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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

SEAN DEVINE

Plaintiff;

and

DANIEL McATEER [No. 3]

Defendant

DEENY J

[1] This is the third judgment I have had to deliver in the action of Sean Devine and Daniel McAteer. In my first judgment reported at [2008] NI Chancery 7 I acceded to the application of Mr Gavan McGill that the plaintiff had failed to establish an answerable case against him and I gave judgment against the plaintiff in favour of Mr McGill. The case proceeded against Daniel McAteer and in my judgment reported at [2008] NI Chancery 18 I found against him. He appealed to the Court of Appeal which, per Girvan LJ, delivered a judgment reported at [2010] NICA 28. The defendant/appellant had contended before that Court, that after the conclusion of the hearing of the action, but before I had delivered the judgment, he had sent a letter on the 17th June 2008 to the Chancery Office with certain enclosures.

In particular there was a letter from an Inspector of Taxes in Cardiff which he thought was of assistance to his case. At paragraph 11 of his judgment Lord Justice Girvan on behalf of the Court remitted the matter to this Court to reconsider my judgment in the light of the correspondence if I found it was sent. He considered that a necessary first question for determination was whether the letter was in fact sent to the Chancery Office in June of 2008 as alleged. The Court invited me to make a finding on that point. One might have a slight hesitation as to whether this is the appropriate term given I am dealing with a matter which might be thought to be to a degree extra judicial, but on the other hand, if the defendant/appellant is relying on this material as relevant to the issues in the trial before me, it is presumably subject to the judgment of the trial judge and indeed further for it to be relevant it would have to be admitted in evidence which he now seeks to do. I am informed by the Chancery Office that at the request of the Court of Appeal when the matter was before them a search for this correspondence in the numerous McAteer files was carried out and it was not found. An enquiry was made to me as to whether I recollected such a letter and I had no recollection of such a letter. Certainly such a letter has never been found.

[2] Mr Ronan Lavery, who appears for the defendant/appellant, Mr McAteer, draws my attention to enquiries by email from Mr McAteer's secretary in 2010 which concluded with the Chancery Office saying that the file could not be found; that was on the 1st October 2010. Some of the documents do exist, indeed I have before me the Chancery Judge's file up until the 18th April 2008 and my clear understanding from the chancery officials was that it was available at some stage and that they had

checked the file and could find no such correspondence. Furthermore, I am advised by the officials in the Chancery Office that they had no recollection of receiving the alleged correspondence. As I have already indicated I have no recollection of receiving the alleged correspondence. Clearly I make no reference to it in my subsequent judgment; indeed paragraph 9 of the judgment indicates the opposite.

[3] The files in this matter, and Mr Lavery has laid stress on the great volume of litigation that Mr McAteer became involved in over these years either at his own behest or as a defendant to various other actions for and against him, the files are indeed numerous. They also show that Mr McAteer is not slow to email the office about his cases. It is a significant point of fact in this case that not only is there no record of any follow up enquiry from him here but neither is any follow up enquiry claimed by Mr McAteer. Again the explanation offered for that is the volume of business but if the letter was of the importance that the appellant and his Counsel are now trying to convince the Court of Appeal that it is, it is most surprising in my view, that there wasn't any follow up check to make sure that the document had arrived safely. It is striking to compare Mr McAteer's most recent affidavit of 28th November 2011 where he exhibits the long string of emails from 2010 enquiring about files which couldn't be located at that time, in comparison with his complete silence on the point in 2008. The obvious inference to be drawn is that there was no follow up following the 17th June 2008.

[4] The letter is rather curious for other reasons in that in trial book one you find an affidavit at section (d) of Mr McAteer dated 4th June 2010 and he exhibits there the letter that he thinks was sent to the Court. The letter of Mr Lewis is at page 40 of

that bundle and as a separate exhibit he has a letter bearing the date of 17th June which he contends was sent to the Chancery Office. There are several curious features about this. For some reason in the exhibits to that affidavit, the two letters that were purportedly sent at the same time are not attached; that may have been just an oversight either at Mr McAteer's end or on the part of his solicitors when compiling the exhibit, but it raises the possibility in one's own mind that there was an error in June of 2008 about the sending of these letters. In fact the exhibit at (d) McA 5 attaches, oddly enough, the letter of 19th June 2008 thanking Mr Lewis for his letter of 10th June, but of course if the letter was sent on the 17th June that would not be attached. There are two manuscript notes written at some stage beside the references to letters of the 2nd and 10th June in that letter of 17th June, they are it would appear in the writing of Barbara McArthur who works for Mr McAteer. I am not just quite sure what they are meant to convey, she "pp'd" the letter so when Mr McAteer says he sent it, he is relying on that, and he relies he says, on a redacted memo from his post book saying that something was sent to the Chancery Office on Wednesday 18th June. Whether that is that letter or a completely different letter, of course is not disclosed in any way by that record, but I note that it was "pp'd" so there is the possibility of Mr McAteer being wrong here or his secretary having omitted to send it. What I find of more significance is that the letter does not purport to be and was not it now seems copied to the solicitors for the plaintiff. When I challenged Mr Lavery of Counsel about that this morning he said he was instructed that it was copied to Miss Brunton who was then and is now the solicitor for Mr Devine although she is now at a different firm of solicitors and I must say I

noted at that time that that had not been claimed before and of course that the letter itself doesn't say it was "cc'd". Later in the morning Mr Lavery's instructions were changed and it was accepted that the letter had not been copied to the plaintiff's solicitor and it was said that earlier correspondence had been copied to them as I had directed it should be sent to them at the end of the case. I find these rather disingenuous instructions to Mr Lavery. By then Mr McAteer had been involved in substantial correspondence, he was as he has pointed out many times a chartered certified accountant, highly articulate, he had fought several actions before me, he had corresponded on numerous occasions with the Chancery Office, I think he knew perfectly well that a letter of this kind ought to have been copied to Mr Devine's solicitor and the fact that it was not copied to Mr Devine again tends to the view that it was not sent at all. I am quite satisfied that if I had received this letter then I would have directed the letter from Mr Lewis, because of course the plaintiff doesn't make any real sense unless the letter from Mr Lewis was attached and the letter of 2nd June, that I would have directed that those be sent to Mr Devine's then solicitors for their comments. Hearing the other side is one of the two basic rules of natural justice and I am absolutely certain that is what I would have done if I would have ever had sight of the matter and clearly that was not done and it is not now suggested that Miss Brunton ever got the letter or letters and indeed that accords with the instructions the Appellant has given [belatedly].

[5] The request from the Court of Appeal is that I find whether or not the letter was sent to the Chancery Office. It is absolutely clear to me that it wasn't received by them and I am sure they would have shown the letters to me if they had received

them and that is the case. I acknowledge the possibility that it was sent and went astray in the post; that is sometimes an excuse that is viewed with cynicism, but occasionally I would say it could happen. But I am asked to rule on whether or not it was sent to the Chancery Office at the time alleged. Bearing in mind its non-location in the Chancery Office, the absence of any recollection, the absence of follow up query from Mr McAteer or his office about whether it had been received or what I was doing about it and the other material to which I have adverted, I conclude on the balance of probabilities, which is the appropriate test, that it was not sent. Whether or not this was due to an administrative error in Mr McAteer's office or to some manoeuvre to try and keep this powder dry for an appeal I do not know, but my conclusion on the issue and on the finding of fact is that it was not sent.

[6] Now that being the case the Court of Appeal makes clear, as Mr Lavery acknowledged that that is an end of the matter in their view [subject to one point]. Before I complete this I will just make a few observations. As I said a moment ago, if it had been received, obviously the Court wouldn't have made any decision about it, or taken it into account without allowing the other side to comment on it, given the robust attitude of the solicitors and the then counsel Mr Coyle for Sean Devine and Mr Devine himself. I have little doubt that there would have been an issue taken about it, since it has been pointed out that the information that was given to Mr Lewis in Cardiff, an Official of Her Majesty's Revenue and Customs was incomplete, and I am sure that I would have had to schedule a hearing to see whether I did or did not take it into account, and if so, what weight I should give it and it may well be as Mr Dunlop submits in his skeleton argument that therefore it would not have

been admitted as fresh evidence. One of the factors there is, as I have pointed out to Mr Lavery, this issue of the EIS relief was clearly set out in the original Statement of Claim of the plaintiff here of 12th February 2007, so it really with the best will in the world was not good enough for Mr McAteer to be sending emails or making phone calls in April 2008 at the trial of the matter, bar on the human basis one can understand that he had a great deal on his mind. The Court has to act fairly between different parties. I note that Mr McAteer acknowledges that the Court did accommodate him, because of the number of these actions, but I think to be looking for information fourteen months after you had been put on notice of a point is so late in the day that it is quite possible and perhaps more than possible that I would not have admitted the view of Her Majesty's Revenue at that time. In any event the Court of Appeal says that is the end of that matter.

[7] Now the Court of Appeal also felt it was preferable for me to give a ruling on the remaining accountancy views relating to the frailty of the EIS relief. Mr Devine's claim was because he had to repay money which he had originally got the benefit of, so to speak, from the Revenue by way of EIS relief which was withdrawn. It was withdrawn after Mr McAteer's colleague Mr Magill wrote to the Revenue volunteering matters that undermined that relief. I think just for completeness, I draw attention to a point that has troubled me about these whole proceedings, by which I mean the proceedings since the Court of Appeal. The point has been made on behalf of Mr McAteer, partly I think by Mr Tony Nicholl, that because by the time of the trial or even 2007, Mr McAteer had ceased to be a Director of the company, he wasn't in a position to appeal the Revenue's assessment, that the company Roe

Development Limited had conducted itself in such a way and was of such a nature that Mr Sean Devine was not entitled to relief on his investment in it and I take that point, but it does seem to me that if the matter had been addressed properly at the time of Mr McAteer's defence or at any time thereafter in 2007, he could have come before the Court and said this is really all a wholly misconceived action because if he appeals the Revenue he will get his relief back. Now that was never done and it seems to me entirely reasonable that if he had moved, with even reasonable expedition, about this matter and got a letter such as that of Mr Lewis of the 10th June 2008 that he could then have asked for a stay of the action, asked the Court not to list the action, until Mr Devine or his accountants did appeal the refusal of relief. That was not done and when I had to deal with this matter in 2008 I had to deal with it on the basis of the evidence before me which was [that] the relief had been withdrawn and furthermore that Mr Devine had been told by his accountants that it would be withdrawn inevitably. Mr Lavery draws my attention to a letter saying that Moore Stephens appeared to have written the letter querying the assessment, if that is the same assessment which led to the loss of the relief, but we don't have any response to that.

[8] Now the Court of Appeal thought that I could resolve the remaining accountancy matters without hearing further evidence. No doubt they had in mind, that this Court has an enormous volume of litigation before it with more proceedings now in Chancery than in the Queen's Bench Division and with only a single judge to hear those most of the time. No doubt that was a well intentioned thought, but when the matter came before me in 2010, following the judgment of the

Court, two points arose : first of all that it was two years since I had heard the evidence and so it might be difficult to categorically rule on it. But secondly, my recollection is that and I think at least one other person agrees with that recollection [Mr McAteer], was that the defendant/appellant Mr McAteer [sought and] should now be given a chance to put in the sort of report that he didn't put in in 2008 and I acceded to that request. So the Court has since had the benefit of a report of Mr Tony Nicholl of Goldblatt McGuigan, a report from Mr Sean Lavery in response from BDO and two documents from Mr McAteer dealing with the matters and then a further letter of 30th November 2011 from Mr Tony Nicholl. Now Mr Nicholl is a very reputable forensic accountant and in his report to be found at tab (f) of trial bundle one for these purposes he is careful to set out at paragraph 4 the following quote:-

> "I attach the full file prepared by the defendant and his solicitor and rely on the background therein".

Having read his report and looking to that file I was surprised to find that it did not appear to include, and indeed does not include, the report of Mr Kevin Bell which was the basis of his oral evidence before this Court setting out his reasons for saying that the EIS relief arising from Roe Developments Limited was doomed to be repaid, and I quote from him in a moment. I was most surprised at that, most surprised, that Mr Downey and Mr Ronan Lavery of Counsel should have allowed that to be the situation, so I raised it with Counsel, obviously at this hearing, and Counsel informed me that that was quite right, Mr Nicholl did not have access to Mr Bell's report, and that he Mr Lavery had not seen it at that time either and didn't see it until he saw Mr Sean Lavery's report, and that they had no access to it he was

instructed. He took the opportunity which was allowed to him, to take further instructions, and he was instructed by Mr McAteer who is present in Court that the KPMG report extended to eight lever arch files and to keep down the costs involved in retaining Mr Nicholl he was not furnished with it. That is just - it is hard to use any other word than a lie, because we have appended, and it appears I may say in earlier documents of Mr McAteer, there is a reference to the supplementary report of Mr Bell and we have appended to Mr Lavery's report the supplementary report to the court prepared by Kevin Bell, a partner in KPMG, and it deals expressly with these EIS points and it is a very cogent and lengthy report but it is nothing remotely like eight lever arch files. It seems to be twenty-four pages including a number of peripheral pages and I find it nothing short of shocking that Mr Nicholl was asked to address the points on which the court had heard oral evidence from Mr Bell and he was not given Mr Bell's report and the fact that this was held back by Mr McAteer who had it, because he had cross-examined him, it seems to be nothing more than an attempt to obfuscate and mislead. The court therefore can place little weight on what Mr Nicholl had said, because he is careful and has repeatedly pointed out in his report that he is relying on the basis of the documentation which he has received; his very summary at paragraph 41 begins "on the basis of the documentation examined there appears to be sufficient evidence to indicate etc" and he refers to that further down the page as well.

[9] Mr Sean Lavery then responds. He, of course, is given Mr Bell's report quite properly and he responds in very robust terms, I will turn to those in a moment, at a late stage, because at one stage Mr Devine had no solicitors at all, his earlier

solicitors had withdrawn from the case and I think it is not proper for me to disclose the grounds of that order under Order 67 but shall we say that I am content that no blame attaches to Mr Devine for the delay in having the ability and means to obtain this report and obtain [the services of] his present solicitors Messrs A L Goodbody and his present counsel Mr Jonathan Dunlop, who provided a helpful skeleton argument to the court. Mr Lavery robustly attacks the EIS relief and the case put forward by Mr McAteer and that report was then apparently taken to Mr Nicholl and he writes in a letter to his solicitors marked 'strictly private and confidential' but disclosed by them to the court. Mr Nicholl writes on the 30th November 2011 to Downey Solicitors, he refers to their meeting earlier this week, he says he received Mr McAteer's detailed analysis of the BDO report yesterday copy attached:-

> "There are a number of issues raised in the BDO report which stem largely from material available to the BDO not previously seen be me; however based on the analysis prepared by Mr McAteer of the BDO report I have no reason to amend the conclusions in my report of the 2nd August 2011. Mr McAteer in his detailed analysis of the BDO report addresses the issues arising based on his knowledge of the company. If I were to prepare a response to the BDO report I would be relying on Mr McAteer's knowledge of the company and his understanding as to the reasons why the relevant documents were prepared. For example, at 2.9 (iii) BDO refer to a letter of representation prepared in May 2002 and placed an interpretation on the paragraph relating to the Telstar Bar, somewhat surprisingly BDO have not sought an explanation from the Directors of Roe Developments Limited in relation to paragraph relied upon and given the analysis prepared by Mr McAteer he appeared to have totally mis-interpreted the issue".

And then he makes one criticism of Mr McAteer about the relief. So Mr Nicholl does not choose to contravene Mr Lavery's report, save in the way that he has said that

anything he would say would be based on the analysis provided by Mr McAteer and I have read that analysis and my view is that those views prevail but I shall reserve that part of the judgment to allow me to consider the detail of the reports and I will make available the transcript of the judgment including the points dealing with the accountant's report as soon as possible. I observe that these are academic in my view and in the view of the Court of Appeal in the light of the earlier finding that the monies were not employed in the way they needed to be to obtain EIS relief but as they are before me and Girvan LJ has asked for a ruling. I shall take a little time to complete my judgment in that regard. I will deliver that as soon as possible and counsel can make any application then accordingly.

SECOND SECTION

[10] I observe that I consider the remittal of the matter may be misconceived. If one reads my judgment one finds at paragraphs 8-11 the reasons why I concluded that the tax relief on the EIS scheme which the plaintiff/respondent had invested in on the advice of the defendant had been withdrawn by HM Revenue and Customs. In particular I said at paragraph 9:

> "Both with this witness [Malcolm McCausland of HMRC] and in his own evidence Mr McAteer sought to raise the possibility that the Revenue might be able to revisit this decision that relief was withdrawn because of the failure of the company to employ the funds within the required time limit. Accepting for these purposes that there is such a possibility I conclude that it makes no difference to the outcome of this case. The withdrawal of the relief and the repayment of the sums on foot of the relief are facts established to the court. The possibility and it seems to me only a remote and theoretical one at present, that the Revenue might one day arrive at a different decision cannot serve to set aside an established fact before the

> court. Mr McAteer would have needed to have had that decision reversed ahead of the hearing before the court if he had wanted to defeat the claim in that way. He has had ample time in which to do so but all he has been able to do is raise the possibility which is not enough. I note the documents produced by Mr McCausland in support of that view."

[11] If I may say so that finding appears to me to be a valid one i.e. that the opinion of the Tax Inspector in Cardiff, even if it were admitted in evidence, by him giving oral evidence before the Court of Appeal or me or in any other way appropriate in law is not the way to deal with it. Mr McAteer should have got the Revenue to reverse their decision and any comment by a single official is no substitute for that. Mr Devine's loss was due to the revocation of the tax relief. That is a certain fact. It remains a certain fact until Her Majesty's Revenue reverse their earlier decision and give Mr Devine back the money he paid to them. The existence of the letter is, it seems to me, irrelevant.

[12] I might add a word to the extempore judgment given on 2 December. A considerable reliance was placed by counsel for Mr McAteer on an admission from the Chancery Office contained in an email of 1 October 2010 to Mr McAteer's secretary to the effect as follows:

> "This file has been requested from off site storage on numerous occasions since your request was made. Unfortunately this file seems to be misplaced or lost as each time this has not been found when requested. Therefore at this time this file is not available. Apologies for any inconvenience."

This email followed a long chain of emails starting on 8 July 2010 when Mr McAteer's secretary began an enquiry about the letter the subject of this judgment dated 17 June 2008. It does not appear that there was any enquiry prior to the judgment of the

Court of Appeal in 2010 from Mr McAteer. Following the hearing ON December 2nd I have looked again at the Chancery files relating to this particular action. It does not seem to be right to say that a file is missing. There are documents relating to the action up to 18 April 2008. Documents then recommence with a request for his costs from Mr Gavin McGill dated 17 February 2011. That gap might have given rise to the impression, therefore, that papers were missing. But on reflection the only matters before the Chancery Division in the interval were the handing down of my judgment of 18 December 2008 and, I believe, a short mention about the relisting of this matter following the decision of the Court of Appeal in 2010. It seems to me, therefore, that in truth no file is missing but that no letters of the sort alleged by Mr McAteer to have been sent have been found.

[13] I have been asked to consider, although it is clearly obiter on my original decision and the decision of the Court of Appeal, whether the investment in Roe Developments Limited by Mr Devine would in any event have proven ineffective to obtain the tax relief he sought, for reasons other than those discussed above.

[14] The starting point for this is to remind myself that Mr Devine's accountants, Messrs Moore Stephens, a reputable firm, one of whose partners gave able evidence before me in related litigation, formed the view that the investment was fatally flawed for those purposes and that they did so before he sold his shares. The amount of £20,000 gained by way of relief with interest thereon was repaid to HM Revenue and Customs.

[15] At the trial of this action before me in 2008 the plaintiff, Mr Devine, was not content to rest only on the opinion of his own accountants. He called Mr Kevin Bell,

FCA, a Member of the Chartered Institute of Taxation and a partner in the leading firm of KPMG for nearly 20 years who specialises in this field. I recorded at paragraph [10] of my earlier judgment that Mr Bell "was an impressive witness dealing with quite arcane points of revenue law and doing so at times without prior notice". I concluded he was right on the failure to employ the money point and I said that it was probable on the facts that the relief would have failed for other reasons helpfully set out by Mr Bell. In approaching those other reasons now therefore I have the benefit of having found Mr Bell an impressive witness and having his supplementary report which dealt with some of these points.

[16] As adverted to before Mr Ronan Lavery of counsel persuaded me that Mr McAteer should be allowed to put in an expert opinion, both in fairness to him, and to assist the court coming to these matters approximately 2 years after it had seizure of them. Mr McAteer put in a report from Mr Tony Nicholl of Goldblatt McGuigan. Mr Nicholl is again an accountant, a forensic accountant of high standing and no doubt perfectly competent in tax matters without, I think, purporting to be a specialist in those. His report evoked a response from the defendant shortly before the hearing before me. A substantial report was submitted by Mr Sean Lavery FCA CTA ATT. He is a tax partner in another leading firm, BDO, with previous experience of advising clients on enterprise investment schemes (as here) and 15 years' experience of working on tax. Unlike Mr Nicholl he was provided with appropriate documentation to prepare a report. I have commented adversely not on Mr Nicholl but on the failure to give him Mr Bell's report.

[17] The response of Mr Tony Nicholl to that document must be read with care. On 30 November 2011 he wrote pointing out that there were "a number of issues raised in the BDO report which stemmed largely from material available to BDO not previously seen by me; however based on the analysis prepared by Mr McAteer of the BDO report I have no reason to amend the conclusions in my report of 2 August 2011." He goes on the in the next paragraph to say, inter alia: "If I were to prepare a response to the BDO report I would be relying on Mr McAteer's knowledge of the company and his understanding as to the reasons why the relevant documents were prepared." Therefore the main response of Mr Lavery is to be found in the document of 29 November 2011 entitled "Analysis of Report prepared by Mr Sean Lavery BDO dated 21 November 2011 and prepared Mr McAteer". I have taken it into account along with the other reports referred to.

[18] As Mr Bell said at B14 of his supplemental report:

> "It was critical to the success of Sean Devine's income tax relief claim that Roe Development Limited was a 'qualifying company' on the date of his investment, retained this qualifying company status for three years after the date of investment (ie. until 1 March 2003) and spent the subscription proceeds within 12 months of the date of subscription) (ie. by 1 March 2001) on a 'qualifying activity'."

It was the uncontested evidence of Mr Bell that the first breach of the EIS legislation should be viewed as the event that caused the EIS income tax relief to be withdrawn. I have already held that of the three limbs outlined by Mr Bell above the monies were not invested in the way that they had to be within 12 months.

<u>Qualifying Company?</u>

[19] Mr Bell pointed out that a company seeking to qualify for EIS relief can, and best practice is to, make a detailed submission to HM Revenue and Customs in advance that the company does indeed qualify. I accept Mr Bell's view that this was not done.

[20] Mr Bell said in his supplementary report and in his evidence consistent with his earlier report that in the opinion of his firm it was highly unlikely that Roe Developments Limited was a qualifying company at the date of Mr Devine's subscription on 1 March 2000. This is conveniently analysed by Mr Sean Lavery in his report at 2.15ff. He draws attention to Section 293(2) of the ICTA 1988 which states that :"The company must throughout the relevant period be an unquoted company and be a company which exists wholly for the purposes of carrying on one or more qualifying trades or which so exists apart from the purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of company's activities ….." In effect the non-qualifying activities of the company must not count for more than 20% of the activities of the trade as a whole. This can be readily understood as the tax relief is to encourage "enterprise" and not the mere holding of property. He then analyses the non-trading activities of the company and he concludes at 2.20 :"I believe that the 20% test is clearly breached in all the years and that in all likelihood the company was not a qualifying company in the year 2000 at date of issue of the shares." Mr McAteer seeks to deal with this argument at 2.2.5ff of his response. He asserts that during the hearing of the action KPMG withdrew the qualifying point. I do not consider that is correct. I did not find such a concession in my trial note. I have read his responses which stress the

period when he was responsible for the company and before he resigned. Even allowing for that qualification I am satisfied that the view expressed by Mr Lavery is the correct view and that this company had not qualified for EIS relief because it had an excessive investment in and involvement in non-qualifying activities.

[21] I accept the view of Mr Nicholl in which he really seems to be in accord with that of Mr Lavery that the loan would not have led to the loss of EIS relief completely but to a reduction of EIS relief in the sum of £1,130. While making it clear that I do not in any way disparage the other views of the accountants for the plaintiff/respondent, on the balance of probabilities I do not find that the plaintiff/respondent had shown that the company was otherwise fatally flawed. As I say these findings are supplementary to my main finding that the money was not employed within the requisite period. On looking back at the notes of the evidence I am of course reminded that it was a director of the company itself who asserted that. It is really quite remarkable that this point is still being taken by one of those then directors many years after the event i.e. contradicting Mr McGill's assertion to the revenue which caused Mr Devine and his accountants to repay the relief.