

1 a reference is made to the decision of Chief Justice Mann
2 in Trustees and Executors.

3 So Your Honour in that situation - in that case we'd
4 be saying that the same approach should be adopted here,
5 that you look at the relief sought in the previous
6 proceeding, the relief sought in this proceeding to see -
7 in ascertaining the subject matter, and the words used in
8 the release in this case arising out of or in any way
9 relating to the subject matter are the same - have the
10 same possible broad interpretation as "in respect of" had
11 in Lyon Trust Corporation.

12 HIS HONOUR: Thank you. Mr Garde please.

13 MR GARDE: Your Honour we will start by just taking Your Honour
14 back again to the amended further statement of claim in
15 the Woodleigh Heights proceedings, and invite Your Honour
16 to just spend a moment and I'll go through the pleading,
17 but before I do that there are two - there are two of
18 course, types of water supply that are under discussion
19 in this pleading.

20 There is the water supply that was provided on the
21 land, which was of course non-obtainable water - non-
22 drinkable water, and then there was the prospect of water
23 becoming available from the Kyneton Shire Water Works
24 trust. And one has to, in looking at the pleading and
25 therefore looking at what was known at the time, identify
26 the features of the two systems, one existing prior to
27 1982, and one which as we know potentially became
28 available as and from 1982.

29 And with that in mind what I would invite Your
30 Honour to do is just to look for a start at Paragraph 6,
31 and in Paragraph 6 on p.3 of the amended further