr.Millist, at the outset of this conference, read out those five terms? A. That is quite possible.

Q.And I further put to you that neither you nor Mr.Wainberg ever denied that these terms truly set out the arrangement that had been made between you? A. Well, that question can hardly be answered Yes or No.

20 Q.Well, you answer it as you wish? A. Well, reference to 75% seemed immaterial when Woolworths purchases from us were considerable - were taking our production which was higher than that and so long as they continued to take our production of 75%, it was of no material relevance.

Q.Would you answer the question; did you or Mr.Wainberg ever deny that the arrangement as set out in these six terms, was not made? A. I could not deny nor affirm that. There was not an objection taken at the time. My memory would not be that good.

30 Q.Would you have a look at your letter of 13th August 1963, on p.95 of Exhibit A? A. Yes.

Q."With reference to our discussion held yesterday...." then he goes on "We referred to the arrangements made at a meeting held in July 1961 between yourself and our managing director, the details of which were as follows-" you see that? A. Yes.

40 Q.And you or Mr.Wainberg never thereafter denied that allegation; now would you be prepared to deny, under those circumstances, that this arrangement was referred to by Mr.Millist?

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

A. The arrangement was referred to.

Q. And it being referred to, neither you nor Mr. Wainberg ever denied its existence, did you?

A. We did not deny its existence, no.

Q. In the note of 12th August you have, in regard to Mr. Wainberg's reaction at this meeting of 12th August, said "Mr. Wainberg replied categorically that these prices were not acceptable?" A. That is correct.

Q. On what grounds did he say they were not acceptable? A. They were not acceptable, because we did not consider they were fair market prices.

10

Q. Are you sure of that? A. I beg your pardon?

Q. Or that on those prices you would be making a loss; which was it? A. It could be both.

Q. I am asking you, what was it? What did Mr. Wainberg say when he said the prices were not acceptable; what did he say? A. Well, I think he would have said that they would not be acceptable, because they would be unprofitable.

20

Q. And I put it to you that he never suggested on that occasion that these prices were not fair market prices that were being offered; he never said that, did he, he simply said they were unprofitable? A. I would not be prepared to affirm or deny.

Q. May I take you to a letter on p.67 of Exhibit A. You see, in the third paragraph of that letter that Mr. Cooper writes to you "It is inevitable that prices will have to be discussed again in the future and we suggest you make some provision in your reserves against the day in the near future when you may have to accept the fair market price." Do you see that? A. Yes.

30

Q. "This is in accordance with the agreement reached at the meeting of your Managing director, Mr. A. Wainberg and yourself with our Managing director Mr. T. Kelly and the Merchandise manager, Mr. R. Fleming last July, when all aspects of your

hosiery mill were discussed. This was confirmed by a letter written by our Merchandise controller, Mr. J. Miller, dated 1st August, 1961." Do you see that? A. Yes.

10 Q. And do you see the second paragraph on that page "Regarding prices, you will note, that in spite of the lower market prices prevailing at present for 15 denier 60 gauge plain and 15 denier 51 gauge mesh, we have agreed to Mr. Alex Wainberg's request to leave these unchanged for the duration of these contracts." It goes on, do you see that? A. Yes.

Q. Now again in that letter there is an allegation made of this arrangement that your company had entered into with Woolworths? A. Yes.

Q. And the answer to that letter is again by you, on 13th March, on p. 74 of Exhibit A. Now the letter that you were answering was the letter I have just read, of 9th March? A. Yes.

20 Q. You say "Many thanks for your letter of 9th inst. enclosing full fashioned hosiery contracts for the period 1st April 1962 to 30th June 1962? A. Yes.

Q. Then you say "as regards prices those charged by us have always been fair and equitable as shown in the following schedule." That is all you say about prices, isn't it? A. Yes.

30 Q. And you never denied in that letter this arrangement that it referred to in the letter of 9th March? A. No.

Q. You have already told us that arrangement was made? A. Yes.

Q. And it was never varied? A. Well, I do not know if it was never varied.

Q. You gave this evidence yesterday, on p. 84 of the transcript, "And to the best of your knowledge that arrangement has never been varied has it? It has not, has it? A. No, I do not think so." Now do you want to alter that

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

evidence? A. What page was the letter you are referring to?

Q.The letter of August, 1963? A. It was as I stated, yes.

Q.Now notwithstanding that fact, Mr.Wainberg, you have told us right throughout this agreement, was maintaining that the original agreement stood and had never been varied? A. That is so.

Q.Notwithstanding that variation, Mr.Wainberg continually maintained, from 1956 right up to the end, that the position of the parties was regulated and controlled by the 1955 agreement, didn't he? A. Well, it cannot actually be answered Yes or No; it wants answering with respect to other matter.

10

Q.Well, you answer it? A. Well, the arrangement mentioned in the letter of 13th August 1963 refers specifically to 75% at market prices, but as Woolworth's practice had always been to take the full production, there did not appear to be a great deal of difference in the 75%.

20

Q.Leave out the 75%, I appreciate that; I am talking about market prices? A. Well, market prices are mentioned in this letter and the 1955 letter -

MR. MEARES: I refer Your Honor to p.68, the second and third questions.

Q.So that as from 1962, at any rate, may I suggest to you that the attitude that you and Mr.Wainberg were adopting was that you should be paid a price for the stockings Woolworths purchased from you which showed to you a reasonable profit? A. Yes.

30

Q.And you maintained that you were entitled to change a price which showed you a reasonable profit? A. Yes.

Q.And your complaint about these prices was that Woolworths were offering towards the end, - that

they did not show you a reasonable profit?
A. Yes.

MR. MEARES: I call for some documents, on subpoena Duces Tecum, relating to the purchase of the 48 machines.

MR. BOWEN: They will be produced in a few minutes.

10 MR. MEARES: Q.I understand you to say in your claim that you should have had reasonable notice that this agreement was going to be terminated?
A. Yes.

Q.Well, you would agree with me, wouldn't you, that if you had been given one month of six years, you would never have been able to have sold your machinery? A. No.

HIS HONOR: Q.Does that mean you would not have been able to, or you do not agree?

20 MR. MEARES: Q.May I withdraw the question. You would never have been able to sell your machinery except for scrap? A. At the time -

Q.I am putting it to you now that if the company knew of had six months notice, one year's notice, two years notice or three years notice, you would have, during those times, only been able to sell your machinery for scrap? A. In November 1963?

Q.As from then? yes. You would agree with that, wouldn't you? A. Yes.

30 Q.And you would agree also that as far as using the machinery was concerned, you determined in a matter of weeks of what you say is a repudiation of the agreement, to close the mill down, didn't you? A. Yes.

Q.And you decided, as at the date of repudiation, that you could not use that mill profitably for the purpose of making fully fashioned hosiery, to establish and sell your own brand? A. We did not have any market for it.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

Q.Well, the answer to my question would be Yes?
A. Not altogether. You cannot make up material and keep the mill going and build up stocks and spend a lot of money if you have not got a market for it.

Q.You decided then, in November, 1963, that it was impracticable for you to use that machinery for the purpose of establishing your own brand and selling it, did you not? A. We decided in December.

10

Q.Now having reached those two decisions, would you tell me how the giving of any notice would have advantaged you? A. Well, unless sufficient time had been given to establish or try and establish a market during which time your mill was in production - we may have had possibilities if sufficient time had been given, a period of two or three years.

Q.And is that your answer to my question, or do you want to add anything? A. I could only say that at that period, in late 1963, that unless there was a long period of time given for a finalisation of any arrangement, that would give us the opportunity of testing the market fully whilst production was being maintained, that that would be the only opportunity that would be available to us.

20

Q.And, of course, the position was this, wasn't it - or rather you know now that since December, 1963 the demand for fully fashioned hosiery has continued to drop? A. It was not apparent in December 1963, because Woolworths offered us -

30

Q.No, would you answer my question; you know now that since 1963 the market for fully fashioned hosiery has continued to fall? A. The general market has continued to fall, yes.

Q.And would you agree with me under those circumstances that, being wise after the event if you wish, that as at December 1963, it would have been quite impracticable for you to manufacture profitably, given any period of time to establish your brand of fully fashioned hosiery;

40

you would agree with that, wouldn't you? A. Yes.

Q. Well now, of course, as far as these negotiations from time to time were concerned, you have told the Court that you were asked, I think in 1961, to pay for the cost of the cartons, and that is correct, isn't it? A. That is correct.

10 Q. And you were also asked to give Woolworths two and a half per cent discount for 30 days?
A. Yes.

Q. And you knew at that time, did you not, that Woolworths were saying that they were going to bring that 2½% discount in? A. Mr. Cooper told us.

Q. And you knew, furthermore, that all other manufacturers selling to Woolworths were giving them this 2½% discount? A. I did not know that.

Q. Well, wasn't that written to you? A. I beg your pardon?

20 Q. Weren't you told that in a letter? A. I do not recall it at the present moment.

Q. Have a look at p. 54 of Exhibit A, a letter of 13th October, 1961? A. Yes.

30 Q. And I refer you to the second page "Delivery terms agreed are F.I.S. each State, cartons included. It has been decided to agree to your request for cash terms to be altered from nett 7 days to nett 30 days rather than change to your normal terms for other lines of 2½% 30 days. This is quite contrary to the company's current policy and has been granted for the time being in view of the special circumstances concerning your hosiery plant and the excellent service you have given us. It will be necessary to review this at a later date." You see that? A. Yes.

Q. And then it was, wasn't it, in 1963, as appears from p. 86 of Exhibit A, in a letter dated 7th March, 1963 that you agreed to the company applying these 2½% discounts as from 1st April 1963? A. Yes.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

In the Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

Q. And you knew also, of course, that Woolworths, in regard to cartons, were dealing with other hosiery manufacturers on the basis that they supplied cartons? A. I cannot say that, that I knew that altogether.

Q. Can I have those machinery papers? (Produced) Your Honor will see from p.150 that 12 hosiery machines were purchased in October and December 1957 or arrived, it is not clear and that 36 of them arrived by 24th April, 1956, or 30 arrived by then.

10

HIS HONOR: 12 arrived in May, on the 3rd and 6 on the 24th if that means "arrive," as you say.

MR. MEARES: Q. What I wanted to see if - it is only on this basis if it comes to a question of damages - the order for those machines, as to the purchase of the subsequent machines in 1957.

HIS HONOR: Do you mean another 24 ordered in one year, or 2 lots in 12?

MR. MEARES: 48 altogether and the last twelve, I would like to see the order for them. And I would like to see the order for the first 36.

20

(Short adjournment)

MR. MEARES: Q. I show you two files in relation to the purchase of 12 machines in 1957. (Approaching witness) I refer to p.150. Do you see the documents? A. Yes.

Q. On p.150, do you see particulars, given by you, of the 12 machines and the date of purchase of six of them is given as 30th October 1957 and the date of purchase of another six of them is given as the 12th December, 1957? A. Yes.

30

Q. I show you an invoice of Mellor Bromley's, of the 31st August, 1957, for 6 hosiery machines? A. Yes.

Q. And also a declaration from Agnew and Company Limited, London, insurance brokers, in relation to those machines, dated September 1957, said to

be shipped on the "Wellington Star"? A. Yes.

Q.Then I show you an invoice of Mellor Bromley's of the 18th October, 1957 for a similar six machines, and a similar declaration from the London insurance brokers, dated October, 1957, indicating that they are shipped or to be shipped on the "Adelaide Star"? A. Yes.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

10 Q.Would you accordingly agree with me that the 12 machines referred to on p.150, to which I have referred you, were ordered and delivered late in 1957? A. They were delivered in 1957.

Q.No - "ordered"; I show you the invoice? A. Yes, but that does not have any effect on when they were ordered. The invoice only gives the date they were invoiced.

20 Q.Is not the invoice the document that evidences the contract; if you order goods and the supplier agrees to deliver, then according to your offer he invoices you? A. Yes, but it depends on the availability and shipment of goods, when they were ordered. They may have been ordered months before that. I am not prepared to say, without checking, when they were ordered.

30 Q.You have been asked to produce all your documents. I am asking you, will you agree those 12 machines were ordered in 1957 - they were certainly delivered late in 1957. You may refresh your memory from a document, p.30 of Exhibit A, 30th July, 1957, do you see that? A. Yes.

Q.Now, would you admit those 12 machines were ordered in 1957? A. Yes.

Q.In regard to these machines, you discussed the matter with Mr.Fleming? A. Mr.Wilson and Mr. Fleming.

Q.You told those gentlemen of your intention to order them? A. They were ordered after a request to increase production.

40 Q.What I am suggesting to you is, in the

In The Supreme
Court of New
South Wales

Flaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

discussions in relation to ordering them, Mr. Fleming or Mr. Wilson said to you, as far as ordering was concerned that was your responsibility. Would you deny that? A. I do not think, from memory, I could say those terms were used. We were asked to increase production from the original amount and it was necessary to double the original plant from 24 machines to 48 machines and these final 12 machines made a total of 48 machines to give Woolworths the production they required from us.

10

Q. But, I want to come to this point. If you look at that letter of July 1957, you say with 48 machines you would be able to make 1800 dozen a week, is that correct? A. Yes.

Q. And you would work, at this time, 49 weeks a year - or am I wrong? A. Approximately 49 weeks a year, yes.

Q. If we multiply 1800 dozen by 49, that comes to 88,200 dozen per year, is that right? A. Yes.

20

Q. In May of 1955, you had an order to supply 50,000 dozen per year, is that correct? A. That is correct.

Q. So that to supply 50,000 dozen a year as from the inception of the agreement, you would have needed 24 machines? A. We would have needed 24 machines, providing we worked 2 full shifts. On one shift, we would have had to double it.

Q. So you knew that in May 1955 you would need 24 machines? A. Yes.

30

Q. But you say, as I understand it, in your evidence that the £45,000 was loaned to you as a result of a request to increase your production and that it was in respect of the second 12 machines? A. I do not think I said that.

Q. Let us look at the November agreement. That agreement is made in November 1955? A. Yes.

Q. And it is for £45,000, is that correct? A. That

is correct.

Q. That would represent how many machines? A. I don't know but that does not state here the £45,000 was specifically for the - - - -

Q. Do you see, at clause 10, Stirling Henry would effect the said insurance? A. Yes.

Q. Then there is produced on p.12 the insurance that was effected pursuant to that agreement? A. On 12 machines.

10 Q. On 12 machines, from the United Kingdom to Sydney, sailing during April; do you see that at p.12? A. That is a certificate of insurance from Steeves-Agnew.

Q. Do you say those 12 machines were the 12 machines that came out on the 3rd May and the 24th May? A. I would think so, yes.

Q. Mr. Wainberg attended a very great number of these conferences that you have spoken of, did he not? A. Yes.

20 Q. He played a very active part in the discussions and conversations that took place, did he not? A. Yes.

Q. May I suggest to you, from your "side of the fence" he was the main talker? A. Not necessarily.

Q. I am not asking you "not necessarily"; in the main, that is what he was, was he not? A. I am not prepared to say "Yes" or "No" to that question.

30 Q. Take the negotiations when Mr. Kelly was present, he was the main spokesman on your side, was he not? A. Both he and I had different things to say. He spoke up and I spoke up, too.

Q. He used to say quite a lot, did he not? A. Everybody at the meeting said quite a lot.

Q. He did? A. Yes.

In The Supreme Court of New South Wales

Plaintiff's Evidence

No. 7

Adrian Johnson Stopford

9th December 1965

Cross-examination continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Cross-
examination
continued

Q. And in these discussions he had with Mr. Kelly, may I put to you it would be a fair suggestion that he would refuse to face up to the issues put by Mr. Kelly; would that be a fair comment to make of him? A. It depends on what you mean by "face up to the issue".

Q. That he was inclined - when he was confronted, I suggest to you, with a submission made on Woolworth's part - to dodge it and go on to another topic? A. No.

10

Q. That would not be correct? A. No.

Q. However, Mr. Wainberg is available to give evidence, is he? A. I don't know.

Q. You do not know; were you not talking to him outside this Court, 10 minutes ago? A. I was talking to him outside the Court.

Q. By the by, you bought your yarn from different sources, did you? A. That is correct.

Q. What was the market price of it? A. I could not tell you at the present moment, without reference.

20

Q. Without reference to what? A. Without reference to the purchases, where they were made, from whom they were made and the time they were made.

Q. Without reference, in other words, to what you paid for them? A. That is correct.

Re-examination

RE-EXAMINATION:

MR. BOWEN: Q. Would you look at Exhibit A, p. 22, a letter of 23rd March 1956 from Stirling Henry Limited to Woolworth's Limited? A. Yes.

30

Q. Is that a letter which refers to 12 Mellor Bromley machines---

MR. MEARES: It appears, to me, on enquiries, if it helps my learned friend, quite obviously the £45,000 was loaned in respect of the third 12 machines.

MR. BOWEN: I do not know that that matters.

Q. That letter relates to the lot of 12 machines which was the first delivery, increasing above the first 24 machines, was it not? A. That is correct.

10 Q. Then at p.30 of Exhibit A, the letter you were referred to by Mr. Meares refers to the next 12 Mellor Bromley machines? A. That is correct. There had to be a delay in ordering those, due to import licences. We were unable to get import licences for the full 24 at a time.

Q. In regard to the £45,000 and the assisting you financially by taking over stocks of yarn, and letting you draw 1000 lb. weight of yarn out of bond; was this financial assistance related in any way to the cost of any particular number of machines? A. Not necessarily for them (objected to on the ground the agreement speaks for itself; question and answer allowed)

20 Q. I am not saying the insurance would not at least reach the figure which you were loaned. You have told us that the 24 machines would need to work two full shifts to produce the 50,000 dozen referred to in the letter of May 1955? A. Yes.

Q. What shifts would you have to work with the 48 machines, to produce the 88,200 dozen? A. Two full shifts.

30 Q. In relation to this letter at p.30 of Exhibit A, dated 3rd July 1957, where there is a reference to 800 dozen per week and 1,000 dozen per week, where did those figures come from? A. They are the approximate quantity that the machine was capable of making in the period of time. They have to be a little bit elastic, you cannot get exact amounts. It depends on the sizes you are making. If you are making small sizes with a small length of leg it is shorter; and if you are making larger sizes with a long length of leg it is naturally longer. The longer ones take longer to manufacture.

40

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Re-examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Re-examination
continued

Q.You were asked, at p.72 and 73, by Mr.Meares yesterday about some efforts you made to sell Stirling Henry stockings elsewhere, other than to Woolworths? A. Yes.

Q.You said: "At one period we had our own normal salesmen approach the trade, not for any lengthy period, it could have been a fortnight. We had no production to sell. We made contact with the trade with a view of offering fully fashioned hosiery." That was taking place after the letter of 10th July 1961? A. Yes.

10

Q.And then you were asked: "May I put it to you that no further attempts were made to sell after that date, namely, 27th July?" I want to direct your mind to the period in December 1963, after there had been those differences between Stirling Henry Ltd. and Woolworths Ltd? A. Yes.

Q.Did anything take place in relation to attempting to sell stockings at that time? (Objected to as being not in reply; His Honor ruled the question was not in reply but granted leave to Mr.Bowen to ask the question) A. I overlook remembering any dates but in December 1963 we sent samples to our interstate officers, and our interstate representatives endeavoured to show our samples and to see what the prospects were for selling fully fashioned hosiery at that date, but the results were negligible, they were nil.

20

Q.Do you recall over what period of time that would have operated? A.That would be from the beginning of December to just on our closing down prior to Christmas.

30

Q.I take you to another matter. You were asked yesterday some other questions about the letter of 10th July 1961, which appears in Exhibit A at p.37. Mr.Meares asked you some questions about recent discussions. Look at your notes of meetings, which are shown to you. Do you see a note of the meeting on 14th June, 1961? A. Yes.

40

Q.Tell us who were present at that meeting? A. Mr.Kelly, Mr.Fleming, Mr.Wainberg and myself.

Q. Then, you gave evidence in chief, there was a later meeting on the 28th June. Tell us who were present at that meeting? A. Mr. Miller, Mr. Cooper, Mr. Wainberg and myself.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Re-examination
continued

Q. At the last of those meetings, that is the meeting on the 28th June, you fixed prices, which appear later in the letter of 10th July, 1961, is that right? A. That is right, yes.

10 Q. Did you also fix certain quantities which appear to have been increased, when you came to the letter of the 10th July? A. They were increased, yes.

Q. You were not present at any meeting in between 28th June and 10th July? A. No.

Q. If there was such a meeting; or on the 10th July. You do not recall any meeting in the intervening period from the 28th June until you saw that letter? A. No, I was not at any such meeting.

20 Q. I want you to go for a moment to the letter of 1st August 1961, which is at p.48 on Exhibit A. Do you remember you have been referred to it a number of times? A. Yes.

30 Q. It refers to the purchase of 75% of your requirements at market prices, total purchase not less than 50,000 dozen. Then you were referred to your letter in reply to that, dated 9th August, 1961, where on the 2nd page you made reference to it being a first refusal of the balance of 25%, not an option? A. Yes.

Q. I want to ask you this. You attended the various meetings to fix prices at these three monthly intervals subsequent to these letters? A. Yes.

40 Q. In the procedure which was followed at these meetings, was there ever a sort of fixing of an objective figure of the market price, and then an adoption of that as the price for the next period for contract; was that ever done? (Objected to; question allowed)

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Re-examination
continued

Q. Was any objective evidence by the parties ever put as to something - - - A. We were told that this type of hosiery was purchasable at a certain figure. Then a price was arranged also, and a time for our supply of goods. On another occasion, it was said the best price they could give us was such and such a price, that would give them their mark; 48% in one case, they were asked to get by their company - that Mr. Cooper was asked to get by his company.

10

Q. But was there ever any attempt to fix a price which would form a basis of the contracts for the next period, which was equivalent to some price which was assessed by the parties as being what Mr. Meares has put to you as a "market price"? A. No. In most of these cases we were told there had been certain offers at certain prices and that they could buy - take one line, 15 denier 60 gauge stockings at a certain figure and then we said that is the distressed price, they are not market price, and we would arrange a price we would supply the hosiery at which was another higher figure.

20

Q. Was there ever at any of these meetings a production of invoices or documents which might establish the market price in the sense Mr. Meares was putting it to you? (Objected to) A. No. (Question and answer allowed)

HIS HONOR: Mr. Meares, look at para. 5(a) in the amended claim.

30

MR. BOWEN: Q. Was there ever any production of evidence, such as invoices, which may establish what Mr. Meares put to you was the market price, which would govern the prices for the next period? A. No, it was only verbal talk.

Q. It was verbal talk about offers that had been received, it did not go beyond that? A. No.

Q. And these offers suggested were of various types? A. They were of various types.

Q. And this was so until Mr. Millist, at the very last, in 1963 asserted that the price to be fixed

40

for the next period should be equated with what he said was the market price, 41/-d., 48/-d. and 48/-d.? A. That is correct.

Q. That was the first time that had been adopted as the mode of dealing? A. The first time.

Q. It has been suggested to you by Mr. Meares that your hosiery mill may have been inefficient. You have been in the hosiery business for a very long time, at different mills, Can you tell us the position in that respect? A. I would consider the mill was highly efficient and that was really confirmed by that letter from Mr. Cooper, at one period, thanking us for the efficiency and everything. On top of that, we had not complaints from Woolworths about late deliveries - there may have been a minor odd one that might have been a day or so overdue, but in lots of cases they asked us to bring deliveries forward; and regarding complaints of quality, over the period of time, they were negligible.

Q. Would the machinery, at the time you finished, be regarded as old, or new or what? A. No.

Q. At the time the contract finished? A. No. It would not be considered as "old".

Q. You may recall, Mr. Meares put to you that at a meeting on the 12th August 1963 a memorandum was produced by Mr. Millist which purported to be a summary of a meeting held earlier, which was later set out in their letter in six paragraphs, do you remember - would you look at your notes of meetings in respect of the meeting of the 2nd August 1963? A. Yes.

Q. Look at the last part of your note. Having looked at that note to refresh your recollection, are you able to tell us anything in relation to the meeting held on the 2nd August 1963, and whether anything took place in relation to a memorandum? A. I took a note there, Mr. Millist produced a memo but I did not - - -

Q. Did you get an opportunity of reading it at the meeting? (Objection to leading; question allowed)

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Re-examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Re-examination
continued

Q. Did you read it? A. No, I did not.

Q. Do you recall whether, when this matter was raised - - -

MR. MEARES: May I interrupt, with respect, so that my friend and Your Honor are not confused? I am relying on the fact this note was read out at a meeting on the 12th. I referred to the letter of the 13th, where that is mentioned as happening on the day before. My friend is dealing with a meeting on the 2nd.

10

HIS HONOR: I think you had better go into detail.

MR. BOWEN: Q. Do you recall whether it was mentioned what was the date of the meeting, of which this memo was a summary; have a look at your note. A. 14th June 1961. That is the meeting of the 2nd August 1963, I have a memo there Mr. Millist produced a memo written by Mr. Fleming purporting to be a summary of the meeting held, with Mr. Kelly, Mr. Fleming, Mr. Stopford and Mr. Wainberg, on the 14th June 1961.

20

Q. And that is the memorandum you say you did not read, or did not get an opportunity to read?
A. Yes.

Q. I think there was then a meeting on the 12th August 1963? A. Yes.

Q. And you made a note of what happened at that meeting, did you? A. Yes.

Q. Do you have that note? A. Yes.

Q. Look at it and tell me whether any memorandum was produced or read out at that meeting?
(Objected to as already having been read out;
question allowed)

30

Q. I have taken you to the meeting of the 12th August 1963. Was any memorandum produced at that meeting, as far as you can recollect? A. I do not recall. I did not record a memorandum at that meeting.

Q.(Approaching witness): I want you to look at some documents which I show you, which are pinned together. I want you to identify the signature on it and tell me whether it was received by the company? A. The first one is dated 5th December 1963 and was received by the company on the 6th December 1963. It is from our then Melbourne manager, F.G. Munn.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 7

Adrian Johnson
Stopford

9th December
1965

Re-examination
continued

10 Q.Are there initials on it? A. Yes, those are his initials.

Q.Are you familiar with his handwriting and with his initials? A. Yes.

Q.What is the next one? A. The next one was dated 6th December 1963 and was received by the company on 9th December 1963. It is signed by our Brisbane manager, C. Devereaux.

20 MR. MEARES: If these are letters in relation to these attempts, I would not suggest they were forging signatures. There will be no issue about that.

(Mr.Bowen then showed the letters to
Mr.Meares.)

RE-CROSS-EXAMINATION

Re-cross-
examination

MR. MEARES: Q.Can you tell me whether you instructed, or Mr.Wainberg instructed your interstate representatives to offer your hosiery at any particular price or prices? A. Yes, we gave a particular price.

30 Q.Have you any record of the prices you gave, at which you were prepared to sell? A. I have not got any records here.

Q.Are there any records in the company? A. There would be correspondence I should think, yes.

Q.Could you produce that for us? A. I will endeavour to, yes.

Q.Can you tell me, subject to producing the correspondence, whether to the best of your

In The Supreme Court of New South Wales
Plaintiff's Evidence

No. 7

Adrian Johnson Stopford

9th December 1965

Re-cross-examination continued

recollection you offered these various lines in December at prices over and above prices you were prepared to negotiate with Woolworths for, or under them, or what? A. I think they were based, from memory, on the auditors' costs plus approximately 10 per cent.

Q.And you would be able to produce the correspondence in relation to that? A. I don't know whether I can, until I see if it has been destroyed.

10

Q.Did you receive any reaction as to market prices prevailing at that time, as a result of your interstate representations? A. We had reports on some prices, yes.

Q.(Approaching witness): Of course, the main Woolworths line, by far, was the 15 denier 60 gauge, was it not? A. Yes it was - the biggest quantity.

Q.May I put this to you, that on the 6th December 1963 your Brisbane manager advised as follows, in relation to prices they were buying 15 denier 60 gauge at? (Objected to on the ground the letters were shown to the witness to get his identification of signatures, and the documents were not in evidence; and that Mr. Meares had had a "free look" at them.)

20

(Bundle of letters m.f.i.1)

MR. BOWEN: Here are copies of a letter to the Melbourne office and the Brisbane office dated 3rd December 1963 and an internal memorandum of the same date which I show to my friend. This is probably the correspondence he was asking Mr. Stopford to look for.

30

(Copy letters on yellow paper m.f.i.2.)

MR. MEARES: Q.Do you maintain, still, that in December 1963 the price which Woolworths said they could buy for, namely, 40/-d. was a distressed price, do you maintain that? A. That question is difficult to answer "yes" or "no", without an explanation.

40

Q.You have used the expression "distressed price", have you not? A. Yes.

In The Supreme Court of New South Wales

Q.In regard to certain prices? A. Yes.

Plaintiff's Evidence

Q.Do you claim that price of 40/-d., for 15 denier 60 gauge stockings comes within that category according to you, namely, a distressed price? A. May I give an explanation with my answer?

No. 7

Adrian Johnson Stopford

10 Q.I do not want to be unfair, but you have used this expression constantly, these prices were distressed prices. I want your answer as to whether you now claim the price of 40/-d. they said they could pay was a distressed price? A. Yes.

9th December 1965

Re-cross-examination continued

Q.You do? A. Yes.

20 Q.Will you admit that you were involved in relation to the inquiries from Brisbane, that from all inquiries made the price at which retailers were buying was between 36/-d. and 39/-d.? A. Yes - for special quantities.

Q.For 15 denier 60 gauge? A. It did not say for regular stock.

(Witness retired)

(Luncheon adjournment)

PLAINTIFF'S EVIDENCE

No. 8

No. 8

WILLIAM ALEXANDER SCOUGALL
sworn, examined as under:

William Alexander Scougall

30 MR. BOWEN: Q.What is your full name? A.William Alexander Scougall.

9th December 1965

Q.Do you live at 15 Speers Road, North Ryde? A. Yes.

Examination

Q.Are you the secretary of Stirling Henry? A. Yes.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Examination
continued

Q. Have you held that position in the company for the past 2 years? A. Yes.

Q. Prior to that were you for a period with this company as its accountant? A. Yes, from April 1956 to September 1958.

Q. I think, on the 30th November this year a Mr. Fahey, of Albert G. Sims Limited, came out to the hosiery mill? A. He did.

Q. Do you know Mr. Fahey? A. Yes, I know him very well.

Q. You had the task of taking him to see the machinery and auxiliary equipment of the hosiery mill so he could inspect it? A. Yes.

Q. What did you show him? A. I showed him the 48 knitting machines and seaming plant and other auxiliary plant for dyeing and finishing the stockings.

Q. He inspected that? A. That is right.

Q. There has been tendered in evidence as part of exhibit A, page 103, a report by Walmsley Cowley & Company of the 6th November 1963 and it is addressed to Woolworths Limited. It attaches schedules setting out information about the accounts of Stirling Henry Limited. You are familiar with that report and you are familiar with those accounts, are you? A. I am, yes.

Q. In exhibit A, page 108 is a report by Priestly and Morris, auditors for Stirling Henry Limited dated 17th November 1963 and addressed to Stirling Henry Limited? A. I am familiar with that, as well.

Q. There is a letter, page 110 in exhibit A, by Priestley and Morris to Walmsley Cowley & Company dated 11th November 1963, forwarding to Walmsley Cowley & Company their report on Stirling Henry Limited. You know that? A. I received a copy of that letter.

Q. I think you have prepared, from the books of

10

20

30

account of Stirling Henry Limited, a statement of the profits for each financial year ended 30th June, since that company started producing stockings in its hosiery mill? A. Yes, that is so.

10 Q.I show you a copy of a statement which you have prepared - I hand my learned friend and Your Honor copies of this statement - I think you prepared three statements. First is statement No. 1, being manufacturing and trading results of the hosiery department during the period 1956 to 1963? A. That is correct.

Q.And these are, as I mentioned, for the financial years ended 30th June? A. That is so.

20 Q.You have certain figures for each of those years which are in items 1 to 16; and then you come to item 17, being a gross profit. Is that gross profit figure arrived at after only direct expenses incurred in the hosiery mill have been taken into account? A. That is the nett result after the direct expenses have been taken into account.

Q.You have apparently two alternative sums below that, one of which you took off a proportion of expenses under items 18 19 and 20; and the other, where you took off a proportion of expenditure under items 22, 23, and 24? A. That is so.

30 Q.Can you explain the difference among those groups of three? A. Yes, between items 18, 19 and 20, this includes the total expenses which were verified by the auditors. Items 22, 23 and 24, exclude those overheads or expenses which Walmsley Cowley indicated they considered were not applicable to our hosiery mill.

Q.They expressed doubts about certain types of expenditure? A. Yes.

40 Q.You have taken the steps, in making what would be the calculation in relation to gross profit, so as to arrive at a nett profit not deducting those expenses about which they were differing,

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Examination
continued

but only the expenses which they conceded should be deducted? A. Those were expenses they considered not attached to our hosiery mill and I exclude them in items 22, 23 and 24.

Q.What have you included in items 22,23, and 24?

A. I have included there a proportion of the trading expenses, general factory administration and selling and distribution, which they accepted as being - and only those expenses - as being apportionable to the hosiery mill.

10

Q.When you say "they", do you mean Walmsley Cowley? A. Yes.

Q.And their report was in relation to the year ended 30th June 1963? A. Yes.

Q.But you have adopted the principles they laid down, in going back through the company's figures in these earlier years? A. That is so.

Q.Statement No. 2 is a summary of total costs of turnover, and percentages, for the years 1956 to 1963. This refers again to the financial year ended 30th June each year? A. That is so.

20

Q.And the Stirling Henry Limited, in addition to the hosiery mill, during the years you have dealt with, had a number of other mills or manufacturing complexes, did they? A. They did, yes.

Q.And these figures on statement No. 2 represent the figures for all the manufacturing, lumped together? A. Those items 26 to 33, yes.

Q.Taking those first, item 32 gives the total sales of the company in any one year. Item 33 gives the total expenses of the company in any year? A. That is correct.

30

Q.Item 31 would give you the trading profit of the company in each of those years. In relation to this trading profit which is shown, these figures showed it made a trading profit in each of the years in question? A. That is right.

Q. None of these was a loss year? A. There were no losses in those years, no.

Q. Those are trading profits. Is there any figure for nett profit as distinct from that. A. To that trading profit - the company had profits from investments and dividends from its subsidiary company to be added to that, before the total company profit was established.

10 Q. It has subsidiaries as well as investments? A. It had a subsidiary, yes.

Q. Those figures would be before tax? A. That is correct.

Q. They are a pure figure before tax and of course before dividend? A. That is true.

Q. Would there be any other expenses to be taken off that trading profit to arrive at the company's profit for the year? A. No other expenses.

20 Q. For the year ended 30th June 1964, what was the comparable position as regards trading profit? A. The company showed a loss for the year ended 30th June 1964.

Q. How much was the company's trading loss? A. The company's trading loss was £257,000 plus £77,000 - £334,000 for the year 1964.

Q. Have you taken into account its subsidiary as well, and investments?

HIS HONOR: Q. What is its subsidiary? A. Jeanette Underwear Mills Pty. Limited.

30 MR. BOWEN: Q. If you take in as well as the company's trading figures, the figures for its investments and the figures of its subsidiary, what was the position for the year ended 30th June 1964? A. The nett result was a total loss of £329,000 for the year ended 30th June 1964.

Q. For the year ended 30th June 1965, taking the trading profit or loss, what was the figure? A. The trading loss for Stirling Henry Limited was

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Examination
continued

£156,000 and the consolidated loss after dividends received and profit from capital profits was £86,000 for Stirling Henry Limited and £124,000 for the consolidation loss.

Q.The other percentage figures on statement No.2-take as stated in item 34, for example, material to sales percentage, labour to sales, total expenses to total sales and trading profit percentage to total sales. Then there is a percentage in relation to labour, so that in any year you can see what the percentages were with your company? A. That is correct.

10

Q.Then in item 38 you have your total of expenses to labour costs and total hosiery expenses, direct and indirect, as a figure, not as a percentage? A. That is as a figure, item 39 is as a figure.

Q.Then below that you give the percentage to enable a calculation if one of these was the proper proportion to take in apportioning the hosiery expenses? A. That is correct.

20

Q.I do not think I need go through them individually. What is statement No. 3? A. Statement No. 3 is a summary year by year, from 1956, of the total expenses incurred by the company against those items which Walmsley Cowley indicated in their report as being not applicable to hosiery.

Q.You take selling and distribution expenses. Those would be total figure for the years in question? A. That is true.

30

Q.Administration expenses, take rates and taxes, that is the total figure for the company's property? A. For 1963 the total figure would be £12,729.

Q.Would that include the property on which the mill building was erected? A. Yes.

Q.But that has been excluded from being a hosiery expense? A. Walmsley Cowley have, but I have not, in statement No. 1 items 18, 19 and 20.

40

Q. But you have, in items 22, 23 and 24? A. Yes, I have excluded it actually in item 22. I have included it in item 18, rates and taxes.

In The Supreme
Court of New
South Wales

Q. And if one looks at directors' fees, Walmsley Cowley thought they should be excluded, but on the appropriate set of items in statement No. 1 you excluded it in items 18, 19 and 20? A. Yes.

Plaintiff's
Evidence

No. 8

Q. The same would apply to various expenses which are listed here? A. Yes.

William
Alexander
Scougall

10 Q. Coming down to depreciation, the third last, we see in 1963 it was £1,159? A. Yes.

9th December
1965

Q. That is your total depreciation for all the operations of Stirling Henry Limited? A. Yes, that is the total depreciation of office machines, office furniture, for the company during the year 1963.

Examination
continued

Q. Because the main heading is "Administrative Expenses", it looks small? A. Yes.

20 Q. So it is depreciation only on administrative equipment? A. Yes.

Q. In selling and distribution, you have depreciation on motor vehicles and furniture. On statement No. 1, what would the depreciation item 14 be? A. Item 14 is the depreciation on the hosiery mill plant and equipment only, production machines in the hosiery mill.

Q. No depreciation charge on the building? A. No depreciation on the building.

30 Q. These figures have been prepared by you from the books of the company, as you told us, and you have had them checked and certified by the company's auditors, Priestly and Morris? A. Yes.

Q. And, attached is a certificate from Priestley and Morris, dated 8th December 1965, is that correct? A. That is so.

Q. Attached to the three statements are what are called "Supporting notes" for statements No. 1 to No. 3 inclusive, and they set out an

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Examination
continued

explanation or comment in respect of each item,
by number? A. That is so.

Q. So it is largely explanatory? A. Yes, it is
explanatory against each item number in the
margin.

(Three statements tendered and Mr. Bowen
to undertook to call a witness from the
firm of auditors.

Mr. Meares objected to the tender as
containing totally different figures from
figures in schedules with which the
plaintiff had asked the defendant to agree.

10

Mr. Bowen pressed the tender.

His Honor admitted the documents subject
to objection and they were marked exhibit
B.)

MR. BOWEN: Q. In 1963 when a dispute about price
arose towards the end of the year, there was a
claim made that an amount of 5d. per dozen ought
to be added to a figure arrived at before for the
cost of stockings per dozen, because of an
extra week's leave having been granted to the
employees. Do you remember that? A. Yes, I
remember it well.

20

Q. Did you have occasion to check the correctness
of that figure of 5d. as an addition to the cost
of stockings per dozen? A. I did. I checked it.

Q. What was the position? A. The position was that
after the statement was prepared by the auditors,
there was an increase in the annual leave of our
employees in the hosiery mill, from two weeks to
three weeks, which meant in effect we lost one
week's production; and the wages of £1,800 per
week distributed over 90,000 dozen per annum is a
cost of 5d. per dozen.

30

Q. So the 5d. represented a direct loss as regards
wages but did not include any item of loss of
time? A. No.

Q.I think you were concerned in some attempts to sell the machinery in June this year, were you not? A. That is so, yes.

In The Supreme
Court of New
South Wales

Q.I think on the 1st June 1965 you wrote a series of letters to possible purchasers. I show you some documents. That is from your files, copies of letters and replies you got, in relation to an attempt to sell the manufacturing machines for knitting hosiery? A. That is so, yes.

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Examination
continued

Q.It might be convenient if you told us the names of the firms and companies to which you wrote? A. I wrote to William C. Jackson & Company Pty. Limited who are our current agents in Australia for Mellor Bromley. I wrote to L.J. Foster & Company, who are well known in the textile industry for the sale of used machinery. I wrote to William Cotton Limited, the manufacturers in England, and the Australian hosiery mills Yoffa and Wurth Hosery Pty. Limited. I wrote to Suitex Industries Limited, Kolotex Pty. Limited, Kayser Pty. Limited, Prestige Limited, Holeproof Limited, Hilton Hosiery Limited, Beau Monde (Australia) Limited and Messrs. Brown and Dureau Limited.

Q.What responses did you get to those letters?

A. I received one reply from Kayser Pty. Limited, I received one reply from Kayser manufacturers of hosiery plant and I received a letter from William C. Jackson, the agents, enclosing a copy of a letter from William Cotton Limited, the manufacturers. I also received a reply from Brown and Dureau.

Q.Putting it shortly, did any of those replies display any interest in purchasing the mill machinery at all? A. None whatsoever.

(Letters m.f.i.3)

Q.Going back to exhibit B, look at exhibit B. The report attached to it is that of Priestley and Morris but it refers back to the report of Walmsley Cowley, part of exhibit 3. Go to the third and fourth paragraphs (read). Now, I just

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Examination
continued

want you to tell us, in the figures you have prepared in statement No. 1, part of exhibit B, what in fact is the different method of allocation in your allocation in items 18, 19 and 20 and in the Walmsley Cowley allocation? A. In my method in items 18, 19 and 20 I have included all the factory selling and distribution and administrative expenses which we would normally apportion to the hosiery mill. There are some expenses that are not apportionable to hosiery, which we exclude or ignore. In items 22, 23 and 24, I have further excluded those expenses that Walmsley Cowley in their report said were not applicable to the hosiery mill and this has the effect of a reduction of £10,544.

10

Q.Now, look at the direct expenses in statement No. 1, that is item 9 onwards. Could you tell us whether when a mill stops any of those charges continue on? A. In between 9 and - - -

Q.Let me put it shortly, between 9 and 16? A. Between 9 and 16, depreciation certainly continues and maintenance certainly continues.

20

Q.What maintenance could there be? A. With our company, we require an electrician to make regular inspections of the electrical installation within the hosiery mill. Then, our maintenance foreman makes periodic inspections with a view to cleaning, dusting and cleaning down the machines.

Q.Needles and royalties would not continue? A. No.

30

Q.Nor does long service leave? A. That is right.

Q.Can you indicate to me other charges which might continue? A. Yes, the rates and taxes, insurance, security services.

Q.What are the security services? A. That is the watchman we employ. We employ a firm of security specialists to patrol our property.

Q.And do they do the mill as well as the rest of the place? A. Yes, they do the hosiery mill as

40

well as the rest.

Q. Is there anything else? A. Yes, there are certain administrative salaries that would continue.

Q. Which would, to some extent, be referable? A. I would say they would be referable to the hosiery mill, because you cannot halve a man or quarter a man.

10 Q. I want you to take the employees in the hosiery mill and in the company's other knitting mills. They are all on the same, or different, awards? A. They all work under the same award, the textile industry award.

Q. Direct labour costs, therefore, are based on the same award. What about piece-work, do they work piece-work at all? A. Yes, they are all on piece-work in all the mills.

20 Q. With variations in the price of yarn purchased since you started the production of stockings, would the price of yarn alter at various times over the period? A. Yes, it has fluctuated quite a bit.

Q. This would be so in nylon yarn for the production of stockings? A. Yes.

Q. Would it also apply to other types of yarn used in other sections of your business? A. Yes, we purchase other types of synthetic yarns and there has been fluctuation there, too, in prices.

30 Q. Do you use some raw cotton of different grades, in other sections? A. Yes, we use raw cotton. (Objected to as irrelevant; question and answer allowed)

Q. So far as cotton is concerned, is that more stable or less stable, or about the same as nylon, in its variations over the period? A. It is more stable than nylon.

Q. With the cotton relatively stable, and the nylon going up and down? A. That is right.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Cross-
examination

CROSS-EXAMINATION

MR. MEARES: Q.You indicated your losses for the year 1964. I want to put this to you. I am reading from a newspaper of the 16th November 1964: "Stirling Henry cotton spinner weaver knitter lost £440,027 from group operations for the year to June 30th, compared with a profit of £63,668 for the previous year." Is that correct? A. That is not correct.

Q.This statement goes on - "In the preliminary statement the company reported a consolidated loss of £329,240?" A. That is correct.

10

Q.That was correct? A. Yes.

Q."The difference, calculated from the annual accounts released today, is accounted for by the capital item of provision for long service leave." Is that correct? A. That is their explanation of the difference between £329,000 and £440,000 but they lose sight of the fact of the £25,000 provision for long service leave was merely a transfer between reserves.

20

Q.I do not want to waste time, but would you say this suggestion in The Sun of November, that the loss was £440,027, is incorrect? A. I say it is incorrect, yes.

Q.And you say that when the writer said the difference calculated from the annual accounts released today is accounted for by capital items of provision for long service leave, that is correct? A. I do not say that, no. I say they have included in that report the £25,000 long service leave provision which should never have been added - - -

30

Q.But it would make the difference between £329,000 and £444,000? A. No, the difference between £329,000 and £440,000 is profit on capital items.

Q.£444,000? A. £329,000 and £440,000 less the £25,000.

Q.Is the difference in what? A. Capital profit.

Q. May we take it, then, that in achieving a loss of only £329,000 you took as a profit item a capital gain on some sales? A. Yes.

Q. Sales of what? A. Sales of investments.

Q. And that was a profit on the sale of shares of £77,168.0.0., is that right? A. £77,000 something, yes.

10 Q. So that unless or if you had not sold part of your assets in that year and shown that profit of £77,000, your loss would have been over £400,000? A. Over £400,000, yes, that is the consolidated loss.

Q. And that would have represented approximately half your paid up capital? A. The consolidated loss against Stirling Henry paid up capital, it would be roughly 45% yes.

20 Q. Now I want to put to you a problem that we lay men occasionally have when accountants go into the witness box, and it is as simple as this: If I may refer you to Exhibit B, you reached a nett profit figure as shown in Item 21 for the years 1956-1963 is that right? A. That is right.

Q. You show those nett profit figures? A. Yes.

Q. Then if we get down to Walmsley Cowley & Co.'s figures, they show a totally different nett profit figure, is that correct? A. That is so.

30 Q. And then if we look at the document on p.176, that document was prepared by your own accountants, wasn't it, Priestley and Morris? A. No, that was not prepared by Priestley and Morris.

Q. Well, who prepared it? A. That was prepared by the accountant of Stirling Henry.

Q. Well, who is he? A. The gentlemen who prepared this statement actually took figures from -

Q. No, who is he, was my question? A. Mr. Beale.

Q. So that if you take the year 1957, for

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Cross-
examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Cross-
examination
continued

argument's sake, your estimate is £48,459, is that right, your estimate? A. My estimate, yes.

Q. Warmsley Cowley's is £55,918, calculated according to Warmsley Cowley, is that right? A. Yes.

Q. And your own accountants is £33,217? A. Yes.

Q. And these substantial discrepancies between the three estimates continue in every year? A. On the contrary, there is no discrepancy between the estimates of 21 and 25. 10

Q. Between what? A. Item 21 and item 25. The basis for that has already been outlined.

Q. The nett profit arrived at by you under item 21 in each year differs substantially from the nett profit arrived at taking Walmsley Cowley's figures, doesn't it? A. In arriving at 21, I also took Walmsley Cowley's - (objected to)

Q. Can you understand my question? A. Yes.

Q. Can you answer it Yes or No? A. I do not think it is a question that can be answered Yes or No. 20

Q. Well, would you like to make an explanation? A. I should explain that Item 21 has also been calculated on Walmsley Cowley's figures.

Q. Well, what is Item 25? A. Item 25 is item 21 less expenses that Walmsley Cowley stated are not applicable to the hosiery mill.

Q. So, it would be fair to say that item 25 represents Walmsley Cowley's view? A. In respect of the year 1963 only, yes.

Q. And then we find that throughout each year you get this vast discrepancy between your estimates, item 21 and those of Mr. Beale, your own accountant? A. No. This statement (1) has been prepared on the basis adopted by Walmsley Cowley in determining the figures for 1963. 30

Q. But Walmsley Cowley's figures for 1963 are £44,408? A. That is correct. It is also £33,864.

RE-EXAMINATION:

MR. BOWEN: Q.The 1963 report by Walmsley Cowley would have certain principles? A. That is correct.

Q.And when you came to prepare the items 18, 19 and 20, did you apply their principles or not?

A. In preparing, 18, 19 and 20, I applied the expenses accepted by Walmsley Cowley as having been apportioned by Stirling Henry to the hosiery mill.

10 Q.So, they accepted as being correct the Stirling Henry apportionment? A. Yes.

Q.You continued those through those items? A. That is correct.

Q.Now what have you done in 22, 23 and 24? A. In 22, 23 and 24 I have taken from the total of Walmsley Cowley's statement those expenses that they stated to be not applicable to the hosiery mill.

Q.And you have excluded them? A. I have excluded them in calculating the nett profit of £44,408.

20 Q.Well, what have you included in 22, 23 and 24? A. 22 would be the factory overheads, a proportion of the factory overheads acceptable by them.

HIS HONOR: Q.You have not included anything; you have excluded it, haven't you? A. No, the question was what have I included, and the general factory overheads at £15,216 would include expenses such as maintenance.

30 MR. MEARES: Q.Take for instance, '57, general factory overheads in item 18 are £11,000 or more, whereas in item 22 they are £10,000 or more. You have excluded more, the expenses are lower in each case, in Items 22, 23 and 24? A. Yes.

Q.Because you have excluded more to comply with the Walmsley Cowley principle; this produces a bigger profit? A. That is correct.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Re-examination

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Re-examination
continued

Q.Because the expenses are lower? A. That is correct.

Q.Mr.Beale has prepared some figures, which you have referred to? A. Yes, that is right.

Q.Have you got Exhibit A, that schedule? A. Yes, (Page 176 of Exhibit A.)

Q.Have you got the nett profit or loss for the year? A. Yes.

Q.Take the year 1957, that shows £33,217, whereas in item 21, in Exhibit B it is shown as £48,459? A. That is correct.

10

Q.Now why is the profit lower? A. Because in 1957 in these figures no adjustment was made for any stock on hand variations at 30th June each year.

Q.And in the expenses in this statement (p.176 of Exhibit A) have you excluded some of the expenses of Walmsley Cowley's principles, or not? A. That is what has happened here, as in statement (1).

20

Q.What about p.176 of Exhibit A? A. In Exhibit A, p.176, it has included all expenses.

Q.And did not exclude them in accordance with Walmsley Cowley's principles? A. Yes.

Q.So, therefore, the profit is lower, because more expenses have been included, is that right? A. That is true.

Q.Walmsley Cowley raised a question whether apportionment of indirect expenses to the hosiery mill should be on a basis of Labour costs or should be on a basis of turnover, is that right? A. I do not think they actually mentioned turnover, but it was more or less suggested in their report, I do not think they mentioned the word "turnover".

30

Q.Look at p.103 of Exhibit A, the third paragraph. They refer to what they call an inherent weakness? A. Yes.

Q.They say "It is obvious that an inherent weakness exists in that any variation in output in other sections has a bearing on apportionments to the hosiery mill." Well, that would be turnover or sales wouldn't it? A. It could be termed production, productive output, yes. It does not have to be turnover.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Re-examination
continued

10 Q.Well, what is productive output other than turnover, quantities? A. Well, you cannot be producing for stock, in other words, you cannot build up your stocks of finished products.

20 Q.And then they criticise faintly, to some extent, an apportionment in accordance with labour expenses, direct labour costs; what are the considerations in the case of the hosiery of Stirling Henry which would favour one method of the other? A. Well, we found by reason of the constant labour content throughout our various mills that the direct labour method of apportioning expenses is the best to use. If we had used a turnover method of apportionment, then it is obvious that any increase of finished stock, going into stock and not being sold or production ahead of orders, as it were, affected the proportions of expenses quite greatly.

30 Q.Are there any other factors if you take turnover or production? A. Well, we have control over the labour. We have very little control against the future in the material cost of the raw component, the raw material cost.

Q.And if that rises, the production figure tends to rise, which would be used as a measuring rod? A. Then it obviously makes expenses out of proportion.

Q.If you are apportioning indirect costs as to production costs these productions costs fluctuate because of fluctuations in the value of raw material? A. That is correct.

40 Q.So that if raw material prices went up or down, it would load a different portion of your indirect costs on to the hosiery mill or off the hosiery mill according to the changes in prices

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 8

William
Alexander
Scougall

9th December
1965

Re-examination
continued

of raw material? A. Yes.

Q. Whereas direct labour costs are a relatively constant factor? A. That is true, yes.

Q. And you felt it would be better to apportion on that basis? A. Yes.

HIS HONOR: That might be for general purposes, but what about for the purpose of the inquiry that was being carried on? The question being investigated by the auditors in November 1963 was whether the hosiery part of Stirling Henry's business was showing a reasonable profit on costs.

10

MR. BOWEN: Yes.

HIS HONOR: It does not necessarily apply to every method of approach to a company's account.

MR. BOWEN: No, But I was only seeking to get this, that if one can have direct costs, one can have the raw materials making stock, one can have the men actually on the knitting mills, that is part of the cost, and it can be calculated at so much a dozen, but to run a mill like that, one has to pay rates and taxes and some of the Managing director's time has to be given to it.

20

HIS HONOR: It is only a question of approach.

MR. BOWEN: Walmsley & Cowley suggested one approach, the company auditor another. I was seeking to get from this witness the considerations underlying each of these two distinct approaches. I do not think much will turn on it.

30

(Witness retired)



PLAINTIFF'S EVIDENCE

No. 9

LYEL JOHN MURRELL

Sworn and examined as under:

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

9th December
1965

Examination

MR. BOWEN: Q. Your full name is Lyel John Murrell?
A. Yes.

Q. And you reside at 58 Cecil Street, Croydon?
A. Yes.

10 Q. You are a chartered accountant, (Australia)?
A. Yes.

Q. And you are an Associate of the Institute of
Chartered Accountants of Australia? A. Yes.

Q. A member of the Australasian Institute of Cost
Accountants?

MR. MEARES: I admit the witnesses qualifications.

MR. BOWEN: Q. You are a partner in the firm of
Priestly and Morris.

Q. Auditors for Stirling Henry? A. Yes.

20 Q. You see Exhibit B; you are familiar with the
accounts and figures attached? A. Yes. (Exhibit
B handed to witness)

Q. And you have signed the report? A. Yes.

Q. Which is attached to the front of it, is that
right? A. Yes.

Q. Now I want you to assume that the company was
given 3 years notice terminating the business
of producing stockings in its hosiery mill? A.
Yes.

30 Q. Or was entitled to three years notice, I want
you to assume that, but in fact was given no
notice, so that it had to close down and dismiss
staff immediately? A. Yes.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

9th December
1965

Examination
continued

Q. In the loss which the company would suffer in relation to the profit it may have made, are you, with your knowledge of those accounts which are in Exhibit B, in a position to express any opinion as to the extent of that profit loss? (Objected to; after argument Mr. Meares withdrew his objection to the question)

WITNESS: The company would cease to enjoy the profits that it had been used to.

MR. BOWEN: Q. And have you made any calculations in this regard? A. Yes.

10

Q. Will you tell us what they are? A. I have determined, by referring to the profits that the company has been used to making, that there ought to have been or it could have expected to go on making a nett profit of £32,000, something like that for a number of years.

Q. Can you explain how you arrived at that; it does not appear to be an average of the profits they made during the time they produced or some particular production; what basis have you taken to arrive at your maintainable profit? A. I have considered that the years prior to 1963 were not a fair guide as to what might be expected in the future, and I have taken 1963, being a year in which the profits were not so good, as a better guide, and the profits shown there I have reduced by a small margin from £33,800 to £32,000.

20

Q. Well then, taking that, do you consider that to be a fair assessment of the position of the profit which would be lost? A. Yes.

30

HIS HONOR: Q. It is an annual figure - per annum? A. Yes.

MR. BOWEN: Q. So, it would depend on the length of time that one was looking at the loss of profits, what that total figure would be? A. Yes.

Q. In addition in loss of profit, are there any other charges or losses to which you feel you should draw attention? A. Yes.

Q. Would you tell us what those are? A. The charges would be normally termed standing charges, which the company would incur as a result of owing the assets comprised in the hosiery mill.

Q. Say, rates and taxes, that type of thing? A. Yes, rates and taxes.

Q. Perhaps you had better tell us what they are if you would, and how you have brought them into account? A. Yes, Well, first of all, there would be depreciation on the machinery.

Q. Perhaps you can tell us what the figure would be with the early demise of the business? A. The plant and the machinery stood in the books at £47,000 odd and the company stood to lose all but £1600 of that figure if it ceased to produce goods and there was no other sale value for that.

Q. You have been given £1600 as a scrap basis, when you mentioned that? A. Yes.

Q. That is an assumption you make? A. I have seen a letter.

Q. To that effect? A. To that effect.

Q. Now how would you treat this depreciation?
A. Well, I would consider that it ought to be written off over whatever period the company could have expected to continue to trade.

Q. Would it be expected that in purchasing machinery of this type, the cost would be recovered during the period of its operation?
A. Yes.

Q. Now there is some of the accounts a depreciated figure for income tax purposes, which is slight different? A. Yes.

Q. Does that have any bearing on the position?
A. I do not feel it has any bearing at all.

Q. That is depreciation, any other charges? A. Yes. The company would continue to insure the building and would incur actual insurance

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

9th December
1965

Examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

9th December
1965

Examination
continued

premiums for that, and also the plant, which it would insure for its declining depreciated value.

Q.Any other amounts? A. Rates and taxes, watchmen and security services, maintenance in that the building would have to be kept clean and the electrical installations regularly inspected, and the place generally kept in order; also amounts which the company would have expected the hosiery business to contribute towards costs such as director's fees, interest paid, the company still having to pay interest on money outlaid to purchase the building and the plant, administration salaries of the Managing director, the Merchandising manager and Secretary. This is a contribution that the hosiery mill would normally have made for these costs.

10

Q.They would not have taken part in conducting the hosiery mill business; how, therefore, do you apportion some of their salary to it?

HIS HONOR: They would not be working full time.

20

WITNESS: No, it is not in respect of any work they might be doing; it is an amount that the company has been used to collecting from the hosiery mill to recover portion of these costs.

MR. BOWEN: Q.And any other items? A. Payroll tax on those salaries at 2½%, and certain small items such as the telephone and the electricity that is available to the building and cleaning.

Q.I think you have set these out in the form of a schedule, where you have based all that on a three year period, have you? A. Yes.

30

Q.Have you got that in a convenient form, perhaps without going through the figures? A. Yes. (Produced)

(abovementioned Schedule tendered;
objected to; rejected)

Q.Will you take this document? (Document handed to witness) Now, you told us a figure for depreciation, I think, £45,740? A. Yes.

Q. And you have certified the accounts of the company; at what date was that figure of depreciation? (Objected to;)

In The Supreme Court of New South Wales

Plaintiff's Evidence

No. 9

Lyel John Murrell

9th December 1965

Examination continued

10 MR. MEARES: There can be no consideration of any question of damage qua the machine, unless it is first established that if the agreement had not been repudiated, if Your Honor found that, and that if a proper notice had been given, then that machinery could have been disposed of at profit. And the same consideration applies to the building.

20 Now there can be no conceivable heading of damage, in our submission, in regard to the machinery unless and until, and not otherwise, the plaintiff can establish to Your Honor's satisfaction that if some notice, which Your Honor finds to be reasonable was given they would not presently be in the position qua their machinery that they would have been in if reasonable notice had been given.

HIS HONOR: But I think this evidence goes to diminish the amount claimed as loss of profit.

30 MR. MEARES: No, it is going to be added on. We would submit with respect, it is so much waste of time to ask this Court to listen to what accountants say about depreciation of plant in the future unless the plaintiff, Your Honor finds, has established to Your Honor's satisfaction, that the failure to give reasonable notice has caused the Plaintiff the capital loss alleged. That is the first submission in regard to the plant. It applies to the building.

Now this witness, I suppose, as one gathers, says "Now I have calculated the profits not on one of these figures we have already had but on a lower one." Well, I do not quibble with that.

MR. BOWEN: This is nett maintainable profit in the future.

40 HIS HONOR: That is what I said a while ago, maintainable profit in the future.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

9th December
1965

Examination
continued

MR. MEARES: But what is nett maintainable profit? Nett maintainable profit is something that depends upon so many imponderables that it is difficult even to debate some of them.

HIS HONOR: What you say is that it goes to weight?

MR. MEARES: First of all, it depends on price, quantity, cost.

HIS HONOR: Change of fashion and so on?

MR. MEARES: Change of fashion and so on. I do not mind him saying £32,000, but it is the evidence as to depreciation and that sort of thing, of plant - and then there is an assumption he makes, as I see it, that there is a building and the building is not to be used, nothing is to be done in regard to it, and in some way that is an added charge. Well, this may be a matter for submission to Your Honor as a matter of common sense, as a heading of damage, but I submit with respect, an accountant cannot advance it.

10

20

HIS HONOR: I have come to no conclusion whatever, but if I come to certain conclusions this evidence may be relevent. I will admit it.

MR. BOWEN: Q. We have got the figure for depreciation at 30th June 1963 at £45,740. How have you allocated that; you have assumed a 3 year period, have you? A. Yes.

Q. And what is that, £15,783 each year? A. Except the year where the scrap value of £1600 reduces the depreciation.

30

Q. The scrap value reduces depreciation to £14,180, is that right? A. Yes.

MR. MEARES: If this is evident, I would not mind the statement going in.

MR. BOWEN: Then I will re-tender the papers.

(Abovementioned statement tendered and marked Exhibit C).

Q. Have you got a copy of this still? A. Yes.

Q. You notice that insurance is the next one; how do you arrive at that rate of 5/9% is the normal rate the company has to pay for insurance on buildings and plant.

Q. You have taken the insurance on the buildings and this particular plant? A. Yes.

10 Q. On maintenance, there is an apportionment of 13.9% on wages, what is that? A. That is 13.9%, that is the proportion that the hosiery direct wages bore to the total direct wages for the factory in 1963.

Q. And that 13.9% occurs in relation to administration salaries, Managing director, Merchandise manager and Secretary? A. Yes.

20 Q. And then payroll tax, you have got 2 1/2% of administration salaries; why is that? A. 2 1/2% is the normal rate of payroll tax.

Q. That is the rate of the tax? A. Yes.

Q. So, you have applied that to administration salaries, maintenance and director's fees, which you have taken in elsewhere? A. Yes.

Q. There is an interest rate of 6 1/2% on cost of building; there is 6 1/2% on the value of the plant; what is the significance of that? A. 6 1/2% is the current bankrate.

30 Q. But why apply that? A. That is the rate that the company pays on its overdraft with the bank on borrowed funds.

Q. You have assumed that if it had gone on for 3 years that this was a factor that was during all the years charged against it before you got the nett profit which you projected forward? A. Yes.

Q. It would continue? A. Yes.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

9th December
1965

Examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

9th December
1965

Examination
continued

Q. Tell me in relation to depreciation, why do you express the view that that should be taken into account in the loss in addition to the net profit for the number of years I have asked you to assume? A. Depreciation is a cost that has to be borne by the company. It is normally paid for out of its revenues. It is paid for before the nett profit is struck.

Q. It is a charge against revenue? A. Yes, it is a charge against gross revenue, and this charge and cost has gone on, because they have continued to own the machinery.

10

Q. Now in the previous years, when you have taken Exhibit B and you have taken a profit and estimated what you think would be multiplied as the nett maintainable profit, it was a profit arrived at in all the years on that amount after depreciation had been charged? A. Yes.

Q. So that if one wants to multiply a profit without taking depreciation into account, one would have to increase the profit by disallowing depreciation? A. Yes.

20

Q. Knock the depreciation out of account and you would have the profit which did not take account of the depreciation or the building? A. Yes.

Q. In other words, had they gone on for another 3 years getting a gross profit and decided not to charge it against depreciation, it would have been very very much larger than £32,000? A. Yes.

Q. It is only because they have chosen to charge it against depreciation in the past that it is as low as that? A. Yes.

30

Q. I think you have checked your view on another basis, haven't you; what did your totals come to assuming a 3 year period? A. The total of the nett profit based on an assumed £32,000 maintainable would be £96,000.

Q. And the estimated standing charges for 3 years, £73,852, totalling £168,852. Now you have approached the matter from an entirely different angle as well have you? A. Yes.

40

Q. Would you explain what that is? A. Yes. The other basis that I have calculated is that assuming a fair return on the sales, that is, the normal maintainable sales.

Q. Based upon the demand which was apparently to be for 1964, that is 86,000 dozen pairs of stockings, and this 10% is a return on the sale. You have taken a calculation based on a theoretical return of 10% on the cost of making the stockings? A. Yes. I have prepared three calculations, one at 10%, one at 15% and one at 20%.

10 Q. And what figures do you get? A. At 10% a nett profit of £63,067, that would have been available for three years. To that is added the standing charges for the same reason as we have outlined in the previous calculations.

Q. And they do not vary; they would be the same? A. They do not vary.

Q. So, whatever those charges are considered proper would be spread over whatever period you took? A. Yes.

20 Q. And whichever method you adopted? A. If 15% is considered a fair return, nett profit would be £100,174, for three years.

Q. To which you would have to add those same standing charges? A. Yes. And if 20% is considered a fair return, then the nett profit would be £149,915.

Q. And then you would add the standing charges as before, of £72,852? A. Yes.

30 Q. You mentioned a sales figure of 86,000 dozen stockings; how did your turnover figure in pounds? A. The turnover figure is the cost of producing the stockings.

Q. Where did you get that from? A. That is based on the 1963 cost study done by the company and verified by Messrs. Walmsley Cowley and Co. in 1963.

Q. So, the cost of making each particular line, you have taken either 10, 15, 20% to show what the result would have been? A. Well, that cost has been grossed up to a theoretical sales value which would produce a profit of 10% on the sales.

40 Q. In your practise, have you the duty of costing in relation to various types of business? A. Yes.

Q. That is your particular special duty in accountancy, is it? A. Yes.

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

9th December
1965

Examination
continued

In The Supreme
Court of New
South Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

9th December
1965

Examination
continued

Q.Are you able to express a view as to the percentage profit on cost which would be appropriate in the circumstances relating to Stirling Henry from 1963 onwards? A. Well, I can only say a reasonable amount for the company to earn would be what it has been used to earning, and it had been used to earning 18% on its sales in this hosiery mill. It is a very high percentage, but it is what it has been used to earning.

10

MR. MEARES: 18% for what period of time?

MR. BOWEN: Q.What period of time would it be referable to? A. That is the average for 7 years.

Q.That is the average for 7 years from the hosiery mill? A. Yes.

Q.And you say, therefore, that you would conclude that of the three sets of figures you have taken the 15% would appear to be the appropriate one? A. Yes.

Q.It produces a total figure of standing charges of £173,026. as compared to £168,852 by using that method? A. Yes.

20

Q.You spoke of taking the cost and then taking, say, first of all in your first of these last three sums, 10% profit? A. Yes.

Q.So, you arrive at a selling price for that stocking? A. Yes.

Q.Multiply that by 86,000 to give the sale for the year? A. Well, from the cost study, we know what the cost of 86,000 dozen stockings would be.

30

HIS HONOR: Do you make any assumption of what would happen at the end of this postulated three years, one way or the other?

WITNESS: No.

(At this stage further hearing to 10 a.m.
on Friday 10th December, 1965)

FOURTH DAY: FRIDAY, 10th DECEMBER, 1965

In The
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

Lyell John
Murrell

10th December
1965

Examination
continued

(Mr. Bowen said that after Mr. Murrell had completed his evidence, and possible after some other short evidence, he would be in a position to close the plaintiff's case. Because he had not been given sufficient time to peruse certain documents because of late discovery, he fore-shadowed an application for an adjournment when the abovementioned evidence had been completed. Mr. Neares said that Mr. Bowen had been afforded ample time to peruse these documents. After argument, His Honor said he would deal with the application when it was made).

LYELL JOHN MURRELL
On former oath:

MR. BOWEN: Q. You understand you are on your former oath? A. Yes.

Q. I want to take you back for a moment. You gave some evidence yesterday regarding profits projected over a period of 3 years with an addition of some charges, which you called standing charges? A. Yes.

Q. I want you to tell us, if you will, the basis on which you include those standing charges, that is to say, why do you include rates and taxes as well as nett profit?

A. Well, when a company is in business it usually produces sales and it expects those sales to pay all the costs of running the business including rates and taxes, and to leave a pure nett profit. If that company ceases to produce sales, certain costs including rates and taxes continue and the company has to meet these costs and apportion the difference without the pure nett profit.

Q. Supposing there was a fire and the business just cut off like that, what charges would stop and what would go on? A. The charges that would stop would be those charges

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

Lyell John
Murrell

10th December
1965

Examination
continued

directly related to productions, such as wages, electricity and materials.

Q. Would you project those forward if you wanted to indemnify someone against having their sales cut by a fire? A. No, you would not project them, because the production ceases as well and those costs would cease.

Q. Well, the sales would cease, I take it?
A. Yes.

Q. With either a fire or breach of a contract? 10
A. Yes.

Q. Now what charges do continue? A. The charges that do continue would be or may be, in certain cases, depreciation, rates and taxes, administration salaries and certain expenses, insurance, cleaning matters that I set out yesterday.

Q. If you project nett profit and did not project the standing charges, the company could still be at a loss? A. Well, if the company received compensation in the form of pure nett profit, it would not still be pure nett profit, because a company would have to meet these charges out of it. 20

Q. In other words, it would not be indemnified?
A. No.

Q. Could you explain direct and indirect costs in relation to this hosiery mill? A. Well, direct costs are those that can be clearly identified with the functioning of manufacture of goods such as labour engaged in producing those goods. 30

Q. You mean in the actual production of those particular goods? A. The actual production of those particular goods, the operatives engaged therein, or other persons who may be directly identified with the goods. Indirect costs would be, for example, the salaries of other administrative personnel who have other duties to

perform as well as watching these particular goods, supervise the production of these particular goods, other costs as well such as rates and taxes over the whole of the factory.

In the
Supreme Court
of New South
Wales

Q. Look at p.107, Exhibit A. (Shown to witness) That is a schedule attached to Walmsley Cowley's letter? A. Yes.

Plaintiff's
Evidence

No. 9

10

Q. Which are the direct costs? A. The direct costs are towards the top of the page, and consist of cost of materials used, direct knitting labour, pay roll tax.

Lyel John
Murrell

Q. That is under the heading "Knitting"? A. Knitting, dyeing.

10th December
1965

Q. Then under the heading "Dyeing"? A. They are direct costs as well.

Examination
continued

Q. What about under the heading "Manufacturing Expenses"? A. They are indirect costs.

20

Q. I think you gave your evidence yesterday in relation to assuming a nett profit of £32,000 a year. I think you also made a calculation of the average profit earned by the company throughout the whole of its operations? A. Yes.

Q. Now did you make a calculation of the average profit for all the years of operation excluding the first broken year which you have excluded? A. Yes.

30

Q. What did that produce as the average nett profit of Stirling Henry shown in the figures for hosiery mill, shown in Exhibit B. (Shown to witness). Is that the one you took? A. Yes, Exhibit B.

Q. Now, whereabouts on it? A. Item 21. Each of the years from 1957 to 1963 inclusive produce average nett profit of £45,332. per annum.

Q. And why did you exclude 1956? A. Because it

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

10th December
1965

Examination
continued

was an established period and not indicative of what is normal production, normal trading.

Q. And I think you have made a calculation projecting that 3 years on the average nett profit basis as well, so arrived at? A. Yes.

Q. Now you have got those figures and also your figures from yesterday on a sheet of paper with the additions of the standing charges, haven't you? A. Yes.

Q. And those correctly set out the arithmetical calculation in adding the results together?
A. Yes.

10

(Abovementioned schedule tendered and marked Exhibit D)

Q. I think you gave evidence of another calculation involving taking the cost of producing stockings and adding 10%, 15% and 20%? A. Yes.

Q. Now you have made those calculations and also put them on a sheet of paper; that sets out in a visual form what you were saying would be produced by those different percentages if they were used? A. Yes.

20

(Abovementioned schedule tendered and marked Exhibit E)

Q. You have a copy of Exhibit E, have you?
A. Yes.

Q. On turnover? A. Yes, on turnover.

Q. You see you have a turnover of £210,225. per annum; where do you get that from? A. That is in the first calculation and that represents - let me put it this way- the cost of producing the number of pairs of stockings in this calculation is a figure that is in some statements that have been prepared, and it is a certain figure.

30

Q. You have got Exhibit A; can you give it by reference to that? A. I do not know that the statement is in here. It is a statement of cost prepared on the basis of this one here.

In the
Supreme Court
of New South
Wales

HIS HONOR: Of Exhibit B?

Plaintiff's
Evidence

MR. BOWEN: Q. Would you tell us the page number of Exhibit A? A. P.107.

No. 9

10

Q. Now relate your figure to that on p.107, if you would not mind? A. This p.107 represents a calculation of the amount of cost involved in producing 92,903 dozen pairs of stockings. These costs have been adjusted by our accountant and examined by me to ascertain the cost of producing -

Ivel John
Murrell

10th December
1965

Q. Who is the cost accountant? A. Mr. Scougall. Mr. Scougall did that. They have been adjusted to produce an estimated cost for 86,000 dozen pairs of stockings. That statement is not here.

Examination
continued

20

Q. That involves an adjustment to produce the 86,000? A. Yes, it involves an adjustment of these figures. Now the turnover of 86,000 dozen, as I said yesterday, was the estimate production for 1964 based on figures supplied by Woolworths.

Q. Being how many dozen stockings per year?
A. 86,000 dozen.

30

Q. I want to relate it to the evidence? A. To arrive at the turnover that is shown in this statement, Exhibit E, item 1, to arrive at \$210,225, the cost, which I referred to estimated to produce 86,000 dozen pairs has to be grossed up to provide a theoretical sales-figures sufficient to provide a return of 10% on that sales figure.

Q. So, the figure you have taken would give a 10% return on what? A. On the sales figure of \$210,225.

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

10th December
1965

Examination
continued

Q. And what would that 10% profit over three years amount to? A. £63,067.

Q. And then you have added on to that the same standing charges as you listed before, £72,852. is that right? A. Yes.

Q. Could you take the second one on Exhibit E?
A. The second one is assuming that a fair return is 15% on the sales. Now, in calculating the turnover shown therein of £222,612, we must bear in mind that the cost of producing 86,000 dozen stockings, is the same, so that if the profit is to be greater, then the sales figure must be greater and the principle of the calculation is exactly the same as in the first one.

10

Q. Is it just an adjustment to produce 15% instead of 10%? A. Yes.

Q. And then you project out to the right what the 15% profit is? A. £100,174.

Q. And you add the standing charges of £72,852 as before? A. Yes.

20

Q. What about No. 3 on Exhibit E? A. That is a similar calculation based on 20% return.

Q. And shows a 20% profit projected out to the right of £141,915, standing charges £72,852? A. Yes.

Q. Now did you make a similar calculation in respect of 75,000 dozen per year? A. Yes, I have.

Q. Have you got a similar sheet relating to that? A. Yes. (Produced)

30

(Abovementioned schedule tendered and marked Exhibit F).

Q. Now would you take the first calculation and explain what difference it makes if you calculate it on 75,000 dozen; first of all, did

you use some basis figures? A. Yes, except that the cost here would be reduced naturally to produce a lower number of stockings.

Q. Now take the first calculation, the cost?

A. The cost is shown in this statement, not in the other statement, £170,258, and this is increased by one-ninth to produce the sales value of £189,175, which is multiplied by three for the years.

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

10th December
1965

Examination
continued

10 Q. That adds on the 10%? A. Yes.

Q. Then you project out to the right the 10% profit for 3 years, £56,752 and you add the same standing charges? A. Yes.

Q. What about the second calculation? A. The second calculation is based on a return of 15%.

Q. So, you take the cost of producing 75,000 dozen stockings and you multiply it by a $\frac{100}{85}$ to give the 15%? A. Yes.

20 Q. Multiply it by three to give you the three years, and you project out to the right only the portion of it which represents the 15% profit in it, that is £90,136? A. Yes.

Q. The third calculation, you take the same cost of producing 75,000 dozen stockings, and what do you do then? A. You add on one-eighth to produce a sales value for one year, extend it to three years and 20% thereof is £127,693, to which the standing charges are added.

30 Q. Now I think you said something yesterday about which method you considered to be the preferable one, the profit basis or the turnover basis? A. Yes, I consider the profit basis to be a better method, a preferable method.

MR. BOWEN. These figures to some extent derive from something done by Mr. Scougall. I might have to seek leave to recall him, to verify it.

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

10th December
1965

Examination
continued

Cross-
examination

Q. Would you look at that sheet with figures and calculations on it? A. Yes. (Shown to witness)

Q. You did mention that you base some of your calculations on figures supplied by Mr. Scougall? A. Yes.

Q. Are those the figures that you referred to? A. Only in respect of the calculation involving the production of 86,000 dozen. There was another sheet.

10

Q. Related to the 75,000 dozen? A. Yes, other figures as well.

(Abovementioned schedule m.f.i.4)

Q. Would you look at this additional schedule I put before you? (Shown to witness) A. Yes, that is the schedule on which this calculation of 75,000 dozen was based.

(Abovementioned schedule m.f.i.5)

CROSS-EXAMINATION:

MR. HEARNS: Q. You said in your evidence that you have determined, to use your own words on p.121 of the transcript, by referring to the profits that the company has been used to making, that there ought to have been or it could have been expected to go on making a nett profit of £32,000, something like that for a number of years? A. Yes.

20

Q. So that your total figure of £96,000 depends upon the fundamental premise that for a period of 3 years after December, 1963, this company, in relation to its hosiery mill, would have made £32,000 each year? A. Yes, except that the date was from 1st July 1963.

30

Q. From 1st July. Well, you have made no estimate of the profits it could have expected

to make from 1st January 1964 or 1st December, 1963? A. When.

Q. Each year for those periods? A. I have taken a 3 year period.

Q. You have made no estimate of the yearly profits the company could have made commencing from 1st January 1964? A. No.

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

10

Q. And you have made no estimates alternatively of the yearly profits the company could have made from 1st December 1963? A. No.

Q. And, of course, you would be ready to agree, wouldn't you, that the future profits that this company may have earned in relation to its hosiery mill primarily depended upon the three factors: First of all, the quantity of hosiery that it was able to sell; secondly, the price that it could obtain for that hosiery; and thirdly the cost of producing that hosiery? A. Yes.

Lyel John
Murrell

10th December
1965

Cross-
examination

20

Q. And may I take it, broadly speaking, that in reaching this profit of £32,000 you have assumed that the company would continue as and from 1st July 1963 in the same fashion as it functioned from 1st July 1962 to 30th June, 1963? A. Yes.

Q. Did anybody tell you that in relation to the activities of the hosiery mill that prices that the mill was receiving were gradually going down? A. I was told there was a tendency towards reduced prices.

30

Q. Did you examine the tendency? A. I saw no reduction that had been agreed to.

Q. Now, I suppose you would agree with me that in the projection you have made, the tendency would be for costs to increase? A. Yes.

Q. But in your calculations, your estimates, you have assumed costs remaining stationary? A. Not entirely. I have reduced the nett profit by a

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

Iyel John
Murrell

10th December
1965

Cross-
examination

margin.

Q. Of some \$1800? A. Yes.

Q. And also you would agree with me, wouldn't you, that in regard to the production of a product such as the one you are examining, it is by no means difficult to convert a substantial profit into a substantial loss if by any chance costs increase or production decreases or prices paid decrease? A. I would agree.

Q. And we have, have we not, manufacturers proceeding for a large number of years, showing a substantial profit and then finding that within the space of 12 months they will make a substantial loss and lose 50% of their capital? A. Yes.

10

Q. And such a case is Stirling Henry, isn't it? A. Yes.

Q. Now may I assume that any claim you have estimated for standing charges can only be maintained upon the assumption that the company for the period of 3 years you have projected would be operating profitably in regard to its hosiery mill? May I suggest that your estimate of standing charges as a loss to the company depends upon the premiss that for the period of time for which you have projected that loss, the company in relation to its hosiery mill would be operating at a profit? A. No.

20

Q. Well, supposing you had a case of a company, which was manufacturing fully fashioned hosiery, and which was entitled under an agreement that it had to 3 years notice from its purchaser of its output, do you follow me? A. Yes.

30

Q. And supposing it was entitled to 3 years notice, we will say, as from 1st January, 1964. And supposing it can be established that in truth as from that date, assuming the company had been given the 3 years notice but nevertheless had operated, it would have made consistent losses for the period of 3 years? A. No.

Q. Why do you say No; I am asking you to assume that. Under those circumstances, the company would have lost nothing by way of standing charges, would it? A. It would still incur its standing charges.

In the
Supreme Court
of New South
Wales

Q. But really you would then charge up, would you, to this purchaser, who should have given 3 years notice, some standing charges which would have accrued to permit the company to carry on for 3 years at a continual loss? A. Yes.

Plaintiff's
Evidence

10

No. 9

Q. And you would have come to the Court, I assume, and said "Well, if the company, the purchaser, had given 3 years notice, then upon the basis that the hosiery mill was continued for 3 years, there was a substantial loss in standing charges" you would have come to the Court and said under those circumstances, notwithstanding the fact that as from 1st January 1964 this company can only carry on buying from the purchaser who has given it 3 years notice, at a loss - you would still say that under those circumstances the company would be losing standing charges? A. I would still say that the company would be losing its standing charges provided all those standing charges were in fact lost.

Lyel John
Murrell

10th December
1965

20

Cross-
examination

Q. Supposing you had a case of a company which should have given its purchaser 3 years notice, do you follow me? A. Yes. Pardon me? The company should have given its purchaser 3 years notice?

30

Q. Yes, its vendor 3 years notice. But supposing in truth that company that was buying went into liquidation after 6 months, what would the loss be to the selling company, that is the hosiery company, in relation to standing charges? A. The loss would still be to the extent of the standing charges. It would not matter whether the company had gone into liquidation or not. The claim would be the same.

40

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

10th December
1965

Cross-
examination

Q. You speak as an accountant, do you? A. Yes.

Q. Now in this particular case, you have at a certain date the value of the company's hosiery mill at a certain figure? A. As it stands in the book.

Q. And you assume that as far as that machinery is concerned, it would have lasted for years?

A. It would have lasted for years, yes.

Q. But you assume, do you, that if Woolworths had said, as they were legally entitled to, we will assume, "This agreement has only 3 years to go," and if you assume also that Stirling Henry could not have used that machinery for any other purpose after that period of 3 years, then you say, as I understand it, that a proper claim in damage as a standing charge is the total value in the books of that machinery, namely, some \$45,740? A. In the circumstances of Stirling Henry, where the machinery was 10 years old, yes, after the 3 year period.

10

20

Q. Well, is that based on the assumption that the machinery would have only lasted for another 3 years, pray? A. Not at all.

Q. Is it based upon any assumptions as to its life? A. No.

Q. Is it based upon any rate of depreciation charged in the past by this company? A. No.

Q. Well now, I want to take you to a standing charge of rates and taxes, which you say calculated amounts to \$1489 per annum. Is that the proportion that was charged against the hosiery mill in the company's book? A. It is an allocation.

30

Q. Is it allocated in the company's books? A. No, there is no entry to that effect.

Q. Do you know whether it has been calculated in relation to improved values or unimproved

values? A. The rates are based on unimproved values, but it has not been allocated according to any values.

In the
Supreme Court
of New South
Wales

Q. Well, has it been allocated to the size of the buildings and the mill compared to the total area of land that Stirling Henry occupied? A. No. It has been apportioned on the basis of the hosiery mill direct labour in 1963 to the total direct labour in 1963 as agreed by Walmsley and Cowley.

Plaintiff's
Evidence

10

No. 9

Q. Supposing instead of the building that was used for the hosiery mill there was a 20 storey building in which were 3,000 employees instead of, as we understand it, about 80. Then I assume - and you will correct me if I am wrong - that upon the assumption that there were only 1,000 other employees in Stirling Henry, the total rates and taxes that you would have apportioned to the hosiery mill would have been in the proportion of 20/21sts. to the hosiery mill and 1/21st to the rest of the company's organisation? A. If that situation had existed, the calculation might have been different.

Lyel John
Murrell

10th December
1965

20

Cross-
examination

Q. Upon the basis that where this hosiery mill is there was a 20 storey building with 20,000 employees in it, and there were only 1,000 other employees in Stirling Henry, you then would have apportioned the rates and taxes in your standing charges qua the hosiery mill at 20/21sts? A. No, I would not. I would have done it on an average spaced area, since all the buildings are single storey.

30

Q. No, you have got a 20 storey building? A.No, I am sorry. I would have done it on a floor space basis, I suppose.

Q. Would you tell me what floor space has got to do with rates - A. I am sorry, ground area.

Q. On ground area? A. Yes.

Q. So, under those circumstances you would have

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

10th December
1965

Cross-
examination

adopted a completely different method of apportionment? A. Yes.

Q. Now, I suppose another way of doing it, and a way that is sometimes done, would be to apportion costs in relation to turnover? A. It is possible.

Q. Or I suppose another approach would be to apportion costs in relation to gross profit earned by each branch? A. If you want to.

Q. Or nett profit? A. If you want to.

10

Q. And I suppose one is as valid as the other?
A. Oh no.

Q. And, of course your apportionment as to rates and taxes depends upon the assumption, doesn't it, that the building which remains, which has not been burned down by Woolworths or destroyed by them is not being used for the remainder of the activities of Stirling Henry?
A. That is correct.

Q. So that if Stirling Henry used that business building in connection with some other activities, there would be no standing charge apportionment?
A. That is right, apportionable to the hosiery.

20

Q. And in the same fashion, your apportionment of security services, director's fees and administration salaries, depends upon the assumption that no business is being carried on on the land and buildings formerly occupied by the hosiery mill? A. Not necessarily.

Q. Well, let me take this case, let me assume that in August 1963 Stirling Henry used that land and building for a very profitable enterprise, and in starting it, it was a case of all hands to the pump, the administrative had to spend 80% of their time in starting it. Under those circumstances, would you have apportioned the standing charges that I have mentioned against the hosiery mill company activity? A. I

30

still would have.

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

10th December
1965

Cross-
examination

Q. So, it amounts to this then, doesn't it, that whether or not the security services, the director's fees and the administration salaries can be apportioned to something else that is going on by way of a business activity where the hosiery mill was, you would, nevertheless, still claim that Stirling Henry had lost these standing charges in respect of those? (Objected to; allowed) A. I would say that these standing charges -

10

Q. No, would you deal with the particular standing charges I am dealing with, upon the assumption made? A. The company has been used to getting these amounts as contributions towards those expenses and that is the assumption. The expenses are still being incurred and they still should get those contributions.

Q. No, would you answer my question? (Read by Court Reporter - "So, it amounts to this in respect of those.")

20

WITNESS: Yes.

MR. NEARES: Q. Now you have made a claim by way of standing charges of interest paid, is that right? A. Yes.

Q. In the profit and loss account of Stirling Henry from its inception, has there been any deduction for interest on capital in any of those accounts? A. There has been no deduction in the profit and loss account.

30

Q. In any account? A. Not in the form of a deduction. There has been in the form of a charge.

Q. In what respect? A. Interest on bank overdrafts.

Q. And that is all? A. Yes, as far as I am aware.

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

10th December
1965

Cross-
examination

Q. And there is no mention of it, nor has there ever been, in the company's profit and loss account? A. Of course there has.

Q. Well now, you would concede, wouldn't you, that no interest charge has ever been charged before in relation to arriving at nett profits? A. No, I would not. Oh yes, I am sorry. I did not understand the question. Would you mind repeating it?

Q. You would agree with me that in arriving at nett profits or gross profits of this company, there has never been in the past charged as an item against profit, interest? A. I would not agree with that.

10

Q. Well, has it ever been charged in respect of the hosiery mill? A. Yes.

Q. Where has it been charged? A. In the cost summary prepared by Walmsley and Cowley in 1963.

Q. As far as the company was concerned was my question, Stirling Henry? As far as the company was concerned - interest on any sum of money - ever been included in the company's profit and loss account? A. Yes.

20

Q. Well now, would you show it to me? A. I have not got a profit and loss account here, I am sorry.

Q. May I refer you to Exhibit B, to manufacturing and trading results of the hosiery department. (Exhibit B shown to witness). Now would you concede that in arriving at the nett profit in those figures that were approved of by Priestly and Morris, that is you, isn't it? A. Yes.

30

Q. Leaving out Walmsley and Cowley's figures - there is no mention nor is there included any charge for interest? A. I disagree.

Q. Would you show me where it is? A. It is included in item 20, administration expenses.

Q. Item 20, is it? A. Yes.

In the
Supreme Court
of New South
Wales

MR. MEARES: Q. You said that in some estimates made by Stirling Henry interest was taken into consideration? A. Yes.

Q. Could you point out under what headings it was taken into consideration? A. In which estimates?

Plaintiff's
Evidence

HIS HONOR: Q. I think you said it was Item 20. A. Yes. Administration expenses, Item 20.

No. 9

10

MR. MEARES. Q. It would seem that in arriving at the various charges, if you look at your estimate under Standing Charges, in some cases you have arrived at them by apportioning the proportion of employees in the hosiery mill to the total employees in Stirling Henry? A. As they were in 1963, yes.

Lyel John
Murrell

10th December
1965

Q. You have done that, for instance, in regard to rates and taxes? A. Yes.

Cross-
examination

20

Q. But in regard to other items, you have used a totally different method? A. No.

Q. Take Interest Paid? A. I am sorry, interest is a different method.

Q. And take Insurance? A. Insurance is a different method.

Q. I do not suppose you, in estimating a profit for the future, gave any thought to whether profits were rising or falling over the years? A. Yes, I did.

30

Q. What were they doing - without looking at them? A. In 1963 they fell from the 1962 level.

Q. What about 1961? Might I refer you to Exhibit B as a quick method. According to that on your estimate of real profits they fell from \$52,822 in 1959 to \$33,864 in 1963. That would be roughly by 40 per cent? A. Yes.

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

10th December
1965

Cross-
examination

Re-
examination

Q. Supposing I came along to you as a client and I sought your advice as to the wisdom of purchasing this hosiery mill and there had been a price put on it and I wanted to know whether you thought, as an accountant, I should pay that price. Do you follow that? A. Yes.

Q. The first thing you would do, I suppose, would be to look to the future? A. Yes.

Q. You would say to me: Now, it is no use buying this business unless it can make a profit. That would be so? A. Yes.

10

Q. You would say, bearing in mind the risk of a business of this sort, you would need to see a profit of X per cent, Y per cent or Z per cent? A. Yes.

Q. You would want me to examine very closely as to what I thought I could get for the stockings I would be producing in the future? A. Yes.

Q. And as to the quantity I would be selling? A. Yes.

20

Q. And as to cost? A. Yes.

RE-EXAMINATION

MR. BOWEN: Q. Still on the last assumption, if you were told that for the next three years there was an exclusive supply agreement with Woolworths for the supply of up to 50,000 or 75 per cent of Woolworths' requirements, would that be a factor you would take into account? A. I would consider it a very important factor.

Q. Mr. Heares asked you to what date you ran your three years. You told him first July 1963? A. Yes.

30

Q. Take, first of all, the basis of the average net profit calculated over a seven year operation of the company?

MR. HEARNS: I object to the question on the basis that the witness told me this morning that the £33,000 was an estimate of the profits for the year from the 1st July 1962 to the 30th June 1963. The question is being put upon the basis that that estimate was over 7 years. If there is any doubt about that answer I would ask it to be turned up.

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

MR. BOWEN: It is not being put on that basis.

No. 9

Lyel John
Murrell

10th December
1965

Re-
examination

10 MR. HEARNS: What my learned friend referred to is one matter; what the witness told me is another. He told me - if he wishes to correct it, I have no objection - he told me that this £32,000 was an estimate of profit for the year ending 30th June 1963. If there is any mistake that he has made, I submit it should be corrected, in fairness to the witness. He said this estimate of £32,000 was an estimate of profits that he made for the year ending 30th
20 June 1963.

HIS HONOR: We will ask him again.

MR. BOWEN: I make it clear I am asking him at the moment about two portions. He had two calculations.

Q. First of all taking your £45,332 per annum, Exhibit D. You told us you arrived at that figure by averaging seven years' profits of the company? A. Yes.

30 Q. Then you project it forward for three years? A. Yes.

Q. The last of the seven years you took ended on the 30th of June 1963? A. Yes.

Q. If you were asked to make a projection of three years from the 14th July 1963 would that affect the figure that you took? A. My figure would be the same.

Q. If you were asked to take Christmas Day,

In the
Supreme Court
of New South
Wales

Plaintiff's
Evidence

No. 9

Lyel John
Murrell

10th December
1965

Re-
examination

25th December 1963, would that make any
difference to the figure you took? A. No.

Q. On the other hand if you were asked to
commence it from the 1st July 1964, could that
make a difference? A. No.

Q. I am putting it to you that there would be a
full further year's accounts available to you?
A. Yes, that would make a difference. I would
have those figures to work on.

Q. Did you have accounts for any broken period
up to either 1st December 1963 or 1st January
1964? A. I had no accounts.

10

Q. If you had had such broken accounts would
that have affected the average that you would
have taken into account? A. No.

Q. You explained in relation to that average
that you excluded the first broken year of
initial production too? A. Yes.

Q. If you go back to your first basis, \$32,000
per annum, you explained that was based on the
year ended 30th June 1963 but you had made some
adjustment, you told us in evidence? A. Yes.

20

Q. If you were asked to make an estimate of
three years' profits from, say, 14th July 1963
would that affect the taking of that figure?
A. No.

Q. If you were asked to make it from Christmas
Day 1963 would it affect that figure? A. No.

Q. If you were asked to take it from 1st
December 1963 or 1st January 1964, would it
affect that figure? A. No.

30

Q. You would asked about standing charges. You
were asked to suppose that the company did not
make a profit but continued to carry on? It
was getting sales but not making a profit and
would this lead you to eliminate standing

charges. I think you answered that it would not? A. It would not, except -

In the
Supreme Court
of New South
Wales

Q. Can you tell us why that would be, that you would not eliminate standing charges? A. Standing charges are still incurred by the company even though the company might make a loss. I will explain that a little more. If the company makes a loss it may still have recouped some of its standing charges.

Plaintiff's
Evidence

No. 9

10 Q. If it made exactly a line ball, it would have recouped virtually all of them? A. Yes.

Q. If it made a substantial loss it might have recouped part only of them? A. Yes.

Lyel John
Murrell

Q. But it still would have incurred them and either wholly or partly recouped them? A. Yes.

10th December
1965

Q. You were asked about depreciation and you were asked whether you took into account the life of the machine? A. Yes.

Re-
examination

20 Q. Did you answer that question based on the physical life, the economic life or what sort of life? A. I answered the question that I have taken a ten year period as being a generally accepted period in which to recoup the cost of plant. Ten per cent is a readily acceptable basis to write off plant in a straight line. That is, an equal amount each year for ten years. The amount has not been equal in this case but I have still taken a ten year period.

30 Q. Is this applicable to what type of machinery (objected to).

MR. REARES: I do not mind that concession as an accounting question.

(Witness retired)

MR. BOWEN: I tender the documents m.f.i. 4

In the
Supreme Court
of New South
Wales

and 5 as being correctly based on the company's
figures.

(M.f.i. 4 and 5 marked Exhibits G and H
respectively).

Plaintiff's
Evidence

MR. MEARES: If my learned friend considers
these documents are so important that have been
discovered, I want to have another look at them.
I think it had better be ordered so there cannot
be any dispute about it. I have no objection to
my learned friend having them for the rest of
today but I should like to have them handed to
me by some time this afternoon so that I may
look at them in the weekend.

10

No. 9

Lyel John
Murrell

HIS HONOR: Do you agree to that?

10th December
1965

MR. BOWEN: I want to look at them but I cannot
look at them this afternoon as unfortunately I
have another commitment.

Re-
examination

MR. MEARES: May I endeavour to get over it this
way: we will try to look at them today and then
hand them to Mr. Bowen.

20

(Further hearing adjourned to 10.30 a.m. on
Monday 13th December 1965).

FIFTH DAY: MONDAY, 13TH DECEMBER 1965

In the
Supreme Court
of New South
Wales

MR. BOWEN: I was about to put Mr. Scougall in on two documents to prove some figures but my learned friend and I agreed on them. I found over the weekend there was a further document with figures in it which I needed him to prove - Exhibit C, standing charges. I have not had time to talk to my learned friend about this.

Defendant's
Evidence

No.10

10 I could perhaps get over the necessity to recall Mr. Scougall. I refer Your Honor to Exhibit C. Item 1: The figures are from the company's books and are correct as far as the amount goes. Your Honor appreciates that my learned friend makes no concession as regards the method of treating it.

Robert
Geoffrey
Millist

20 Item 2, Insurance. 353,000 is the insurance replacement value of the building, not the cost, but it is correct in that respect. It is the amount for which they insure. The earlier evidence was that the original cost was 22,520. That is the value for which it is insured and the rate they pay on insurance. The plant values: that is the depreciated value and they only insure at the depreciated value. But that is the correct figure from the books.

13th December
1965

Court notes
of legal
argument prior
to witnesses
evidence

30 Rates and taxes are correct for the figures paid by the company, but again the apportionment is direct labour costs of the mill to total direct labour costs.

Item 4, Security Services. That is the correct figure from the books and that is correct, but the apportionment is the proportion of direct labour costs of the mill to total direct labour costs.

Item 5, Maintenance and Wages. Those are wages actually paid. The figures are correct from the books but the apportionment, 13.9, is the proportion of direct labour costs of the

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Court notes
of legal
argument prior
to Witnesses
evidence
(Continued)

mill to the total direct labour costs.

Item 6, Directors' Fees. Those are correct from the books, the correct figures. The apportionment is again direct labour costs in the mill in proportion to total labour costs. I do not know why, but they describe it as the 1963 basis; however, it is the same thing.

Item 7, Interest Paid, 6½% of the cost of buildings. The cost is 322,520, 6½% on cost of building. That is the overdraft rate paid by the company. This was the figure brought into the account, 6½% on the written down value of the plant - again, the written down value of the plant is the correct figure from the books. As before, my learned friend does not concede the method of treating these.

Item 8, Administration Salaries, Managing Director, Merchandise Managers' Salary. The figure for salaries is correct but again the apportionment is 13.9; that is not conceded as to method.

Item 9, Payroll Tax. 2½% of administrative salaries, maintenance and directors' fees. The figure for maintenance and directors' fees is correct. 2½% is the correct rate of payroll tax paid by the company. As to whether these would be chargeable is not conceded.

Item 10. This is based on the correct figures paid for telephone, electricity etc., but it is apportioned again to direct labour costs and total labour costs and the method of bringing it into this statement is not conceded.

That would be all I would have sought to get from Mr. Scougall.

There are some documents remaining to be tendered in our case. I tender the documents m.f.i. 1 and m.f.i. 2.

10

20

30

MR. MEARES: I asked Mr. Stopford whether he could produce any correspondence as to the prices at which Stirling Henry had offered their hosiery lines in New South Wales and other States in December 1963 and he said he had searched for the correspondence. Subsequently, Mr. Bowen said that m.f.i. 2 contained the particulars of it. I think it is fair to say that m.f.i. 2 does not mention any prices. M.f.i. 1 does refer to a price in regard to certain lines, not the main line. Without some mention of price, part of the exhibit may be not as meaningful as if we had some evidence as to what these people were prepared to offer to the trade at.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

HIS HONOR: There might not be a written record of it.

13th December
1965

MR. MEARES: Exactly. With respect, I do not object to this tender.

HIS HONOR: Subject to the very grave comment.

Court notes
of legal
argument prior
to Witnesses
evidence
(Continued)

MR. MEARES: I do not want to comment, I just offer that little warning about it so that if some evidence can be produced as to what prices were offered -

MR. BOWEN: If you can give me a bit longer for that.

(Correspondence, m.f.i. 1 and 2, marked Exhibit J)

MR. MEARES: I would refer Your Honor to pp.108 and 109 of the transcript.

MR. BOWEN: Perhaps I could add correspondence later.

There were some documents produced to us by the defendants. I call first for the buyer's advice of 8th January 1962 relating to the 15-denier Fairyweb and of the 8th February

10

20

30

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Court notes
of legal
argument prior
to Witnesses
evidence
(Continued)

relating to 30-denier Captivation.

MR. PEARES: May I have it noted that on Friday, pursuant to the undertaking I gave to the Court, I kept all the documents on the Friday and delivered them at 5 p.m. on Friday to my friends and they had them over the weekend.

I produce the first document, 8th January. The second document, 8th February - I think that call should be for the 8th January. The month has been changed in the document. I produce it and I show it to my friend.

MR. BOWEN: I tender those. There is one further that might perhaps be added to this, a memorandum of 1st June 1962, inter-office, by Mr. Cooper to South Melbourne buying manager.

MR. PEARES: It shows in substance, I suggest, that at that date from a record, we were getting from the trade stockings and paying them a higher price than we were paying Stirling Henry on that particular date in connection with the stockings mentioned.

(Buyer's advice sheets tendered and marked Exhibit K)

MR. BOWEN: I will tender the copy of the inter-office memorandum from Mr. Cooper to the South Melbourne buying manager dated 1st June 1962.

MR. PEARES: Could my friend indicate the purpose of the tender?

MR. BOWEN: The first paragraph is the relevant one, but in relation to some lots they were paying very much less in June 1962. In some cases more and in some cases less.

(Case for the Plaintiff Closed)

10

20

30

DEFENDANT'S EVIDENCE

No. 10

ROBERT GEOFFREY MILLIST,
sworn, examined, deposed:

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Examination

TO MR. MEARES: My full name is Robert Geoffrey Millist. I live at 18 Holly Street, Castlecove. I have been employed with Woolworths Limited since 1947. In 1951 I returned from London and I was employed in Sydney as a buyer. In 1956 I went to New Zealand as the buying manager of the New Zealand Company and in January 1963 I came back to the Sydney office and I was there employed as merchandise manager. I still occupy that position.

10

Q. As merchandise manager, are your duties only concerned with buying or with buying and selling or organising stores, or what?

A. Primarily concerned with buying and the administration of buying.

Q. When you are described as the merchandise manager, are you in charge of the buying of all the goods that Woolworths are offering for sale or only part? A. Only part.

20

Q. What is your part? A. In 1963 I was responsible for buying virtually all of the softgoods items purchased by Woolworths.

Q. Does that include womens hosiery? A. Yes, that includes womens hosiery.

Q. Prior to returning to Sydney in January 1963 had you had any direct dealings with Stirling Henry in connection with the sale by it of womens hosiery? A. No.

30

Q. At some time either late in July or early in August 1963 did you have a conversation with Mr. Cooper concerning prices to be paid to Stirling Henry for stockings they were

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No. 10

Robert
Geoffrey
Millist

13th December
1965

Examination
(Continued)

supplying Woolworths? A. Yes I did.

Q. What was Mr. Cooper's position then? A. Mr. Cooper was then buying manager of hosiery.

Q. To your knowledge, was he from the time you returned until then the person dealing mostly with Stirling Henrys concerning deliveries, orders and prices? A. Yes, he was the one that was primarily concerned.

Q. After this conversation with Mr. Cooper did you attend a conference between yourself and Mr. Cooper, representing Woolworths, and Mr. Wainberg and Mr. Stopford representing Stirling Henry? A. I did, yes, to the best of my knowledge, on the 12th August.

10

Q. Do you remember where the meeting was? A. It was held - if that is the meeting you are referring to - it was held at Stirling Henry's mill.

Q. As a result of something Mr. Cooper had told you prior to attending that meeting, had you had a discussion with your managing director, Mr. Theo. Kelly, concerning the future dealings with Stirling Henry? A. Yes I had.

20

Q. Did you shortly after the conference, namely on the 14th August, make a report to your managing director as to what took place at that conference? A. Yes.

Q. Have you with you a copy of that report? A. Yes, I have it in my briefcase.

Q. As far as what was said and the order in which it was said, would you be clear about that without referring to your report? A. Reasonably clear, yes.

30

Q. You went out there with Mr. Cooper to see these gentlemen. Would you tell me what took place? A. Yes. I took out with me a copy of an arrangement which had been made between the

two companies in approximately July 1961 and I first of all -

Q. Have you got a copy of that? A. I have a copy of that on my file, yes.

MR. MEARES: I tender that document. He showed this to them out there.

MR. BOWEN: It appears to be an internal document but if Mr. Millist showed it at the meeting, I would not have any objection.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

10 HIS HONOR: Q. Did you show this document to the other members of the conference - specifically, Mr. Wainberg or Mr. Stopford?
A. As far as I am aware, I did not show them the document; I merely read it out to them.

Robert
Geoffrey
Millist

HIS HONOR: He can read it out to us.

13th December
1965

MR. BOWEN: I will not object.

(Document dated 10th July 1961 marked Exhibit 1)

Examination
(Continued)

20 MR. MEARES: Your Honor will find it is the variation pleaded.

Q. You say that at the commencement of this meeting you read this out. Prior to reading it out, what did you say? A. May I just refer to my notes on that?

HIS HONOR: By all means do so; it is much more satisfactory if you do.

MR. BOWEN: I will not object to that.

30 TO MR. MEARES: I do not know that I said anything prior to this except I approached it on this matter, that we had come to discuss this question of prices and we wanted to make it quite clear on what basis we were discussing prices.

In the
Supreme Court
of New South
Wales

Q. What did you say about this document you were reading out? A. I told them that this was a copy of the document that had been passed to me as being the details of the arrangement made in July 1961.

Defendant's
Evidence

Q. And you then proceeded to read it out? A. I read it out just to get confirmation of the point.

No.10

Q. Having done that, what did you then do? You can refer to your notes. A. I then said that I wished to bring the discussion back to the question of market prices and that it was on this basis that we wanted to base our future dealings with Stirling Henry.

10

Robert
Geoffrey
Millist

Q. Would you read out your notes on p.2. Have you got your note of the 14th August? A. Yes.

13th December
1965

Q. Would you read it out to me? A. We then informed Stirling Henry that we were currently offered -

Examination
(Continued)

MR. MEARES: All the records of Mr. Stopford were simply read out.

20

MR. BOWEN: I am not objecting; I just want to understand it.

MR. MEARES: Q. Read out what you have got slowly because this gentleman is taking it down in shorthand and we desire complete and meticulous accuracy. A. We then informed Stirling Henry Limited that we were currently able to purchase our requirements of hosiery construction being produced by them at prices considerably below those we were at present paying to them and that we now wished to bring into effect the terms of the arrangement outlined above and purchase from them our future requirements at the ruling market price. At this point lengthy discussions emanated on the definition of the term "market price", we insisting that it meant the price at which we could regularly purchase hosiery of the same

30

construction on the open market; Mr. Wainberg maintaining that the prices we were paying were not true market prices but were in fact distressed prices and that these would not be available to us if Stirling Henry were not in the market and able to supply a very big proportion of our total requirements.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

10

This latter point we refuted as we consider that at present the market for fully-fashioned hosiery was so over-supplied for this to have little or no effect. No agreement could be reached between us on the definition of the term "market price". At this stage we had not quoted the actual prices we considered to be the current market price but in an endeavour to assure Mr. Wainberg that we were not driving an unreasonably hard bargain we informed him that if after due consideration they were of the opinion that the prices which we nominated would result in producing at a loss then if they were prepared to supply either us or our auditors with an audited statement showing that their transactions over the last two to three years had been unprofitable and that future operations would also be unprofitable we would undertake to review the matter to ascertain what should be done.

No.10

Robert
Geoffrey
Millist

20

13th December
1965

Examination
(Continued)

30

Mr. Wainberg refuted entirely this suggestion, saying that he would not be put in a position of coming with "cap in hand" to Woolworths to bargain for some compensation.

We then advised Stirling Henry the prices we had in mind which would involve decreases from those we are currently paying, as follows:

15-denier 60-gauge: current price, 46/6; new price, 41/-; decrease per dozen pairs, 5/6d.

30-denier 51-gauge: current price, 56/-; new price, 48/-; decrease per dozen 8/-.

40

15-denier 51-gauge mesh: current price, 66/6d; new price, 48/-; decrease per dozen, 18/6d.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Examination
(Continued)

When Mr. Wainberg received this information he was horrified, ~~and there is no doubt the reductions are substantial, but only because in the past we have been generous towards Stirling Henry and have only asked prices from them which averaged with other purchases would give us -~~ (Struck out by direction of His Honor).

MR. BOWEN: Is this said at the meeting?

MR. HEARES: Q. Is this what you said? A. This is not what I said at the meeting. This is what happened at the meeting. 10

HIS HONOR: Q. This is your comment to Mr. Kelly after the meeting has taken place? A. Yes.

HIS HONOR: Q. I think what was said at the meeting includes the horrified look on Mr. Wainberg's face but the rest is comment to your managing director? A. That is correct.

HIS HONOR: That is all we want in - this is very tentative, Mr. Heares.

MR. HEARES: I could have that when Mr. Wainberg received this information, he was horrified. 20

HIS HONOR: Yes.

MR. HEARES: Q. You have read something out which was your comment to Mr. Kelly. Did you make any comment to Mr. Wainberg and to Mr. Stopford as to how it was that you had managed to pay above market prices from time to time? A. As far as I am aware, I did not make any comment of that nature.

Q. Would you now read on? A. Mr. Wainberg complains that since the inception of this arrangement it has continually meant reductions in prices paid to Stirling Henry and an ever-increasing percentage mark-up for Woolworths. He claims this is unreasonable and unfair, which point we refuted, saying that the prices at which we sell have absolutely nothing to do with the 30

price we pay and that we would have maintained our selling price structure even had we been able to purchase freely on the open market.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

10 Q. Leave out the next paragraph. Then would you continue? A. Mr. Wainberg's reaction to these prices is that he would definitely not accept them, that he would hold us to our current prices until such time as his present stocks of hosiery and yarn had been exhausted and that when he again called for contracts, if these were not forthcoming he would decide what action to take, saying he would rather be in Stirling Henry's shoes than Woolworths. We advised Mr. Wainberg that we would like him to give this matter due consideration and that we would set out details proposed in a letter and would ask him to advise us in writing what his reactions were.

No.10

Robert
Geoffrey
Millist

13th December
1965

Examination
(Continued)

20 Q. Insofar as the arrangement that you refer to was concerned, when you read it out did either Mr. Wainberg or Mr. Stopford say anything at all to indicate that that arrangement had not been made? A. They said nothing at all to that effect.

Q. Insofar as the negotiations were concerned on this occasion, who was the main spokesman from the Stirling Henry side? A. Undoubtedly, Mr. Wainberg.

30 Q. I think I am right in saying that following upon that discussion you wrote a letter to Mr. Wainberg of the 13th August 1963, did you not? A. That is correct.

Q. That is contained on p.95 of Exhibit A, in which you said that you referred "to the arrangement made at the meeting held in July 1961 between yourself and the managing director" and so on? A. Yes, that is correct.

Q. Following upon that interview, you then received the reply to your letter from the

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Examination
(Continued)

plaintiffs signed by Mr. Wainberg of the 19th August 1963, which appears on p.97 of Exhibit A, in which he said there was no purpose in going into details of the general agreement, and there was a discussion by him in the third paragraph on what "market" meant. Following upon that letter, did you have further discussions with your managing director on or about the 20th August 1963? A. Yes, I did.

Q. Following upon that discussion, did Mr. Wainberg and Mr. Stopford attend a conference with yourself and Mr. Cooper on the 27th August 1963? A. Yes.

10

Q. Would you refer to your notes of that date. You made those notes at the time? A. I made these notes following after this meeting, yes.

Q. Just read out your notes. A. This is 27th August. The meeting was on 27th August 1963, the one you are referring to. Mr. Millist advised that the matter of fixing prices for future contracts had been given very close consideration and that the position had been discussed at top level. Our conclusions had been reached and we were prepared to offer a contract for the period 1st October 1963 to 31st December 1963 for the following quantities at the prices indicated:

20

- 12,000 dozen 15-denier 60-gauge.
- 4,000 dozen 30-denier 51-gauge.
- 1,500 dozen 15-denier 51-gauge mesh.

30

Q. The prices offered were, first of all for the 15-denier 60-gauge, 41/-; for the 30-denier 51-gauge, 48/-; for the 15-denier 51-gauge, 48/-? A. That is correct.

Q. Would you tell me whether at this time and before it you were purchasing at those prices? (Objected to; allowed).

HIS HONOR: I will allow it; what effect it has will be a very different matter.

MR. MEARES: I shall be dealing more

40

specifically with these purchases at a later time.

HIS HONOR: I will admit the evidence subject to the objection.

TO MR. HEARES: We were purchasing at or even below these prices.

10 It was pointed out that if this offer were accepted the contracts would be placed forthwith. If it was refused our orders for the quantities indicated would have to be placed elsewhere. Time for consideration was offered, but it was advised that a decision must be reached no later than Monday next, 2nd September 1963. Mr. Wainberg advised that there was no need for further consideration, that he knew their costs and he definitely could not accept at these prices. He still claims that we have a contract to take the total of Stirling Henry's production before
20 purchasing elsewhere.

It was pointed out that we were still prepared to take his output whilst our demand remained at a level to enable us to do so, but that we were only prepared to do so at prices at which we were reasonably able to do so from other manufacturers. It was pointed out that even our offer of 41/- was, on today's market, considerably higher than prices that were obtained elsewhere.

30 Mr. Wainberg claims that such prices were not market prices but were distressed prices.

Q. As far as your position as merchandise manager in this month was concerned, what was your opinion, with your knowledge of the trade, as to the future of fully-fashioned hosiery?

A. At this time fully-fashioned hosiery demand was waning quite considerably, and the prices also of fully-fashioned hosiery that we could obtain from manufacturers throughout Australia

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Examination
(Continued)

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Examination
(Continued)

were in fact weakening.

Q. What about the prices you were charging?

A. We felt that there was no point in our reducing our prices further because we felt that this would have no effect now on the demand for the hosiery.

Q. As far as the future was concerned, were you, or not, concerned in relation to the quantity of fully-fashioned hosiery you would be able to sell in the future as a result of this waning demand? A. We were concerned from the point of view that we would not be able to continue in the future to take Stirling Henry's full production.

10

Q. In regard to your company, do you make it a practice of giving each buyer of a particular line a target which he is required to achieve? (Objected to; allowed subject to objection).
A. That is correct.

Q. Does this target that you give him prescribe what gross profit you expect of him? A. Yes.

20

Q. Does it also prescribe mark-up percentages?
A. It does prescribe a departmental mark-up percentage.

MR. BOWEN: This is all subject to the same objection?

HIS HONOR: Yes.

MR. HEARLES: Q. So that the buyer is expected to maintain a certain mark-up and to show a certain profit? A. That is correct.

30

Q. In relation to this target that he has and the amount of profit that is expected of him, the amount of mark-up that is expected of him, he is entitled, in relation to particular purchases, to buy under or over the mark-up so long as the average required of him is achieved? A. That is correct. It is his duty

always to buy at the best available prices. The hosiery department is concerned with a number of lines and it may not always be possible to achieve the percentage mark-up that we set for a department on any one particular line. Some must be over, some must be below.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

10

Q. I want to ask you this from your experience with Woolworths: In relation to people who sell to you, is it the company's policy to throw overboard, if I may use that expression, a person with whom the company has been dealing for a long time simply because somebody else offers a little bit under him? (Objected to).

No.10

Robert
Geoffrey
Millist

HIS HONOR: I realise the force of the objection but I will receive the evidence; whether I will use it or not is a matter for argument.

13th December
1965

20

TO MR. MEARES: I say in answer to that it is definitely not the company's policy merely to accept prices from other suppliers because they are below those of a long established supplier without first making endeavours to get the long established supplier to quote at different prices which would be comparable to what we had received elsewhere.

Examination
(Continued)

Q. Suppose, for instance, on an occasion a new man will come in and offer a little under, will it necessarily mean you will abandon the other?

30

MR. BOWEN: I take the same objection and I take it the same course will be followed.

HIS HONOR: Yes, I will give the same ruling.

WITNESS: Certainly not.

MR. MEARES: Q. Will you proceed with your notes - is this a policy that has existed with Woolworths ever since you have been with them?
A. Yes, it has.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Examination
(Continued)

Q. And one that is constantly maintained by Mr. Kelly? A. It is one that Mr. Kelly more or less enforces.

Q. Now would you proceed with your note of the 27th August? A. Mr. Wainberg reported that he would not accept our offer and that if that was our final decision the matter would have to be resolved by other persons. He was not prepared to close down his factory immediately and throw a hundred people on to the street just because we wanted to make higher profits.

10

Discussion then revolved around other terms of the arrangement, mainly dealing with the following points:

(1) Prices to be firm for six months. Mr. Stopford claimed that this meant that six months' notice of change of costs was to be given. It was pointed out that our understanding was that prices were to be firm for six months and that this did not mean six months' notice of change was necessary. In fact it would be impossible and that the current prices had been in effect for well over six months.

20

(2) Mr. Stopford also pointed out that they were supposed to have six months' cover at any one time but they were now down to one month's cover. The arrangement is that contracts should be placed for six months and reviewed every three months.

The present negotiations have been somewhat protracted but the arrangements made on this occasion have followed the same pattern as previous to this monthly discussion - that does not read right.

30

Finally, Mr. Stopford put forward a request for an interview, that in view of the fact that their cover was so short would we be prepared to continue on at present prices until the end of the year. This would also give more time for consideration to be given to our proposition for

40

future operations. Mr. Millist advised that we were not prepared to alter our proposition as this would involve us in payments very substantially over and above those that would be necessary at current market prices.

In the
Supreme Court
of New South
Wales

Q. Following upon that interview, did Mr. Wainberg request to see Mr. Kelly? A. Yes, he did.

Defendant's
Evidence

10 Q. As to any requests made by him from time to time when you were there for him to see Mr. Kelly, if he wished to see Mr. Kelly was Mr. Kelly prepared to see him? A. Yes, on every occasion.

No.10

Robert
Geoffrey
Millist

Q. Until after the parties seemed to be finally at issue in November 1963? A. That is correct.

13th December
1965

Q. Again at this conference on the 27th August was it Mr. Wainberg who was doing most of the talking? A. Very definitely.

Examination
(Continued)

20 Q. Was it Mr. Wainberg at these conferences dealing with whether the propositions were acceptable - was he talking generally to the point? A. I found discussions with Mr. Wainberg fairly difficult to follow because he was inclined to interrupt when you were trying to make a point and I don't think it was a deliberate attempt to sidetrack but he would continually refer back to agreements even back to 1955 and to recount certain portions of the history of our dealings with them in relation to the hosiery business.

30 Q. On the 28th August 1963 did Mr. Wainberg and Mr. Stopford come up and see you and Mr. Kelly in Mr. Kelly's office? A. That is correct.

Q. I may try to shorten this, with respect, because I do not think there is a great deal of dispute between us. At that conference did Mr. Kelly maintain that Woolworths were not prepared initially to pay at prices higher than

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Examination
(Continued)

those reasonably available on the market?
A. That is correct.

Q. However, did he say anything about Stirling Henry and what he would be prepared to consider?
A. Mr. Kelly, let alone -

Q. I want to know about this particular time.
A. At that time he was looking for ways and means - (Objected to).

Q. Would you read from paragraph 2? A. Following on this paragraph dealing with discussions that ranged over various periods of the history with Stirling Henry, in essence Mr. Kelly said quite clearly that Woolworths would not be paying prices higher than those reasonably available on the market at any one time but that because Stirling Henrys were suppliers of long association and that at such prices they would not be operating at a loss, the arrangements were that our contracts would be placed at prices at which we could reasonably obtain stocks from other suppliers and at the end of a period if Stirling Henry would submit audited accounts of the results of the previous period's trading which showed that losses had been sustained, compensation would be made at least to offset these losses.

10

20

This arrangement is to last for a period of time during which Woolworths were able to make satisfactory profits from these margins. Mr. Wainberg appeared not to understand the meaning of this offer and kept insisting that he would have to close his factory.

30

Ultimately, after long discussion, it was agreed that on Mr. Kelly's return to Sydney some time in September a meeting would be arranged between representatives of Stirling Henrys, their auditors, representatives of Woolworths with their auditors, to work out a basis for future operations. The auditors would be asked to determine such facts as (1) Stirling Henry's costs of production; (2) value of Stirling Henry's present capital investment

40

in the hosiery mill; (3) their opinion as to a reasonable rate of profit to Stirling Henrys, bearing in mind the conditions existing at any time; (4) a date at which it was reasonable to lay down that all obligations on behalf of either party to the other were to cease.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

10

At this juncture Mr. Stopford requested that we would agree on some interim price for operations up until the end of 1963 whilst the auditors were thrashing out the details of the arrangement to be applied in the future. On this request, Woolworths therefore agreed that they would pay prices as at first suggested by Mr. Cooper, that is :

No.10

Robert
Geoffrey
Millist

- 15-denier 60-gauge, 44/-.
- 30-denier 51-gauge, 56/-.
- 15-denier 51-gauge, mesh, 63/6d.

13th December
1965

20

That was to be for all deliveries for the new contract to be placed up until 31st December 1963, new prices to become operative for all future contracts and any balance of the existing contracts as from the 1st January 1964.

Examination
(Continued)

Q. Then it would seem that as a result of this discussion with Mr. Kelly, prior to this Woolworths were maintaining that they were only prepared to pay these current market prices?
A. Yes.

30

Q. Then Mr. Wainberg came up and was he listened to by Mr. Kelly? A. Yes, certainly.

Q. Mr. Kelly spoke of these people with Woolworths and the long association they had had with Woolworths? A. Yes.

Q. Finally Mr. Kelly was prepared to consider an altered method of payment? A. For the period indicated for these goods.

Q. Thereafter the auditors attended to

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Examination
(Continued)

conferences? A. Yes.

Q. You had various auditors' reports? A. Yes.

Q. Ultimately an offer was made dated 12th November 1963 on p.113 of Exhibit A which was over and above what you maintained was the current market price and which was the price you had said you would pay and you would not pay any more, and then as a result of further discussions Mr. Wainberg and Mr. Stopford had with Mr. Kelly and you, those prices were varied in an offer contained on p.115 of Exhibit A? A. That is correct.

10

Q. That offer was made on the 14th November 1963? A. That is correct.

Q. Thereafter, Stirling Henry were not prepared to accept those prices? A. That is correct.

Q. Then you proceeded to buy elsewhere? A. Yes.

Q. And have continued so to do? A. Yes.

Q. But in relation to stockings they had on hand that were manufactured, did your company arrange to take up all those stockings from Stirling Henrys? A. Yes, we did.

20

Q. Did you take them over at prices agreed to by Stirling Henrys? A. We took them over at market prices.

Q. Insofar as this claim of Mr. Wainberg's about distresses prices was concerned. In relation to hosiery, were Woolworths receiving normal offers in the course of their trading for hosiery, and were you receiving those offers? A. ~~I was not personally, but my buying manager, Mr. Cooper was.~~ (Objected to; struck out by direction of His Honor).

30

Q. In November did you make an estimate of what Woolworths requirements might be for the year 1964? A. Yes we did.

10 Q. That estimate appears on p.114 of Exhibit A, and your estimate was 86,000 dozen. You stated in that letter that provided your requirements came up to this estimate you would be prepared to purchase the numbers mentioned in full but if the numbers fell below the estimate you would take 75,000 dozen. The prices offered, therefore, were increased prices over what had initially been offered; namely 41/- for one line and 48/- for the other lines? A. That is correct.

Q. I will be leading specific evidence as to this. In the early years of this agreement and later on you were buying a very large quantity of fully-fashioned stockings in addition to the output of Stirling Henrys? A. If you are going back to the late 1950s, yes, that is correct.

20 Q. What was your opinion as to the year 1964 in regard to your ability to sell fully-fashioned stockings in the lines that Stirling Henrys were selling? When you mentioned this 75,000 dozen, what was your feeling in regard to the market? A. Our feeling in regard to the market was that the market was declining, that it was difficult to forecast ahead exactly what our sales would be but, as pointed out by you, we had estimated our requirements for the whole year as 86,000 dozen but in view of the fact that it was difficult accurately to estimate what was likely to happen we advised
30 Stirling Henry that, come what may, we would take 75,000 dozen from them during the whole of 1964.

CROSS-EXAMINATION

MR. BOWEN: Q. You said in relation to one of these meetings that Mr. Wainberg was talking about an agreement in 1955. Do you remember that? A. Yes.

40 Q. You yourself took the view that there was no agreement in 1955 operating - did you at

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Examination
(Continued)

Cross-
examination

In the
Supreme Court
of New South
Wales

that time? A. Yes I did.

Q. Were you aware of the existence of a previous agreement in 1955? A. At that time, yes, I think I was aware of it.

Defendant's
Evidence

Q. You had read the file. You had read letters exchanged in 1955? A. Yes.

No.10

Q. In particular, a letter of 10th May 1955?
A. Could I refresh my memory?

Robert
Geoffrey
Millist

Q. Could I have the notes to which you referred in refreshing your recollection?

10

13th December
1965

HIS HONOR: Q. Could you let counsel have the notes you read from - they were 12th August, 27th August and 28th August? A. Yes. These are only copies of the notes of the 12, 27th, 28th August. (Produced)

Cross-
examination
(Continued)

MR. BOWEN: Q. I want to refer you to a letter of the 10th May 1955 from Woolworths to Stirling Henrys. It is Exhibit A, the first document.
A. This is 10th May 1955.

Q. You are familiar with that letter, are you?
A. Reasonably familiar with it. I am familiar with what I consider to be the intent of that letter.

20

Q. At the time you told us about when you entered into these discussions in August 1955 you knew of its existence and you had read it?
A. I had read it, yes.

Q. You see it refers to the manufacture of 50,000 dozen? A. Yes.

Q. It provides at the bottom for contracts to be placed each six months so that there will be 12th months cover for production at that stage?
A. Yes.

30

Q. Over the page, orders to be placed for colours and size. A. Yes.

Q. The first paragraph in that letter was that they would import and set up machinery to produce stockings exclusively for Woolworths Limited? A. Yes.

In the
Supreme Court
of New South
Wales

Q. Did you take the view when you went to this meeting on the 12th August 1963 that this 1955 agreement had been varied by the arrangements made in 1961, or entirely superseded, or what?

Defendant's
Evidence

10

A. I took it that these arrangements had been entirely superseded with what had been arranged in 1961.

No.10

Q. Did you regard the 1961 arrangement as binding between Woolworths and Stirling Henrys?

Robert
Geoffrey
Millist

A. Yes, as far as it went I did consider it was binding.

Q. You are aware, I suppose, of Mr. Kelly's letter to Stirling Henry on the 27th November 1963 at p.120 of that exhibit. Would you look at that? A. Yes.

13th December
1965

20

Q. You were aware of that letter because you were working closely at this time with him on this matter? A. Yes.

Cross-
examination
(Continued)

Q. You notice the third paragraph: "On every occasion during our discussions we have emphasised that no claim exists between our companies with regard to the supply of fully-fashioned hosiery ... goodwill."

30

Q. You disagree with that view? A. Not quite, no. If I may say this, I consider the arrangement we had was binding but there was no real legal document binding us to an agreement with Stirling Henrys and I think Mr. Kelly in this letter is sort of saying virtually there is no legal document, it was an arrangement between businessmen.

Q. In other words, you draw a distinction between something which is binding and something which is legally binding? A. Yes.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Cross-
examination
(Continued)

Q. When you answered me before you meant that in your view the 1961 agreement was not legally binding? A. That is correct.

Q. In what sense was it binding? A. Inasmuch as it was an arrangement made between us as between honourable businessmen.

Q. The best of goodwill? A. Yes.

Q. Purely moral or ethical considerations would give it force. Is that right? A. Yes.

Q. If I may go back, you were away in 1955, were you? A. No, I was actually in Sydney in 1955.

10

Q. At that time were you aware that Woolworths were having difficulty with their suppliers of stockings? A. At that time I had nothing to do with the purchasing of hosiery through Woolworths but from hearsay I had heard it was difficult to get our requirements.

Q. You had heard that suppliers were holding Woolworths up on prices, raising their prices? (Objected to).

20

HIS HONOR: It will not be any evidence of the facts but it might go to his state of mind.

MR. MEARES: If it is put forward on that basis I do not object to it.

WITNESS: Would you repeat the question?

MR. BOWEN: Q. You had heard a lot by hearsay that they were having difficulties with their suppliers of stockings at that time? A. No, that is not quite what I had. I had heard - this would be just from conversations with my fellows in the office - that we were having difficulty in getting our full requirements.

30

Q. Now I ask you whether you had heard that the suppliers were increasing the prices against

Woolworths? A. No, I had not heard that.

Q. You would agree that if Woolworths obtained an exclusive supply of 50,000 dozen production per year this would strengthen their position as far as dealing with other suppliers is concerned - taking 1955. A. If we are talking of 1955, yes. I do not think I could deny that.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

10

Q. If production was increased above 50,000, upwards towards 100,000, the same thing would apply: it would strengthen their position as far as dealing with other suppliers was concerned? A. It would depend on the outside situation altogether, but if you are talking specifically about the position in 1955, of which I know very little, assuming that we were having difficulty in getting stocks from other manufacturers I must accede to what you say as being correct.

20

Q. If you did not know the market at that time I will not take it any further with you. When you went to the meeting you told us about first, the meeting on 12th August 1963, I gather you knew of the existence of the letters that passed between the parties in the middle of 1961 - perhaps I had better remind you of them. (Question withdrawn).

Cross-
examination
(Continued)

30

Q. Would you look at Exhibit 1, which I now show you. Whose signature is that on Exhibit 1? A. Mr. Fleming.

Q. When did you first see that, do you recall? (No answer).

Q. Would it be when you came into the matter to look at the file and to take this matter up with Stirling Henrys in 1963? A. It probably was some time after the meeting with Mr. Cooper in late July, when he met them at Stirling Henry; but it could have been before that, I could have been acquainted with it

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No. 10

Robert
Geoffrey
Millist

13th December
1965

Cross-
examination
(Continued)

before that.

Q. You are referring now to 1963? A. Yes, 1963.

Q. Was it your understanding of the matter that that was a record of the contract between the parties? A. Yes, that was the arrangement.

Q. That was the basis? A. That was the arrangement that was made in 1961.

Q. You did not go to any other sources to see whether there was any variation or any other term in it other than on the memorandum? A. No.

10

MR. BOWEN: Q. I think that you got your knowledge from looking at that memorandum, and you put this to Mr. Wainberg and Mr. Stopford at the meeting of 12th August 1963? A. That is right.

Q. And at that point of time, may I take it at that meeting that you had not yet gone to the file and looked at the 1955 letter? A. No, I knew at the time of the original arrangements that were made.

20

Q. You mentioned in your discussion of it that Mr. Wainberg tried to introduce some talk about a 1955 agreement; would it be incorrect to say that after that meeting you went and had a look at the 1955 agreement? A. I undoubtedly would have done.

Q. And you had not particularly paid attention to it before the meeting? A. No, I think that I had read it very thoroughly and knew what it was before that meeting.

30

Q. You put to them your view as to what was meant by market price in the arrangement that was set out in Exhibit '1', did you not? A. I put to them that what I wanted to do was to revert to this agreement and purchase in future at what I considered to be at market prices.

Q. It was a matter for you to assess the market

price and that way to fix it under the agreement, is that the position? A. Yes.

In the
Supreme Court
of New South
Wales

Q. And do you say that even if that price that you so fixed gave you a mark up of 100%, that would not be relevant to the fixing of it?

A. As I understand the question, no. Our mark up would not have any -

Defendant's
Evidence

Q. Would not have any bearing on fixing the price between the manufacturer and Woolworths?

A. No.

No.10

10

Q. And your mark up could be as small or as large as one might imagine, but it did not affect the market price after, being the words used "fixed under this arrangement" in Exhibit '1'? A. No.

Robert
Geoffrey
Millist

Q. That is your view? A. That is certainly my view.

13th December
1965

Q. And was it also your view that it did not matter whether or not such an arrangement was in any way profitable to Stirling Henry; when I say it did not matter, that this was not a relevant matter? A. It was not a relevant matter in fixing the market price, no.

Cross-
examination
(Continued)

20

Q. It was completely irrelevant in fixing the market price? A. Yes.

Q. And, of course, you appreciate that from the time the 1961 arrangement was made up to the time you came into the matter, as you have told us on 12th August 1963, Stirling Henry and Woolworths had always fixed prices which did take into account the matters I have mentioned? (Objected to).

30

HIS HONOR: It is very much an arguable question. I intend to let it in, if it only goes to credit.

WITNESS: Would you mind repeating the question?

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Cross-
examination
(Continued)

MR. BOWLEN: Q. (As read by court reporter).
And, of course, you appreciate that from the
time the 1961 arrangement was made up to the
time you came into the matter, as you have told
us on 12th August 1963, Stirling Henry and
Woolworths had always fixed prices, which did
take into account the matters I have mentioned?
Is that your understanding of it? A. No.

Q. Was it your understanding of it in August
1963? A. No. I say no because, as far as I am
aware, we never knew what Stirling Henry's costs
of production were.

10

Q. Was it your view in August 1963 that ever
since the arrangement had been made in 1961,
Woolworths and Stirling Henry, in fixing the
prices of stockings, had taken the retail
selling price at which Woolworths were selling
stockings and Woolworths mark up? A. To some
degree, yes.

Q. And when you say "to some degree" you would
agree with me, wouldn't you, that it had been
taken into account and it had influenced the
price which was so set and arrived at? A. Yes.

20

Q. Now as far as other prices at which you were
obtaining from other suppliers are concerned,
is the position this, that from the time the
arrangements, which you referred to in Exhibit
'1' were made in 1961 until the time you came
into the matter in August 1963, the prices at
which Woolworths were able to obtain supplies
of stockings from other suppliers had also been
a factor taken into account in fixing prices?
(Objected to).

30

MR. HEARLES: I am calling the buyer who bought
these things. We would submit that even if Your
Honor admits it, anything this man says can be
of no probative value. How can he conceivably
say what was happening when he was away? The
person who is able to speak about this matter is
able to be called.

40

HIS HONOR: Well, it is my view at this moment that I do not think that any reply that Mr. Millist could make to that question could be treated by me as evidence of the truth of the fact, but having in mind the line of cases such as the Ginger Meggs case and Carr v. Berriman case, his answer may have a bearing on his state of mind at the time he was taking an active part in negotiations, and it is for that reason that I admit it.

10

WITNESS: I do not understand the question.

MR. BOWEN: Q. (As read by Court Reporter). Now as far as other prices at which you were obtaining from other suppliers are concerned, is the position this, that from the time the arrangements, which you referred to in Exhibit '1' were made in 1961 until the time you came into the matter in August 1963, the prices at which Woolworths were able to obtain supplies of stockings from other suppliers had also been a factor taken into account in fixing prices? A. I do not understand the question. Will you say it was a factor in fixing the prices, are you saying fixing the prices at which we sold the merchandise, or prices at which we may have offered Stirling Henry.

20

Q. No, prices at which you bought from Stirling Henry, fixed for the periods in accordance with the arrangements? A. I really feel that I am not competent to give a satisfactory answer to that question, because I was not in the negotiations and I had no direct discussion on the negotiations that took place between 1961 and 1963.

30

Q. So that when you came into the meeting of 12th August, 1963, you did not know whether or not this had been a matter that had been taken into account in arriving at the prices in the past? A. I agree that I knew that we had paid probably Stirling Henry prices that were a little higher than we were able to obtain from

40

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Cross-
examination
(Continued)

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Cross-
examination
(Continued)

other manufacturers.

Q. You appreciate that is not the matter I am putting to you? A. No, I realise that, but I was not at the discussions and I do not think that I could give, not having discussed this point with anyone, an opinion on it.

Q. You have no view one way or the other as to whether your representatives of Woolworths, over the period before you came into it, had pressed upon Stirling Henry at the meeting to fix prices, the lower prices at which they were obtaining supplies from other people from time to time? A. I know, from what I have heard, that the prices that we were able to obtain supplies from other suppliers for were told to Stirling Henry.

10

Q. But the prices fixed with Stirling Henry differed from those prices? A. That is correct.

Q. You have mentioned this meeting of 12th August 1963; do you recall a meeting at Woolworths' office on 2nd August 1963, attended by yourself and Mr. Cooper and Mr. Stopford and Mr. Wainberg; do you recall that? A. Yes, I recall that meeting very vaguely.

20

Q. You did not make a note of it at the time; you are just relying on your recollection when you answer? A. That is right.

Q. And I suggest to you that it was at that meeting that you produced a memo written by Mr. Fleming, which would be Exhibit '1', that that was the meeting at which it was produced? A. On 2nd August?

30

Q. Yes. A. No.

Q. Didn't you produce it the first time you came into the matter? A. No.

Q. Why not? A. As far as I remember, and I have made no notes of 2nd August, I discussed this

matter with Stirling Henry merely to sort of acquaint myself with the feeling that existed between the representatives of Stirling Henry and our managing director and to find out first hand exactly how Mr. Wainberg had reacted to the prices that Mr. Cooper had offered him at a meeting they had had previously, on, I think, 24th July 1963.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

10 Q. And you did not look at the file beforehand?
A. I could not say whether I looked at the file beforehand or not.

No.10

Q. Then after the meeting of 12th August, you wrote the letter of 13th August, which is in Exhibit 'A', pages 95 and 96? A. Yes.

Robert
Geoffrey
Millist

Q. You see on p.2. "We advise that we wish to operate on this basis.." and then it is set out?
A. Yes, that is correct.

13th December
1965

Q. Is this your view, that it was a matter for you to say what the market price was? A. Yes.

Cross-
examination
(Continued)

20 Q. Was this because there were a variety of prices at which the suppliers were, at this time, producing stocking for and making them available to Woolworths? A. Yes.

Q. So that you had to exercise a decision or assessment on the matter and assess what was to be put as the market price? A. Yes, bearing in mind, of course, that it was my responsibility to buy at the best possible prices.

30 Q. And you would always buy at the lowest possible price in the interests of Woolworths, I take it? A. Not necessarily, no.

Q. Other things being equal, you would always buy at the lowest price? A. If, as in this case, we had a long-standing arrangement with Stirling Henry, we would not go and buy at the best possible price without referring the matter to Stirling Henry.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Cross-
examination
(Continued)

Q. Without first giving them an opportunity to supply at the same price? A. Yes.

Q. If you were offered supplies for promotion purposes, you would not take that into account, would we, as indicating a market price? A. This would depend a lot on the circumstances. If we are talking particularly of the circumstances that existed at this time, where we had an arrangement with Stirling Henry that we have referred to, as being the arrangement that was made in 1961, the position in that case would be very different to any other normal situation where we had no specific long-standing arrangement with a supplier.

10

Q. May I ask you whether you regarded in your assessment of current market prices, the price that was current between yourself and your exclusive supplier; was that a factor? A. No.

Q. You excluded them to take others of what might be called the open or free market into account, all those on an open or free market? A. Yes, the figures were actually quoted to me by Mr. Cooper, at which he could have then placed our current requirements possibly from one or more other manufacturers.

20

Q. Well, you know it would not have been from one other manufacturer, don't you? A. I do not know.

Q. Well, you did not have very much to do with the actual buying? A. Not with the actual buying.

30

Q. Well, you took entirely what Mr. Cooper told you in fixing the 41/-, 48/- and 48/- prices which you put to Stirling Henry, did you? A. That is correct.

Q. On p.97 of Exhibit 'A' there is the reply of 19th August 1963, from Stirling Henry to you? A. Yes.

Q. And you have been referred to the third paragraph, which might be called a definition of market from the Stirling Henry point of view; do you see that? A. Yes.

In the
Supreme Court
of New South
Wales

Q. You did not agree to that description of the market, did you? A. I just disagree with that definition there.

Defendant's
Evidence

10 Q. But you would agree, I take it, that in the supply of fully-fashioned stockings at that time, August 1963, there was no market through wholesalers, as far as you were concerned? A. Well, we certainly were not purchasing from wholesalers.

No.10

Robert
Geoffrey
Millist

20 Q. In other words, there was no market in that sense? A. In my opinion, there are market prices in many senses, particularly depending on the quantity which you are wishing to buy or prepared to buy. I think the market price for someone wanting to buy five dozen would probably be different from someone wanting to buy 500 dozen or 1,000 dozen.

13th December
1965

Cross-
examination
(Continued)

Q. If the buyer already has an assured supply from an exclusive supplier and is dealing with other suppliers, offering him marginal costing supplies, this would be a different market again, wouldn't it? A. That would depend on the overall supply position of the commodity that you were looking at.

30 Q. But it would be a different market; you would arrive at a different market price than if you were just a purchaser on the open market with no exclusive supplier? A. Again, there are circumstances in which I think the fact that in this particular instance we had an exclusive supplier - I think the circumstances were, at this particular time, that it would not have made any difference.

Q. In normal times it would, but in these times it would not? A. Well, we have got to

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Cross-
examination
(Continued)

appreciate that certainly in my estimation in 1963 there was fairly gross over-production of fully fashioned hosiery, and manufacturers were competing amongst themselves for business.

Q. Would this be fair, that in the past, having an exclusive supplier, had enabled you to decrease prices offered by other suppliers, but that that had ceased by August 1963? A. I am not really competent to answer that question, because I was not in the business prior to 1963, and I consider that it would not be proper to be answered; it would be better if it was answered by somebody who was actually in on any negotiations that took place during that period.

10

Q. You see that on the next page of that letter, Exhibit 'A', p.98, just below the quotation of prices, there is the statement made by Stirling Henry "We consider ... prices." That is referring to the 41/-, 48/- and 48/-. Do you see that? A. Yes.

20

Q. Is the fact this, that you never wrote a reply to that letter changing that? A. No, I do not think I did.

Q. It is fair to say that you felt it was no answer really to put that; is that fair? A. Yes.

Q. In other words, they would still be market priced? (Objected to).

Q. They could truly be described as distress prices but they would still be market prices? A. I have never had a definition of the term "distress prices", so I would not like to answer that one without knowing exactly what a distress price is.

30

Q. I have referred you to a meeting of 2nd August 1963, and I have indicated to you that you had a very general recollection and you have made no note to refresh your mind; is that right? A. Yes.

Q. I suggest to you that at this meeting, Mr. Wainberg made some observations; Mr. Cooper also was speaking, and Mr. Cooper mentioned that due to the present conditions, he was being offered lower prices than they are paying to Stirling Henry. I do not know whether you would recall that? A. No, but I agree it could have been said. It was the fact at that time, and I have no doubt it could have been based on that fact.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

10 Q. But you do not remember whether he said it or not? A. No, not specifically.

No.10

Q. Do you remember whether he said this "Mr. Cooper mentioned that only last week he was offered stockings in 15 denier 60 gauge at 39/6d. a dozen"; do you remember that being mentioned? A. I do not.

Robert
Geoffrey
Millist

13th December
1965

Q. It would be a shade lower than 41/-, wouldn't it? A. Yes.

20 Q. Do you remember that Mr. Cooper did press upon Mr. Wainberg and Mr. Stopford at the meeting that he was being offered prices lower than, say 41/-, or you have no recollection? A. No, I know that at that meeting of 2nd August we had not mentioned the price of 41/-.

Cross-
examination
(Continued)

Q. Do you remember whether the price of 39/6 a dozen was mentioned? A. No, not specifically.

30 Q. I thought that when you came to mention the price of 41/- you may have recalled it? A. I do not remember Mr. Cooper specifically mentioning it.

Q. I suggest to you that Mr. Cooper went on to say he was offered it because the manufacturer mentioned to him that he wished to keep his plant going and so prevent the machines deteriorating through non-use and through rust; do you recall that being said? A. No, I do not.

Q. That would be a case where it might be said

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Cross-
examination
(Continued)

the manufacturer was going to average; he was selling elsewhere at better prices but he would want to keep his machines going and recover those prices in order to cover his overhead and average his costs; would that be right (Objected to).

HIS HONOR: This is an attempt to define, at Mr. Millist's request, what is meant by the phrase "distress prices". I do not think there is any specific matter of fact involved; it is a general sort of question which is trying to give Mr. Millist an appreciation of what Mr. Stopford and Mr. Wainberg meant by "distress prices".

10

MR. BOWEN: Q. Are you able to answer that?
A. I believe that it is the practice in manufacturing circles to average that way, that they sell one commodity at a price at which they are showing a substantial or sufficient profit, and they are prepared to make another line sell at a lesser profit merely to keep their machines turning and their factory going.

20

HIS HONOR: Not necessarily another line, but the surplus of that same line.

WITNESS: It could be.

MR. BOWEN: Q. And where that was done in order to keep the machines from deteriorating through non-use and rust, would you describe the resulting lower price as a distress price or not?
A. It is not my assessment of a distress price for merchandise, no.

30

HIS HONOR: Q. "Distressed" is something stronger than that? A. I think it is stronger than that.

MR. BOWEN: Q. Do you recall that at that very same meeting of 2nd August 1963, I suggest to you that Mr. Cooper said that and Mr. Stopford promptly described it as a distress price in effect and thereby sought to put it on one side

as being a distress price? A. I do not recall it, no.

Q. And you appreciate that in the arrangements as you put them to us, based on Exhibit '1', there is a reference to giving Stirling Henry an opportunity of quoting special prices for 25% of requirements of Woolworths referred to earlier; do you remember that? A. Yes.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Cross-
examination
(Continued)

10

Q. These special prices would be for what, to your way of thinking? A. To my way of thinking, it would be special prices which we negotiations with manufacturers of goods where we want a specific quantity, probably for a promotional effort.

Q. If you were opening a new store or something like that? A. That is right, that could be it.

Q. Or a February bonanza, I think that was the phrase used on one occasion, some special sale? A. That is right.

20

Q. That type of thing? A. Yes.

Q. I notice that the second meeting you mention in your evidence was one of 27th August 1963; I put it to you that there was a meeting held at Stirling Henry's mill on 22nd August 1963, attended by yourself, Mr. Cooper, Mr. Wainberg and Mr. Stopford? A. Yes, I remember that.

30

Q. And you have not told us about that in your evidence, because you had no particular note of it, is that right? A. Well, I was not asked about it.

Q. I suggest to you that there was another meeting on 2nd October 1963, held at Woolworths, which you attended, which Mr. Theo Kelly attended and also Mr. Withycombe and Mr. Wainberg, Mr. Cooper and Mr. Morris? A. Yes, I remember that.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Cross-
examination
(Continued)

MR. BOWEN:Q.You were present on 2nd August 1963 at a meeting which you have no note of? A. Yes.

Q. Was that the first time you were at any meeting, or were you at any earlier meeting than that? A. It was the first time I was at a meeting with Stirling Henry.

Q. When you went to that meeting, I take it you would have been aware that there had been a meeting which Mr. Cooper had had with Mr. Wainberg and Mr. Stopford on 24th July 1963, at the mill? A. I was aware of that.

10

Q. And you would have been aware at the time of Mr. Cooper's meeting on 24th July 1963 that he had suggested as a price for the next period, Fairyweb 44/-, Captivation 56/6 and Mesh 53/6? A. Yes.

Q. Those prices to be effective from 1st October; you knew his offer? A. Yes.

Q. Now at the meeting of 2nd August 1963, which was the first meeting you attended, these prices that Mr. Cooper had offered were discussed? A. Yes.

20

Q. And the position at the end of that meeting was that the parties had not been able to reach a determination of the price, is that so? A.Yes, the prices that were offered, that Mr. Cooper offered, were refused.

Q. They were refusing, and Mr. Cooper put some persuasive material about some other purchases from suppliers and so? A. Yes.

30

Q. But no determination was arrived at, is that right? A. No, no determination was arrived at.

Q.At the meeting of 2nd August 1963, when Mr. Cooper's prices were under discussion, was it your belief that in offering those prices, Woolworths were adhering to the arrangements of 1961, at that time? A. They were adhering to

them in this respect, that they were offering prices above the then market prices.

Q. You did not, at the meeting of 2nd August 1963, make any objection to Mr. Cooper offering those prices which he had offered? A. No.

Q. Now between 2nd August 1963 and the meeting of 12th August 1963, you had had a discussion with Mr. Theo Kelly, the managing director? A. That is correct.

10 Q. And when you came to the meeting of 12th August 1963, isn't it a fact that you opened it by stating that you had changed your mind and Woolworths were only now prepared to pay Stirling Henry what you called market prices, which you then proceeded to state as being 41/-, 48/- and 48/-? A. No, that is not correct.

20 Q. Is this the position, that you mentioned the price of 41/-, 48/- and 48/-, particularly referring to the fact that this was a change in the prices that had been discussed at your last meeting with Stirling Henry representatives? A. Yes, that could be correct.

Q. Who was your predecessor in the office of Merchandise Officer, Softgoods, in Woolworths? A. Mr. Ross.

Q. And he continued in that office up to the time you came back, in 1963, did he not? A. That is correct.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.10

Robert
Geoffrey
Millist

13th December
1965

Cross-
examination
(Continued)

In the
Supreme Court
of New South
Wales

DEFENDANT'S EVIDENCE

No.11

ERIC WILLIAM COOPER
Sworn, examined as under

Defendant's
Evidence

MR. HEARES: Your full name is Eric William
Cooper? A. Yes.

No.11

Q. And you live at 56 Warrangi Street, Turra-
murra? A. Yes.

Eric William
Cooper

Q. And you are a buying manager employed by
Woolworths? A. Yes.

10

13th December
1965

Q. You have been employed by Woolworths for
approximately the last eighteen years, and you
have been a buyer with the company for twelve
years, have you not? A. That is correct.

Examination

Q. And ever since you or your company was
purchasing from Stirling Henry, women's hosiery
in 1956, did you have occasion to deal with
representatives from Stirling Henry in relation
to prices? A. Yes.

Q. How long have you had experience in buying
women's hosiery? A. For the full period I have
been employed as a buyer, that is, about
thirteen years.

20

Q. And are you responsible for buying women's
hosiery to meet the requirements of all Wool-
worths' stores? A. That is correct.

Q. And does that involve you paying visits
interstate from time to time? A. Yes.

Q. And negotiating with sellers? A. Correct,
yes.

30

Q. And also co-ordinating the buying with the
requirements of the large number of Woolworths'
stores throughout the Commonwealth? A. Yes.

<p>Q. First of all, with regard to women's hosiery, there is the problem from your point of view of colour? A. Yes.</p>	<p>In the Supreme Court of New South Wales</p> <hr/>
<p>Q. And also of size? A. Yes, that is right.</p>	
<p>Q. And the further problem of meeting the demand of the buying public? A. Yes.</p>	<p>Defendant's Evidence</p> <hr/>
<p>10 Q. Before the middle of 1955, certain negotiations were conducted between Stirling Henry and Woolworths concerning the establishment by Stirling Henry of a hosiery mill? A. Yes.</p>	<p>No.11</p> <hr/>
<p>Q. And you were aware of these negotiations? A. Yes.</p>	<p>Eric William Cooper</p> <hr/>
<p>Q. And at all times, you have been aware of the letter that was written to Stirling Henry of 10th May 1955? A. Yes.</p>	<p>13th December 1965</p> <hr/>
<p>Q. And you have heard evidence given of an arrangement that was made varying the original letter, in August 1961? A. Yes.</p>	<p>Examination (Continued)</p> <hr/>
<p>20 Q. And were you told of that arrangement that was made arising out of a conference between Mr. Kelly and Mr. Fleming representing Woolworths, and Mr. Wainberg representing Stirling Henry? A. Yes.</p>	
<p>Q. And would you have a look at Exhibit '1'? A. Yes. (Shown to witness).</p>	
<p>Q. You see some marking on the top of that document; is there a copy of it marked out to you? A. No, it is a memo. to M.C.A.</p>	
<p>30 Q. What is that? A. That is Merchandise Controller A, who at that time was Mr. Miller.</p>	
<p>Q. Now do you remember seeing that document? A. Yes, a copy of this was given to me by Mr. Miller.</p>	

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(Continued)

Q. And can you identify the day it was given to you? A. I think it was the day after the date indicated here, 10th July 1961.

Q. And on 10th July 1961, did Mr. Fleming have a conversation with you concerning Stirling Henry? A. Yes, he asked me to advise -

Q. He had a conversation with you, and he gave you certain instructions? A. Yes.

Q. And pursuant to those instructions, did you write a letter to Stirling Henry on 10th July 1961, which appears on p.37 of Exhibit 'A'?
A. Yes.

10

Q. And in May 1955, what was the position in regard to the supply of women's fully fashioned hosiery? A. Just prior to that it was in fairly short demand on the Australian market.

Q. And were you having difficulties with supplies? A. Yes, we were not getting sufficient.

Q. Now did the position alter thereafter, and if so, when and to what extent? A. Well, after Stirling Henry became established, the position improved, but also other suppliers also increased production.

20

Q. I am dealing with other suppliers; when was it they commenced, to the best of your recollection, increasing supplies and easing the position? A. It would be about the end of 1955 onwards.

Q. And as far as the position thereafter was concerned, did it again become tighter in regard to supplies, or did suppliers tend, as the years ran down, to get bigger and bigger? A. Bigger and bigger.

30

Q. And you receive, do you not, production statistics of the Commonwealth Bureau of -
A. Bureau of Census and Statistics.

Q. Showing the Commonwealth production of various types of hosiery from month to month? A. Yes, production.

In the
Supreme Court
of New South
Wales

Q. And also the annual figures? (Objected to).

MR. BOWEN: I object to this.

Defendant's
Evidence

MR. NEARES: Q. Now would you have a look at this document? (Shown to witness). Does that document show the Bureau's figures of production of fully fashioned hosiery as compared to circular hosiery, from 1954 - 1955 to 1964 - 1965? A. Yes.

No. 11

Eric William
Cooper

Q. And have you, yourself, calculated roughly the percentage of fully fashioned hosiery to circular hosiery over the years in question, and in that document stated what the relevant percentages are of fully fashioned to circular, each year? A. Yes.

13th December
1965

(Abovementioned document tendered and marked Exhibit '2')

Examination
(Continued)

20 MR. NEARES: Your Honor will see that in 1954 there were two million-odd -

Q. These are in dozen pairs, are they? A. Yes.

MR. NEARES: That is dozen pairs of fully fashioned, as compared to 186 - circular - a percentage of 92% fully fashioned and 8% circular. In 1964/1965, Your Honor will see that the total production of fully fashioned was 275,000-odd as compared to three or four million approximately circulars. I put the scale of examples to Mr. Stopford, he was not able to confirm or deny them. The scales have tipped almost precisely in the opposite direction.

30

Q. In regard to fully fashioned hosiery from 1955 onwards, apart from this exhibit which you have produced, insofar as Woolworths were

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(Continued)

concerned, what was the overall trend in regard
to fully fashioned as compared to circular?

A. Our sales of circular continue to rise and
fully fashioned diminished over the years.

Q. And has that position continued from the
end of 1963? A. Yes.

Q. And is it still continuing? A. Yes.

Q. Now insofar as one of the lines is concerned,
that was sold by Stirling Henry to you, is the
company any longer purchasing that line? A. No.

10

Q. And what is that line? A. That is the fully
fashioned 15 denier mesh.

Q. And insofar as that line is concerned, when
did the company discontinue buying it? A. It
discontinued buying early this year.

Q. And what was the reason? A. The sales were
not good enough, - (Objected to).

HIS HONOR: Once more I will admit the evidence
subject to objection.

MR. NEARES: It is also put on the question of
profits.

20

Q. Yes, why did you stop? A. The sales were
not good enough to warrant its display on our
counters, because other lines were selling at
a better rate, and it had lost favour with the
public.

Q. And have you made some calculation of the
sales by Woolworths of fully fashioned hosiery
for the year from 4th December 1962 to 3rd
December 1963? A. Yes.

30

Q. And for the years 4th December 1963 to 3rd
December 1964? A. Yes.

Q. And for the period from 4th December 1964
until October 1965? A. Yes.

Q. And do your calculations for October 1965 go up to purchases for the end of that month?

A. Yes, that would be so. I am sorry, to the 5th October, I think.

In the
Supreme Court
of New South
Wales

Q. Now, arriving at these figures did you, first of all, take as your first calculation the drawings of stockings by the various branches of Woolworths from Woolworths' warehouses? A. Yes.

Defendant's
Evidence

No.11

10 Q. And then did you check on the position, on the stock position in the warehouses at the beginning of the period and at the end of the period? A.Yes.

Eric William
Cooper

Q. To see that as far as these figures were concerned they were not costing - (Objected to).

13th December
1965

MR. BOWEN: If my friend wishes to prove what the sales were during this period, then for reasons which we have, we would like them to be proved in a substantial way. What he is asking the witness at the moment is whether he has made calculations on different types of figures, drawings by branches, and whether he has checked stock to see whether that is influenced by something.

Examination
(Continued)

Not only is this type of calculation incapable of really doing anything for us, but it is not adequate evidence of Woolworths' sales.

30 HIS HONOR: I must admit that we have been proceeding in a series of what I thought were legitimate shortcuts -

MR. MEARES: I will take it further to see if I can satisfy my learned friend.

Q. Now I show you three sheets for the three years or the two years that I have spoken to you about and the broken year, for 5th October 1965. A. Yes.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(Continued)

Q. Now you have calculated the lines, namely, B.29, which is 15 51, B.33, which is 15 60 and B56, which is 30 51, is that correct? A. That is correct.

Q. Now, first of all, you have taken the stock in the warehouse as at 3rd December 1963 for the first period, am I right? A. Correct.

Q. So, you have taken stock in your warehouses at the end of the period, is that right? A. Yes.

Q. Well, have you got all the stock books of the warehouses, and are you able to produce them if you are asked? A. Yes.

10

Q. And you have taken these figures from those books? A. That is correct.

Q. Now have you also deducted the stock in the warehouses as at the commencement of the period? A. Yes.

Q. Similarly, from the books? A. Yes.

Q. So that it follows, accordingly, does it, that in these calculations you have given particulars of the total amount of stockings that went out to all Woolworths branches for that year from your warehouses for sale? A. That is correct.

20

Q. Now it may be, of course, that at any point of time there could be some amount of stock in the various shops that were still on the counters? A. Yes.

Q. And you cannot possibly estimate that? A. You cannot take that into account.

30

Q. But this calculation for the three periods shows precisely the total amount of fully fashioned stockings that were delivered to all your shops from your warehouses for sale over your counters? A. That is correct.

Q. And is your turnover of these stockings a turnover that is fairly quick, or do you have stockings for six months without selling them?
A. That could occur in some cases. They are fairly quick, but it is inevitable that some get left behind in the course of stocktaking.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

10

Q. Now this shows, doesn't it, that up to the 3rd December 1963, the total purchases of standard lines of fully fashioned hosiery or the total sales for this period ending 3rd December 1960, shows that the total purchases of standard lines were 133,752 dozen? A. That is correct.

No.11

Eric William
Cooper

Q. And on the next page you have also made a calculation, not only of the standard lines but of the promotional lines? A. Correct

13th December
1965

Examination
(Continued)

20

Q. And as appears from the second page of the document for the year ending 30th December 1963, total purchases of all lines of fully fashioned were 163,336 dozen, am I right? A. Yes.

Q. And the total purchase price was £382,085?
A. Yes.

Q. Now if I may take you to the year ending 1st December 1964, the total purchases by your company had been reduced from 133,752 to 62,375 dozen pairs? A. Correct.

MR. NEARES: I withdraw that question.

30

Q. Had the total purchases been reduced from 163,336; have a look at the second page?
A. That is right.

Q. With the total cost of £383,085, to 62,375 dozen with a total purchase price of £119,691?
A. Yes.

Q. And insofar as the period from 1st December 1964 to 5th October 1965, have your purchases in that year, of all fully fashioned lines,

In the
Supreme Court
of New South
Wales

dropped to 46,177 dozen? A. Yes.

Defendant's
Evidence

Q. And has the price paid fallen from \$119,691 to \$79,171? A. Yes.

No.11

Q. And that last period is over a period of ten months; and could you tell us, from your experience as a buyer, as to what you would expect sales to be in the months 5th October to 5th November and from 5th November to 5th December 1965? A. Approximately 3,000 dozen each month.

10

Eric William
Cooper

Q. So that would mean that your total purchases for the year ending 5th December 1965 would be approximately 52,000 dozen? A. Yes.

13th December
1965

Q. And in your experience as a buyer, with your experience as a buyer of hosiery, will this trend that is indicated in your evidence and by these figures continue? A. Yes.

Examination
(Continued)

Q. Now you have also prepared, have you not, some figures that indicate the prices that you were purchasing fully fashioned hosiery for from Stirling Henry and other suppliers from 1961 until 1964? A. Yes.

20

(Abovementioned document tendered and marked Exhibit '3')

Q. Would you tell me in the exhibit where you get your figures showing the purchases? A. The stock figures, at the beginning and end of each period are in the books about which I have spoken. I think Mr. Bowen has those that go back to those particular years. They are the figures of each State's warehouses' stocks. Well, by taking the stock at the end of the period, adding to it the drawings by our branches, from the warehouses, we then have the stock at the end of the period - I am sorry, the stock at the beginning of the period which is already bought and on hand, so it cannot be considered as being a purchase.

30

Q. But to take the case in point, if you had 1,000 dozen stockings in your warehouses on 4th December 1962 and you had drawings from your warehouses over the year of 100,000 dozen and then only 1,000 dozen in stock at the end of the twelve months, well those must be purchases?
 A. Yes.

Q. Unless they had been given to you - (objected to).

10 MR. BOWEN: I want the purchases.

MR. MEARNS: Q. First of all as to prices, tell me how you achieve these figures of the value of purchases? A. Yes. You will see at the top, I have written "estimated value" because I could not get it accurately from the point of view that we have no exact records of the total amount purchased from each supplier, but I obtained the costs from our records, as far as they go back over these periods, and the quantities are apportioned, to the best of my knowledge, on how that stock would have come from each of those suppliers, and by multiplying out the quantity against each supplier at the price we considered -

20 Q. As far as those quantities are concerned, have you any method of checking on your recollection? A. Yes, as far as Stirling Henry is concerned, I have been able to check back against letters that we have sent to them
 30 over various periods covering contract quantities.

Q. And as far as the others are concerned?
 A. The difference being that how I recall approximately how we placed the quantities, the remainder -

Q. And have you been able to rely on letters?
 A. Yes, there are some letters, definitely.

Q. As far as that is concerned, the value of

In the
 Supreme Court
 of New South
 Wales

Defendant's
 Evidence

No.11

Eric William
 Cooper

13th December
 1965

Examination
 (Continued)

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(Continued)

the purchases is only an estimate of the value?
A. That is correct.

Q. But it is an estimate that you have made to
the best of your knowledge as the buyer and
knowing what you are ordering and from whom?
A. That is correct.

Q. I mean, it is not a question that you have
not simply omitted to look up records; you
simply have not got any more records than you
have looked at? A. That is true. I have looked
up everything we have there.

10

MR. BOWEN: I object. We sought to get some
information on this. We are not really
concerned with retail sales in this case; we
are concerned with purchases. That is the one
figure that is important. I am not asking for
the production of precise records, although this
should be proved in a proper way. Certainly,
there appear to be records, if not going back
the full distance; there must be purchase
records, too, to prove this properly over the
latter period.

20

MR. PEARES: I press this tender on the basis
that it is admittedly an estimate, which is
subject to criticism. My friend speaks of the
total amount of purchases in pounds shillings
and pence as being important. With respect,
we would think that it was far more important,
what they were paying per dozen. In truth,
they had been paying for nearly two years, for
the main line that Stirling Henry was selling,
33/6 per dozen.

30

Q. Now insofar as actual purchases in value are
concerned, would you tell me how it is that
your accounting system renders it impossible for
you to estimate the total purchases in pounds
shillings and pence accurately; would you just
explain it to His Honor? A. Yes. Our
accounting system would give a total amount of
money paid to each supplier each month, but it
would not segregate the type of lines he would

40

supply. For instance, Holeproof would be supplying seamless hosiery as well as fully fashioned hosiery and there would be no means of segregating those at all. On some invoices you might have seamless and fully fashioned at the same time and this information has never been required and it is never kept in that form.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

10 Q. And the reason you cannot be accurate from records is that you do not retain or have in your possession invoices showing the sales of various types of stockings from various manufacturers? A. That is true.

No.11

Eric William
Cooper

13th December
1965

20 MR. BOWEN: My objection is that the purchases are important as distinct from retail sales. What is important is to get the quantity and the purchases and the price per dozen that were purchased. I noticed in this schedule they have been put in the cost, a cost per dozen calculated on these estimated figures. I submit that should not be there in that schedule. These are not the real figures. We have been shown some figures of what the actual contracts were, but to get an estimated number calculated and divided into a value figure and arrive at what looks like, on the face of it, to be a very concrete and certain market, I would submit -

Examination
(Continued)

30 HIS HONOR: If there were a jury trying a case, I would have to settle the argument here and now. I will receive the evidence subject to objection and the problem can be dealt with when we are dealing with the legal argument. It is admitted subject to objection.

MR. HEARES: I do not want to find myself in a position where, with respect, Your Honor takes a certain view of a document without having ruled on it and then -

HIS HONOR: I will see that you are not put in that position.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(Continued)

MR. HEARES: Q. Now in Exhibit '3' you have various costs stated, have you not? A. Yes.

Q. Now where did you get those costs from?
A. From our cost records that we have.

Q. Now would you wish to deal with any particular one as a stab check or would you like to deal with a number of them? (Objected to)

MR. HEARES: I am going to prove, I think as quickly as one could, actually what the prices were right from 1961.

10

Q. If you will take Exhibit '3' would you tell me how you reach the various cost prices in that exhibit? A. From our stock control record of cost. I have a copy, I think. May I refer to it?

HIS HONOR: Yes.

MR. HEARES: Q. Now would you take any one price in any part of Exhibit '3' and tell me how you reach it? A. Holeproof, 57/- here for Mesh on p.1.

20

Q. You are taking the third price of 57/- for 1,000 dozen Holeproof at a cost of £2850, is that so? A. Yes. Now for the period 4th December 1962 to 3rd December 1963, you have 57/-.

Q. You show me here a record of purchases from Holeproof at 57/-? A. That is there cost at that time.

Q. That is what you paid them, 57/-, am I right?
A. That is correct.

30

Q. And that is the figure you have included in Exhibit '3'? A. Yes.

Q. Now where do you get the 1,000 pairs from?
A. 1,000 dozen pairs?

Q. Yes. A. Purely from my recollection of what quantities they were buying at that time.

Q. So that it could have been, for instance, that the quantity you purchased from Holeproof was not 1,000 dozen but, we will say, 1200 dozen; this is possible? A. It could be.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

Q. And to that extent accordingly the total value of the purchases would be greater or lesser according to the extent to which your recollection is faulty, assisted by your records? A. Yes.

10

No.11

Q. But otherwise as far as cost is concerned of all the stockings in Exhibit '3', can that be verified, and has it been verified from your records? A. Yes.

Eric William
Cooper

Q. In every case? A. Yes.

13th December
1965

MR. BOWEN: In the same way?

MR. MEARES: In the same way.

Examination
(Continued)

Q. Now insofar as your records are concerned, they have been kept right from 1961, and they are kept from information given to you, by you to your accounts branch from time to time?

20

A. Yes, to our stock control records.

Q. And you have checked the accuracy of them also from your records? A. Yes.

Q. So that we may take it then that insofar as prices per dozen are concerned from 4th December 1962 to date, the prices there set forth are the prices you were paying various manufacturers for the various lines? A. Correct.

30

Q. Now if I may turn to p.4. of the exhibit, would you take 15 51 mesh? A. Yes.

Q. You were, during the whole of that period of time mentioned on p.4. paying 48/-? A. Correct.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(Continued)

Q. Now if I may turn back onto p.3. and have a look at 15 51 on the top of that page, that shows that you were paying 48/- during the whole of the year 3rd December 1963 to 1st December 1964 other than from Stirling Henry?
A. Correct.

Q. And if one may turn back to p.1, dealing with the period from 4th December 1962 to 3rd December 1963, there again the prices are shown for that particular line from various manufacturers similarly during that year? A. Correct.

10

Q. Now in regard to 15 60 plain, that was the biggest selling line of Stirling Henry's to you, wasn't it? A. Yes.

Q. At all material times from 1955? A. Yes.

Q. And can you give us an idea of the quantity of 15 60 sold in dozens compared to all other quantities? A. Percentage-wise, it would be about 60%, I should imagine.

Q. Now if we may have a look at the first page there in relation to prices for the year ending 3rd December 1963, we see a Stirling Henry price of 46/6 and later on 44/-; do you see that?
A. Yes.

20

Q. And do you see in that year sales by Beau Monde to you of 42/6 and then later of 41/-, is that correct? A. Yes.

Q. Now what is the next figure, 39/-? A. 39/-. I think that was an alteration - I think I have omitted to put the supplier's name in there.

30

Q. It should be Holeproof? A. Yes.

Q. Now then dealing with that 15 60 plain, and do you see in this year you have been buying at 33/6? A. Yes.

Q. And if you take the preceding year, you were buying from everyone but Stirling Henry at from

39/- down to 33/6 as compared with Stirling Henry minimum price of 44/-? A. Yes, except that there were some bought from Stirling Henry at 39/-, which was the final stock we took from them.

In the
Supreme Court
of New South
Wales

Q. That was after the termination of the contract and when you bought at what you said was your market price? A. That is true.

Defendant's
Evidence

10 Q. Concerning exhibit '3', in that exhibit you have listed promotional lines in your totals? A. Yes.

No.11

Q. Would you tell me whether all those promotional lines were being offered by Stirling Henry prior to December 1963, or not? A. No.

Eric William
Cooper

MR. MEARES: Q. Would you have a look at p.2 of Exhibit 3 and tell me which promotional lines you were not being offered by Stirling Henry? A. P.2; which lines were not being offered?

13th December
1965

20 Q. Yes. A. I may have got the meaning of this a little wrong, I thought you meant quantities.

Examination
(Continued)

Q. In regard to promotional lines on p.2, were all those promotional lines on that page being offered by Stirling Henry? A. Yes, they were.

Q. On p.3? A. Except for the 15/51 mesh they were not offered as promotional lines.

Q. On p.3 were Stirling Henry prior to December 1963 offering all those promotional lines? A. Yes.

30 Q. P.4; were they offering prior to December 1963 all the promotional lines other than the 15-51 mesh? A. Yes.

Q. If you look at Exhibit 3 you see the price of the 15-60 plains has come down now to 33/6d and it has been in that condition all this year? A. Yes.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(Continued)

Q. And for some part of last year? A. Yes.

Q. That price is a price that you have been buying at notwithstanding the fact that Stirling Henry is no longer in production? A. Yes, that is correct.

Q. Additionally to that exhibit which shows the total fully-fashioned lines you have been buying and the prices at which you have been buying, and you also prepared a schedule showing the price in months that you were paying to Stirling Henry and other manufacturers for the three main lines from 1961 until November 1964? A. Yes.

10

Q. In regard to these prices have you checked and re-checked your records? A. Yes.

Q. How were you able to set forth the various prices that you were buying the stockings for from time to time? A. From these records that we saw a little while ago; the stock control records.

20

MR. HEARES: I tender a copy; I have been unable to find the original.

MR. BOWEN: I object on two basis. At the first page there is a notation "June 1961. Heavily stocked May/June." The second point of the objection might perhaps cover it; these appear to be based on schedule ledger cards and stock control cards which I submit should be in even if this is a convenient summary of the position.

MR. HEARES: My learned friend has had them most of the time during this case. Your Honor will recall my learned friend said on Friday that he wanted quite a deal of time because there might be some very valuable matters that he wanted to lead evidence as to and then there were produced this morning - there was produced this morning as a result of the investigations that were made, evidence of two lots of sale in January and February 1962 and they were produced.

30

My learned friend has seen all of them and I do not propose to tender them unless I am ordered so to do. I am entitled on the authority of Lateman's case. If it was a question of telling my learned friend how I had done it I would be bound to do that and if he does not know after having seen these records I shall do that but I rather gather that he did. If he does not I shall do it. To clutter up the Court with a large number of documents which are totally meaningless unless they are all gone through one by one in a project which would last a week, I see no purpose in it except that it must be borne in mind these documents are available for my friend to cross-examine on. Perhaps I may indicate through this witness how he does get to these various results in case my friend is in difficulty with that.

10

20

30

40

HIS HONOR: Very well.

MR. MEARES: Q. In relation to these schedules, you have made an observation in relation to the 15 denier 60's haven't you? A. Yes.

Q. In June 1961? A. In June 1961.

Q. Have you got that? A. I have not a copy of that one. I have June 1961.

Q. Do you see a note there in regard to the position about being heavily stocked and so on? A. Yes.

Q. Can you tell us what the position was from your own recollection, at that time? A. Yes. Towards the end of 1960 as I recall it the credit squeeze came on; I think it was in November, and stocks had been purchased just prior to that for the Christmas trading period. Sales were not up to expectation for October/November and stocks started to accumulate after Christmas and, of course, orders were still coming in; stock was still coming in from suppliers including Stirling Henry who had

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(Continued)

In the
Supreme Court
of New South
Wales

received orders before Christmas for the months after Christmas and these stocks were accumulating considerably, and that was how it occurred.

Defendant's
Evidence

Q. What did you have to do in relation to it?
A. We had to endeavour to defer or cancel orders.

Q. As far as possible to keep this stock position from mounting? A. Yes.

No.11

Eric William
Cooper

Q. In relation to prices that you were offered that time which you were not able to avail yourself of because you had too much stock, have you a record of what offers were made to you by Beau Monde and Holeproof? A. Yes.

10

13th December
1965

Q. What were they? A. 45/9d and 46/6d for Holeproof.

Examination
(Continued)

Q. That was at a time when you were paying 50/- a dozen to Stirling Henry? A. Yes, that is correct.

Q. I will ask you to take one month, namely, July 1962. It is stated in that month that you were paying Stirling Henry 48/9d for 15-denier 60's and you were buying from Beau Monde at 42/6d and from Holeproof at 46/6d? A. Yes.

20

Q. Let us take another one. Take August or anyone my learned friend wants you to take. Would you take July 1962? A. Yes.

Q. What record do you produce? A. The Stock Control Record headed "hosiery, fully-fashioned nylon, 15 denier Fairyweb, maker's no.43".

Q. Copies of these have been made available to Mr. Bowen for some days? A. Yes.

30

Q. And he has been given photostats of them?
A. Yes.

Q. I want to find this price in July 1962 at 48/9d charged by Stirling Henry? A. It does not

go prior to July. It starts on the 6th December.

Q. Just take July. You have 48/9d for July?
A. Yes.

Q. Where do you get that from? A. That would have been from Stirling Henry's letters covering their contracts.

Q. In other words, the letters in exhibit A?
A. Yes.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

10

Q. Of course, you do not go back prior to this period of 1962 in your records? A. No.

Eric William
Cooper

Q. May I take the 42/6d? A. That could be covered - I am not sure as to which - by copies of invoices from Beau Monde or letters. It does not cover it on this Stock Control card. It does not go back that far. This goes to 6th December 1962.

13th December
1965

Q. As far as July 1962 is concerned, this price of 42/6d for July 1962 is based on what? Information? A. Yes.

Examination
(Continued)

20

Q. On what information? A. Letters from inter-state and, perhaps, a copy of an invoice which may be here.

Q. Does the same thing apply to the price of 46/6d? A. Yes.

Q. However, from the 6th December 1962 this system came into force of keeping these Stock Records sheets? A. Yes.

Q. May I take January 1963? A. Yes.

30

Q. Could you show me your stock record sheets. First of all, what is the price shown there for Stirling Henry? A. 46/6d.

Q. What is the price shown to Beau Monde?
A. 42/6d.

In the
Supreme Court
of New South
Wales

Q. What date is this? A. This is in January 1963.

Q. What is the price shown to Holeproof?
A. 42/6d.

Defendant's
Evidence

Q. That accords with your statement? A. Yes.

No.11

Q. If I may take the figure I did ask you about for which you had not stock record cards; do you see in July 1962 there is the price of 42/6d that you were paying to Beau Monde? A. Yes.

Eric William
Cooper

Q. Do you see here a copy invoice from Beau Monde, 31st August 1962, 42/6d? A. That is right.

10

13th December
1965

Q. In relation to the time in respect of which you have not the stock record sheets have you been able to ascertain prices from correspondence and invoices, the like of which I have shown you? A. Yes.

Examination
(Continued)

Q. If I may turn to the next equality, 15 denier fully-fashioned; this is the mesh stocking, how far do your stock record sheets go back to in that regard? A. To November 1961.

20

Q. May I then ask you the price for 15 denier fully-fashioned mesh for December 1962 as from those records? A. The 6th December 1962, they are shown as Beau Monde 55/-, Holeproof 57/-, Stirling Henry 66/6d.

Q. That accords with this record? A. Yes.

Q. In regard to the third page of this document, namely, the 30 denier plain, how far back do your stock records go there? A. To the 9th August 1962.

30

Q. Prior to that have you made your estimates from invoices and letters to and from the manufacturers? A. Yes.

MR. PEARLES: I tender the document.

MR. BOWEN: I think there has been a fair bit of detail as to how it is made up. I think it really goes to weight and to conduct. I do not object to it in that form.

(Abovementioned schedule tendered and marked Exhibit 4)

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

10

MR. HEARES: Q. After discovery was had Mr. Bowen tendered this morning two documents dated 8th January 1962 and either 8th January or 8th February 1962 as Exhibit K. Would you have a look at those two documents. (Shown) There was produced a very large number of those documents to Mr. Bowen? A. Yes, there were about eight or ten I think.

No.11

Eric William
Cooper

Q. And together with all these cards showing prices from time to time? A. Yes, that is correct.

13th December
1965

20

Q. Would you have a look at the first page of that exhibit. Would you tell me what that shows? A. It shows for reference 33 fully fashioned 15 denier Fairyweb.

Examination
(Continued)

Q. 33; that is the main line? A. Yes. This is a buyer's advice which is headed "Rockman's Variety Stores" and this advice was made out to Rays Records for that separate subsidiary of our company and the various suppliers were listed on this form.

30

Q. What is the date of it? A. It is dated 8th January 1962. It shows Stirling Henry a cost of 50/- and terms net 30; alternative suppliers, Beau Monde 59/-, two and a half seven days, Holeproof 48/6d, three per cent, seven days and Universal Hosiery 56/8d, two and a half, seven days.

Q. May I refer you to the first page of Exhibit 4. Your Honor sees that buyer's advice note was for February 1962 and the witness says the price shown on that buyer's advice note is 50/- Stirling Henry, 59/- Beau Monde; and there is

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(Continued)

another one there? A. Yes. Universal 56.8d.

Q. Do you know if you bought from them? A. Not for some time.

Q. Therefore your record for 1962 as in Exhibit 4 is correct? A. Yes.

Q. The next page. What does that show? A. This shows the same heading for Rockman's Variety Stores.

Q. What is B56? A. The 35 denier Captivation fully-fashioned.

10

Q. That is on p.3 of Exhibit 4? A. Yes. It shows Stirling Henry as the supplier at a cost of 56/6d.

Q. What date? A. 8th January 1962. I am not sure whether that is January or February.

Q. At 56/6d? A. 56/6d. Alternative suppliers, Lincoln Mills 60/-, Roslyn Hosiery 59/-.

Q. Turn to p.3 of Exhibit 4. You show Stirling Henry in February 1962 at 56/6d? A. Yes.

Q. What figure is there for Lincoln? A. 60/-.

20

Q. And what other? A. Roslyn 59/-.

Q. Insofar as Lincoln 60/- is concerned have you any recollection as to that whether you were buying from them or not? A. No, I do not think so. I am pretty sure that is not the case. At that time we were drawing all from Stirling Henry.

Q. Insofar as the 59/- from Roslyn was concerned were you then buying from Roslyn in February 1962? A. It is possible although it would not necessarily indicate it. This was the last recorded cost from that supplier.

30

Q. That is all it shows? A. Yes, that is correct.

Q. If I may turn to the 15 denier. The first page of Exhibit 4, would that be correct to put to you that in regard to that line from November 1961 to January 1964 Stirling Henry were at all times above these other two manufacturers with the exception of Beau Monde in February 1962?
A. Yes.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

Q. And that is all? A. Yes, that is correct.

10

Q. You will recall some conversations which you were at in August 1963 in which you and Mr. Millist said you were prepared to pay the market price of 41/- for this line. Do you recall that? A. Yes.

No.11

Eric William
Cooper

Q. In May 1963 you were buying this line from both Beau Monde and Holeproof for 41/-? A. Yes, that is correct.

13th December
1965

Q. And in September you were buying the line from Beau Monde for 39/-? A. That is correct, yes.

Examination
(Continued)

20

Q. And from Holeproof at 41/-? A. Yes.

Q. And then in May of 1964 you were buying the line from Beau Monde for 33/6d? A. Yes.

Q. And in September 1964 and since then you have been buying that line from Beau Monde and Holeproof at 33/6d? A. Yes.

Q. And is that the present price? A. Yes.

30

Q. When you indicated a market price of 41/- to Stirling Henry in August - in your presence, when there was indicated in your presence a market price of 41/- for this line that market price was indicated at a time when from one manufacturer you were buying at two shillings cheaper? A. Yes.

Q. Finally after much discussion and as a result of representations by Stirling Henry it

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(Continued)

was agreed to offer for that line 45/2d?
A. Yes.

Q. As appears from p.115 of Exhibit A? A. Yes.

Q. Notwithstanding that you were buying at that
time at 39/-? A. Yes, that is right.

Q. Mr. Millist indicated the price you were
prepared to pay for the other two lines was
48/-? A. Yes.

Q. And that that was the market price? A. Yes.

Q. Were you buying at that price from Beau
Monde 50 denier mesh at 48/- from May 1963?
A. Yes.

10

Q. As compared to Stirling Henry's price at
that time of 66/6d? A. Yes.

Q. Are you buying now as from July 1964 - from
July 1964 were you buying the mesh from two
manufacturers at 48/-? A. Yes.

Q. Until you discontinued early this year?
A. Yes, that is right.

Q. In respect of that line you were offering
Stirling Henry's finally 51/7d? A. Yes.

20

Q. In regard to the last line - 56/9d. In
regard to the last line of Exhibit 4, the 30
denier plain, did you indicate you thought a
fair market price was 48/- for that line in
the discussions in August? A. Yes.

Q. And in truth had you been buying that line
at 47/- consistently from July 1962? A. Yes.

Q. From Kolotex? A. Yes.

Q. Was Kolotex the successor to Roslyn? A. Yes.

30

Q. Are you still buying at that price, or less,
or more? A. Still at 47/-.

Q. And that has been the price ever since December 1963? A. Yes.

Q. You were negotiating with Mr. Wainberg and Mr. Stopford in regard to prices from time to time right from the inception of the agreement? A. Yes.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(Continued)

10

Q. Originally did you negotiate every three months, six months, 12 months or what? A. No, it was not on a regular basis. The policy was to let their prices go as they were originally fixed for a while to give them a chance to establish the mill as they were building up production and a price alteration did not take effect for some time.

Q. In regard to the 15 denier 60's would you tell me when the price dropped down to the price mentioned as for the second six months? A. This record does not go back that far.

20

MR. HEARES: I do not think I need waste time on this because, with respect, I think - I have that admission as to this from Mr. Stopford when he says in relation to the main line it did not get down to the second six months price until June 1957 and in regard to the second important line, the 30 denier plain, it did not get down for over three years to the second six months' price.

30

MR. HEARES: Q. Notwithstanding that prices were altered at irregular periods from time to time? A. Yes.

Q. And these prices were altered as a result of negotiations between yourself and some times the merchandise manager and Mr. Wainburg usually and Mr. Stopford representing Stirling Henry? A. Yes.

Q. From time to time did you mention in these conversations this problem that you were having in relation to the market for fully fashioned

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(Continued)

hosiery? A. Yes regularly.

Q. What did you say to Mr. Wainburg? A. I pointed out to Mr. Wainburg the seamless hosiery was taking an ever increasing sale and demand for fully-fashioned was gradually reducing and the prices were coming down from other manufacturers and he had to be competitive because we also have to be competitive from a retail selling point of view and we were constantly faced with the problem of having to reduce selling prices to meet out competitors prices.

10

Q. For instance, in relation to the main line 15 denier now; that is the 15 denier fully-fashioned 60's, you are now selling retail at 4/11? A. Yes.

Q. And at the commencement of the agreement you were selling at what price? A. 8/11 I think it was.

Q. Did you ever discuss with Mr. Wainburg the question of him getting into circular or seamless hosiery? A. Yes. We pointed out the increase for demand for seamless hosiery but he never expressed any desire ---

20

Q. What did he say? A. He said "I do not think the demand for fully-fashioned will completely die out"; indicating he had confidence there would be always a demand.

Q. Did he make any comments? A. Yes, he said people who wore seamless hosiery; their legs tended to look like sausages in them.

30

Q. In relation to the mesh stocking, what were you finding in relation to the line he was making of 30 denier plain? A. The 30 denier plain; the demand for the 30 denier dropped away quicker relatively than the 15 denier, being a heavy stocking and as such a large proportion of their plant was in 51 gauge it was originally intended for 30 denier their production, had it remained on 30 denier, would

have been far in excess of our requirements and we suggested to them they could convert part of this plant over to make the 15 denier ladderless mesh style. This meant we would take some of our business from one of our other regular suppliers and give it to Stirling Henry.

Q. And they did this? A. Yes.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

10 Q. And you discontinued buying this stocking from another supplier and gave the order to Stirling Henry? A. Not entirely. They only put over a small section of the plant and we were still able to buy the bulk of our demand from our original supply.

No.11

Eric William
Cooper

Q. May I take you up to 1963. Did you, in letters from time to time, refer to this trend in regard to fully fashioned hosiery and also the question of market price? A. Yes.

13th December
1965

20 Q. On the 12th August 1963 did you and Mr. Millist go out to the plaintiff's factory at Flemington and have a conversation with Mr. Wainburg and Mr. Stopford? A. Yes.

Examination
(Continued)

Q. Would you look at Exhibit 1 and tell me if anything was done by Mr. Millist about that document? A. Yes. Mr. Millist read out the points listed here from one to six to Mr. Wainburg reminding him of this agreement.

Q. Were you aware of that agreement from the time this minute had taken place, namely some time about the 10th July 1961? A. Yes.

30 Q. From July 1961 until August 1963 would you tell me the nature of the negotiations you had from time to time with Stirling Henry in relation to prices?

MR. BOWEN: I object. I think this may be of some importance. I suggest my learned friend ought to take the witness to a particular meeting as far as possible.

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(continued)

MR. MEARES: Your Honor has made a reference to the unreality of some of our practises. Mr. Cooper did not make notes of these meetings and he cannot pin-point words that were said two and three years ago.

HIS HONOR: He must do his best.

MR. MEARES: Q. May I take it from the time of this agreement in July 1961 did you have occasion to negotiate prices? A. Yes.

Q. You have heard Mr. Stopford relating to certain of those occasions of which he has a note? 10
A. Yes.

Q. But you - were there other occasions than those he has indicated? A. I cannot recall.

Q. Do you - dealing with discussions from 1961, from July of that year, until this conversation you and Mr. Millist had with these gentlemen in August 1963, at these conversations did you ever, and if so. to what extent, or was it always that you mentioned or discussed market prices? A. Oh 20
yes.

Q. What, without considering the actual prices, in these negotiations was the attitude that you took in regard to the agreement. What did you say -

MR. BOWEN: I object.

HIS HONOR: Q. Do not tell us what attitude you took. Tell us what was said and being as precise as your memory will permit. Can you carry on in that way? A. Yes, I think so. On all these 30
occasions the market was falling and I stressed the necessity for Stirling Henry to be competitive with others and reduced their costs and it was a continual exercise with them to try and get them into line with other suppliers, not only regards costs themselves but as regards terms and other factors which went into the making up of the hosiery such as costs of cartons and so on. In my mind always I discussed with them and pointed out what I was buying from other suppliers 40
at and that was my basis of market price. That was -

MR. MEARES: Q. What would Mr. Wainburg say?

A. Mr. Wainburg said on most occasions that he did not regard these as market prices, that they were distress prices; he would not accept my statements that we were buying at these prices regular merchandise and would not accept the price I quoted as market price and he used this word "Distressed" price on many occasions. We finished up usually by us giving some concession to Stirling Henry.... -

10

Q. Before you finished up what used Mr. Wainburg go on with them? A. He would always indicate the difficulties they had in regard to prices, they were continually coming down and the profits were receding, the costs were going up and always pointing out the difficulties as it affected them. We naturally had to put our side of the case in regard to our position in the market with regard to our retail competitors and we always endeavoured to stress this angle with him. It was a very difficult thing to get a message over to Mr. Wainburg at any time.

20

Q. Did he make any point in relation to the original letter of May? A. Yes. He always harked back to these original terms of taking his original production and that was it as far as he was concerned. He had the mill to put it in and the idea was we should take his total production indefinitely and in spite of everything else that was uppermost in his mind all the time. We endeavoured to do this to the best of our ability always but occasionally it occurred when our stocks were high that we did not have the requirement for months ahead and we were not able to give him orders immediately and this always created problems.

30

Q. This was after 1961 when you made this alteration? A. Yes.

Q. In exhibit A, p/53, in a letter of the 13th October 1961 you referred to this: "For the past six months we have been offered 15 denier at 48/6d and 30 denier in the same style and packet at 66/6d and we will lose this business". That is a specific letter you wrote in October 1961?

40

A. Yes, that is correct.

Q. And as appears from p.67 in a letter of the 9th

In the
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(continued)

In the Supreme Court of New South Wales

Defendant's Evidence

No.11

Eric William Cooper

13th December 1965

Examination (continued)

March 1962 you said: "We suggest you make some provisions in your reserves.... in the meeting with your managing director" and so on? A. Yes.

Q. As far as you yourself were concerned you negotiated with them from time to time after 1961; after July 1961 at prices above what you believed the market prices were? A. That is right.

MR. BOWEN: I object to that. If this is a negotiation; what happened, in fact, or what was fixed I do not object to evidence as to that.

10

HIS HONOR: If this is to a certain extent inquired into that state of mind both sides are allowed to lead evidence in that regard. This could be accepted as to the state of mind in which the whole thing was approached.

MR. BOWEN: I would ask my friend not to lead if that were so.

MR. MEARES: Q. In so far as your negotiations were concerned with these gentlemen, the prices that were agreed upon from time to time between Woolworths and Stirling Henry were increases of the prices you were purchasing from other manufacturers? A. That is correct.

20

Q. As far as Stirling Henry was concerned in relation to reaching prices from time to time did you find this an easy matter or not? A. Never.

Q. However, in finally reaching a price that you agreed to pay for a period of time did you do this on your own initiative? A. Yes.

30

Q. Insofar as you were concerned what was the ambit of your authority in paying for goods that you were wanting to sell? A. I have to achieve a certain budget percentage mark-up as well as a budget money value mark-up for my whole department, and how that is achieved within the department is the buyer's responsibility and that is why in these cases I could afford to give Stirling Henry a little more than the others so that my average came out within the budget I was aiming for.

40

Q. Were you able to achieve this overall result until August 1963? A. Yes.

MR. BOWEN: I object.

HIS HONOR: It is only a summation. I know it is leading.

MR. BOWEN: He is talking about achieving something in his own field. I do not mind the fact the prices were different. If it goes to the carrying out of a policy then I would submit it would be objectionable and leading.

10

HIS HONOR: I will allow it.

MR. MEARES: Q. Were you able to do this until August 1963? A. That is correct.

Q. Around August 1963 did you form - do not tell me what it was - a certain view in regard to the future of fully-fashioned hosiery? A. Yes.

Q. Following upon that view did you have a conversation with your senior, Mr. Millist? A. Yes.

20

Q. On the position vis-a-vis Stirling Henry and maintenance of this agreement to charge market prices? A. Yes.

Q. Following upon that did you understand Mr. Millist spoke to Mr. Kelly? A. Yes.

Q. And you then had certain discussions with Stirling Henry that have been dealt with? A. Yes.

Q. As far as Stirling Henry were concerned you tell us from time to time you agreed notwithstanding the arrangement of July 1963; you agreed to pay above what you were paying to other manufacturers.

30

MR. BOWEN: I object. He says notwithstanding the agreement.

HIS HONOR: I know.

MR. MEARES: Q. Would you tell me why you were prepared finally to pay something over and above the price you were paying to other manufacturers? A. Because I was still able to maintain my overall percentage.

In the Supreme Court of New South Wales

Defendant's Evidence

No.11

Eric William Cooper

13th December 1965

Examination (continued)

In the Supreme
Court of New
South Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(continued)

Q. So far as any feelings towards Stirling Henry were concerned could you discuss it from that point of view? A. Yes. I was still endeavouring to fulfil to the best of my ability the spirit of the arrangement, in other words, taking as much of their production to offset our overall requirements against each line and giving them as much consideration as I possibly could.

Q. This question of giving them consideration, is this a policy of Woolworths in regards to people who have supplied them for a long time? -

10

MR. BOWEN: I object to that.

HIS HONOR: I do not think that is admissible.

MR. MEARES: Q. Mr. Stopford has spoken of a statement you made as appears from p.45 of his evidence; in a conversation that took place on 2nd August 1963 in which you said you had been offered only last week 15 denier 60 gauge at 39/6d because the manufacturer mentioned to you he wished to keep his plant going and so prevent the machines deteriorating through non-use and rust. Do you remember that? A. Yes.

20

Q. Do you remember such an offer being made round about that time? A. Yes.

Q. Did you buy? A. No.

Q. Did you buy at that price? A. No.

Q. So far as the prices which you were paying other manufacturers right from the inception of the arrangement with Stirling Henry when they started in 1956 were these the prices that you were buying from manufacturers, prices negotiated with them in the ordinary course of your buying operations? A. Definitely yes.

30

Q. I ask you this; in relation to any of these manufacturers did you at any time when they came along offering you goods put Stirling Henry's price to them so you could cut their price down? A. Never, because --

MR. BOWEN: I object.

MR. MEARES: Q. As far as these manufacturers that you were buying from were concerned were they manufacturers who were offering their commodities to you not just in some great parcel but from month to month in effect? -

In the Supreme
Court of New
South Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(continued)

10 MR. BOWEN: I object. One can cover years with these generalities and it is also leading. If one is going to deal with manufacturers, manufacturers do not all even necessarily do the same thing.

20 HIS HONOR: What is in my mind is this; A and B agree to buy and sell goods at a price which is not stated in units of money but as a descriptive price - if you like market price - and they carry on in apparent fulfilment of that contract for a number of months or years and then it may well be said that the price is prima facie market price because one would expect that they would carry on in accordance with the terms of the contract. Then if ever there is a dispute, and the purchaser says "that is not true, this prima facie situation is not the correct one because I pay more than market price" he is entitled to give that evidence.

MR. BOWEN: I appreciate the steps that are sought to be covered. What I understand my learned friend is on now is the nature of the purchases from other manufacturers.

30 HIS HONOR: Q. Subject always to approximations and the best of recollections. I think it is again a matter of approach I will accept it on that basis. Can you give the answer? A. Yes. All manufacturers that were supplying these lines did so on a planned production basis and they planned their production ahead and it was definitely nothing hit or miss about it, it was definitely a quantity for a period for a definite quantity over so many months and they had to plan their production and their
40 knitting and their dyeing to cover this

In the Supreme
Court of New
South Wales

Defendant's
Evidence

No.11

Eric William
Cooper

13th December
1965

Examination
(continued)

situation; regular supplies was the key note
of the arrangement. Other lines were bought or
advertisements on a different basis.

(Witness stood down)

(Further hearing adjourned until 10 a.m.
Tuesday 14th December 1965)

SIXTH DAY: TUESDAY, 14TH DECEMBER 1965NO. 11ERIC WILLIAM COOPER,
on former oath:In The
Supreme Court
of New South
WalesDefendant's
Evidence
No. 11Eric William
Cooper
14th December
1965
Examination
(continued)

MR. MEARES: Q. Did you ever tell Mr. Wainberg or Mr. Stopford on 12th August 1963 that you were buying lines of fully-fashioned stockings at distressed prices? A. No.

10 Q. And was it the fact were you buying them at distressed prices? A. No.

Q. You have heard discussions about the meaning of the expression "distressed prices". What does it mean to you, as a buyer? A. To me it means that if a vendor wants to sell stock and get money quickly, if a vendor wants to sell stock to obtain money quickly and take whatever price he can get for it.

20 Q. Now in regard to all the sales of fully-fashioned hosiery by suppliers other than Stirling Henry that you gave particulars of yesterday were any of those sales made to your knowledge as distressed sales? A. No.

30 Q. And in regard to your two main suppliers namely Beau Monde and Holeproof, were these sales from 1961 on negotiated as a result of either or both of those manufacturers coming along and saying "Well, we have stock of so many thousand dozen in hand. We will offer it to you at such-and-such a price" or anything of that nature? A. No.

Q. Generally speaking how were these orders you made from time to time from Beau Monde and Holeproof how were they made? A. They were discussed over three or four months as to supply for a further period ahead on a planned production basis, and the prices were negotiated at that time.

Q. In other words, as far as they were concerned, you would indicate your requirements and they

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Examination
(continued)

would do what, would you tell us? A. Yes, I would indicate requirements for a period and they would determine whether it could fit in with their production. They would quote the prices they wanted, and we may negotiate between ourselves on these prices.

Q. In addition to Beau Monde and Holeproof, were there any others offering fully-fashioned hosiery in 1961 and onwards, to your recollection?
A. Yes.

10

Q.. Who? A. Kayser Limited, Charmain Hosiery Mills, Kolotex.

Q. And how did their prices compare with the prices you were paying Beau Monde and Holeproof?
A. Very much the same.

Q. And in regard to Kolotex, what happened to Kolotex as time ran down after 1963? A. Well, they gradually reduced their production of fully-fashioned until finally they determined they did not want to make any more fully-fashioned hosiery, their equipment was old and they replaced it with seamless machines.

20

Q. Insofar as purchases at depressed prices are concerned, have you ever made a purchase of hosiery off manufacturers for Woolworths at what you understand a depressed price to mean?
A. Yes, I can recall one occasion when, I think it was towards the end of 1960, we were offered a few thousand dozen of a special pack of fully-fashioned, which was called a pair and a spare, from a wholesaler, which I think was a subsidiary of Lever Bros. They had this stock and they wanted to clear it quickly and get the money in. We purchased that after negotiation.

30

Q. Now you have records, have you not, of the total purchases by Woolworths of fully-fashioned hosiery from 1956 onwards? A. Total issues from our warehouses, yes.

Q. We have evidence that in 1964-1965, the total Australian production of fully-fashioned hosiery was 275,079 dozen? A. Yes.

40

Q. Now in 1959 and 1960, how did your sales of fully-fashioned hosiery compare with that figure?
A. Approximately the same total.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Examination
(continued)

10 Q. Insofar as the position was concerned from the date you commenced buying from Stirling Henry until the agreement you have referred to made in or about the middle of 1961, in your discussions with Mr. Wainberg and Mr. Stopford as to Woolworths' obligations to Stirling Henry, can you recall what you said to those gentlemen as far as your interpretation of your obligations was concerned? (Objected to).

MR. BOWEN: If the witness is going to give evidence of what he said, I object to it in that form.

20 MR. MEARES: Q. I want to ask you whether you can recall any particular year or month when you gave any indication as to what your view was as to Woolworths' obligations to Stirling Henry prior to 1961? A. Right at the start, in 1955-1956, I understood it to be for 12 months.

MR. MEARES: I ask that that be struck out.

HIS HONOR: Yes, that will be struck out.

MR. MEARES: I am trying to find out what he said to Mr. Stopford or Mr. Wainberg.

HIS HONOR: Not what you understood was said.

MR. MEARES: And when you said it.

WITNESS: Prior to 1961?

30 HIS HONOR: Yes.

WITNESS: I cannot recall when I said the particular thing, but constantly in my discussions with him I pressed that we had no agreement to take quantities, but because they were long-standing suppliers, we were giving them every consideration because of the original agreement for 12 months.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No. 11

Eric William
Cooper
14th December
1965
Examination
(continued)

MR. MEARES: Q. And what was the attitude of Mr. Wainberg? A. Mr. Wainberg constantly maintained that it was a continuing arrangement to take their total production.

Q. Now after you had a discussion with Mr. Fleming and after you wrote the letter of 10th July 1961, and after you had seen Mr. Fleming's memorandum, did you thereafter negotiate on a basis of market prices? A. Yes.

Q. Now Mr. Stopford said, at P.61 of the transcript, that Mr. Millist told him on 2nd December 1963 that the market price of hosiery had fallen still further and that Woolworths had purchased at certain prices for various gauges set out on p.61. Do you remember that? A. Yes.

10

Q. And was that a true statement that he made? A. Yes.

Cross-
Examination

CROSS-EXAMINATION:

MR. BOWEN: Q. You have told us the meaning you attach to distressed prices. You agree, I take it, that Mr. Stopford attached a different meaning to it when he raised it with you? A. I cannot recall what he actually said.

20

Q. Well, let me remind you of one instance perhaps; do you remember a meeting of 2nd August 1963, one of the meetings towards the end, the first meeting Mr. Millist came into, and you were discussing prices; you had proposed prices which had not been agreed to at that stage, of 44/-, 56/- and 63/6; and Mr. Stopford gave evidence that you said that "due to the present condition he was being offered lower prices than they were paying Stirling Henry and he said he had been offered only last week prior to this meeting 15-denier 60-gauge at 39/6, because the manufacturer mentioned to him that he wished to keep his plant going and so prevent machines deteriorating through non-usage and rust"? A. Yes.

30

Q. Do you remember making that observation? A. Yes.

40

Q. And quoting that price? A. Yes.

Q. Mr. Stopford then said that the reasonable idea of a sale to Woolworths was reasonable prices and not distressed prices, he pointed out that these distressed prices were possible as other manufacturers had many outlets for their production, which permitted them to average their selling prices. Do you recall that? A. Yes.

10 Q. So, it was clear to you that as far as Mr. Stopford was concerned he took the view that an offer of that type was an offer at a distressed price; that is the way he was using the term? (Objected to).

Q. At 39/6d., because the manufacturer had to keep his plant going and so prevent the machines deteriorating from non-use and through rust. That is clear to you? A. Yes, that is what he would say.

20 Q. And it is clear to you that you, yourself, give a different meaning to the term?
A. Definitely.

Q. You appreciated all through that the objection Mr. Stopford or Mr. Wainberg were making was to describing that kind of a price as a distressed price - was an objection to that kind of approach being adopted as a market price; you understood that? A. Not necessarily.

30 Q. Well, it is quite clear that at that meeting on 2nd August 1963, they were objecting to that being taken as a factor in fixing market price?
A. Yes.

Q. And that they characterised it as a distressed price? A. Yes.

Q. However, you took another view and thought it was a material matter to mention to them in these discussions to fix prices? A. Yes.

40 Q. Now I want to take you to the figures you put before us yesterday in Exhibit 3. Do you have a copy of Exhibit 3 before you, that is the

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No. 11

Eric William
Cooper
14th December
1965
Cross-Examination(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No. 11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

figures for annual periods? A. Yes. (Produced).

HIS HONOR: Q. It is in your handwriting, isn't it? A. Yes.

MR. BOWEN: Q. Now the heading above quantities, cost and values is estimated value of purchases. I think you made it clear yesterday that these figures are your estimates of the figures?
A. Correct.

Q. And the quantities which are listed there under the word "Quantity" are based on some sales figures in letters which you have, which include seamless as well as fully-fashioned?
A. No, these figures are for fully-fashioned hosiery only, for each particular buyer.

10

Q. Well, would this be correct, that Holeproof would be supplying seamless hosiery as well as fully-fashioned hosiery, and there would be no means of segregating those at all, they would be on one invoice and it would be a total figure taken into your records; is that right or wrong?
A. I am sorry, would you repeat the question?

20

Q. I put to you that Holeproof would be supplying seamless hosiery as well as fully-fashioned hosiery; that would be correct, wouldn't it? A. That is correct.

Q. And I put it to you that there would be invoices which might have seamless and fully-fashioned at the same time? A. Correct.

Q. And the figures which went into your records of sales would be the total figure? A. No.

30

Q. And I suggest to you there is no means of segregating those at all? A. These figures were based -

Q. Is that right or wrong? A. That is wrong.

Q. I want to refer you to some evidence yesterday on p.181 of the transcript in relation to this exhibit. You were asked "Now insofar as actual purchases in value are concerned,

would you tell me how it is that your accounting system renders it impossible for you to estimate the total purchases in pounds, shillings and pence accurately; would you just explain it to His Honor?" I do not know whether you recall the actual question; you are recorded as answering "Yes, our accounting system would give a total amount of money paid to each supplier each month"? A. Correct.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

10 Q. "But it would not segregate the type of lines he would supply"? A. That is correct.

Q. "For instance, Holeproof would be supplying seamless hosiery as well as fully-fashioned hosiery and there would be no means of segregating those at all." Would that be correct; is it right or wrong? A. No.

Q. It is not right? A. No, if I may express this-

20 Q. Firstly, can you tell me whether it is a correct statement or not? A. It is a correct statement as far as the document I had in mind in our accounts department are concerned.

Q. Well, is it right as an explanation of actual purchases in value are concerned, which you have taken into Exhibit 3? A. No.

Q. The records do not present that figure, is that it? A. They present it in a different form.

30 Q. I will just complete this and ask you what you say about it. You said "On some invoices you might have seamless and fully-fashioned at the same time and this information has never been required and it is never kept in that form." Perhaps I had better refer you to the next question and answer. You were then asked "Q. And the reason you cannot be accurate from records is that you do not retain or have in your possession invoices showing the sales of various types of stockings from various manufacturers? A. That is true." Is that correct? A. I am
40 sorry, would you read that again.

Q. "Q. And the reason you cannot be accurate

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No. 11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

from records is that you do not retain or have in your possession invoices showing the sales of various types of stockings from various manufacturers? A. That is true." That is the reason you cannot be accurate? A. We have some, but we have not got all over the period in question.

Q. Well, that answer needs to be qualified?

A. Yes.

Q. It is only partly true; that would be your answer? A. That would be so.

10

Q. We will go back to this "And there would be no means of segregating those at all." Is this the position, that although you stated yesterday that that did present difficulty, you now say it is not a real difficulty? A. It is a big difficulty.

Q. Well, you tell us, what is the difficulty there? A. The difficulty is that we have thousands of invoices coming in weekly to the company. As far as this hosiery is concerned, individual invoices would specify seamless or fully-fashioned if it was on the one invoice, and usually specify the maker's number and the price for that particular stock. They could be identified from the invoices, however, as far as our detailed accounts are concerned, our accounting system only has a complete record each month of the total payments to each manufacturer.

20

Q. "Segregated under manufacturers"? A. Segregated under manufacturers' names, and it would include all that merchandise that that manufacturer delivered to us.

30

Q. Whether it included seamless, fully-fashioned, or only one? A. That is correct. Only the individual invoices themselves would indicate seamless or fully-fashioned for the particular item.

Q. I think when, on Monday week last, I asked you some questions in response to the subpoena which you were answering from the company, I

40

asked you some questions, I asked you for invoices; you explained to me that they would be all over Australia? A. That is correct.

Q. And therefore it was physically impossible to obtain them in connection with this case, for us? A. The total, yes.

Q. And that is still the position, I take it? A. That is correct.

10 Q. So that the total figures which show sales segregated into manufacturers would deal without distinction with both seamless and fully-fashioned? A. No, these sales are estimates for various manufacturers.

Q. I am talking about your records at the moment; it is correct to say that your records are segregated into manufacturers and show the sales to each manufacturer for the month? A. That is our accounts records.

20 Q. And that these are without distinction as to whether the stockings are seamless or fully-fashioned? A. That is correct.

Q. Am I correct in my understanding that it is these accounts records that you have gone to in compiling the figures in Exhibit 3? A. No.

Q. You have not used those records? A. No.

Q. You have not used those records at all? A. No, apart from invoices that we have seen, copies of invoices -

30 Q. I am not talking about invoices. You drew a very clear distinction to me between your accounting records and your invoices? A. Yes.

Q. Because you told me that no complete set of your invoices could be made available? A. That is correct.

Q. We are clear on this, aren't we? A. Yes.

Q. And now I am asking you whether you used your accounting records in compiling the figures

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No. 11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

in Exhibit 3, and your answer is No? A. No, only as far as checking actual numbers in the columns also with our records.

Q. You did not use them in respect of the quantity - A. No, I cannot.

Q. Now in your accounting records, the records we are just discussing showing sales for the month to the particular suppliers, there would be no individual statement of prices for particular lines indicated, would there?
A. Would you please repeat that question?

10

Q. Yes, in the accounting records we have been discussing showing total sales per month to each manufacturer, there would be no indication of the price for individual lines?
A. No, not to the best of my knowledge.

Q. They are total sales figures? A. Total purchases.

Q. Now I come back to Exhibit 3, and you appreciate I am asking you questions under the heading "Quantities"? A. Yes.

20

Q. You now tell us you did not go to your accounting records of sales per month to individual manufacturers in compiling this?

MR. MEARES: He has not quite said that.

MR. BOWEN: Q. Did you or did you not go to those accounting records showing sales for the month to each manufacturer, when you compiled these quantity figures? A. No.

Q. So that the figures you compiled for quantities were from your very wide knowledge of the matter, your best estimate of these things?
A. That is right, for each supplier.

30

Q. And your best estimate, trying to calculate a quantity for fully-fashioned of the particular type? A. No, that is not an estimate; they are factual figures.

Q. Let us take Holeproof 1,000; you see that there under "Quantity"? A. Yes.

Q. Tell us where you got that figure from?
A. That is what I estimated that Holeproof had supplied us during that period.

Q. I am sorry, I thought a moment ago you told me these were not estimates, that they were actual figures? A. No.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

10 Q. We must be at cross-purposes. A. I am sorry, if I may explain, the total figure of 20,754 under B.29 for instance, calculated just to the left of that column headed "Supplier" which is shown as purchases for the year, 20,754 dozen, now I have broken that total up. That is a factual total based on our stock control records, which are in Court here. I have taken that total and broken it up to the best of my ability, to estimate how much has come from each supplier in that period.

20 Q. And the figure of 20,000 is not in these purchases we were talking about a moment ago, but on a different sheet, a ledger card? A. Different records altogether.

Q. And that is a record which shows stock figures, doesn't it? A. Yes.

Q. And it shows what you call drawings?
A. Correct.

Q. Sent out to various branches, is that right?
A. Yes.

30 Q. But it is a record which does not show purchases from your manufacturers? A. That is correct, not individual manufacturers.

Q. Well, it does not show a total figure as such, as purchases from manufacturers, does it, that is a calculated figure? A. That is a calculated figure.

Q. You had to make some calculations? A. Correct.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

Q. In order to arrive at that? A. Yes.

Q. It does not appear on the stock control sheet? A. No, that is correct.

Q. And in arriving at that figure of 20,754, you had to make certain assumptions, didn't you?
A. No assumptions, they are factual figures which I obtained from our records.

Q. I am asking you about the 20,754, one assumption you would have had to make is the rate of drawings? A. No.

10

Q. As to whether they were fast or slow?
A. That would not come into it over a full period.

Q. Well, that would be one of the questions you would have to consider in using the figures that you had on your control card, as to whether they could be proper figures to be used for working back to a purchasers figure? A. No, we have a factual stock to start with. We have a factual stock to finish and a factual figure of drawings in between those two actual stocks.

20

Q. Can you tell us when the drawings are entered as drawings? A. As soon after we get the figures from each State, after each monthly period.

Q.. And how soon would you get the drawing figures, say, after October 31st this year? A. It might take up to three or four weeks.

Q. You would have all the drawing figures in for all States at the present time, from 31st October this year? A. Yes, I think they are in, but I do not think they have been entered.

30

Q. And there might be a few stragglers?
A. Yes.

Q. At any one time, if you are using drawings in calculating purchases, there is room for error in relation to defining purchases up to a particular point of time? A. No, that is not so. If I may qualify it, all accounts are done on the same date throughout the Commonwealth and it

depends on the different warehouses and the office staff as to how soon they can get those all completed and forwarded to us in Head Office.

Q. I want you to go to the prices which are stated under the heading "Cost" in Exhibit 3. Do you see that? A. Yes.

Q. Now the position is, isn't it, that you have taken those from some ledger cards, is that right? A. Yes, our stock control cards.

10 Q. You call those your stock control cards?
A. Yes.

Q. But they are not cards which show any figures in relation to drawings or sales or purchases? A. No.

Q. They are just cards which show the names of particular suppliers and they do have the price or cost figures at which you are buying from that particular supplier? A. That is correct.

20 Q. Now these are entered up from time to time, are they? A. Yes, alterations are entered as they occur.

Q. I notice you have amongst the documents produced on Monday week, cards; were some of these cards shown as "Rewritten" and a date of rewriting? A. That is correct.

30 Q. Does that mean that those particular cards that would have been produced would not have been the original cards that were used and entered up at the time? A. They would be, yes.

Q. Well, you would expect, if they were, that as a change came there might even be a different ink showing a date, say in 1963 as compared to 1962, wouldn't you? A. By rewriting, it means that as the last card if filled up, the last entry is carried on to a fresh card.

Q. But it does not mean the card has been completely itself rewritten? A. No.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

Q. Now, this control or ledger card I am talking about does not indicate any actual purchases at all? A. That is correct.

Q. It is just a card where you say you record rates, that is prices? A. The supplier's name and his price and special terms and so on.

Q. In addition, I think you had put some terms, free into store, discount and a few others? A. Yes.

Q. And I think in addition you have, at the bottom of this card the retail selling price from time to time of different lines? A. Yes.

10

Q. And these prices are stated for various States or territories in Australia? A. Yes.

Q. Will you agree that they show from time to time the retail selling price of particular lines such as 15-denier 60-gauge - they would differ in different stores of Woolworths throughout Australia. A. It would depend. It would at certain times according to the records shown.

20

Q. A thing might be selling at 5/11 in some stores and 5/6d in other stores; this does occur? A. Yes, if I may qualify that.

Q. Can I ask you this, was it ever the position that in those areas where you had a store in direct competition with, say, Coles, that your prices might be 5/6 and in other places, where you had not a store in competition in that way, it might be 5/11? A. That could happen, depending on the type of line.

30

Q. You wanted to say something else about these differing prices? A. Yes, some lines are sold at the one price in all stores throughout the Commonwealth; others are sold at higher prices to cover transport and so on, as they get further away from the capital city. It depends on the type of line.

Q. If you go over the second page of Exhibit 3, I think you told us yesterday that all these

40

promotional lines were being offered by Stirling Henry except 15-denier 51-gauge mesh? A. Yes.

Q. Did you mean by that that they were manufacturing all of them and that therefore they could make them available? A. No, I meant that we had at times bought those lines from Stirling Henry for promotional purposes, except the mesh.

10 Q. Did you follow a procedure in relation to these, first offering an order to Stirling Henry at the price at which you might be able to buy them? A. Yes. Not in all cases.

Q. Not in all cases? A. No.

Q. In some cases you did? A. Yes.

20 Q. Do you recall a provision about 75% of your requirements being taken from Stirling Henry, the balance of 25% might be bought elsewhere? There was some difference of opinion as to whether you had to offer the other 25% to them or whether they had a right to them; do you remember that? A. Yes.

Q. In relation to p.1 of Exhibit 3, did you ever offer to Stirling Henry the lines stated there, which they were not supplying at the prices on offer to you? A. I think we did, yes.

Q. So that you treated that as part of the 25% outside the 75% of your requirements? A. For promotional purposes.

30 Q. I am sorry, I have gone back to p.1.
A. Not on p.1.

Q. You did not offer anything over the 75% of your requirements to Stirling Henry? A. We did not have to, because we were taking all they were making in those lines.

Q. The answer is, you did not, and you want to give that as a reason? A. Yes, in respect of those lines.

Q. Now I want you to go to p.4 of Exhibit 3;

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965

Cross-
Examination
(continued)

you have expressed some views about trends in the market not only during that period 1st December 1964 to 5th October 1964 but ahead as well?
A. Yes.

Q. Would you agree that there is selling at the present time retail in the departmental stores each of those lines, that is, 15-51 mesh 15-60 plain, 30-51 plain fully-fashioned hosiery at 9/11? A. I could not be sure about the mesh. I would say that is correct. 10

Q. You would not deny that? A. No.

Q. And that this would be so even today, but you are doubtful about mesh? A. I would say that is correct.

Q. And you would think they were in fact selling 15-denier mesh at 9/11 too, wouldn't you?

MR. MEARES: Is this in the retail stores?

MR. BOWEN: Q. That these are on sale in retail stores? A. Yes, it is quite possible that mesh could be. I could not say. 20

Q. And you would be familiar with what actually is the market to this extent, that you would know that the manufacturers such as Holeproof, Kayser and others circulate you through catalogues in respect of these lines of yours and are actually doing so in relation to fully-fashioned hosiery? A. Yes, I would say so.

Q. I would suggest to you that Holeproof offers each of these three lines at the present moment at 85/- a dozen? 30

MR. MEARES: The first question is what are they offering? Are these specially got up or boxed, or what are they?

HIS HONOR: Surely that goes to weight.

MR. MEARES: My learned friend is relying upon a contract that the price was to be paid, which was to consist of three components: the profit to Stirling Henry, the profit to Woolworths and the

market price. He led not a tittle of evidence about this. He gave no evidence whatsoever as to market price, with the exception of leading evidence as to what he thought a distressed price was, that these prices that Woolworths were paying were distressed prices, and he led evidence as to a statement made by Mr. Cooper on one line, at one time, of 39/6d. I speak subject to correction, but in our recollection there was no other evidence led in any shape or form as to market price. I submit that in those circumstances, my friend is not entitled, with respect, to endeavour in the defendant's case to cross-examine a witness about catalogues. We cannot determine market prices on catalogues. If he wanted to establish a market price, he could have, and I submit this evidence has no weight.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

10

20

HIS HONOR: I think it is admissible as to credit and as to damages. I see no reason why, in any event, Mr. Bowen cannot seek to get evidence from the defendant's own witnesses.

MR. BOWEN: Q. You told us you are aware that manufacturers, who manufacture fully-fashioned hosiery, circulate in catalogues? A. I understand so.

30

Q. Are you aware that Holeproof currently in their catalogue offer each of three lines on p.4 of Exhibit 3 at 85/- per dozen? A. I am not aware of that, but I agree that it would be quite possible.

Q. You would see these catalogues from time to time from the manufacturers? A. Yes.

Q. In your duty as a buyer for Woolworths, buying the way you do? A. Yes, but fully-fashioned lines have no interest to me now at this price you are referring to.

Q. They are of no interest to you now? A. Not the boxed lines that you have there.

40

Q. They are of interest to you, selling in your own stores with your marks on them, aren't they, still? A. Not for bulk purchases.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

Q. Well, let us go back a little; when you were buying both from Stirling Henry and from Beau Monde and Holeproof, you were aware, were you not, say, in 1961-1962 that Holeproof and Beau Monde were selling stockings in the same lines but with their trade names on them at higher than retail figures? A. Yes.

Q. Than you were selling yours? A. Yes.

HIS HONOR: Selling to whom?

MR. BOWEN: Q..To various stores, including yours? A. Yes, all other retailers.

10

Q. All retail stores, and you would stock not only those lines under your own names such as Fairyweb and Captivation, but you would stock Beau Monde or Holeproof under their names as well? A. No, only in one small store in Victoria, which is a specialised hosiery shop.

Q. And otherwise you could not get a Woolworths store with a proprietary line?
A. Not of this type, no.

20

HIS HONOR: Q. When you bought from Holeproof and Beau Monde, did you buy Fairyweb and Captivation stockings? A. Yes.

Q. MR. BOWEN: You got them to put that on them?
A. Yes, they packed them in our own specialty designed envelopes.

Q. The design had been arranged with you?
A. Yes.

Q. This is the position, that during the period that we have been talking about, 1955-1963, in Woolworths stores you did not sell fully-fashioned stockings under proprietary lines from any maker?
A. From 1955?

30

Q. Yes, to 1963, except in the store in Victoria you mentioned? A. No. Early in the piece, we did.

Q. Well, how long did you? A. For some years,

I think, until sales of those proprietary lines fell away to such an extent that we could not continue the stocking.

Q. Well, would this be around about the beginning of 1961? A. I do not recall exactly. I do not think we had any fully-fashioned boxed lines in our stores, apart from the hosiery shop, in that time.

Q. Well before 1961? A. Well before 1961.

10 Q. Was it around about the time of the credit squeeze? A. No, it was well before that.

HIS HONOR: Q. Captivation and Fairyweb were popular brands? A..Yes, they are our nationally branded lines.

Q. And they are popular with the public?
A. Yes.

MR. BOWEN: Q. And in this early period when you were selling proprietary lines, were any of them from Holeproof? A. I think early in the
20 piece we did, from Holeproof.

Q. 15-denier, 60? A. I think so.

Q. And would they also make some for you under Fairyweb or Captivation mark, which were your own?
A. Yes, that could have happened.

Q. And these would be the same? A. Not necessarily, the same construction, 15-denier, 60, yes, but the stocking itself would be different.

30 Q. Would always be different? A. Yes. As far as Paris brand was concerned, they had a different design for the stocking to ours.

Q. That is a different stocking, isn't it?
A. Yes.

Q. Do you know their line E? A. Yes.

Q. Well, that would be the same, wouldn't it?
A. No.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

Q. What is different? A. Without looking at it, I would say that it is different, because we had a definite heel style on ours, which was different to most other proprietary brands.

Q. You think the heel is different? A. I think so.

Q. Otherwise it was the same? A. Otherwise similar.

Q. I suggest to you that these lines on p.4 of Exhibit 3 are selling in departmental stores today at 9/11; I put that to you - (objected to)

10

MR. MEARES: When my friend talks of a line, is he speaking of a boxed line, or not?

HIS HONOR: Or is he speaking of a brand line or merely of mesh? I do not know. He has got to start somewhere, and it is the first question. He is taking it one step at a time.

MR. BOWEN: Q. That is so, isn't it? A. Would you repeat the question.

Q. (As read by Court Reporter). I suggest to you that these lines on p.4 of Exhibit 3 are selling in departmental stores today at 9/11, I put that to you? A. Yes, I think so.

20

Q. I want to put to you that those I was referring to would have the manufacturer's trade name on them; you understood that, didn't you? A. I did not at the time, but having seen the packs, yes.

Q. And they are selling at 9/11; you realise that? I want to go back for the moment and suggest to you that at times you would take to sell under your own names from the manufacturers such as Kayser, a substantial quantity, say 4,000 dozen, which was precisely identical with their proprietary line; would you agree with that? A. I could not say without examining both lines. I could not swear to that.

30

Q. Well, occasionally do you remember them

asking you to leave their colour name on it, for example Lucky Penny and Aloha; they were not the colour names of Woolworths, were they? A. That is right.

Q. They were the colour names of Kayser? A. That is correct.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

10 Q. And where you were taking identical shades, do you remember Kayser asking you to leave their colour names on? A. Yes, I think that did occur.

Q. And in that case the stockings would be identical with the proprietary line? A. The stocking itself, but not the pack.

Q. The construction of the stocking would be on the carton; it would have a different name on it? A. the envelope they are packed in, yes.

20 Q. And where that occurred, say in relation to an order of 4,000 dozen from Kayser, for the sake of argument, they would be charging a lower price per dozen for those goods than they would for the line which you were selling under their proprietary name? A. They would be taking a lower price for what they would be selling under their proprietary brand.

Q. And the proprietary brand would be selling retail at a higher figure in the first place, wouldn't it? A. Yes.

Q. And they would be charging a higher price to the retail buyer for that? A. Yes.

30 Q. I think you gave an estimate that for this year on p.4 of Exhibit 3, that if it was projected for the complete 12 months your purchases would be 52,000? A. Yes, approximately another 6,000 dozen.

Q. And there is a very small quantity of 15-denier 51-gauge mesh stated there; do you see that? A. Yes.

Q. Only 539 dozen; is it a fact that you changed over to 30-denier mesh during that

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

period? A. No.

Q. You are selling, are you not, 30-denier mesh at 4/11? A. Today?

Q. Are you selling it today? A. Yes, 30-denier?

Q. Yes. A. No, we are selling it, but not at 4/11.

Q. Well, what are you selling it at? A. I think it is 8/-.

Q. And you changed to 30-denier mesh from 15-denier mesh? A. No.

10

Q. As policy? A. No, we did not do this.

Q. When did you start selling 30-denier mesh? A. Many years ago, I cannot recall.

Q. Can you give us any idea? A. I think it would be prior to 1961. I think so.

Q. And you would agree that the machines for making 15-denier mesh can be adapted to making 30-denier mesh? A. Yes.

Q. And I think you would agree that the 30-denier mesh is a stronger mesh stocking than 15-denier? A. Yes.

20

Q. And that as far as sales are concerned, it is a better seller at the present time than 15-denier mesh? A. In our company we discontinued 15-denier. We do not know how it would sell if they were both together today.

Q. At the time you discontinued 15-denier mesh, that was the position? A. It was not a better seller, no.

30

Q. I take you to Exhibit 4; can you tell me when that was typed out? A. I think this was typed out yesterday morning.

Q. And the typing would have been completed some

time before lunch, would it? A. Yes.

Q. I want you to go to the figures for July 1962, shown on the first page of it, 48/9, 42/6, 46/6?
A. Yes.

Q. Now I think you have told us that these figures do not appear on any control cards which you now have? A. July 1962? I do not think so.

Q. And that you obtained them? A. Yes.

10 Q. Where did you obtain them from? A. From correspondence we had on our files, to the best of my recollection, and from copies of some invoices we had obtained from our warehouse at Silverwater, in Sydney.

Q. Well, that would involve material which has not been produced; you know you produced material in answer to a subpoena? A. No, it is all here. (Objected to).

20 Q. I am not suggesting there is anything wrong in this, but the invoice you referred to would not be amongst the material you produced to us, I take it? A. Yes, they are here. I do not know whether they were produced to you.

Q. They are now in Court, are they? A. Yes.

Q. But as far as the letters are concerned that you referred to, they would all be amongst the letters that were produced on the subpoena, would they? A. Yes.

30 Q. Well, this would have an element of guesswork in it to some extent, wouldn't it, as to whether or not there happened to be an invoice or a letter which showed - A. No, to the best of my ability I recorded these prices from letters and stock control records.

HIS HONOR: Q. Directly from them? A. Directly from them. I may have made an odd mistake.

MR. BOWEN: Q. Where you could find the letter
A. Yes.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

Q. Where you could not find the letter or an invoice, but supposing you found one in April and one in December and the price was the same, would you continue the price on, or did you always find a letter or an invoice? A. No. You are referring to July 1962?

Q. Yes. If you looked at April 1962 under Beau Monde for example and you found a letter there which said 42/6d. and another in December which said 42/6d., would you assume the price had remained unchanged; that sort of assumption came into the compilation of these figures, did it? A. Unless, say, we go to December 1962 where we have a stock record of 42/6d. on our control card.

10

Q. But there you would be comparing an earlier figure with your other figure and you would make an assumption that if the figures were the same on both, they had not changed in the interval? A. Well, on our stock control records, if there is a change in price it is recorded and the date of the change, so that anything in between the price remains the same.

20

Q. I am asking you about the period before the stock control figure you mentioned; now, the stock control figure is the first figure? A. Yes.

Q. Going back behind it to a letter, where there is nothing on the stock control card?
A. That is correct.

Q. You would assume, if the prices were the same, they had not changed in the meantime, that kind of an assumption? A. To a degree.

30

Q. To a degree, that kind of an assumption is involved in this statement? A. Not entirely. For instance, in February 1962, in showing 50/- from Stirling Henry, we had their letters with covering contracts, covering that period, and I would assume from those letters that that was the price applying right throughout that period.

Q. Take the figure of 59/- under Beau Monde, February 1962, when this was made up; you were aware, were you not, that I had tendered that

40

figure in Court? A. Yes, I think that happened yesterday.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

10 Q. Now did you search your records to find, when you found the letter which said that the price was in April 1962 for Beau Monde, say 42/6 - did you stay at that and put that figure down from the letter, or did you also look around to see if you had any other records which might show other figures as well apart from it? A. I do not quite see what you mean. This is Beau Monde?

Q. Yes, Beau Monde, April 1962. A. Well, I am sure I got that from a letter or an invoice.

Q. And you made a judgment then, from what was said in the letter or the nature of the order and the invoices as to whether it was likely to be a steady price at that period? A. Yes, from what was contained in the letter.

20 MR. BOWEN: Q. Do you have in front of you a copy of Exhibit 4 - it has the suppliers and costs? A. Yes.

Q. You have told us that from the period for which you had stock control cards which were still obtainable, you took the figures from them and put them on this list? A. Correct.

Q. These stock control record cards or ledger cards would be altered from time to time if there were changes in the price? A. Correct.

30 Q. Is this correct, that you would direct that stock control records be adjusted, that you would send some kind of direction to adjust stock control records? A. Yes.

Q. You would send that direction with any material alteration that occurred? A. Yes, usually very soon after it occurred.

Q. Then you would expect them to carry out that alteration on the stock control record? A. Yes.

Q. Perhaps by some other officer? A. That is

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

correct.

Q. And it should find its way on to this sheet if it was so altered? A. Yes, that was what I endeavoured to do.

Q. Would you now look back to Exhibit 3, the first sheet. You will notice there that in the case of 15-denier 60-gauge various prices are shown for the period 4th December 1962 to 3rd December 1963. The price at which you bought the 4,200 Holeproof is 39/-, and this does not appear in the alteration to Exhibit 4 in your list of the applicable prices. Is it not a fact that at one period 39/- was the price applicable so far as Holeproof is concerned?

A. On thinking about this later, that should have been Beau Monde, 4239, because at that time we were getting approximately the same quantity from Beau Monde and Holeproof. You see where Beau Monde is showing 7,500 and then 5,000 at 41/-, Holeproof should have started at 1,500 dozen at 44/6. and the remainder in that list were Holeproof. I regret that error yesterday.

Q. Are you sure of that now? Would you go to the third page of Exhibit 4. Those are the figures for 30-denier fully-fashioned over the various periods stated in the first column. Is that right? A. Yes.

Q. Would those figures include all the figures on your stock control cards? A. The cost records there for 30-denier?

Q. Yes, or would you have taken some of the figures from your control record cards and not others? A. May I refer to the price on this sheet for 30-denier?

Q. You mean on Exhibit 3? A. Yes.

Q. Before you do that, to the best of your recollection can you tell me whether you may have left some out and put others in? A. I could have left some out; I do not think I put others in.

Q. It is not complete? A. The reason being

10

20

30

40

that it is conceivable at that time we showed another supplier still on the records at a price for 30-denier but we did not necessarily buy from him during that period.

Q. Taking the existing suppliers, would all those figures be in or would you have left any out of the stock control records? A. They would all be in on the stock control record ,yes.

10 Q. You would transfer them from the stock control records to this list in the Exhibit?
A. Yes.

Q. Now look at Exhibit 3 and tell me whether there is any change in that. A. 30-denier, within the period 3rd December 1963 to 1st December 1964?

Q. I am not talking about 1964.

MR. MEARES: You referred him to p.3.

MR. BOWEN: Page 3 on Exhibit 4. He asked might he refer back to Exhibit 3.

20 MR. MEARES: On p.3 it is 3rd December 1963 to 3rd December 1964.

MR. BOWEN: Q. You appreciate what I am asking is about p.3 on Exhibit 4? A. I have only a copy and it is not numbered as such,

HIS HONOR: You are looking at Exhibit 3, are you not, Mr. Bowen?

30 MR. BOWEN: He asked leave to look at Exhibit 3 in order to check whether p.3 of Exhibit 4 is correct or not. I said he may now refer if he wished to Exhibit 3, to any page he likes.

WITNESS: Schedule B reference 56. 30-denier fully-fashioned plain, and the heading on the top of the page -

MR. BOWEN: Q. That is right. Now you can go to Exhibit 3, if you wish.

HIS HONOR: Q. That is your handwritten one?

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

A. Yes. It refers to Stirling Henry on p.3 at 56/- and also 2,375 dozen at 47/- and Kolotex, 4,020 dozen at 47/-.

MR. BOWEN: Q. Does that help you? A. That confirms the prices of this list on the other exhibit.

Q. As far as December onwards? A. Yes, from 3rd December 1963 to 1st December 1964.

Q. The relevant figure on Exhibit 4 would be that to 1st January 1964? A. 1st December 1964. 10

Q. That does not appear. Perhaps we need not spend any time on it. You feel the last couple of figures are proved, in your mind, by referring to that page on Exhibit 3? A. Yes.

Q. Would you now look at Exhibit K (shown to witness). You see that that is dated. You told us you thought it would be the 8th January. It looks as if it might be February but you think it is January? A. I think it is January.

Q. You there see prices for Beau Monde 59/-, Holeproof 59/3d - this is January 1962 - Stirling Henry is 59/3d., is it? A. This is a sheet for reference. 20

Q. 30-denier? A. Stirling Henry shows 56/-.

Q. Would you read us out the figures? A. Stirling Henry is shown as the supplier at 56/6d. per dozen. Alternative supplier, Lincoln Mills at 60/- a dozen; Roslyn Hosiery at 59/-.

Q. Then Charmain? A. No. That is all that is on this reference - 56. 30

Q. Then you strike an average price. What is the average price? A. Average last cost, 60/-.

Q. Then you have a direction to adjust the stock control records accordingly? A. Yes, that is correct.

Q. You assume that the stock control records in

January or February 1962 were so adjusted?

A. Yes. This was addressed to Rockman's office for them to receive those records, and these were taken from Woolworths' store control records - these figures at that time.

Q. Or is this the position, Woolworths were buying partly for Woolworths retail stores and partly for Rockmans stores which had been taken over? A. That is correct.

10 Q. For convenience Woolworths did the buying and passed it on to Rockmans, although they were a subsidiary company? A. Yes. In this instance I think the orders were placed and they delivered direct to Rockmans' warehouse.

Q. They delivered direct. Those would be the delivery directions? A. Yes.

Q. In this case Woolworths would be buying for Rockmans from Stirling Henry? A. Yes.

20 Q. And from Lincoln and from Roslyn, January and February 1962? A. Not necessarily Lincoln and Roslyn.

Q. You would not give an idle direction?
A. No. This is purely for record purposes. We just transferred information that was on our Woolworths records and gave this advice, posted it down there to our Rockmans stock control office and they recorded the same information on their cards.

30 Q. And it should go on to Woolworths records as well? A. Yes.

Q. You would not give a direction to adjust stock control records if you had not been buying for months or had discontinued completely buying from a particular manufacturer? A. It could so happen, so that this would be the last price recorded from Lincoln and Roslyn; it is possible we have not bought from them for many months.

40 Q. And you were never going to buy from them again? A. That is possible, but I did not know

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

this at the time.

Q. That would be a bit unusual, to go to the trouble to average the price on the stock control records if you had not bought for months and apparently were not going to buy again from them?
A. This average related to costs worked out over the previous period. It is not just done on these figures here.

Q. You will agree that the probability was that Rockmans would order from the suppliers mentioned on that sheet? A. Only from Stirling Henry subsequently. The other was just an old record put on to make it in line with Woolworths. These suppliers were eventually dropped from our records because we did not deal with them - except Roslyn, I think Roslyn was retained, from memory, at a lower price. That shows on our schedule.

10

Q. You say you did not buy any stock for Rockmans. Not Rockmans, you say, but you actually have a recollection as to whether Woolworths were buying stock from Stirling Henrys but not from Lincoln or from Roslyn at that time? A. Certainly not at those prices.

20

Q. Your recollection is quite clear that you never would have ordered at these prices at that time? A. No, not Rockmans - or for Woolworths either.

Q. This was just a completely idle exercise?
A. No, not an idle exercise. It was purely to bring the records into line for both companies.

30

Q. But Woolworths were not buying at that price either at that time? A. No, they were buying at that price the previous year, in 60 and 61, I think it was, this was the last time they had it recorded.

Q. They had not bought at 60 for some years - four years? A. From Lincoln or Roslyn.

Q. From Lincoln or - A. But it is on the records at the time, those prices, and it is possible they

40

could have been there all that time without offering. It is the last recorded cost from those suppliers.

Q. This is the adjustment you directed to be made on the 8th January 1962 in the records?

A. On Rockmans records, yes. I do not think they had any before that.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

10 Q. If you look at Exhibit 4 on p.3, if you look at the date February 1962 there is no mention of a price for Lincoln or Roslyn there. There has not been a price for some time for Lincoln or Roslyn? A. No.

Q. There had not been a price for 1960 for Lincoln and this was still June 1958? A. That is what is recorded there.

20 Q. Why would you be entering 60 for Lincoln in January 1962? A. As I say, I only transcribed what we had on the records at that time I cannot give any other explanation than that. It is as simple as that.

Q. I suggest that you made some purchases for Rockmans at these prices at that time? A. No.

Q. You do not agree with that? A. No.

Q. Exhibit K is in your handwriting? A. Yes.

30 Q. If you had known that you had not ordered anything at 60/- from Lincoln for four years, don't you think you would have made a decision not to trouble to enter that on the record? A. It is possible, but the fact is I did not and I know in this particular case we merely transcribed what was on the Woolworths record at that time. Subsequently all these records and the others were brought into line at the same time.

HIS HONOR: Q. Have a look at p.3 of Exhibit 4. Are those dots ditto marks or mere blanks? They are obviously not ditto marks in the top line? A. It means nothing, no costs after that.

MR. BOWEN: Q. In July 1963 you were getting 30-denier at 47/- from Kolotex, were you? A. Yes.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

Q. Were you getting them from any supplier at 48/- a dozen? A. No.

Q. Had you ever got them from any supplier at 48/- a dozen? A. Not to my recollection.

Q. Will you go to the subsequent page, p.2 of Exhibit 4. Would you direct your mind to the figures for Holeproof, 15-denier mesh? A. Yes.

Q. I see from Holeproof in July 1964, according to this record you bought mesh at 48/-? A. That was the price, yes, negotiated. 10

Q. Are you sure of that? A. Yes.

Q. The price from Holeproof went up to 63/6d., did it not? Do you remember that? A. This is for the 15-denier mesh? I cannot recall it.

Q. That is right, is it not? A. I cannot say for certain. It is not shown on this list.

Q. You did not buy any at Holeproof for 48/- in 1963? A. That would be right, according to this.

Q. I suggest that Holeproof in January 1964 were 20 stating that their price for B.29 15-denier mesh was 63/6d. Does that accord with your recollection? A. No.

Q. The previous price having been 57/-, there having been an increase? A. I cannot recall that.

Q. Do you remember Holeproof writing a letter to you "Attention Mr. Cooper. 22nd January 1964. Thank you for your letter of the 17th January. We have put through price advised to the warehouse 30 covering B.108, new price 51/6. B.109 at 51/6d. B.45190 at 60/-. B.33, 15-denier 60-gauge sheers at 39/-, B.29, for which the new price will be 63/6d. S.71 to operate at 79/3d., in addition to Rockman lines, 85107 46/-, 85109/10 at 52/6. New prices to commence from the 1st February". A. Yes, I recall that letter; but if I may qualify that, there is opposite that reference to 89, a

reference to B.82 which I have written out. That was an error. That was 30-denier ladderless mesh, not 15-denier. B.82 is our reference number for 30-denier.

Q. There is a note here "B.8/2"? A. That would be it.

Q. So they quoted B.29 at that price but you say that is a misquotation in your letter?
A. Yes.

10 Q. It refers to a letter of yours of the 17th January which we do not appear to have. Have you any knowledge as to whether that letter of yours is available, to which it is a reply?
A. It may be. I do not know at the moment.

Q. When did you first become a buyer for Woolworths? A. I think it was four years after I commenced with the company.

Q. When was that? A. 1946,

20 HIS HONOR: Q. You said you had been a buyer with the company for 12 years. You had been employed by them for approximately 18 years?
A. That would be right.

MR. BOWEN: Q. Do you remember the agreement of the 10th May 1955? A. Yes.

Q. Between Stirling Henry and Woolworths. Were you concerned on the buying side at that time or did you come into it later? A. No, I was in it then.

30 Q. You said yesterday that at the time that agreement was entered into there were some difficulties in obtaining supplies? A. Yes, prior to that there were not enough for our requirements.

Q. Is this the position, that when Woolworths wanted hosiery, different suppliers either could not supply it or were late in deliveries or were increasing their prices. Would that be a fair summary? A. I do not think they were increasing their prices so much as not having

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No. 11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

sufficient available for our delivery needs.

Q. Not having sufficient available would be one thing. Were their deliveries bad, were they late with their deliveries? A. I could not say that entirely.

Q. This continued to be your experience to some extent with other suppliers apart from Stirling Henry - they were not as good with deliveries as Stirling Henry were? A. I would not say that they were not as good. I think that hosiery suppliers are much the same.

10

HIS HONOR: Q. Is that good or bad? A. They have their difficulties in delivering at different times, and this applies to all of them.

MR. BOWEN: Q. And the prices which manufacturers were asking prior to May 1955 were increasing, I suggest to you? A. I cannot recall that.

Q. The people dealing with it at that time would have been Mr. Wilson and Mr. Miller, I suppose? A. Mr. Wilson was.

20

Q. Was Mr. Miller there then? A. I do not think so.

Q. Was he not head buyer? A. Mr. Wilson was merchandise manager.

Q. And Mr. Miller the buyer, is not that right? A. He was in the organisation, yes; he was connected with hosiery.

Q. You understand that under this agreement Stirling Henry undertook to import and set up machinery to produce stockings exclusively for Woolworths (Objected to).

30

HIS HONOR: It is only a preliminary question.

MR. BOWEN: I was reading the first sentence of the letter.

MR. MEARES: I do not want to take time, but I submit the question of the agreement is for Your

Honor.

HIS HONOR: Undoubtedly, but I clearly understood this to be leading through the background of the facts.

MR. MEARES: If it is only on that basis, I have no objection.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No. 11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

MR. BOWEN: Q. You understand that by that agreement Stirling Henry agreed they would import and set up machinery which would produce fully
10 fashioned nylon stockings exclusively for Woolworths Ltd. You understand that? A. Yes.

Q. You understand they went ahead after this had been agreed and did that? A. Yes.

Q. Imported this and built a mill and set it up? A. Yes.

Q. After that they produced stockings exclusively for Woolworths Ltd. A. That is right.

Q. Initially on the 10th May, 1955, the figure of 50,000 dozen a year was mentioned as the
20 production figure. Do you remember that? A. Yes.

Q. Subsequently, I suggest, Woolworths expressed the desire that production should be increased above that figure and an arrangement was made for some financial assistance to Stirling Henry from Woolworths to enable them to instal additional plant and machinery? A. Yes. I heard about this later. I do not know whether we asked them or not for the extra production.

Q. I put it to you that at that time, in May
30 1955, there were a number of other manufacturers making ladies' fully fashioned hosiery? A. Yes.

Q. Is it a fact that these other manufacturers would be selling proprietary lines of their own? A. Yes, that would be so - not all of them.

Q. Who would not be? A. I am sorry. Subsequently - I was thinking of a later date. I cannot call any to mind that were not making brands of their own at that time.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

Q. Would you agree with this, that once this agreement was in operation Stirling Henry were producing and Woolworths were obtaining supply under the agreement - that Woolworths were then in a stronger position in their bargaining with other suppliers for the balance of their requirements? A. In what way?

HIS HONOR: Q. You do not agree? A. I do not agree.

MR. BOWEN: Q. You do not agree that the fact that they had an assured supply for 50,000 dozen or the increased production from a person supplying exclusively for them, placed them in any better position to bargain for supplies from the free manufacturers? A. No. 10

Q. Would you agree with this, that if there are only free manufacturers to deal with - those who are free and not tied - by refusing to supply them can put the retailer in a difficulty? A. That could happen, yes. 20

Q. But if the retailer has a tied manufacturer who is supplying a very substantial part of his requirements, this weapon is not available to the free manufacturers with their bargaining? A. That would be so.

Q. Would you agree that it could be the result of this that the price for the purchase of stocks to be sold non proprietary from other manufacturers would tend to go down? A. They were going down anyway. 30

Q. I am speaking now of the prices as between Woolworths and the other manufacturers. Would you agree that there would be a tendency for what I may call stocks surplus to their proprietary requirements to go lower because of the existance of this exclusive supply agreement? A. They would go lower anyway because they could not get the same price as they could for their proprietary brands.

Q. You are saying that the free manufacturers are selling their surplus - if I can use that as 40

a neutral expression - by that I mean surplus to the production that they are selling in their own proprietary lines. Do you understand? (Question withdrawn).

Q. We agree, do we not, that the free manufacturers would sell what I have defined as their surplus production generally at a lower price than their proprietary lines? A. Correct.

10 Q. They would tend to offer this surplus production to stores such as Coles and Woolworths who would market lines under names which they own? A. That is true.

Q. With regard to that, they would be lower in any event than their proprietary lines? A. Yes.

Q. I think you have put to me that prices were tending downwards anyway from 1955 onwards? A. That is so.

20 Q. What I am seeking your agreement on is that this tendency for the prices of these stocks that I have defined as surplus stocks was accelerated by the existence of this exclusive supply agreement between Woolworths and Stirling Henry? A. No, I do not agree with that.

Q. Would you mind having a look at the agreement of 10th May 1955. Take Exhibit A, p.1. You see the letter of 10th May, 1955? A. Yes.

30 Q. Just a word about the prices. The prices ruling for these six months were 30 denier 71/-; 15 denier 79/- a dozen. Do you see that? A. Yes.

Q. You recall that at that period they would sell at respectively 7/11 and 8/11? A. Yes.

Q. 7/11 would give something close to 33 1/3 percent - slightly over; 8/11 again is close to 33 1/3 mark-up retail? A. Yes.

Q. When you look at the next set of prices;

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965

Cross-
Examination
(continued)

30 denier 62/- a dozen; 15 denier 71/- a dozen,
that would be 33 1/3 at 6/11 and 7/11 respectively?
A. Without checking it, I take your word for it.

Q. You are fairly familiar with this position?
A. Yes. I think that would be so.

Q. You are aware - you mentioned in evidence -
that some time after this agreement began to
operate the prices did not come down to what
we might call the thereafter prices? A. That
is right.

10

Q. They did not come down after the first
six months? A. That is correct.

Q. You will agree also that the Woolworths
retail selling prices did not come down to
6/11 and 7/11 within six months afterwards?
A. I think that is correct. I am sure they did
not.

Q. Are you aware that it had been the original
intention that they should - did you have any
knowledge of that? A. No (Objected to).

20

HIS HONOR: I am receiving a lot of
argumentative evidence and evidence that does
not bind me at the moment. I agree that there
must be a limit and we are very close to it at
the moment. I will receive it for what it is
worth.

MR. BOWEN: Q. I want you to direct your mind to
some meetings which took place in 1961 at which
you were present and Mr. Wainberg and Mr. Stopford
were present. On the 28th June 1961, I suggest
there was a meeting when Mr. Miller, yourself,
Mr. Wainberg and Mr. Stopford were present and
there was a discussion about the requirements to
the end of December 1961 for mesh Fairyweb brand,
Captivation and one or two other lines. Do you
have some recollection of this conversation?
A. Specific ones I cannot recall but I remember
we have many meetings.

30

Q. I suggest to you that at this meeting it
was stated - I do not know whether by you or

40

by Mr. Miller - that Woolworths had been offered 20,000 dozen at 44/-, 20,000 dozen at 45/6 and 10,000 dozen at 40/-. The prices that were current at the time of this meeting were said at the meeting to be: Fairyweb 60/2; Captivation 60/- and Famous Maker 51/6. The meeting arranged new prices for the future. Do you remember whether you mentioned that or Mr. Miller did? A. I cannot recall whether I or Mr. Miller did.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

10 Q. You do recall that was said? A. I think that was substantially correct.

Q. To your mind that was a material matter to put in fixing the price as between Woolworths and Stirling Henry? A. Yes, as an indication of the market.

20 Q. The price then fixed for the orders up to the end of December was Fairyweb 56/6, Captivation 60/-, Mesh 59/3. You may remember them. A. Not specifically, but I know it is documented.

Q. Then there was a letter signed by you on 10th July, 1961, not long after. That is in Exhibit A, p.37. There are the prices I mentioned and which you are confirming in a letter - 56/6, M 60/-, 59/3. Do you see that? A. Yes, I have that.

30 Q. Does that help you to recall that these were the ones fixed at the meeting I have referred to? A. Yes.

Q. Those quantities there, if you add on the orders for 4,000 dozen for 15 denier, 60 gauge nylons, represent 47,850 dozen for the half year? A. Yes.

Q. That would be a substantial part of Woolworths requirements? A. Yes, that would be.

Q. Would it be 75 percent of our requirements? A. Without reference to other figures at that time, I could not verify that.

40 Q. But you were at that time purchasing

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

substantial quantities elsewhere? A. In July 1961 we were buying some elsewhere. You will recall that in 1960 we were heavily stocked. We had deferred and cancelled orders of other suppliers but we were still taking stockings from Stirling Henry, so we would not have been buying a great deal from anybody else at that time, because we were giving Stirling Henry preference.

Q. In that letter there is a reference to "confirming our recent discussions". What is your idea of that; it looks as if it is plural for a start? A. There was possibly a telephone conversation with Mr. Stopford on quantities and so on, which quite often happened. some time before or after a meeting. This is just a general term I use. 10

Q. I want to ask about a meeting that I suggest was held on the 9th October, 1961, at which you were present yourself, Mr. Wainberg and Mr. Stopford. I suggest that at this meeting in October 1961 you stated that Woolworths required a line of fully fashioned hosiery to sell at 5/11 a pair to meeting Coles competition. I do not know whether you can recall this at all? A. I cannot recall it exactly but I am sure we did discuss this. 20

Q. I suggest you said that Woolworths intended to reduce Fairyweb to this price as soon as their stock position was in order? A. Yes, that would be substantially correct. 30

Q. This was expected to be in order in February 1962? A. Yes.

Q. I suggest you then said that Woolworths could buy 15 denier 60 gauge at 48/6 - in October 1961 - and 51 gauge lower, at 45/6 and 44/6; and 30 denier 51 gauge at 56/6? A. Yes, these were current prices. That would be substantially correct, on what I knew.

Q. Then I think you fixed new prices at this meeting. This was the forward price approximately from January to March 31st, and the 40

prices were for Fairyweb 50/-; for Captivation, 30 denier, 56/6; for mesh 59/3. That would be right? A. This was in October 1961.

Q. October 1961, for the first quarter in 1962?
A. Yes, I think that would be generally correct.

10 Q. I want you to come to a letter of 13th October, 1961, which you wrote. It is part of Exhibit A, p.53. In this letter you say in view of the great swing to seam-free hosiery and decline in the number of fully fashioned lines from other manufacturers, it is no longer possible for you to absorb their production at current prices. You have been undersold in similar lines by many departmental stores as well as your own opposition. Do you see that?
A. Yes.

20 Q. You say then "for the past six months we have been offered 15 denier 60 gauge plain production at 48/6 a dozen and 30 denier plain in the same style and pack at 56/6 a dozen". In June, at a meeting in June, I suggest you indicated you were offered 20,000 at 44/-, 20,000 at 45/6 and 10,000 at 40/-? A. That could be so, too.

30 Q. You do say in the next paragraph of your letter "other lines are available from various manufacturers in 15 denier 51 and in some cases 60 gauge from 44/6 to 46/6 a dozen in substantial quantities and only today we were offered 30 denier 51 gauge at 46/6 a dozen from current production".

Do you think the ones you mentioned in June related to 15 denier, and if so 51 gauge? A. Yes. 15 denier 60 gauge I would say generally, in the earlier meeting.

Q. You did not keep any record of this offer that you had put to Stirling Henry? A. No. Quite often they were verbal offers to manufacturers.

40 Q. You did not offer at the meeting with the representatives of Stirling Henry to produce invoices or other evidence of sales? A. No, never.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

Q. Is this the position, that at these meetings there were a number of things discussed before the prices was fixed? A. That would be so.

Q. Would it be fair to say that three subjects which were from time to time discussed would be the supplies from other manufacturers, and I have referred to some examples of them? A. Yes.

Q. The second one would be what was the retail selling price. That would be right? A. That would occur periodically, yes.

10

Q. If you were going to reduce to 5/11, that would be a factor, if that was occurring, which would influence the price you fixed with Stirling Henry? A. Yes.

Q. In addition, really on the same topic?
A. Woolworths mark up would sometimes be discussed in relation to their retail selling price? A. Yes.

Q. I suggest the third matter which was discussed was the profitability so far as Stirling Henry were concerned? A. Yes, they quite often raised this matter.

20

Q. The initiative would come from them in that respect and the initiative in relation to other suppliers would have come from you? A. Correct.

Q. On the other hand, both sides indiscriminately might discuss the retail price and the mark up?
A. That would be right.

Q. After a discussion involving these factors, you and the representatives of Stirling Henry Ltd. would fix the price and the arrangement between the companies for a period of a quarter at this stage? A. Yes.

30

Q. On occasions you would fix the price of a particular line subject to a variation if the retail price was reduced during that three months? A. That is correct.

Q. So that it might fluctuate during the period

if the retail price came down? A. Yes. That was in respect of mesh only.

Q. You only recall that in respect of mesh?
A. I am convinced that was the only line.

Q. To which that occurred? A. Yes.

10 Q. If you look at Exhibit A, pages 89 and 90, they would furnish an example of what I was questioning you about a moment ago. You see the first is a letter of the 1st May, 1963, which you wrote to Stirling Henry? A. Yes.

Q. It records the quantities covering production for the period of the July quarter 1963 and the prices are set out for that period. In relation to mesh it stated 66/6, subject to immediate review if Woolworths were forced to meet competition at a lower selling price than 7/11. Is that right? A. Yes.

20 Q. In the contract itself, on the next page, item 1 on that contract refers to the mesh and do you have a note on the contract "Price item 1 subject to immediate review if Woolworths forced to meet competition at lower selling price than 7/11 a pair"? A. Yes.

30 Q. Those are examples. That is an example in relation to mesh of a stipulation review if the retail selling price drops. Is it not the position that there was from time to time at these discussions a reference by you to the mark up which you required for Woolworths in relation to lines that Stirling Henry were selling?
A. That is right.

Q. In the latter part of your dealings with them, is it the position that you told them that you had to have 50 percent mark up to give your company some protection? A. I remember 48 percent it could have been 50.

Q. It came out at 48 percent in certain cases, but did you ever mention 50 percent mark up?
A. I could have.

40 Q. In the early part of your dealings with them

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965

Cross-
Examination
(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

were you telling them you were seeking to get 33 1/3 percent mark up? A. No.

Q. You do not recall a change when they introduced the 50 percent mark up ratio?

A. I recall this being raised at this particular meeting in late October or early October, because the quantities we were buying from Stirling Henry were becoming practically our total purchases in some of these lines. For instance, the 30 denier was one, and we were getting practically all our requirements from them, apart from a small quantity from Kolotex, so that our total requirements were diminishing all the time and Stirling Henry's contribution remained constant; so that in relation to the total market position it was becoming more and more acute from my point of view.

10

Q. The fact is that you did insist that it be 50 percent with them from a certain stage?

A. It could have been so. I know I wrote to them about the 48 percent.

20

Q. But before that, you had not insisted on 50 percent on their lines? A. I cannot recall that exactly.

Q. You are familiar with the fact that the mark up you were getting earlier was not in fact always approaching 50 percent? A. That is right.

Q. So that you did not in fact insist on it, but you do not recall whether it took place in the way I have put to you? A. No.

30

Q. In October 1961, was it your view that there was a legally binding agreement between Stirling Henry and Woolworths? A. Yes.

Q. This involved from time to time meetings to fix the prices for the periods of a quarter?
A. That is right.

Q. You were the person, so far as Woolworths were concerned, who had the major part of carrying it out from their point of view?
A. That is correct.

40

Q. From time to time, when something special occurred, someone, either Mr. Miller - or Mr. Millist towards the end - or Mr. Kelly might come also and deal with them from Woolworths side?
A. That is correct.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

10 Q. I want to take you to the period in 1963 when things became a little more difficult. I think I put to you earlier that there was a meeting on 2nd August, 1963 at which Mr. Millist and you were present and Stopford and Wainberg. You referred to an offer you had received of 39/6 per dozen. I put that to you earlier on another matter, distressed prices? A. Yes.

Q. Do you remember whether or not at that first meeting that Mr. Millist attended when this was mentioned, Mr. Millist produced a memorandum from Mr. Fleming of the July 1961 arrangement?
A. Yes.

20 Q. At the first meeting Mr. Millist attended, he produced that. Do you recall that? A. I am not sure whether it was the first or the second.

Q. Have you any clear recollection which it was?
A. It was the second meeting, I feel sure, somewhere about the 12th.

Q. You think it was the 12th? A. I think so.

Q. Have you discussed this with Mr. Millist recently? A. No, not specifically.

30 Q. I suppose in connection with the case you have naturally had talks with him? A. Yes, just general conversations.

Q. Have you discussed that particular matter with him? A. No.

40 Q. I suggest there was a meeting on 12th August, 1963. You yourself have referred to that date in your answer to me a moment ago. That was the second meeting. I suggest that was attended by Mr. Millist, yourself, Wainberg, Stopford. I suggest that at the previous meeting you had put up your prices of 44/-, 56/-, 63/6, and they had been discussed without reaching any

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965

Cross-
Examination
(continued)

conclusion on them - in the previous meeting?

A. Yes.

Q. That would be right? A. My prices, I think, discussed in the first place -

Q. At the first meeting? A. Yes.

Q. Is it your impression that they had been discussed at some meeting before Mr. Millist came into the matter? A. What were the prices again?

Q. They were 44/- for 15 denier; 56/- for 30 denier; 63/6 for 15 denier mesh? A. Yes, I think they are the prices I discussed with Mr. Stopford and Mr. Wainberg prior to Mr. Millist coming. 10

Q. They were the prices which you considered would be proper prices at that time? A. That is right.

Q. You pressed those prices on Mr. Wainberg and Mr. Stopford but they had not accepted them at the stage when Mr. Millist came into it? A. That is right. 20

Q. Mr. Millist, I suggest, at the meeting on 12th August put these figures to the Stirling Henry representatives and they would not accept them - 41/-, 48/- and 48/- for the 15 denier, 30 denier and 15 denier mesh? A. That is right.

Q. They refused to accept them? A. That is right.

Q. Did Mr. Millist then say that if Stirling Henry considered those prices were uneconomic they should supply them with an audited statement of costs? A. Yes, substantially that is what he did say. 30

Q. Did that arise out of the claim by Mr. Wainberg and Mr. Stopford that this would not be profitable to sell to them at those prices? A. Definitely yes, that was the substance of it.

(Luncheon adjournment).

AT 2 P.M.

MR. BOWEN: Q. May I refer you to Exhibit A at p.94, a letter from Stirling Henry to Woolworths of 12th August. You see Mr. Stopford writes complaining that quantities had been arranged for October/December 1963 but they had not got the orders yet? A. Yes.

10 Q. Quantities had been arranged on 24th July with you but the price was still unfixed?
A. Correct.

Q. They wanted that arranged. In relation to 24th July meeting, you put certain prices which we have mentioned before lunch. Had you discussed those prices before 24th July meeting with Mr. Millist at all? A. No, I cannot recall that I did.

20 Q. If you go to p.95, Woolworths wrote a letter to Stirling Henry setting out in six numbered paragraphs the arrangements and then advising Mr. Millist's prices. You see that?
A. Yes.

30 Q. I want to take you to the reply which came from Stirling Henry to Woolworths, starting at p.97. I want to take you to the second page of that, at the top. Underneath the figures 41/-, 48/-, 48/-, there is a statement that Stirling Henry consider these are distressed prices, not market prices. That had been their contention at each meeting and it is repudiated in the letter? A. Correct.

Q. There was never any invoice for anything of that sort put to them in relation to any of the prices either by yourself or by Mr. Millist
A. No, that is correct.

40 Q. They come to the question of the mark up in the last few paragraphs of their letter, pointing out that at the commencement of the operation of the agreement in 1956 "The average gross profit was approximately 35 percent. These prices have gradually been reduced at your request to the present figures giving you an increased average

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No. 11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

gross profit of approximately 45 percent.
In addition we have been forced to make you several concessions in packaging, cartons, terms and discounts., all of which helped to considerably decrease our margin and increase yours. Now if your suggestion for prices is adopted your average gross profit will be approximately 70 percent." Do you see that? A. Yes.

Q. In putting forward the prices of 41/- and 48/-, is this the position, that any question of Woolworths mark up had been treated as completely irrelevant to the matter? A. Those prices of 41/-, 48/- and 48/- were prices at which -

10

Q. Could you answer the question. That is so?
A. That is right.

Q. That had been treated as a matter not to be considered. They then go on to discuss their small margin and the possibility of it becoming unprofitable, at the top of page 3. Again that is a matter which in your 41/-, 48/- and 48/- had been treated as not a material matter, whether they were profitable or unprofitable to Stirling Henry? A. Yes. At that time. We did not know whether they were profitable or unprofitable.

20

Q. I think it is fair to say that you had said that the profitability of them to Stirling Henry could be a material factor. They had better get their auditors to have a look at it? A. That is correct,

30

Q. That could be a material factor. If inquiries showed they were not able to make a profit out of those prices the suggestion was that they could be allowed some variation upwards in prices? A. That was the substance of the suggestion.

Q. In fact I do not know whether you continued to be concerned in the dealings between the parties after the auditors came into it - were you? A. No.

40

Q. You dropped out of it at that stage? A. Yes.

Apart from the finish, when we placed orders for the balance of stock outside the contract.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No. 11

Eric William
Cooper
14th December
1965

Cross-
Examination
(continued)

10 Q. I want to take you to a portion of your evidence yesterday at pages 179 and 180 where you were speaking of the quantities for the year projected up to the end of 1965, to December 1965. I think you made an estimate that although your figures only showed up to the 5th October, 1965, - at the top of p.180 - if you projected it forward it would bring about a total purchase for the year of 52,000 dozen. Do you remember that? A. That is correct.

Q. In making that projection forward, you took the sales for the ten months as giving you approximately 3,000 dozen each month?

A. It was an estimate I made just from memory of the approximate current monthly issues.

20 Q. Because the average for that ten months would be 4,500? A. That could be. I could not dispute that.

Q. Would you agree that it would be proper to project forward in a 12 months period the average of selling through ten months of it?

A. Not necessarily, but if the line is falling in its general demand it must be a continuing reduction.

Q. But over a period you generally fix these things for three monthly periods with suppliers?

A. Three or four; the period varies.

30 Q. So you do not get a day to day change or a week to week change or even a month to month change, do you, in quantities? A. It is on a monthly basis. They estimate this usually on a monthly basis of our requirements, issues from our warehouse.

40 Q. Would it not be fairer to take the average of 4,500 dozen and project that forward? A. No, because if the demand was falling we would be projecting an average over a period, in this case through ten months, during which the general demand is falling all the time. If we project that average forward it should be a

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No. 11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

diminishing average all the time.

Q. In taking the 3,000 per month, you did not allow for any fall? You did not allow for any fall, you just took 3,000 per month? A. This was based on what I could recall of the last months or couple of months issues.

Q. It is based on no record? A. No - well it is based on what I could recall in the box yesterday of our stock control cards.

Q. Up to the time the two companies, Stirling Henry and Woolworths, reached the point of dispute in 1963, in fact Woolworths' demands from them had been maintained at a comparatively steady, high level had they not - Woolworths' demands from Stirling Henry had been maintained at a fairly substantial and high level? A. That is correct, apart from the 30 denier. 10

Q. From time to time, even during the latter period, urgent demands would be made for additional stock to be supplied by Stirling Henry? A. That could have occurred from time to time, as with anyone. 20

Q. From time to time, even in 1963, there would come urgent requests, maybe from a store in Brisbane or in Victoria, to bring forward delivery to an at once basis? A. Yes, that is quite correct.

Q. During 1962, 1963 and 1964 Woolworths were from time to time opening new stores? A. That is correct.

Q. In August 1963 are you able to tell us how many stores throughout Australia they had? A. I could not. 30

Q. Would it be 400? A. I would not know. It would be quite impossible to know.

Q. You are sending the stock out; you are buying for the whole lot? A. The number of stores has no relation to the figures I have. They are purely bulk figures from the warehouses.

Q. During 1964, you know, also, they were continually opening additional stores? A. That is so. 40

Q. Would you agree that the result of opening additional stores from time to time was that there was a tendency, apart from any other factors in the market, to increase Woolworths total demands?
A. Not in respect of these lines.

Q. I say apart from any question of other factors entering into the matter?

MR. MEARES: I would agree with that.

10 MR. BOWEN: I want to get it from Mr. Cooper to see his reaction.

Q. You would agree with it, but you want to say in relation to stockings that due to other factors the demand elsewhere is falling?

HIS HONOR: Q. For fully fashioned? A. Fully fashioned stockings, the sales were diminishing. But we were still putting them in the additional stores.

RE-EXAMINATION.

20 MR. MEARES: Q. (By leave) You have given some prices at which you were buying from other manufacturers - in Exhibits 3 and 4? A. Yes.

Q. In relation to purchases from all other manufacturers from the inception of the agreement with Stirling Henrys, were you buying on 30 days terms with 2½ percent discount and then 30 days? A. It varied with individual manufacturers. Holeproof were 3 percent, 7 days, to start with. Beau Monde, 3¾ percent, 7 days to start with; others were 2½ percent 30 days.

30 Q. Could I put it this way, that as far as all other manufacturers of hosiery were concerned, from whom you were buying from the commencement of the arrangement with Stirling Henry were you getting at least a discount of 2½ percent?
A. That is correct.

Q. And in some cases more? A. That is correct.

Q. Mr. Bowen asked you whether in 1963, the last year you were still buying substantial quantities of stockings from Stirling Henry? A. Yes.

40 Q. Do you recall the arrangement was in effect

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No. 11

Eric William
Cooper
14th December
1965
Cross-
Examination
(continued)

Re-examination

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965

Re-examination
(continued)

75 percent of your requirements? A. That is right.

Q. Subject to a certain reduction under certain circumstances mentioned in the arrangement. As far as that arrangement was concerned, did you adhere to that right from the time that arrangement was made in 1961? A. Yes.

Q. But as far as your purchases of stockings were concerned, they were, in respect of fully fashioned, falling off after 1961? A. That is correct. 10

Q. In the way you have indicated? A. Yes.

Q. As to prices that Mr. Millist mentioned of 41/-, 48/- and 48/- in August 1963, you have indicated those prices were, in your opinion, market prices? A. Yes, correct.

Q. On the 9th March, 1962, appearing on p.67, did you write mentioning to them that in the future they may have to accept fair market prices in accordance with the agreement? A. Yes.

Q. You did mention that on other occasions after that? A. Yes. 20

Q. When you said to Mr. Bowen that the price you were prepared to pay - prior to Mr. Millist coming into the picture in August 1961 - was the proper price, what did you mean by the "proper price"? A. I do not remember using that word.

Q. I think you said - correct me if I am wrong - in answer to a question from Mr. Bowen that the price you were prepared to pay Stirling Henry as the result of a July 1963 discussion was a proper price. What did you mean by that? A. I am sorry, I do not recall saying "proper", 30

Q. Or "a fair price" perhaps. Do you remember saying that? (No answer).

Q. Insofar as that price that you offered was concerned, on what basis were you prepared to pay that or offer that sum? (Objected to).

HIS HONOR: I can see a technical objection to that

question.

MR. BOWEN: In chief to some degree Mr. Meares sought to get the workings of this witness's mind in relation to this price. When I cross-examined I did not go into that or reopen it. I only asked in relation to the contract was he in effect a representative of Woolworths and did he fix the price under that contract, was he the one to do it, and so on. What my friend now seeks to do is to ask him when he gives certain answers that he did fix prices in accordance with the contract - to cross-examine him by asking him on what basis was he doing it, what was in his mind when he was doing it. That is to say, he wants to get the workings of his mind again.

HIS HONOR: I know we have had a lot of workings of a lot of minds. You are objecting on the ground of irrelevance?

MR. BOWEN: That is so, and also that it is not re-examination.

HIS HONOR: I never take much notice of that; I forget many things.

MR. BOWEN: I mention it without putting too much weight on it then. But my friend has had one go at this in chief; I left it alone and now he wants a second go at it.

HIS HONOR: It may be that this evidence should be ignored by me if I allow it to go in but I cannot help feeling that the state of mind of the various actors in this affair is important. It is still not evidence of the fact, as you pointed out this morning. I do not care what Mr. Cooper says as to what is - your objection is that he is giving his interpretation of the words "market price"?

MR. BOWEN: With respect, that is not it. I could understand you could get this from Mr. Millist, who was examined about his interpretation of the agreement. But not one question is asked of Mr. Cooper as to his interpretation of this agreement. What my friend is seeking to do is to go into that.

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Re-examination
(continued)

In The
Supreme Court
of New South
Wales

Defendant's
Evidence

No.11

Eric William
Cooper
14th December
1965
Re-examination
(continued)

HIS HONOR: If he does, I will allow you to cross-examine further. I would like to know, even if eventually I decide to take no notice of it - it is a matter for argument later rather than for argument now. If this were a Jury case we would have to thrash it out now, but we do not have to. I will allow the question.

MR. MEARES: Q. What is your answer? A. The basis was first of all the market price that I was paying other suppliers at the time. That is the basis, 10 and that was the position in all these discussions with Stirling Henry. I always told them what I was actually paying other people. I did not produce documents to prove it because in my opinion that was unethical but I told them the prices I was actually buying my lines from other manufacturers, when that was the case.

Q. In relation to what you said you were paying as market prices, did they ever challenge your honesty? A. They never challenged my honesty. 20 Mr. Wainberg in the later periods always referred to these prices I quoted as distressed prices.

Q. But he never denied or suggested to you that when you said you were buying at price X, Y or Z that you were not telling the truth? A. No.

Q. And were you always telling the truth? A. Yes.

Q. You have told us in chief as to certain concessions you gave to them and the reasons you were able to give them? A. That is right.

Q. It has been suggested to you, as I understand it, that a manufacturer could use as a weapon against you the fact that there was a shortage and he was manufacturing substantial quantities. Do you remember that question? A. Yes. 30

Q. What do you say about that? A. It would depend on the individual manufacturer as to how much, whether he wanted to sell to an organisation such as ours or not. Some manufacturers seek this type of business and they also seek a proprietary brand business, with some people. 40

HIS HONOR: Any other questions, Mr. Bowen?

MR. BOWEN: No.

(Witness retired).

IN THE PRIVY COUNCIL

No. 17 of 1966

ON APPEAL FROM THE SUPREME COURT OF NEW
SOUTH WALES

B E T W E E N:

WOOLWORTHS LIMITED (Defendant) Appellant

- and -

STIRLING HENRY LIMITED (Plaintiff) Respondent

B E T W E E N:

STIRLING HENRY LIMITED (Plaintiff) Appellant
(By Cross-Appeal)

- and -

WOOLWORTHS LIMITED (Defendant) Respondent
(By Cross-Appeal)

RECORD OF PROCEEDINGS

VOLUME I

Pages 1 - 340

OSWALD HICKSON COLLIER & CO.,
6, Surrey Street,
London, W.C.2.
Solicitors for Woolworths Limited

LINKLATERS & PAINES
59, Gresham Street,
London, E.C.2.
Solicitors for
Stirling Henry Limited