

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 19TH
DECEMBER, 2000 AT 11AM:

CONTINUATION OF EXAMINATION OF MR. CLAYTON BY
MR. HEALY.

Q. MR. HEALY: Mr. Clayton, you will recall that yesterday we began, or we commenced going through the documents attached to your statement in connection with the Gallagher Group deal.

A. Yes.

Q. And the first document we dealt with was a letter of the 22nd May 1984 from Mr. Lawrence Crowley referring to inquiries which Mr. Pairceir had been making concerning the amount which might be able to meet the preferential claim of the Revenue Commissioners in the case of the Gallagher Group.

A. That's correct.

Q. And then the next document we looked at and we spent sometime discussing was the actual form of the contract. And then the next document we looked at was a memorandum of the 13th May of 1984 which was in your handwriting and which recorded, in the main, I think, the terms of a telephone conversation between you and Mr. Pairceir on that day, is that right?

A. They were extempore, as I said yesterday, extempore scribblings at the time during the course of the telephone conversation.

Q. So you had this note in front of you during the telephone conversation

A. No, I started with a blank page.

Q. I beg your pardon, and as the conversation went on you made these notes?

A. For the most part of that page, yes, that's right

CHAIRMAN: And after it I think.

A. After, I added to some items to that, yes.

Q. MR. HEALY: Now, once again just so that we can put this in perspective, that conversation clearly preceded the letter of the 22nd May of 1984?

A. That's correct.

Q. Isn't that right?

A. That's correct, yes.

Q. So prior to Mr. Lawrence Crowley's letter to Mr. Pairceir, you'd had a conversation with Mr. Pairceir, the terms of which you have record in your memorandum and it was Mr. Pairceir who telephoned you about the matter, is that right?

A. Yes, that's correct, yes.

Q. And you had no information about the matter until you brought it to your attention?

A. I had no detailed information. In fact, I think I had no information at all in the matter. It's possible that in the ordinary course Mr. Pairceir might have phoned Mr. Connolly, the Chief Inspector, so to speak,

at the time, who would have possibly have mentioned my name to him. I have no recollection of Mr. Connolly advising me that I was about to be phoned on the matter. It seemed to come out of the blue.

Q. Again I want to try to put the genesis of the inquiries that were being pursued with you into some context.

If you look at the letter of the 22nd May from Mr. Crowley, it doesn't refer to any correspondence from Mr. Pairceir or the date of any prior contact, but it clearly indicates that the prior inquiries were purely with a view to seeing what was available to meet the preferential claim of the creditors in the Gallagher liquidation, isn't that right?

A. That's right, yes.

Q. And then Mr. Crowley says, "In this connection it was necessary for me to discuss the contract entered into by the company for the purchase of certain lands at Kinsealy" which suggests to me that Mr. Pairceir rang Mr. Crowley, that he wanted to know what money was available in the Gallagher Group to meet the preferential claim of the Revenue Commissioners and that Mr. Crowley then said, "well, I am going to bring something to your attention now, and that is this contract."

A. I can't really comment on that. I wasn't involved in those conversations.

Q. I am asking you do you agree with my interpretation of

it?

A. There obviously was an interaction between Mr. Crowley and Mr. Pairceir, but what exactly the details of that were, I am not clear. The evidence you have in front of you consists of letters between the parties prior to the 15th May.

Q. The evidence I have before me

A. You have letters, copies of letters between, I think, Mr. Crowley and Mr. Pairceir, I don't have my hand on them here, but there was correspondence. That, I think would be the best evidence of what transpired.

Q. Obviously I should make sure that you have an opportunity of commenting on that. I'd like to turn it up so that you are not sorry for delaying you Mr. Clayton.

A. That's all right.

Q. There is further correspondence and I think it may be possible to turn it up from, I am told it's Divider 16 which I take it concerns the evidence of Mr. Crowley.

Now, I think what you are suggesting is that there was prior correspondence between Mr. Pairceir and Mr. Crowley concerning this matter prior to the letter that I opened yesterday of the 22nd May.

A. That's correct.

Q. And you are, of course, quite correct.

A. Yes.

Q. There was correspondence going back to the earlier part

of May suggesting that there were meetings between Mr. Pairceir and Mr. Crowley prior to the matter having been drawn to your attention, would that be right?

A. That is correct, yes.

Q. And that correspondence concerned the extent to which the Revenue Commissioners and Mr. Crowley were canvassing how they might get their hands on money which would be available if it could be brought into the company to meet the preferential claim of the Revenue Commissioners and the item or the fund that they were considering was this $\frac{1}{2}$ 300,000?

A. That question was being explored, yes.

Q. Now, the next memorandum then is the next written note is a document, what I suspect may be your writing, is that right?

A. It is indeed, yes.

Q. Saying "who in HB" that's Haughey Boland "is dealing with H?" that's Mr. Haughey?

A. And I don't know who, in fact, I got that information from. I suspect I phoned the firm of Haughey Boland and was told that very simply Pat Kenny, so I phoned Mr. Kenny accordingly and confirmed from him that he had actually taken over the case, which had been handled previously by the late Michael McMahan.

Q. Then you wrote the letter of the 21st June 1984 which, as I said yesterday we would have to revisit again, in which you refer to previous communications to Haughey

Boland about Mr. Haughey's tax affairs.

A. Mm-hmm.

Q. And then you wrote again on the 26th July.

A. Yes.

Q. Now, before we pass on not next memorandum, those two letters were written by you to Haughey Boland & Company and at this point, there can be no doubt but that you were happy to write, to send these letters, not through internal post but through the external, if you like, the public post, using Mr. Haughey's own name?

A. They were very simple letters.

Q. The next document then is another handwritten memorandum, again I assume in your writing.

A. That's correct.

Q. This is sometime in July of 1984. It says "Chairman phoned. I advised him of ' non-reply'" is that right?

A. That's correct.

Q. Were you in fact referring to the next document in the book of documents?

A. I am not sure, in fact. That letter was dated 27th July, but it's possible that it hadn't yes, in fact, I suspect it hadn't arrived in until the 30th July because if you look, if you go further on in manuscript note of 2nd August, the note says, it was a very brief note of a telephone call I made to the Chairman which says "Case of possible forfeited deposit; agents reply confirming acting. Have draft letter, seen by JFC.

Post send it to you for any obs you may have" and "how to address the letter?" that's the draft letter to the Chairman's office.

Q. Right

A. So I would deduce from that that the letter of the 27th July had not come in by the 30th July.

Q. I see. If we could just the sequence of documents then is presumably correct and if we go back to the memorandum of the 30th July '84. You telephoned the Chairman or the Chairman phoned you, I beg your pardon, so he contacted you?

A. Yes.

Q. He initiated the contact and you advised him of non-reply, i.e. the fact that your two reminders had produced no response?

A. That's correct.

Q. So as well as you advising him of what was happening, he was keeping in contact with you so as to keep himself abreast of developments?

A. That's correct.

Q. After that letter, you did get a reply of the 27th July 1984 in which Mr. Kenny said, "I wish to refer to your letters of the 21st June and 26th July and regret the delay in returning to you.

"We confirm that we act on all matters pertinent to Mr. Haughey's Capital Gains Tax."

Then we go onto the memorandum you drew to my attention a moment ago of the 2nd August. This now is an internal note.

A. Well, it's a personal note to myself, so to speak.

Q. I see. A personal note to you. What does "Chairman" at the top mean?

A. It was simply indicating who I was speaking to.

Q. I see. So you were speaking to the Chairman, do I take it on the telephone or in person?

A. On the telephone.

Q. And can I take it that from the fact that you haven't written down "Chairman phoned me", does that mean that you phoned him?

A. Yes, I think that's a very safe assumption because in fact following on the conversation of the 30th July, I would have deemed it appropriate, having got a letter perhaps a day or two later, to bring him up to date with developments.

Q. I see. So you said, "Case of the possible forfeited deposit" now, is that a way of describing the potential capital gain that might arise on a disposal of an asset by Mr. Haughey?

A. Mm-hmm, yes.

Q. Is this a way of referring to Mr. Haughey's case without using his name?

A. Well, I may well have used Mr. Haughey's name in the telephone conversation, but this was the gist of the

telephone conversation.

Q. I see. "Case of the possible forfeited deposit."

Underneath that?

A. "Agent replied, confirming acting. Draft letter seen by JFC. Post send it to you for any obs you may have; how to address the letter?"

Q. Underneath that?

A. "To be seen by Chairman only", which would be, I expect Mr. Pairceir's instruction as to how the envelope would be addressed.

Q. Were you then referring to the letter of August of 1984?

A. Yes. You have I think on the papers a letter which doesn't have a precise date on it.

Q. It has "Draft" written across the top?

A. Yes, that's right and it was the very same letter, there was no change in that letter I think at the time of its issue on the 9th August.

Q. Well, if we could just look at this letter this time a little more carefully now because we are dealing with the second paragraph or at least we are focusing more on the third paragraph of that letter. If we can put it up on a the overhead projector. Firstly as you say, it's the month is given as August 1984, there is no precise date, because the top of the letter is headed "Draft". The first paragraph doesn't concern us. The second paragraph deals with Rath Stud. We

have already gone over that.

A. Mm-hmm.

Q. The third paragraph then deals with how you proposed to approach the issue of any further Capital Gains Tax liability Mr. Haughey might have, isn't that right?

A. That's right.

Q. You said; "Your client's return which was made in April 1981 did not show any chargeable gains accruing in the year 5th April 1980 and no return has been made since.

"Would you please review the matter and let me have information about any disposals in the period from 6th April '79 to 5th April 1984. You are of course aware of the provisions of Section 47 re options and deposits of the Capital Gains Tax Act."

Now, that was directed to eliciting from Mr. Haughey's agents, a response confirming the information you already had and perhaps some other responses as well, but certainly a response confirming the information you already had in your possession?

A. I would have expected that and as you say, other information might have come to light.

Q. Before that letter was sent out, you sent it to you had it seen by Mr. Connolly and you had it seen by the Chairman?

A. That's correct.

Q. And again perhaps you'd explain to me what you mean by

"How to address", how did that arise as a query?

A. Well, an ordinary letter addressed to say the Chairman of Revenue Commissioners might be, might find its way, might be seen by people who would have no interest in the particular case, and it was a matter of some sensitivity. That is why I think I would have asked that question.

Q. What I don't understand is who were you contemplating would be addressing the Chairman in relation to these matters?

A. I am sorry, I don't understand you.

Q. This was a telephone conversation you had and you wanted to know My Friend has corrected my own failure to understand what you are saying you wanted to know how could you be sure that only the Chairman could see this document, the draft?

A. How would I address the envelope in other words, whether he wished it to go to the private secretary or the Chairman only or whatever.

Q. So you wrote on the envelope containing the draft letter, "to be seen by Chairman only"?

A. I expect I did.

Q. The next memorandum we have seen already and you have already explained it, we will just put it on the overhead projector which contains what, presumably, was your note accompanying the draft, together with Mr. Pairceir's approval.

A. That's correct.

Q. And then the next document is the actual letter that presumably or copy of the actual letter that went out of the 9th August, 1984.

A. Mm-hmm.

Q. And as we know, there was no response to your letter notwithstanding numerous reminders, isn't that right?

A. That's correct.

Q. You wrote you were writing up until April of 1985 without a response and at that time you wrote indicating that the issue had now become a matter of concern.

A. That's correct.

Q. Then the next document is a document we have already alluded to, it's a memorandum this was a memorandum indicating how you now proposed to proceed in the matter. The memorandum dealt with a number of different items. Firstly, it's headed 'Capital Gains Tax' and then 'P. Murphy', which is the coded name you had for Mr. Haughey?

A. That's right.

Q. It says, "I have looked at the relevant tax files in Public Departments District, Dublin Farming No. 2, Dublin No. 5 and I have consulted with Mr. Walsh of Capital Taxes branch re wealth tax file." Does that indicate that you had examined all the relevant tax files in relation to Mr. Haughey?

A. Yes, I looked at them as the note says.

Q. Apart from acknowledgment, "the agents have not replied to my queries about capital tax" then you had a summary of disposals which may, I think, have contained references historically to a number of disposals by Mr. Haughey?

A. That's right.

Q. Then you refer to the disposal of the Rath Stud farm for $\text{€}300,000$ on the 25th January 1977 and the submission by the agents of a computation in April of 1981 showing a gain of $\text{€}48,000$. And you pointed out that the disposal had not by that date been assessed.

The next item you mentioned was a deposit of $\text{€}300,000$ and you say, "Apparently received in January 1980 from Crowley Group." Now we know from another note that you have made that Crowley Group refers to Gallagher Group?

A. That's right.

Q. And I suppose it was a useful code because it was a link into Mr. Lawrence Crowley?

A. Correct.

Q. "In connection with an agreement to sell 35 acres at Kildare" which I think was a code for Kinsealy "for $\text{€}35,000$ per acre.

A. That's right.

Q. You say, "No assessment has been made in respect of this receipt." You go on at paragraph 5 to say, "I

have not consulted the valuation office about the values of these properties on any date but I know from experience in other cases that the Valuation Office have a general view that there had been no substantial increase, if any, in property values between 6/4/74 and 5/4/75. There would be considerable, probably insuperable difficulty in be establishing an increase in market value in profit in that pert. Agents have argued to this effect in this letter of the 11/10/1982 to Dublin 5 District."

A. That's right. I wonder is it appropriate for me to point out that there is a paragraph missing from what's on the screen, paragraph 4, which I think you have omitted from these schedules to the.

Q. Yes, do you want to draw attention to anything in paragraph 4?

A. It's what you are reading out is not complete.

Q. Absolutely, because some of the omitted paragraphs don't have any particular relevance other than that they do with other aspects of the overall taxation affairs of Mr. Haughey?

A. Well, the paragraph preceding paragraph 5 refers to land value figures, that's what I think - we can move on, I just mention that point.

Q. You then say "I propose to deal with the case on the following basis." Then there are obviously two items that you refer to firstly. Thirdly, you say "In

relation to Rath Stud, you propose accepting the agents' computation on the disposal of Rath Stud." We have already mentioned that.

In relation to the forfeit deposit. You say, "If the agents do not deal satisfactorily with this matter by 30th September next, I would propose to ask them to call to discuss with me and Mr. Donnelly, Inspector Dublin Farming No. 2 District, the matter of possible transactions between his client and Crowley Group Limited" - meaning the Gallagher Group - "The source and precise nature of our information could not be revealed and the agents would be asked to make the necessary inquiries as a matter of urgency. If there is no satisfactory response, an assessment will be made in January 1984 as follows:" And you indicate then how, if we could have the next paragraph and you suggest how the Capital Gains Tax could be computed to generate a chargeable gain of $\text{£}299,000$ which at 30% would result in an assessment of $\text{£}89,700$?

A. There was in fact as you see from the note on that, a minor correction required on that. I was being over generous as regards the Section 16 personal relief it. Should be 500, not 1,000.

Q. So the tax would have been slightly higher?

A. When the assessment had been made, the correct figure had been put in.

Q. You say that "Agents would be told at a further meeting

beforehand of the imminent assessment. Deferment of this assessment to 1986 is justifiable by reference to the possibility that the agents may be in a position to provide further information about the apparent transaction or more likely, that the basic contract might theoretically be renegotiated between now and 31st December 1985 in which case the year of disposal would be '85/'86. An assessment could now cloud the basic point involved and raise arguments about proper year of assessment, due dates for payment, interest, etc.. A draft letter to the agents is attached accordingly."

At that point, you were trying to bring together all of the information you had concerning this matter?

A. Concerning Capital Gains Tax, yes.

Q. And that included information not just about Rath Stud, but also information about - or not just information about the Gallagher Group, but also about Rath Stud, about a number of other matters?

A. That's right.

Q. And a history of other disposals over the years?

A. From 1974 onwards.

Q. And you based your overall summary on having looked at the relevant tax files in the various departments in which information was to be obtained?

A. That's correct, yes.

Q. Now, in your final paragraph you describe the transaction as an apparent transaction. Do you notice that?

A. I do indeed.

Q. Could I suggest that that was once again an indication that you had formed the view that while it might be appropriate to proceed to tax this transaction as giving rise to a capital gain, taking the documents at face value, there was nevertheless another interpretation which might be put on them, although not necessarily one that would have yielded a clear tax profit, if you like, to the Exchequer?

A. Quite so. It was an unusual contract and one would have wished to have had confirmation of the position of the facts from the agent or the taxpayer.

Q. I am not saying that it was simply an unusual contract. There are many contracts which could be called unusual because they have, you know, they are complex or they may involve terms or ways of doing things that hadn't been thought of before, but I suggest to you that the use of the expression "apparent transaction" in this case conveys at least an apprehension on the part, on your part, that what you had here was a document that you could make some value of to produce some tax for the Revenue Commissioners, taking the document at face value, but that if you didn't take the document at face value, there was something more questionable about it?

A. There is that interpretation possibly, the question would arise that the transaction didn't take place at all.

Q. Sorry, I beg your pardon?

A. The question would arise did the transaction occur at all? Did, in fact, money change hands?

Q. Presumably if money didn't change hands, you had no right writing to anybody about this?

A. Quite so. Well I was raising this matter with the agent to get confirmation of the position.

Q. Is it conceivable that that was your only concern?

A. No, no, it wasn't.

Q. It's unlikely that Mr. Crowley would have canvassed this matter with Mr. Pairceir unless as the Receiver, he was aware that $\frac{1}{2}$ 300,000 had gone out of the coffers of the company he was now responsible for and that it had gone to Mr. Haughey?

A. Quite possible, yes. That's a reasonable thing for you to say, but I had got nothing from the agents up to that point in relation to the transaction, I hadn't heard what Mr. Haughey or his agent had to say about it.

Q. The next document is the actual draft letter that you intended to send, we have mentioned aspects of this letter yesterday. The next document is a note I think from you to the Chairman, is that correct?

A. No, it's a note I think of a telephone conversation

with the Chairman on the following day, on the 21st sorry, yes, the day after I sent the memo to the Chairman, I would have been speaking to him on the telephone and those were simply words I wrote down at the time of the telephone conversation.

Q. That's your memo of the telephone conversation, so not a note addressed to the Chairman?

A. It's not addressed to anyone.

Q. It says, "I have reviewed the Capital Gains Tax aspects of this case. The attached note summarises the position." It's the use of the expression "attached note" which prompted me

A. I am sorry, we are talking at cross purposes here. I was looking at a note which was dated 21st June, also a manuscript note. You are looking at a manuscript note of the 20th June.

Q. We will come to the other note later. So am I right in suggesting that this note of the 20th June accompanied the memorandum

A. Indeed, the note of the 20th June refers to the attached note which was the note that you have been dealing with.

Q. And you explained the codes that you proposed to use?

A. That's right, yes.

Q. Which you say were adopted in the interests of confidentiality?

A. That's right.

Q. The next note then is dated the 21st June of 1985.

Before I come to that, can I ask you to indicate whether the draft letter which accompanied the summary of proposals was ever sent out in final form?

A. I don't believe that it was. The letter which was which issued in relation to this matter at that time was the letter of the 28th June 1985.

Q. I see, well we'll come to that letter which I think is

A. The draft was not used.

Q. I see. We then go to your note of the telephone conversation of the 21st June of 1985. Now, this is a note of a conversation which followed on the memorandum you saw a moment ago in which you sent the draft letter you considered sending and the summary of the overall position concerning Mr. Haughey's tax affairs.

A. Mm-hmm.

Q. And it says "Chairman", again indicating that the conversation was between you and the Chairman.

A. Yes.

Q. Then it has "'75, '77 and '80." Perhaps you'd explain what the reference to those years is?

A. My understanding of, my interpretation of that note now is that '75, proposal in relation to what '75 was agreed with. Likewise with '77. With '80, with the transaction in 1980, the Gallagher deposit, that obviously had been the subject of a more detailed

conversation.

Q. So can we just get rid of '75. I think that may be a reference to, in fact internal rearrangement on the ownership of Abbeville, is that right?

A. That's correct.

Q. Not of huge concern at this point.

A. No.

Q. '77 is a reference to Rath Stud?

A. Correct.

Q. And '80 is a reference to the Gallagher deal?

A. Absolutely, yes.

Q. So right, so you had agreed the approach you intended to adopt in relation to '75 and '77. Then in relation to 1980, you had a somewhat longer discussion and perhaps you'd indicate what the rest of the note refers to?

A. Yeah. The gist of it I think would have been to

Q. Would you mind

A. Write a stronger letter

Q. Would you mind taking me through the details of it first and then perhaps explain the gist of it, because obviously my

A. The handwriting may not be the clearest. The first line there I read as "Hint more strongly".

Q. "Hint more strongly".

A. The boxed item is "Meeting" and I don't know what the doodles would signify, but we needn't dwell on that.

On the next line there is a reference to "Rope and a pig".

Q. Say that again?

A. "Rope and a pig". And it's not my expression. No doubt Mr. Pairceir will elaborate on that.

Q. Forgive my ignorance, do you know what it means?

A. At this stage I have forgotten. No doubt clarification will be available.

Q. The next line, "Revenue obliged to act." I think this might have been the terms of the letter perhaps or some indication of how strong, what line may be taken.

"Serious problems. Justification for delay.

1. Get agents in.

2. Get agents to deal with urgently.

3. Mid-September deadline." And the last line of that

is, I don't have the original document with me here,

but, in fact I don't know if that was written

contemporaneously with the telephone conversation or

not. It's "EH" which I take to read as Eimear

Haughey" "gift tax, CTB" that's Capital Taxes

Branch. That's a note to yourself to deal with an issue

A. I can't say it may have arisen in the conversation.

Perhaps it was something I wrote subsequently. I

don't have the original documents.

Q. Is that perhaps something to do with the redistribution of part of the assets of Abbeville Limited?

A. Yes. Quite so also the farming business was transferred to Eimear Haughey in '79. Not the farm itself, the farming business.

Q. Yes. Following that conversation, there is a letter of the 28th June 1985 in which you say, "I am writing at this stage because my attempts to contact you by phone over the last week have not been successful. You have been unavailable on those occasions when I phoned your office. My suggestion that you contact me on my direct telephone line remains open. You may wish to note that an assessment of Capital Gains Tax has been made on the chargeable gains accruing on the disposal of Rath Stud farm. Other aspects of your client's Capital Gains Tax position remain unclear. See my letter of the 9th August 1984 which is basically unanswered and I now wish to discuss them with you. This could I think be best done at a meeting in my office and I would like to hear from you accordingly as early as possible."

Could I just ask you this stage to clarify for me in any case, the form of the approach taken or the form of the letters to Mr. Haughey's advisers? You had indicated that you'd hint a little more strongly that you would use some strategy which Mr. Pairceir described by using the expression "rope and a pig" whatever that meant, maybe something like 'carrot and stick', I don't know, but in any case, you wrote a

letter impressing upon Mr. Haughey's advisers that they should contact you and offered a meeting.

A. That is correct, yes.

Q. Could I suggest that it's the experience of most taxpayers that they wouldn't necessarily receive letters as tenderly accommodating as that in the case of some liability that was quite old?

A. No, I would disagree with you. It would not that would be the nature of that letter to Mr. Haughey would have been repeated thousands of times. It depends on the particular circumstances.

Q. Was there would there be no would there be any reason not to indicate to the advisers that there are potential liabilities to interest charges and penalties?

A. There wouldn't have been a need to spell out the interest situation to Haughey Boland & Company. They would have been well aware of the position.

Q. Well, that's something we may have to come back to again and again, what position would they have been aware of, the fact that the Revenue never charged interest?

A. They would have been aware there was an interest exposure.

Q. But was there an interest exposure?

A. There would have been an interest exposure in relation to late payment of tax. Now bear in mind that Rath

Stud was about to be assessed. The Gallagher deposit matter, no assessment had been raised on that at that time, so an interest situation had not arisen, interest was not, at that stage, clocking up.

Q. Well, again I am sure you can correct me if I am wrong.

Is it the case that the Revenue Commissioners would not allude to a potential exposure to interests and penalties where a taxpayer had failed over many, many years to respond to correspondence from the Revenue Commissioners?

A. If there were a basic taxation liability which were in assessment. The position, of course, is different under self-assessment, where since 1988 interest becomes a tax becomes payable and interest is chargeable on any tax underpaid or unpaid at the due date for payment irrespective of whether an assessment was made or not. That position has changed radically since 1988.

Q. Am I right in thinking therefore that prior to 1988 it wouldn't have been usual for the Revenue Commissioners in correspondence with taxpayers or their agents to alert them to a potential exposure to either penalties or interest charges?

A. The penalty situation would not arise normally, specifically it wouldn't have been alluded to but interest would be taken for granted. It would be taken for granted by an agent that an interest

liability could arise in relation to late payment of the tax. This would have been referred to in demand notes and so on. There would be no need to advert to it specifically.

Q. It would never then be adverted to specifically in any such correspondence?

A. I hesitate to say never, it could be in the great majority of cases I suspect it would be adverted to in a letter of this nature because it could be it would be adverted to I imagine in communications from the County General's office.

Q. Could we just come back to that point and just to digress for one minute. Is it possible at this time that advisers, tax accountants and other advisers may have been under the impression, perhaps correctly as a result of what you told me yesterday, that they were never going to be charged interest anyway and there were never going to be penalties?

A. I hesitate over the word 'never'. It's absolute. They possibly would have stood maybe a good chance of not being liable to interest in that regime. Those were the days. It was a different regime then.

Q. That's what I am trying to get at. Again I want to be careful in case the suggestion might go abroad that no interest was being charged in Mr. Haughey's case and no penalties were being levied in this case when in fact it may be that the Revenue Commissioners, as many

advisors knew, rarely charged interest and rarely

levied penalties?

A. I am not aware of the amount of interest that was being

collected by the Revenue in those days, but there was,

I would think, something of a collection problem which

I referred to yesterday and which was referred to in

the self-assessment booklet of the then Minister of

Finance in January of '87. This is fairly well

documented.

Q. The Tribunal will, in due course, I think as I may have

mentioned to one of your advisers yesterday, require

the Revenue Commissioners to produce some figures

indicating whether interest was collected and if so, in

what circumstances. Would it be possible to obtain

that information, do you think?

A. I would hope so, but it's not my specific area.

Q. After that letter of the 28th June 1985 when you sought

a meeting as early as possible, the next document is a

letter of January of 1986, six months later, asking for

a response in which you say,

"Dear Sir,

I should be glad of a response from you to my letter of

the 28th June 1985." And you enclosed a copy and then

the next document is a typed memorandum dated 10th

January 1986, addressed to the Chairman which I take it

means that it was addressed to Mr. Pairceir?

A. Correct.

Q. And signed by you.

A. That's right.

Q. It's "Re P J. Murphy, Capital Gains Tax" meaning Mr. Charles Haughey?

A. Correct.

Q. It says "Further to my note of June 18th 1985" which I think is a reference to your earlier extensive review of the situation.

A. Mm-hmm.

Q. "I am now proposing that an assessment should be made before the end of this month, January 1986, in respect of forfeited deposit received in January 1980 and which, in accordance with the terms of the agreement, became non-refundable on December 1st 1985.

"Copies of recent letters to the agents are attached for reference. If the agents do not respond within 21 days of my letter of the 3rd January 1986, I propose to ask the Inspector Public Departments to assess accordingly. Copy of my draft minute to him is also enclosed. If after the assessment is made, I am queried as to the reason for the assessment, I will propose to respond preferably at a meeting on the following lines:

"Information arising in connection with the receivership of Crowley Group Limited suggests that a substantial sum was received by the client in 1979/1980. It would seem reasonable to expect that

full information about the matter would be available to the agents or the client or obtainable by them. If the assessment is being appealed, the basis of the appeal should be clearly specified."

Then at the bottom it says, "Shown to Chairman." And perhaps we'll just also put on the overhead projector, or maybe I don't have it, the memorandum that you sent or the minute that you sent to the Inspector Public Departments, I don't think that's in the books, is that right?

A. It was sent to him on the 23rd January.

Q. That's why I am slightly confused, because you say "Copy of my draft minute to him is also enclosed" that's your letter of the 10th January 1986?

A. That was the draft. I didn't send it until the 21 days had expired.

Q. I understand. And what we have got here is probably your copy, a draft similar to the minute with a similar heading to the minute sent to Mr. Fitzpatrick.

A. Yes, I don't think the draft actually survived as the actual minute which issued.

Q. I understand. Just so we can clarify the dating of these. The document of the 10th January 1986 is a copy of your own original draft.

A. No. The minute to the Chairman of the 10th January, that's, shall we say, an original carbon, so to speak, of what went. It would have had attached to it, a

draft letter to Public Departments.

Q. I am sorry

A. And we don't have that.

Q. I understand. I have is it the wrong way around.

The document now on the overhead projector dated 10th January 1986 duly went on that day, as you said in your note, shown to the Chairman on that day?

A. Correct.

Q. Attached to that is a document in draft form, the contents of which were the same as the next document in the book, dated 23rd January?

A. I would think so, yes. Not having the draft, I can't say that for certain, but I am pretty sure that it was.

Q. But the contents of it would seem to indicate that that's what you intended to refer to?

A. Yes.

Q. And in that draft, what you say is, "In the year ended April 5th 1980 the above-named and his wife made an agreement to dispose of a certain property and received in connection with that disposal a deposit of $\frac{1}{2}$ 300,000. The disposal was not completed and in accordance with the provisions of the agreement, the deposit became non-refundable on December 31st 1985. A chargeable gain under the provisions of the Capital Gains Tax Act 1975 arises accordingly for the tax year 1979/80.

"Sections 47.10 and 10.3 of the Act are relevant. The

transaction in question has not been revealed under terms of income and chargeable gains and the agent has not responded to my letter of the August 9, 1984 (copy attached). In the circumstances, please arrange to have a Capital Gains Tax assessment made as follows:.

For 1979/80. Chargeable gains $\frac{1}{2}$ 300,000, less Section 16 relief which is correctly computed here at "500.

Leaving a chargeable gain of $\frac{1}{2}$ 299,500.

Tax calculated at 30%, generating a tax liability of $\frac{1}{2}$ 89,850.

You then say, "Copies of partially completed assessment forms are enclosed accordingly. The due date two months and one day ... inserted." Then there is a handwritten note which I think says "Along with the assessment number and date of notice, please have the note of assessment issued by registered post." It goes on "If you receive any correspondence from the agents on the matter or any queries as to the reason for the assessment, please refer them to me."

A. That's right.

Q. So that's giving him instructions as to how ministerially he should deal with the matter in a step by step basis from then on?

A. Correct.

Q. Now, if I could just go back to your memorandum of the 10th January. You suggest that an assessment be made

and then you indicated that if you were queried as to the reason, you would propose to respond in the way you set out in your memorandum?

A. That was my thinking at the time, yes.

Q. If we skip on then to the copy assessments. I am trying to find the date of the assessment, Mr. Clayton. Perhaps you can help me because I can't decipher the stamp.

A. I don't have the original but, in fact, I see the notice says "tax payable not later than 25 March"

Q. That's two months and one day. So the assessment would have been made on the 24th January, the documentation, the original document ought to reveal that. So in other words, the assessment was made without delay. I can, in fact, tell you from other correspondence which you have that Messrs. Haughey Boland referred to the notice of the assessment as being dated 24th January of 1986 bearing a reference number 0648386900-97 and that, in fact, is the reference contained on the assessment in this case, isn't that right?

A. Yeah, that's right.

Q. Now, the next document in the book of documents you have before you is a document, is a letter from Messrs. Haughey Boland & Company dated 7th February 1986 and addressed to the Inspector of Taxes Public Departments. It refers to Mr. Charles Haughey Capital Gains Tax

assessment in respect of year ended 5/4/1980. It says, "Please accept this letter as formal notice of appeal against your assessment on i;½300,000 chargeable gain in respect of year ended 5/4/1980 on the ground that it is estimated and may prove excessive."

And there was no reference at that stage to the transaction, isn't that right?

A. None at all.

Q. The next document is a letter of the 22nd May, in fact, the next document is a notice of the sitting of the hearing of the, or the date of the hearing of the appeal?

A. I arranged with Mr. Fitzpatrick for the appeal to be heard by the Appeal Commissioners.

Q. And it was fixed for hearing on the 23rd May of 1986?

A. That's right.

Q. The next document is a letter of the 22nd May of 1986 and it refers to that appeal, isn't that right?

A. That's right, yes.

Q. Now, can I just clarify one matter; had you had any contact with Mr. Haughey's tax advisers between your memorandum of the 10th June 1986 to the Chairman and when you received that letter of the 22nd May of 1986?

A. I don't recall any contact at all.

Q. And could I take it that if you had received any contact, there would have been a note of it on the file?

A. Oh yes.

Q. And that you probably would have taken the steps or something analogous to or similar to the steps you had anticipated you might take in drafting your memorandum in January?

A. Perhaps, it would depend on the nature of their reaction, but I have no recollection of getting any reaction good, bad or indifferent.

Q. The letter of the 22nd May from Messrs. Haughey Boland referred to the notice of assessment and then contained an account of the contract, it said, "Mr. and Mrs. Haughey entered into a contract dated 27th January 1980 whereby it was agreed, subject to specific conditions, that 35 acres of land at $\text{£}1/235,000$ per acre would be disposed of to Gallagher Group Limited.

"Gallagher Group subsequently went into receivership and the conditions were never fulfilled. On the contract completed a deposit of $\text{£}1/2300,000$ was paid.

The contract provided that in the event of the transaction not being completed by the 31st December 1985, and the conditions fulfilled, the contract would lapse but the deposit would not be refundable to the purchaser. The transactions were not completed for the reasons outlined above and the contract lapsed.

Therefore there was not a disposal of an asset for Capital Gains purposes. However, the forfeiture of

the deposit gives rise to a gain, the computation of which is as per your own assessment."

Were you surprised that the matter was taken up by Haughey Boland and disposed of so quickly after all of your many reminders over the previous years?

A. The notice of the appeal hearing obviously concentrated their minds. I had been prepared to have argument before the Appeal Commissioners on that day, the 23rd May 1986 and I think they must have also looked at the matter and realised that their appeal was without foundation.

Q. This was the first intimation you had received from Messrs. Haughey Boland that they had any information at all concerning what might have transpired in 1980?

A. That is the first information I had, yes.

Q. Even though you had clearly hinted at it, certainly from tax adviser to tax adviser, it had been made fairly plain in 1984 that there was something to be, that there was a response required from Mr. Haughey at least confirming the arrangements that he had entered into in 1980, isn't that right?

A. That's right, yes.

Q. Now, if we could go onto the next document, which again is I think a memorandum from you, dated 22nd May of 1986. Am I right in thinking that it's the top of the document in any case, contains your writing?

A. Yes, the top right-hand corner is my writing, my

signature.

Q. It says, "Chairman", addressed to Mr. Pairceir I take it?

A. That's right.

Q. "The enclosed received this afternoon would seem to close the CGT aspects of the case subject of course to the payment of tax $\frac{1}{2}$ 89,850." Signed by you.

A. That's correct.

Q. And what's the other writing on that document?

A. The other writing is a memo from Mr. Fitzpatrick of Public Departments to myself which preceded my note to the Chairman. My note to the Chairman endorses his note.

Q. I understand. And his note deals with, I presume, the Rath Stud aspect?

A. No, Rath Stud was being dealt with separately. That was a separate appeal listing.

Q. Mr. Fitzpatrick says, "Agents letter herewith as requested."

A. Yes, he had phoned me to advise me of the submission of the letter of the 22nd May.

Q. I understand.

A. So I asked him to send it up to me.

Q. Because it was addressed to him Public Departments?

A. It was, yes.

Q. In your note to the Chairman you say, "The enclosed would seem to close the CGT aspects of the case subject

to payment of the tax." What other aspects did you regard as outstanding?

A. Well, I was aware that at the time there were things, such as the farm losses, when I started looking at it in '84, that there were income tax matters being examined. It wasn't my function to find out what actually had happened in the case. I didn't know what the story was in relation to the income tax. I was concerned with the Capital Gains Tax?

Q. The next document is also a handwritten memorandum, can you tell me whose handwriting it is?

A. Yes. That would be Mr. Fitzpatrick's handwriting.

Q. Perhaps we'd just go through. It seems to refer to a telephone conversation and he suggests you may have made and he might confirm whether his note is correct.

A. Yes.

Q. We will just read it out first. "Mr. Clayton phoned" this is Mr. Fitzpatrick speaking "Mr. Clayton phoned. I advised him that two payments were received for $\frac{1}{2}$ 12,480 and $\frac{1}{2}$ 37,520."

A. That's right, yes. "Both were set against IT".

Q. "I advised him that "

A. "I advised him the CGs were informed on the 29/5/86 that payment should be set against CGT. He asked me to phone CG to confirm that my memo was received and would be dealt with." And the next memo which is not on the screen yet, reads "I phoned CGs, memo received

and will input today. It takes approximate two weeks to effect change on computer record." And the next short memo is "Phoned Mr. Clayton and advised him of above."

Q. And that's a reference to the fact that a $\text{€}50,000$ payment on account had been received. It had been put into the wrong pigeon hole. It was now being put into the correct pigeon hole with $\text{€}12,000$ odd being apportioned to Rath Stud and the balance being apportioned to other Capital Gains Tax liabilities?

A. That is so. The background to those three memos would be my concern or curiosity as to what had happened as regards the payment of the Capital Gains Tax. Was it still outstanding or what was the story?

Q. I understand. And as those memorandums indicate, the matter was, at that stage, within your, under the control of the Collector-General, is that right?

A. It was a function it was a matter for the Collector-General to pursue the collection of the tax.

Q. There was nevertheless some continuing liaison with the Collector-General how the payments he had received should be apportioned?

A. Money had been received and it would seem obviously wrongly apportioned, that had to be sorted out.

Q. The next document is a memorandum, again in your handwriting, dated 30th October 1986. It's addressed to the Chairman, Mr. Seamus Pairceir. It says, "Re

C.J. Haughey TD, Capital Gains Tax.

Enclosed is a copy of the form CC 73A for above-named.

You will recall that Mr. Haughey incurred two CGT liabilities, '76/'77 sale of farm, '79/'80 forfeited deposit, total $\text{€}102,330$. He has paid $\text{€}50,000$, brought to account on the 15/7/1986 and the balance of $\text{€}52,330$ excluding interest is therefore outstanding. I am not aware of any reason why the form CC 73A should not be certified for the amount of $\text{€}52,730$ and I propose to advise the Inspector Public Departments to certify the form accordingly."

Perhaps you could explain to me whether that means, as you may have confirmed yesterday, that this is some computer instruction indicating that this tax should be collected, is that right?

A. It's a form, the CC 73 was a form which was produced routinely in relation to tax arrears. The forms were sent routinely, sometimes in bulk, to districts to certify if the tax remained open for collection, if perchance an appeal had been entered, a late appeal or whatever, some adjustment was made, perhaps there had been some change in the taxpayer's circumstances or whatever, which would require a stop to be entered in relation to the tax on the notice.

Q. Is the next document the next document is a printed form, is that something to do with the CC 73A?

A. That is the CC 73, I think the A part of the CC 73

refers to a part of the form, whether it's the carbon or whatever, I mean I am not too sure at this stage. But basically that is it, that's the CC 73 that you are looking at.

Q. And it says, this is not a document that goes to the client, is it? It goes to the Collector-General?

A. It's a document produced in the Collector-General, sent to the Inspector for confirmation or otherwise and for return to the Collector-General's office.

Q. I understand. And what it contains at the top then is the assessment number, the amount of Capital Gains Tax in respect of each of the two liabilities, the total amount of Capital Gains Tax, an indication of what had been paid in respect of '79 and '80, isn't that right?

A. That's correct.

Q. Then the 1977 liability had been cancelled because the $\frac{1}{2}$ 50,000 completely disposed of that?

A. That's right.

Q. And obviously at that stage, that clearly indicates that a decision had been made that no interest would be charged whatsoever in relation to it?

A. I don't think that is actually correct. But I am not an expert in collection matters. I would think that collection could be pursued separately. Interest would not be shown on this form.

Q. I understand.

A. The fact that it's not shown here doesn't mean anything

or it doesn't connote anything as regards interest.

Q. Whether the form shows it or not, in any case, we know that it wasn't pursued?

A. We know that, yes.

Q. It's addressed to the Inspector of Taxes and it says,

"Enforcement action is about to be taken for this tax.

If in order tick box A. If subject to appeal or a

claim for adjustment, tick box B. If some items are

free for collection while others are not delete the

latter items above and input stops for them

immediately, tick box C, which is the relevant box in

this case?

A. Yes.

Q. Showing that there was a balance of the total amount due after credit was given for £1/250,000?

A. That's right.

Q. Then the next document is again another copy of your

earlier handwritten memorandum of the 30th October

1986. It contains a note at the bottom from

Mr. Pairceir, I think, is that right?

A. That's correct.

Q. Addressed to you?

A. Yes.

Q. It says, "Form CC 73 may be certified for recovery through action by the Revenue Solicitor."

A. Yes.

Q. Is it possible that we may have transposed the dates of

those two documents, looking at the date of

Mr. Pairceir's

A. No. Mr. Pairceir wrote that minute the same day as he got my minute.

Q. This is dated the 20th

A. No, sorry, the 30th.

Q. Oh I see, I am sorry, you are quite right. It's easier to see it on the overhead projector than it is on the hard copy. You are quite right.

The next memorandum, I don't think need detain us, it seems to just deal with some other administrative steps taken at the same time in or around October of 1986, is that right, unless you want to make any point?

A. In relation to the following document yes, in fact, I think the next page on my material is a memo from me to Mr. Fitzpatrick.

Q. I understand. Well I think you can confirm my view that the document on the overhead projector needn't detain us in any case. It simply refers, in any case, to some of the matters that we were talking about, the transfer of the file, together with the form CC 73 for certification. Do you see that?

A. Yes, which I referred the form back to him on the 31st October.

Q. You simply repeated what the Chairman said to you, that the balance of $i\frac{1}{2}$ 52,330 due should be certified for

recovery through action by the Revenue Solicitor.

A. That's right.

Q. Would that be normal to recommend that action be taken by the Revenue Solicitor to recover?

A. In the case of a non-trader, so to speak, a person who is not carrying on a trade, that be would be the normal.

Q. Would it be normal to simply involve the Revenue Solicitor at that time?

A. I am not quite sure what you mean by that point, but that would be I think you'd get expert evidence on the normal process in collection after that at that point. But it was quite routine to involve the Revenue Solicitor.

Q. That's what I am trying to drive at. I mean, would it not have been usual to simply write to the taxpayer and say, "you have been assessed for tax, can we have the money? Please would you write to his agent."

A. I think by the time this matter had come to the CC 73 stage, the taxpayer would have got several demands for that tax in the ordinary way and evidence to that effect will be available.

Q. I see. And that it had now reached the point where it was decided to involve the Revenue Solicitor?

A. Yes.

Q. I understand.

If you go onto the next document then, is this in your

handwriting?

A. That is all in my handwriting. The next two pages are all of my handwriting.

Q. Can you put any date on the document for me?

A. Yes, I can. It's in fact in the top right-hand corner. It hasn't come out on the photocopy, you will see 20/2, it's 20th February of 1987. The origin of the document is this.

Q. Perhaps you'd just give me that date again?

A. 20/2/87.

Q. Thank you very much. You were saying that the origin of the document

A. As I recall it, Mr. Hern, the Collector-General, phoned me and referred to the fact that the tax was still outstanding and wondered if I'd be so good as to make contact with the agents with a view to having the tax paid. I presume that I did so because of my previous contact with the agents in the case and the determination of the liability.

Q. How would he have known of your previous contact? Can you just explain that to me?

A. I am not sure about that. It may have arisen on the CC 73, I am not I have no knowledge of that. But in fact, as it was a Capital Gains Tax matter, he may have presumed that I had been dealing with it, I am not clear about that.

Q. I see. Would it have been would it not have been

usual for the Collector-General to take these matters

up himself with the agents of a taxpayer?

A. It may well have happened, but this isn't what happened in this case.

Q. I understand, yes.

A. So before phoning Mr. Haughey's agent, I considered it prudent to be clear as to what exactly the object of the exercise was. I wanted to remove any possible room for doubt as to what I was saying. After all, Mr. Haughey had been involved in a general election on the, I think the 13th February, '87. He was expected, after that election, to be elected Taoiseach I think on the 10th March subsequently. In effect, what I was doing was gunning Mr. Haughey for a substantial sum of money, I thought it prudent to be quite clear as to what I'd be saying to the agents in this matter, so before phoning Mr. Kenny, I scribbled out what you have in front of you there. Now, what you have in front of you there is obviously not exactly what I said to Mr. Kenny but it formed the basis of the phone call to Mr. Kenny. So that that is the origin of the species in relation to that.

Q. Would you prefer to read it out because it's likely that I am going to make a mistake?

A. I am not immune myself.

"I am phoning you in relation to your client. As you know, CGT liability was agreed in the sum of $\text{£}102,30$ of

which i;½50,000 was paid on 15/7/86 leaving a balance outstanding of i;½52,330, excluding interest. The due date for payment was 25/3/86. As you know the tax liability in question has been handled sensitively and as quietly as possible on our side. We have no wish to change that position. However, it is the case that despite the ordinary process of collection, demand notes having been operated in relation to the balance of i;½52,330, the balance does not to date appear to have been paid and the next stage in the collection process is enforcement through the courts which is a matter of routine and on which routine standard procedures would apply. I am phoning now because the enforcement stage is imminent - scheduled for action within the next few weeks - and seems appropriate to us that if you have not already done so, you would review the matter with your client as soon as possible.

In saying this, I am conscious of the fact that your client has been very busy for quite sometime and is not likely to be as busy after 10/3/87. Nevertheless, the tax liability and its collection cannot be suspended by us and the realities of the collection process cannot be ignored on your side.

Perhaps you would consider it therefore, as a matter of urgency, having the matter reviewed with your client so as to avoid the necessity of court proceedings in the collection of the liability. In the circumstances and

having regard to the routine enforcement schedule, I would be glad to have a positive response from you by next Thursday so that I can advise the Collector-General. Mr. Hern is personally aware of the matter. My direct line is ..."

So I phoned Mr. Kenny with that message, as I said I didn't obviously read that out to him word for word, but that was the gist of the message that I conveyed to him.

Q. And the next document I think contains some further notes relating to that telephone conversation with Mr. Kenny?

A. Indeed. It's a note from that telephone conversation. There is a reference there to Friday eve, I am not quite sure what that means, I have a vague recollection that he said that he might be seeing him or would have occasion to be, to have contact with him on Friday evening, I am not too sure about that. "Will do a letter to blank, drop it in to him" and there is quotation marks around the next phrase, "Put pen to cheque" "only one advice" underlined. "Pay" and the rest of that is "Will get back to me next week" and "hopeful." Subsequently, the same day I advised the Chairman and the Collector-General accordingly of the conversation.

Q. That's the end of the documents, Mr. Clayton, I think you have been in the witness-box for over two hours, I

suggest, subject to you, Sir, that it might be an appropriate time to rise.

CHAIRMAN: Well it's I think it's an hour and a half

MR. HEALY: Yes, of course.

A. I am happy to proceed.

CHAIRMAN: I think we should go on to one, if that's not any great imposition on you, Mr. Clayton, and I think we should have perhaps dealt with most of it by then.

Q. MR. HEALY: Now, this document was written the last document that I just showed you is written in 1987 and you had become involved in this matter in 1984?

A. In May of '84, yes.

Q. And was that the end of your involvement in it?

A. That was the end of my involvement in it up to the present time in the Capital Gains Tax matter. In fact, I had left the CGT, in fact, in October of 1986, I hadn't direct responsibility for CGT after October '86.

Q. And during the entire time that you were involved, as far as I can see, every significant action was reported to the Chairman, received his imprimatur and then steps were taken to implement it, would that be right?

A. He was aware, yes, of what was going on and he would

have approved of certain actions, yes.

Q. Would I be right in saying that it went beyond mere approval. That he, his imprimatur was sought in advance of every action, every significant action?

A. I have already got into trouble in another forum as regards the word imprimatur and I think nihil obstat might be more appropriate for some of those actions.

Q. In any case you were looking for let me put it this way, he did have a veto or had he suggested another course, you might have adopted another course?

A. Perhaps depending on what he would have suggested, but he and I were in agreement at all stages as to the steps to be taken.

Q. Right up to the very end when you advised him that you had spoken to Mr. Kenny and that Mr. Kenny was hopeful that something would be done?

A. That is so, yes, I advised him of that.

Q. So he was involved in the assessment process and in the collection process right up to the very end?

A. He was certainly aware as of February '87, what the position was.

Q. And can you indicate to me whether, in your experience, there were many other cases where the Chairman would be so intimately involved in the collection or the assessment of, or the collection of tax from a single individual taxpayer?

A. He would have a Chairman of the Revenue

Commissioners ordinarily gets involved in specific cases on a regular basis, in fact, almost on a daily basis, one might see at times from representations made to him and parliamentary questions, from issues which arise. In the matter of collection, I cannot speak, because this was the only case that I am aware of where there was a collection in which he had become aware of the facts.

Q. But what would normally bring about an involvement by the Chairman in the taxation affairs of an individual taxpayer? What would prompt him to interest himself in one particular taxpayer over another?

A. Well, I would think that the person best qualified to answer that would be the Chairman, but I would think that if a matter of sensitivity arose or if a matter of general interest came to mind or, came to light it, would be a matter which the Chairman would quite rightly get concerned and should get concerned, there could be matters which would suggest a change in the law or a change in administration of practice. In addition, in regards to sensitivity, there could be something very delicate that needed to be handled very sensitively.

Q. Into which category would you put this particular case?

A. This was a case which arose from a receivership of a company and I am not quite clear as to why Mr. Crowley brought the matter to the attention of the Chairman, I

just don't know the circumstances. But it, having reached his table, I would have expected that he would have been interested, at the least in the ultimate outcome.

Q. Can I put it this way, he wasn't just interested in the ultimate outcome, do I correctly summarise the position properly by saying that Mr. Crowley brought something to the attention of Mr. Pairceir? Mr. Pairceir canvassed the various approaches that might be taken to it. Ultimately you were asked for your view. You suggested a potential Capital Gains Tax liability might be the most profitable approach. Would that be a fair way of putting it?

A. No. In fact that would be misleading. I didn't approach it as being the most profitable approach. I approached it on the basis of it being the most appropriate course having regard to the fact that I regarded the proper course to adopt was to take the contract at face value, as a result of which a Capital Gains Tax liability arose. It wasn't a question of the most profitable course for the Revenue. That wasn't my approach to it.

Q. I misunderstood something you said to me perhaps yesterday and perhaps maybe again this morning, you thought it was the proper course to take?

A. Yes.

Q. Does that mean that you were satisfied that there was

nothing untoward, nothing potentially irregular about the arrangement whereby this money was paid over first day?

A. It was unusual, but I decided that it was proper to take the contract at face value.

Q. Could I suggest to you that looking at the documents, it wouldn't be unreasonable for me to think that the reason that Mr. Pairceir maintained a continuing interest in this matter and the reason there was a continuing sensitivity was because there was something potentially irregular about the contract?

A. I cannot say that, I have no comment on that. I think that the decision was taken in 1985 to assess the Capital Gains Tax. That was the proper course of action.

Q. And can I suggest to you that it seems to me again that a potential interpretation, as I would see it, a reasonable one, to be put on your note of the conversation that you had with Mr. Pairceir, is that you were being informed that there was something rather unusual about this contract?

A. Yes, there was something unusual about it, yes.

Q. And that at another point, you took the view that it was only an apparent contract?

A. I don't think I used the phrase "apparent contract".

Q. I think you did

A. Was it not

Q. 'apparent transaction', I beg your pardon.

A. 'apparently transaction', indeed, yes.

Q. Again suggesting, as I would feel it might be reasonable, that you had some doubts about whether this was a wholly regular transaction.

A. I wasn't 100 percent sure as to the, as to what had actually happened in the case.

Q. If you were satisfied that this was a completely regular transaction and one which simply gave rise to an obligation on your part to raise a proper assessment to Capital Gains Tax, didn't that put it into the category of any number of similar transactions?

A. No. The forfeited deposits were not and are not routine.

Q. Leaving that technicality aside, a gain had arisen?

A. A gain, yes, but an unusual gain, a very unusual gain.

Q. But a gain had arisen. Deposits are forfeited, you know, from time to time, in the course of land transactions.

A. Mm-hmm.

Q. Once the gain had been identified, it was on the basis of the evidence you have given, a perfectly ordinary and regular gain which gave rise to a perfectly proper obligation on your part to assess its Capital Gains Tax, no more than that?

A. It gave rise to a chargeable gain which was assessable, yes.

Q. In that sense it was no different to the all the other chargeable gains you were obliged to assess in that year?

A. In a very narrow sense, but it was quite different to the disposal of shares in a quoted company.

Q. This wasn't the disposal of shares in a quoted company?

A. No, it certainly wasn't, it was quite different.

Q. But it was, it gave rise to a gain which had nothing irregular about it. The fact that it arose in somewhat unusual circumstances didn't preclude it from being regular, from being perfectly proper and so on?

A. Indeed, I assessed it in accordance with the contract.

Q. Why would the Chairman of the Revenue Commissioners monitor, quite intimately, the assessment of and the collection of Capital Gains Tax on a perfectly proper ordinary and regular transaction?

A. Well, I am not quite sure that it's proper to say that he monitored the collection of it. I have no evidence to that effect. I simply advised him

Q. Mr. Clayton, I think you know what I mean.

Mr. Pairceir was involved in this matter at every critical moment, even to the extent of canvassing with you how you might approach a personal meeting with somebody, whether you would hint strongly or less strongly the view you had taken. Am I wrong in suggesting that that's an intimate involvement in the affairs of an individual taxpayer?

A. The matter had come to him, come into Revenue I would think, at his level and it would be normal for him to maintain an interest in the case thereafter.

Q. I am not going to debate the point forever, Mr. Clayton, but I am simply, in fairness to you, putting it to you that to suggest that he maintained an interest is a complete understatement.

A. Well, not at any stage could it be said that he made any significant interference in the way that I was handling the case.

Q. Could I ask you, in how many cases that you handled between 1984 and 1987 did you process memoranda to the Chairman indicating to him the form of the letters you proposed to write, the approach you proposed to adopt at meetings, how you proposed to deal with people, and where you used a code, although you were only dealing with a perfectly regular and proper assessment to Capital Gains Tax on a regular and un, how shall I put it, unsuspecting transaction?

A. Well, I disagree with you in your description of this transaction. It was unusual. We assessed it in accordance with the contract. But to come back to your basic question, how many cases? There may be one or two, but no more than that.

Q. So it was a fairly unique involvement by the Chairman?

A. It was unusual in that sense, that the number of such cases that I handled at that time would have been

relatively small.

Q. You see, what I am suggesting to you is that it was unusual because, as I believe quite properly, the Revenue Commissioners, through Mr. Pairceir and indeed I suggest through you, in 1984 took the view that there was more to this transaction than met the eye.

A. I am not sure that that would be a fair statement. Obviously there were unusual features to the contract and we didn't have the full story.

Q. Did, or do the Revenue Commissioners have an obligation, when evaluating a transaction such as this, to consider whether there is more to something than meets the eye?

A. I doubt that such an obligation exists. In the ordinary course of day to day business, we deal with many thousands, millions of transactions. We can't go questioning the basis for each of those transactions.

Q. Mr. Clayton, the most senior official in the Revenue Commissioners was handling this matter. You had plenty of time to reflect on it, you had four years to look at it. I am suggesting to you that this was a transaction that you were examining most carefully. Did you consider that there was more to it than meets the eye?

A. The possibility existed but you have in your possession correspondence from Mr. Pairceir on the issue where quite clearly the matter had been carefully considered and a decision had been taken.

Q. A decision had been taken, as I think Mr. Pairceir outlines, a decision had been taken to follow the Capital Gains Tax route?

A. I am not sure the phrase, 'a decision had been taken' was correct. It was the deposit was pursued in relation to the inherent Capital Gains Tax liability .

Q. Mr. Crowley certainly canvassed the possibility that there was more to this transaction than met the eye?

A. It would seem so from the correspondence, yes.

Q. Would you agree with me - let's approach it with the benefit of hindsight to begin with - that had that matter been canvassed by the Revenue Commissioners perhaps in parallel to the charging of Capital Gains Tax, it might have prompted further inquiries which would have led perhaps to some appreciation on the part of the Revenue of the true nature of the arrangements between Mr. Haughey and Mr. Gallagher?

A. Your question presupposes that the arrangements that are outlined in the contract were not true. I am not sure that that's a valid question.

Q. I am suggesting to you that evidence has been given here that an experienced Receiver has taken the view that the document is, effectively, a sham.

A. As I recall it, and I wasn't involved in those discussions or that decision, there were contrary views and there was also a view expressed, as you know from the copies of letters, that challenging the contract

would not have been a worthwhile exercise.

Q. That's quite true, Mr. Clayton, one might reach a decision on an administrative basis, taking all of the factors into account, one might conclude that it wouldn't be worth the candle, the gain wouldn't be worth the candle to try to recover $\frac{1}{2}$ 300,000. That needn't necessarily preclude the person who takes that decision from forming a view as to the nature of the transaction which might warrant further action, further scrutiny, is that not right?

A. I am not clear as to what you are getting at. There was a contract in front of us, which provided for the sale of land. It was a conditional contract. And looking at it, it could have been said, in modern parlance, to be a win-win situation. Mr. Gallagher, or the Gallagher Group was going to acquire 35 acres at some stage in the future. Mr. Haughey was provided with immediate cash and substantially more cash again in the future. It obviously was a benefit to both parties.

Q. And Mr. Gallagher lost his deposit if he never completed?

A. Well, I am quite sure in 1980 he didn't expect to have problems in 1982.

Q. Well, the evidence given to this Tribunal was that Mr. Gallagher wished to pay $\frac{1}{2}$ 300,000 to Mr. Haughey and that he thought this piece of paper might help him to

get something out of Mr. Haughey in return.

A. That was the quid pro quo.

Q. I am not sure that there was a reliable quid pro quo, that's how I put it to you, Mr. Clayton. I had, I think evidence from Mr. Gallagher on that issue. Do you think, Mr. Clayton, that if there were if in fact $\frac{1}{2}$ 300,000 had been paid to Mr. Haughey under an arrangement which was not a regular one, under an arrangement which was a sham, wouldn't Mr. Haughey become liable, at the very least from a taxation point of view, to Capital Acquisitions Tax, isn't that right?

A. Not necessarily.

Q. I see.

A. I am not quite clear as to what the hypothesis is you are implying there.

Q. I am just asking you to answer. I don't know the answer?

A. If, in fact, they were a straightforward gift from Mr. Gallagher's own funds to Mr. and Mrs. Haughey, a Capital Acquisitions Tax situation would have arisen, yes.

Q. If there were a gift from a company's funds to Mr. Haughey, would that make any difference?

A. If it were ultra vires, the company, yes.

Q. It again would be treated as giving rise to a liability to Capital Acquisitions Tax?

A. I am not an expert on Capital Acquisitions Tax but I'd

be surprised if it didn't.

Q. And if to consider, or to canvass the possibility that was being canvassed by Mr. Crowley, if in fact the money that changed hands, changed hands in a wholly irregular way, and not for the purpose of paying of a deposit under a contract for the sale of land, the entire $\text{€}300,000$ would have had to have been paid back to the company and if the Revenue, as a preferential, creditor, was owed more than $\text{€}300,000$, it would have scooped the pool, wouldn't it?

A. I am not sure about that position. I am not an expert on the law in that area, but your question is founded on the hypothesis that it, this was a completely irregular arrangement and, in effect, a sham document, a fraud. A fraud which, on the face of it, seems to have been involved a relatively large number of people. The document, as I mentioned yesterday, was signed by, and witnessed, signed by three people, signed by Charles Haughey, by Maureen Haughey, and by Patrick Gallagher. It would have been rather difficult to displace those three witnesses in circumstances. And in fact, as regards the, maybe some of the more unusual features of the contract, it has been suggested it was a high price of $\text{€}35,000$ per acre, that all this was a ready-up to get $\text{€}300,000$ into Mr. Haughey's hands. There are possibilities which have to be considered. The document could no doubt have been drawn up by some

legal person in a legal way and apparently more plausible in the legal sense. Instead of mentioning 35 acres at $\frac{1}{2}$ 35,000 an acre, one could have talked about 100 acres at $\frac{1}{2}$ 12,250 an acre. If it had been the intention simply to get money in Mr. Haughey's hands at short notice, there would have been a very short breakable condition, a very short term breakable condition put into the contract. All of those things could have been done if this was a total sham.

Q. The evidence is that Mr. Haughey asked Mr. Gallagher for $\frac{1}{2}$ 300,000. Mr. Gallagher agreed to pay that money. The contract is something which came into existence subsequently.

A. Within a short period of time as I understand it, yes.

Q. Yes, within a short period of time?

A. Yeah.

Q. Did you consider at all whether, if those were the facts, whether if the contract was intended to give colour to a transaction which merely involved the payment of money to Mr. Haughey, it wouldn't warrant further inquiry?

A. Sorry, would you repeat the question?

Q. Did you consider whether, if the did you consider whether the transaction was one intended merely to give colour to the payment of money to Mr. Haughey and whether in fact in those circumstances, further scrutiny mightn't be required?

A. I dare say the question of it being a ready-up was considered, but on the other hand, I was faced with three signatures, three witnessed signatures.

Q. Mm-hmm. You didn't speak to any of those witnesses?

A. No, I didn't.

Q. You didn't you never saw the contract in fact?

A. I saw the contract.

Q. A copy.

A. I saw a copy of it, yes.

Q. The person with whom the contract was supposed to have been made never acknowledged its existence, notwithstanding prompting over a lengthy period of time?

A. That's right.

Q. Wouldn't that tend to suggest that person may have been under the impression that you didn't have enough information to pin him with the contract?

A. No, I don't think so, I don't think that would follow.

Q. In your experience, do people who enter into contracts like this in a perfectly regular way simply wishing to dispose of a substantial amount of land at $\frac{1}{2}$ 35,000 an acre, do they are they reluctant to disclose the details to the Revenue Commissioners even when the Revenue Commissioners invite them to do so?

A. You'd be surprised at how reluctant people are to give us information at times and in fact it was because of that that the range of our powers widely extended last

year.

Q. But is it usual for people to be reluctant to give you information about perfectly and wholly commercially justifiable contracts? Is that usual?

A. It is not normal, no.

Q. It's most unusual I suggest, even in your experience.

A. Well, sometimes it takes time to get information.

Q. Where you don't get information, notwithstanding prompting over a period of time, does that not cause you to form some impression of the taxpayer?

A. Well, it certainly does. An impression of non-cooperation, major non-cooperation, but not necessarily anything else.

Q. Could I ask you whether it wouldn't have been appropriate to ally that impression with the unusual nature of the contract?

A. The contract was unusual, but as I have said, we decided to take it at face value for the reason I have indicated, to combine all those factors together to launch a major inquiry, I think, would run into a brick wall very rapidly.

Q. What do you mean by a major inquiry?

A. A major investigation.

Q. A major investigation into who?

A. Into Mr. Haughey.

Q. Yes. Would that not have been appropriate?

A. Well, I wasn't responsible for Mr. Haughey's I was

dealing with the Capital Gains Tax position only up to '87, but

Q. That's of course correct.

A. I would think that, certainly on the Capital Gains Tax side and the situation on the income tax side wasn't much better, our powers were very, very limited at that time.

Q. What sort of criteria prompted investigations of the kind you mentioned or prompted decisions to make investigations of the kind you mentioned, major investigations, or even minor ones?

A. Well, I am not an expert on the position pre '87. As you know, since the late eighties we carry out audits but the I was seeking from general knowledge the factors which would have applied in the early 1980s would have been the knowledge or information which had come into us as regards assets which we weren't previously aware of, undisclosed income, undisclosed assets, those would be the two broad general terms that would, that I would use to describe the foundation for an inquiry.

Q. Would I be right in thinking and this impression I have is purely an anecdotal one, that whether an investigation would actually be put in train or not I don't know, but certainly would I be right in thinking that an investigation or the need for one would be considered based merely on suspicion, rumour, allied to

some concrete facts?

A. The concrete facts that you are talking about would have to be

Q. $\frac{1}{2}$ 300,000 is a very concrete fact.

A. Mr. Haughey was in a position of, owned very substantial assets. He had very substantial borrowing power. He had been involved over the years from way back in the 1950s in land and property transactions.

Q. Well, we'll come to that later, I am not sure what knowledge the Revenue Commissioners had of that unless you have a lot of knowledge of it?

A. There was knowledge. There was general knowledge which most people in the country had or most adults in the country had of property transactions involving Mr. Haughey over the years.

Q. The Revenue Commissioners didn't have a very complete file of those, is that right?

A. They didn't have, you might say, a unified file in relation to Mr. Haughey.

Q. Well, I don't want to go down the road of particulars of delivered forms at this stage, but am I right in thinking that prior to self-assessment, the delivery of the particulars delivered of a property transaction is what often sparked inquiries, even routine inquiries in the Revenue Commissioners, concerning how a taxpayer acquired the resources to enable him to purchase an asset, isn't that right?

A. It happened, yes.

Q. And you are aware that the Tribunal has put in train inquiries with the Revenue Commissioners to ascertain whether any such routine inquiries were ever put in train on foot of particulars of delivered forms in Mr. Haughey's case?

A. I am aware of that.

Q. Am I right in thinking that to date there wouldn't appear to be a very complete documentary trail of any such routine inquiries having been pursued?

A. Well, certainly the train is not complete.

Q. Well, I don't think am I right in thinking, and again this is based on my memory of recent documentation, it may have to await further elicitation at the Tribunal, that there was no, there were no routine inquiries of Mr. Haughey to ascertain how he had obtained the resources to purchase his various properties?

A. He was involved with property transactions from the late 1950s onward as I understand it. There were purchases and sales of property sometimes for quite large sums.

Q. During that time he had no income disclosed to you which would have been capable of supporting any level of borrowing, would that be right?

A. He had his financial assets.

Q. But did he have any income capable of supporting any

level of borrowing, finance and borrowing?

A. Financing large borrowing, no, obviously not but on the other hand, he had very substantial assets.

Q. All these assets were mainly his house and lands in Dublin, Inishvickillane, Sligo, and Wexford, isn't that right, and Rath Stud?

A. Rath Stud up to '87, yes.

Q. And apart from Rath Stud, there was very little disposals from 1977 onwards?

A. You have, I think, yesterday morning looked at the farm accounts for the period up to '79 and those farm accounts show very substantial borrowings, presumably no doubt with reference to assets. He had a substantial borrowing power.

Q. I think you'd know as much about banking as anyone here, Mr. Clayton, other than a banker

A. I doubt that, but go on

Q. I think you'd know that assets aren't enough to get money from a bank. You must have a capacity to finance your borrowing, isn't that right?

A. No, not, necessarily.

Q. I see.

A. I demur about my knowledge of a banking as anybody else here, that would not

Q. As much as anyone here.

A. I would also have doubts about that, but I would think that if borrowings are properly secured, that a banker

shouldn't be too worried about lack of income.

Q. You may think that, you may think that, Mr. Clayton, and I may have thought that until I started this work, but it doesn't seem to be the case from what I have learned from listening to banking witnesses up here.

A. Right.

Q. We may have to recall you to deal with some other aspects of this matter after Mr. Pairceir's evidence, Mr. Clayton.

CHAIRMAN: Well, I will just give the opportunity to Mr. Allen and Mr. Connolly to raise any matters that might transpire.

MR. ALLEN: I have no questions.

MR. CONNOLLY: I have a few matters, Sir.

CHAIRMAN: Yes, I think it's probably better to deal

MR. CONNOLLY: I will deal with it now, I won't be very long.

CHAIRMAN: I think it's nearly satisfactory in ease of Mr. Clayton and everybody, to conclude it now Mr. Connolly.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY:

Q. MR. CONNOLLY: Mr. Clayton, I just want to ask you a

few questions. Firstly, in relation to the monies that were paid in satisfaction of the CGT assessments raised against Mr. Haughey on the Rath and Gallagher gains, was it appropriate or normal at that time to investigate the source of the monies by which the tax liability was paid?

A. No. That would not be normal at all. In fact, the Inspector who would determine the liability would not ordinarily know how the liability would have been satisfied ultimately to the Collector-General. I am talking about an ordinary run-of-the-mill case. I am not talking about audits or investigations where we don't close off the audit or investigation until we actually get the money paid.

Q. But as it happens, the money was paid in cheques under this title of Haughey Boland who at that stage, as far as the Revenue were concerned, were reputable accountants. There was no reason to query it, no reason to query anything in relation to payment at that time?

A. No, there wasn't, no. Mr. Haughey, of course, had got a sum of $\text{€}300,000$ in cash and he was discharging liability of less than one third of that.

Q. Well, on face value then, there was available to Mr. Haughey a sum of $\text{€}300,000$, so far as the Revenue was concerned, there were ample resources to meet this payment without querying in any level of suspicion what

was the basis on which the money was being paid to the Revenue?

A. Well, the arithmetic is relatively simple. The chronology mightn't be quite straight but the arithmetic was there.

Q. Well, in relation to the lapse of time which appears to have been highlighted by the Tribunal between the actual raising of the assessment and the, or the accruing of the gain for that matter and the actual payment. Compared to other cases, in the capital tax liability side at that stage, was there anything remiss as far as the Revenue treatment of Mr. Haughey's affairs were concerned?

A. Certainly not insofar as the matter which I would be expert, which is the Capital Gains Tax. The fact of the matter is I considered it appropriate and I am absolutely satisfied as to the correctness of my decision that tax could not have been assessed until January of '86 and effectively the matter was free for collection four months after that date which was relatively fast.

Q. You were asked by Mr. Healy in relation to the Gallagher documentation and to look back at it with an element of hindsight. In looking back with hindsight which you have been asked to do by Mr. Healy, you also have to take into account the fact that there was strong legal advice at the time that there was little

prospect of success in the pursuit of setting aside

this particular transaction?

A. That is so. I have seen letters to that effect, and those letters are in the hands of the Tribunal. The legal advice was quite clear, or the legal opinion was quite clear on that matter.

Q. At that stage, given that Mr. Haughey was a PAYE taxpayer, there were relatively little powers available to the Revenue in relation to investigating the matter further should they think it was appropriate to do so compared to the present situation?

A. Indeed. The position in the mid-eighties - in fact it's shocking to look back, people presume, might be forgiven to presume that we then, we then at that stage had powers which we have now. We had, in fact, very little powers, for example, the we had what was called Section 1.74 power, the right to demand submissions of accounts and returns, but we didn't have the didn't have very much power to go looking for bank accounts or to demand answers to specific questions. That power was given to us last year.

Q. Well, you had you have had accounts and returns submitted from Haughey Boland. You were then left with whatever powers were available in pursuit of bank accounts and the extent of the powers available of the Revenue at that stage were under Section 18 powers where you could go to the High Court to seek an Order

to have access to an identified bank account, provided you knew where it was and it was in the name of the taxpayer, on showing reasonable and probable cause to the High Court that there had been non-compliance with statutory obligations on the part of the taxpayer, isn't that correct?

A. That is correct, yes.

Q. Now, looking at the information which you had back then, there was certainly no indications of any fraud or deceit on the part of Mr. and Mrs. Haughey or Mr. Gallagher which would have justified any further steps being taken by the Revenue along the lines being suggested by the Tribunal?

A. There was no evidence to that effect at all.

Q. Thanks very much, Mr. Clayton.

CHAIRMAN: Mr. Clayton, I note many of the individual points that you have made and which will of course carry weight such as your view of the general regime on interest and penalties in that period and the need for care in the particular case. Can I suggest to you though, that if one looks at the totality of the case solely from the CGT standpoint that was your portfolio, it was the case, was it not, that it was apparent relatively soon after you took over these two files, that there was a minimum indebtedness of about $\text{€}102,000$.

A. Figures of that order

CHAIRMAN: Even taking the conservative view of the Gallagher matter.

A. That's right, yes.

CHAIRMAN: And insofar as these were reasonably sizable and in strictly temporal terms reasonably stale liabilities, would you view the totality of pauses in the overall gamut of procedures in assessment, possible enforcement, possible penalties, would you regard it in its totality as being fairly characteristic of similar cases in the mid-1980s.

A. Yes, there would have been obstruction, I would say, from a certain category of taxpayer, non-cooperation from a certain category of taxpayer. There was non-cooperation from Mr. Haughey or his agents in this regard. I wouldn't have regarded that as being unique at all. There are many cases, not just the Income Tax side, but on the Capital Gains Tax side where one would have got no satisfactory responses to requests for information or whatever and the only power that inspectors had in those terms was to make estimated assessments to force an issue, to force the taxpayer to make a return of Income or Capital Gains. That was about the only power that we had. We didn't have powers in relation to banking which we now have, the powers to demand information which we now have.

CHAIRMAN: It was about, what was it, some three and three quarter years after you got the file that the balance was paid off? Of course I know you were not in connection with the latter period of seeking money.

A. That is correct. From May of '84, I first heard of that but to repeat, it wasn't I didn't consider it appropriate to assess that Gallagher deposit until January of '86. The law did not provide, in my opinion, for that assessment until January of '86. If, in fact, I had assessed earlier than '86, I think we might have run into legal argument and went all the way to the High Court or Supreme Court, would have challenged the legal basis for that assessment. I decided to wait and I think the waiting was justified and the matter was closed off within about four months.

CHAIRMAN: Very good, Mr. Clayton. As Mr. Healy has indicated, it may be necessary to ask you for your assistance on some remaining aspects, but for the time being, thank you very much

MR. ALLEN: Chairman, sorry, there is just one very brief matter arising from a question that you put to Mr. Clayton and an answer that he gave that I feel I should very briefly deal with it if I may.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. ALLEN:

Q. MR. ALLEN: Mr. Clayton, in response to a question put

to you by the Chairman, you spoke about taxpayers at the period in time which has been the subject of discussions this morning who were obstructionist or who obstructed the Revenue in their inquiries, isn't that correct?

A. In the way of not replying to communications and so on.

Q. Non-cooperation etc., and I understood you to go on to say that in the case of Mr. Haughey, there was definitely non-cooperation on his part. But you went on and added on either his part or on the part of his agents.

A. I am not sure what the correct position is in that regard. The fact of the matter is that I had been writing to Mr. Haughey's agents from mid-1984 and not getting a response from them.

Q. Yes, but the ability of an agent you did, I suggest, get a

MR. HEALY: If I think I could interject in ease of My Friend, Mr. Allen and of the witness. Neither, of course, are aware that there is a transcript showing that the accountants were endeavouring to get information from Mr. Haughey during the relevant period and that evidence will be given at a later point.

MR. ALLEN: I am perfectly satisfied with that Chairman. You will appreciate that I am concerned about what might be afoot from what was heard today.

A. You appreciate the word, I used the word 'or' without any certainty as to who was responsible for the lack of response.

Q. You don't know, Mr. Clayton, isn't that correct?

A. I have no evidence to that effect.

Q. I have an anxiety obviously

CHAIRMAN: There will be an opportunity to deal with that when Mr. Kenny testifies, Mr. Allen. Very good.

Thank you. We will resume at twenty past two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.THE TRIBUNAL RESUMED AS FOLLOWS AT 2.20PM:

CHAIRMAN: Sorry for any intended discourtesy to anyone present in starting a few minutes late. We had some urgent matters to be dealt with over a Tribunal lunch time meeting. Mr. Coughlan?

MR. COUGHLAN: Mr. Seamus Pairceir.

SEAMUS PAIRCEIR, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Thank you, Mr. Pairceir. I think you have furnished the Tribunal, for its assistance, with three memoranda of proposed evidence, isn't that correct?

A. Yes, that is correct.

Q. And those are in response to various queries which the

Tribunal directed towards you and asked you to

address

A. Correct.

Q. in evidence? And what I intend to do,

Mr. Pairceir, if you have those with you in the

witness-box and any bundles of documents that may be

necessary, but if you need anything, we'll give it to

you, I intend leading you through the queries and your

responses in the first instance and then perhaps come

back and ask some questions, if that's all right with

you?

A. I understand, thank you very much.

Q. Now, Mr. Pairceir, first of all, you are the former

Chairman of the Revenue Commissioners, isn't that

correct?

A. Yes, 13 years ago, I am retired 13 years.

Q. And what period did your Chairmanship span?

A. I was appointed Chairman in December 1983 and I retired

in September 1987.

Q. And prior to that, was your career in Revenue?

A. Almost 40 years.

Q. Almost 40 years in Revenue?

A. Yes.

Q. Now, I think that the Tribunal, first of all, requested

that you provide the Tribunal with information and I am

dealing with the capital tax aspects of matters, I

think you understand that. In relation to the Capital

Gains Tax on the disposal of Rath Stud, in the first instance, I think that was the first query, is that correct?

A. Correct.

Q. And I think the first query was that you were asked for the circumstances in which the matter of Mr. Haughey's Capital Gains Tax liability on the disposal of Rath Stud came to your attention, including the approximate time the person by whom it was brought to your attention and the purpose for which it was brought to your attention. I think that was the first query, isn't that correct?

Second query, because you respond to both together was, you were asked for your involvement and/or knowledge, direct or indirect of these matters prior to being furnished with a memorandum dated 18th June 1985 which is prepared by Mr. Christopher Clayton.

A. Yes.

Q. Now, I'll deal with that memorandum in due course, but I think your response in the first instance is that Rath Stud was brought to your attention because of your interest in the follow-up to the Gallagher/Haughey document.

A. That is right.

Q. And I think you have informed the Tribunal, it seems to have been first mentioned in August 1984, and it was

also dealt with in the memorandum of the 18th June

1985, that's Mr. Clayton's memorandum?

A. Yes, that is correct.

Q. Now, I think you were then asked by the Tribunal whether the memorandum of the 18th June 1985, that is Mr. Clayton's memorandum, was prepared at your request, isn't that correct?

A. Yes.

Q. That was the query that was raised and your response is that you did not ask Mr. Clayton to prepare the memorandum?

A. That is correct.

Q. I think the next two queries we'll deal with together because again you answered both in one paragraph. I think you were asked for your involvement, direct or indirect, in the exercise by the Revenue Commissioners of the discretion to utilise a valuation method based on the value of Rath Stud as of the 6th April 1974 and I think you were also asked insofar as you were involved in or had knowledge of the exercise of such a discretion, details of all factors which were considered or which impinged upon the exercise of such a discretion by the Revenue Commissioners?

A. That is correct.

Q. And I think your response is that the valuation method is a technical matter which was handled by the inspector dealing with the matter. You did not

concern yourself at all with computational matters

which were the responsibility of the inspectors?

A. Yes, that is so.

Q. I think yesterday Mr. Clayton gave evidence of the technical methods involved in the various computations and various changes in the law which had occurred, or in the statutory law which had occurred over the period.

Now, I think you were then asked the circumstances in which interest does not appear to have been levied or collected on the Capital Gains Tax due and your response is that you do not know why interest was not charged.

A. That is correct.

Q. I'll come back to deal with that again in due course.

I think Mr. Clayton spoke this morning about the Collector-General's side of the affairs and the Commissioners' side. I think then you were asked details of all of your involvement regarding this aspect of Mr. Haughey's liability including details of all dealings or discussions which you had with any person regarding this matter, and your response is that: "My contact with this aspect of the case is set out in sequence in the Gallagher schedule. When the Gallagher matter was referred to me, the papers frequently included reference to the Rath Stud."

I think it would be better if we proceeded now to the second memorandum and I'll come back to deal with the various

A. There is one remaining query on the first schedule.

Q. On the first schedule, I beg your pardon?

A. About whether in the course it was your practice to become involved in individual cases?

Q. Oh yes. I am sorry, Mr. Pairceir, I seem to not have that at the moment, but it's something we can come back to in the general discussion, if that is all right.

A. Okay.

Q. Now, I think it would follow if we went to the Gallagher/Haughey document memorandum now and we will see how the Rath Stud information came into your domain in the course of that, and I think that's at divider

13. I think we'll go to divider 15 first because divider 13 deals with the collection aspect of the matter. Divider 15, Sir.

Now, I think you were requested by the Tribunal for the following information in response to queries raised by the Tribunal in relation to the Gallagher Group receivership, Mr. Pairceir. And the first query raised with you was you were requested for a narrative account of all of your dealings with the Receiver with the Gallagher Group of companies in connection with the validity of the contract dated January 1980 and made between the Gallagher Group and Mr. Charles Haughey and

Mrs. Maureen Haughey. And I think in response to that you have informed the Tribunal you, in your narrative account, follow the sequence in the schedule to Mr. Davis's letter of the 7th December 2000, which is seeking this particular information.

And in response to that number 1 request you say: "My dealings with the Receiver of the Gallagher Group consisted in one meeting on the 10th May 1984 and a letter I wrote to him on the 14th May 1984.

Mr. Lawrence Crowley, of course who the Receiver, was accompanied by Mr. Raymond O'Neill, senior counsel, at the meeting. An official from the office of the Collector-General was with me. The discussion centred round the letter of the 3rd May 1984 from Mr. James O'Dwyer of Arthur Cox & Co., to Mr. Crowley with regard to the arrangements or to the agreement for sale."

And I think you note in your narrative, you note that this letter is already in evidence, and we'll come to deal with it in a moment.

You continue: "Following some discussion with Mr. Gallagher who had not been of any assistance to him, Mr. Crowley had sought the advice of Mr. O'Dwyer as to how it might be established whether or not the document was a bona fide agreement. Mr. O'Dwyer had consulted Mr. Raymond O'Neill, senior counsel, and they had formed the opinion summarised in the paragraphs

numbered 1 to 4 on page 2 of the letter of the 3rd May 1984. Their main conclusion as set out in Mr. O'Dwyer's letter was that since the Receiver did not have recourse to the provisions of Section 245 of the Companies Act, 1963 which applies only after the appointment of a provisional liquidator or the making of a winding-up Order, the difficulty might be discussed with the Revenue. The letter goes on: 'Accordingly, we would recommend that you should advise the Revenue Commissioners of the present position and your inability to pursue the matter further for the reasons outlined. It will then be a matter for the Revenue Commissioners on the basis of the information which you have made available to them to decide whether or not they wish to apply for the appointment of a liquidator to the Gallagher Group Limited.'" end of the quote from Mr. O'Dwyer's letter. You continue in your narrative.

"I wrote to Mr. Crowley on the 14th May 1984 which set out in full my reasons for deciding as I did." The full text of the letter, which is already on the record with the Tribunal, should be taken as being quoted in full in this report and I'll deal with it in due course with you, Mr. Pairceir.

"The letter sets out my reasons for deciding that the Revenue would not apply for the appointment of a

liquidator. The letter commented by way of explanation on paragraph paragraphs 2 to 4 in Mr. O'Dwyer's letter.

"2" this is a quote from Mr. O'Dwyer's letter

"There must be a real possibility that Mr. Gallagher's stated reason for entering into an agreement of this kind would not be disproved on examination by the Court.

"3. Even if the bona fides of the agreement were successfully challenged and proceedings were subsequently instituted against the vendor for the recovery of the funds, there is no guarantee that such proceedings would result in the recovery of the deposit paid.

"4. The costs associated with proceeds of this kind are likely to be substantial." You then continue in your narrative.

"I did not have any further dealings with the Receiver of the Gallagher Group. I referred the papers to the superintending Inspector of Taxes where the position of the vendors under the agreement was taken up."

I think the second query which was raised in respect of this particular meeting of the Receiver or the Gallagher/Haughey document, if we call it that, you

were asked whether other legal advice was taken by you regarding this matter and if so from whom and the details of the advice given. If not, the reason that it was not considered necessary to take such advice.

I think you have responded: "I did not seek legal advice. The question for decision was an administrative/management one. As preferential creditor, the Revenue could apply to have a liquidator appointed (a) as to the legal aspects of Mr. O'Dwyer's letter they were concerned with the provisions of Section 245 of the 1963 Act and are reasonably straightforward. Alternatively stated, it was not my business to seek legal opinion as to whether the Receiver of the Gallagher Group was being well-advised. The legal advice given to the Receiver did not say that the document was of no effect or was a sham. If that had been the advice, the Receiver would not have come to the Revenue, it would have been a matter for the courts. Neither did the legal advice suggest that there was any question of fraud. That would have been a matter for the law enforcement agencies. The suggestion was that, if a liquidator was appointed, the directors could be examined with a view to establishing the true facts surrounding the agreement. The Receiver was not asking me to decide the bona fides of the agreement. As can be seen in my letter of the 14th May 1984, my decision was made by reference to my

responsibility under the care and management provisions in respect of the assessment and collection of the taxes and as a counting officer being answerable for the expenditure of voted monies."

I think the third query then that was raised with you was the identities of all persons from whom

A. May I interrupt you?

Q. Of course.

A. I have read the submission made by Mr. Maher, where he says he was not present at the meeting. I would accept that.

Q. I don't think anything much turns on it.

A. Nothing at all, but at the same time, it's sixteen years ago, I thought he was

Q. I think you were asked for the identities of persons with whom you consulted in connection with this issue and the nature of such consultation, and I think you go on to say that you believed that but you are not correct in that that you accept Mr. Maher's position in relation to it?

A. Yes.

Q. Now, I think at paragraph number 4, again all matters which you considered or which impinged upon your decision to refrain from appointing a liquidator to challenge the validity of the contract. I think you say "see 1 above. " That relates to the advice which

was being furnished to the Receiver, the responsibilities, as you saw it, of a Receiver in contradistinction to your own responsibilities, would that be

A. Well, the two letters, really.

Q. Then you were asked for details of all dealings which you had either directly or indirectly with any other person whether or not such person was an official of the Revenue Commissioners regarding the issue. And you say you had no contacts or dealings directly or indirectly.

Then you were asked about whether any further actions taken within the Revenue Commissioners regarding the contract and then you say: "See your letter of the 7th December 2000.

A. That was to Mr. Davis.

Q. That was to Mr. Davis, yes. And I think perhaps, Mr. Pairceir, if we

A. By the way, that's on the Rath Stud papers.

Q. It is. I think if we perhaps just pause for a moment here before I go into the collection aspect of the Capital Gains Tax and how that was dealt with ultimately.

From evidence which has been given to the Tribunal by various officials from the Revenue Commissioners so far, Mr. Donnelly was the inspector dealing with the

farm accounts which related to Mr. Haughey's business as a farmer, I think. And he gave evidence to the Tribunal of receiving a communication and a set of accounts from Mr. Haughey's agents, I think, in 1981 which, first of all, indicated that there may have been a gain in relation to the disposal of Rath Stud back in '74/'77. I think that is the factual situation which existed then.

I take it as of that time, you had no knowledge or involvement in anything to do with Mr. Haughey's tax affairs?

A. That is true.

Q. And in the normal course of the Revenue's business, the various inspectors would deal with their responsibilities and if matters needed reporting to a higher official, that would be done in the due course of the Revenue's business?

A. Yes.

Q. Likewise, the inspectors would be in a position to take whatever advice was necessary to enable them to carry out their responsibilities lawfully?

A. Yes.

Q. Mr. Donnelly sought certain information from Mr. Haughey's agents relevant to the question of capital gains around the time he was first made aware of it. He sought he had a meeting with Mr. Haughey's agent where the question of the exercise

of a discretion in the computation of the capital gains arose and he sought from the agent at that stage, a valuation of the property as of 1974 and he also sought sight of the contract for the sale of the land in '76/'77.

Now, I think you are aware of that now, but you had no knowledge of it at the time Mr. Donnely was dealing with the matter, would that be correct?

A. That is correct. It would be true to say that I did not interest myself at all in that matter until I was summoned to this Tribunal.

Q. I see. You did see reference to it because it was drawn into other matters Mr. Clayton was dealing with in the course of dealing with the Haughey/Gallagher document

A. Which was the one that I became interested in.

Q. The one that you had an involvement in, if I could describe it that way.

Now, your first involvement in relation to the matter arose when Mr. Crowley made contact with you, is that correct?

A. Yes.

Q. And requested a meeting with you, is that correct?

A. Yes.

Q. And he attended a meeting accompanied by Mr. Raymond O'Neill, senior counsel, isn't that correct?

A. Yes.

Q. Mr. O' Neill, the late Mr. O' Neill, was a man who was known to you and perhaps a man who was held or was due respect in relation to legal advice on Revenue matters also, isn't that correct?

A. And very highly and frequently acted for the Revenue.

Q. And advised the Revenue?

A. And wasf well-known to us.

Q. Mr. Crowley's concern was that as a Receiver he could not obtain certain information and that information could only have been obtained if a liquidator was appointed and a certain provision of the Companies Act was invoked, isn't that correct?

A. That was the advice he had received.

Q. Now, as a result of your meeting with Mr. Crowley and Mr. O' Neill and being furnished with a copy of a letter or a letter from Mr. Crowley's solicitor which contained certain legal advice, you made a certain administrative or management decision, is that correct?

A. Yes.

Q. And that administrative/management decision related to ascertaining whether the Revenue could obtain tax in respect of a capital gain on the transaction, is that correct?

A. No.

Q. Well, what decision was made by you so?

A. Until such time as I reported this matter to the

superintending Inspector of Taxes, I was concerned with the taxation affairs of the Gallagher Group. The Revenue were preferential creditor, the discussion that I had with Mr. Raymond O'Neill and Mr. Lawrence Crowley had nothing whatever to do with the tax affairs of the vendors. It had to do with whether, by applying to have a liquidator, to have the company wound up, whether there was a chance that it could be established that this $\frac{1}{2}$ 300,000 was an asset in the liquidation, the presumed liquidation. That was what we were discussing. The idea of collecting anybody's tax was way down the road. And this was the import of the joint consultation which had taken place between the late Mr. Raymond O'Neill and Mr. James O'Dwyer and which is set out in the letter and which I have quoted and I won't go into all of that again.

So that what we were discussing was whether, in the light of the responsibilities which he had to expend the monies on the vote in accordance with the ambit of the vote and with discretion, and whether my obligations under the care and management to collect the monies which were due by the Gallaghers would encourage me, permit me or allow me to go down this rather hazardous road in the faint hope that I might get some money out of it from the Gallaghers.

Q. Well, let's take that slowly, Mr. Pairceir, now. Of

course, Mr. Crowley and Mr. O' Neill were not coming to discuss with you the tax affairs of Mr. Haughey?

A. Nor could I discuss them with them.

Q. Of course not. Of course. But what

Mr. Crowley there is no need for us to speculate in

that area. I don't think it ever arose, from the

Tribunal's understanding of matters and certainly not

from your understanding of matters. But what

Mr. Crowley and Mr. O' Neill came to discuss with you

was the fact that Mr. Crowley was aware, from his

position as Receiver, that $\text{€}1\frac{1}{2}$ 300,000 had left the

Gallagher Group and had gone to Mr. and Mrs. Haughey.

That was a fact, isn't that correct?

A. In 1980.

Q. In 1980. And the consideration there was that of

course for the Revenue as a preferential creditor in

respect of Gallagher Group, that there was a prospect

of recovering that $\text{€}1\frac{1}{2}$ 300,000 from the vendor which would

be for the benefit of the Gallagher Group and

ultimately for the benefit of the Revenue as

preferential creditor, that was what the discussion was

about, isn't that correct?

A. Yes, and the nature of that prospect.

Q. And the nature of that prospect.

So, is it your recollection of the discussion, because

I'll deal with the correspondence now and the evidence

which Mr. Crowley gave, was that that $\text{€}1\frac{1}{2}$ 300,000 was to

be recoverable from the vendors?

A. Through the mechanism

Q. Yes

A. The $\frac{1}{2}$ 300,000 was to be in this scenario which has been put to be, was that the liquidator had some limited prospect of recovering the $\frac{1}{2}$ 300,000 which would become an asset in the liquidation. That's what we discussed.

Q. And what Mr. Crowley was seeking or inquiring was whether the Revenue would fund an application and an appointment of a liquidator, isn't that really what he was seeking?

A. That's another way of putting it, yes, yeah.

Q. To enable, perhaps he would have been the liquidator or a liquidator to embark upon the necessary liquidation to see if it could be recovered from the vendors?

A. The issue was under Section 245 as it then was, that the director and other persons involved could be examined.

Q. Could be examined?

A. Yes.

Q. To try and ascertain the true facts?

A. Yes.

Q. But with the ultimate aim of recovering the $\frac{1}{2}$ 300,000 from the vendors. That was the view that was being expressed, isn't that correct?

A. Yes.

Q. Now, of course Mr. Crowley and Mr. O' Neill would have discussed the prospects in relation to such a matter also with you, isn't that correct?

A. Well, I have to admit that I have no recollection whatsoever of the discussion.

Q. It seems likely that there must have been some discussion?

A. But I have surmised that the discussion was more or less in the terms of James O'Dwyer's letter.

Q. Very good. And if we just look at that letter for a moment. Do you have a hard copy of it?

A. I have, yes.

Q. It's a letter dated 3rd May 1984, isn't that correct?

A. Yes.

Q. And it's addressed to Mr. Crowley. And it reads:

"Dear Mr. Crowley, we refer to your meeting with the Revenue Commissioners and subsequent meeting with Mr. Patrick Gallagher in relation to this matter.

"We understand from your meeting with Mr. Gallagher that he is steadfast in maintaining that the agreement in question was a bona fide commercial transaction.

Elaborating further, he stated that the belief at the time was that planning permission would be forthcoming during the period within which the balance of the purchase monies was to be provided and that this could

result in a profitable transaction for the Gallagher Group. His explanation for the circumstances in which the contract was prepared without reference to solicitors, was to preserve the anonymity of the vendors. He also explained that the provision at clause 3 of the agreement relating to an alternative stud farm was inserted to assist in some unspecified way, the vendor's tax position. In addition, the vendor's daughter was due to get married at the time and the vendor wished to provide her with a home.

"It is clear from the meeting with Mr. Gallagher that he would be of no assistance to you whatsoever in your efforts to establish that this was not a bona fide agreement. Accordingly, you have asked us to consider, in conjunction with Raymond O'Neill, senior counsel, what further steps you, as Receiver, might take in relation to this matter. Our conclusions are as follows:

"1. To anticipate the true facts surrounding the agreement, it will be necessary to have the directors of Gallagher Group Limited examined by the Court pursuant to Section 245 of the Companies Act, 1963. However, this could only be done if a provisional liquidator is appointed or a winding-up Order is made in relation to the company.

"2. Having regard to Mr. Gallagher's business style

prior to the collapse of the Gallagher Group, there must be a real possibility that his stated reasons for entering into an agreement of this kind would not be disproved on examination by the Court.

"3. Even if the bona fides of the agreement was successfully challenged, and proceedings were subsequently instituted against the vendors for recovery of the funds, there is no guarantee that such proceedings would result in recovery of the deposit paid.

"4. The costs associated with proceedings of this kind are likely to be substantial.

"In the light of the foregoing, we are of the opinion that if this matter is to be pursued further, it should be done by a liquidator who can apply to have the directors examined and not the Receiver appointed by the debenture holders who enjoy no such powers.

"Accordingly, we would recommend that you advise the Revenue Commissioners, as the preferential creditor who is the only party likely to benefit in the event that this matter is pursued successfully of the present position, and your inability to follow the matter further for the reasons outlined.

"It will then be a matter for the Revenue Commissioners

on the basis of the information you have made available to them ... Gallagher Group Limited.

"We have consulted with Mr. Raymond O'Neill SC on the contents of this letter and he concurs with our view."

You surmised that that is the nature of the conversation of the meeting you had with Mr. Crowley and Mr. O' Neill?

A. Yes, I would think so.

Q. Now, I think you were perhaps familiar at the meeting with the contents of the purported agreement, the contract for the sale of land?

A. At the meeting, yes, for the first time.

Q. Did you form any view about it yourself at that meeting?

A. No.

Q. At any subsequent stage, did you form any view about it?

A. I would distinguish between a view that I formed of it for the purposes of an action to be taken and a view that I personally take about it which did not enter into the question.

I was not being asked my official position in relation to this discussion, as is clear from the correspondence, was not to take a view of the document, but to take a view of the chances of establishing whether or not it was a bona fide agreement through the

mechanism of Section 245. Nobody asked me to adjudicate on nor was it my function to adjudicate.

It is the function of the Court to adjudicate on the document, it's certainly not the function of the Revenue Commissioners, but I might have a private view of it, that's a different matter, insofar as we have gone through that several times.

Q. Well, now, Mr. Pairceir, could we take both of those steps separately so?

A. Sure.

Q. Are you saying that you can draw a distinction about a personal view that you may have about the document and that you can put that into a separate compartment and say that I have, in effect, no jurisdictional view in relation to the document? Is that what you are saying?

A. Would I say that I did that frequently and continue to do it frequently? There is a big difference between the way one might react to a situation and the way one is obliged to deal with that situation.

Q. Absolutely, Mr. Pairceir. Well, let's just did you form, in the first instance, a personal view about this document?

A. The only view that I formed of it was that it didn't look like agreements, for all the reasons that have been mentioned. At the same time, I would be aware that when parties are in litigation or when there is

claims of right, etc., that very skimpy documents are admitted.

Q. Well,

A. So that I would regard I didn't think long or seriously about the nature of the document. I thought long and very seriously about the nature of my responsibility in relation to what I should do about the tax that is due by the Gallagher Group.

Q. And if there was a prospect of you recovering monies from the Gallagher Group and if $\frac{1}{2}$ 300,000 could be added to the fund, that is a matter that you, as the Chairman of the Revenue Commissioners, would have to give consideration to, isn't that right?

A. Absolutely.

Q. So you had to give consideration then, leaving aside your personal view of matters, you had to give consideration then, as the Chairman of the Revenue Commissioners, as to whether there was some prospect of recovering this $\frac{1}{2}$ 300,000 to add to whatever funds there may have been in the Gallagher Group which would enable the Revenue, as the preferential creditor, to obtain the funds, isn't that correct?

A. That is right.

Q. Did you do that?

A. Yes.

Q. So you then had to give consideration as to whether the true facts surrounding this agreement could be

established, isn't that correct, or did you?

A. Well, that's at one move, yes.

Q. Did you?

A. What?

Q. Did you? Did you give consideration? And I am talking about a jurisdictional consideration or an official consideration to whether the true facts surrounding this agreement should be established?

A. I gave consideration to whether taking a step, the liquidation step, whether there was a prospect by the liquidator when he was he or she was appointed, applying to the Court or whoever, under Section 245, whether or not they might be successful in recovering the $\frac{1}{2}$ 300,000.

Q. Well, before you could get to that position, might I suggest to you, and I can understand that of course, because everybody embarking upon litigation has to weigh up and balance the likely prospect of success, of course. But before one arrives at a position of even considering that, the prospect of success, one has to, first of all, inform one's self that as Mr. O'Dwyer and Mr. Raymond O'Neill had expressed in their letter, that to establish the true facts surrounding the agreement, it would be necessary to have the directors of the Gallagher Group or other persons examined pursuant to Section 245 of the Companies Act, isn't that correct?

A. That was the best prospect of doing it.

Q. Yes, but first of all, did you consider that?

A. Well, I must have whether that was a good prospect or not?

Q. No, no, no, no. Whether there was a prospect at the end of the day is another matter. How did you arrive at the decision you did? And I want to just take you through various steps. Obviously Mr. Crowley was seeking the advice of Mr. O'Dwyer and Mr. O' Neill because he had some questions at least, to ask about the document which was called the contract for the sale of this land, isn't that correct, otherwise he wouldn't have sought their advice?

A. Yes.

Q. He obviously informed Mr. O'Dwyer that he had interviewed Mr. Gallagher, that's in the letter, isn't that correct?

A. Yes.

Q. He obviously informed Mr. O'Dwyer that Mr. Gallagher was remaining steadfast in his assertion that the agreement was a bona fide commercial transaction.

A. Yes.

Q. And he must obviously have sought Mr. O'Dwyer's advice because he himself must have at least have had questions about that in his own mind, would you agree?

A. Yeah.

Q. Now, having obtained Mr. O'Dwyer and Mr. O' Neill's advice, he was advised that if you want to get to the

true facts around this or surrounding this agreement, it would be necessary to take certain steps, isn't that correct?

A. Yes, yeah.

Q. And then Mr. O'Dwyer and Mr. O' Neill advised Mr. Crowley that even if those steps were taken, there was still hurdles to jump, isn't that correct? And even again if the bona fides of the agreement was successfully challenged, there might still be another hurdle to jump in attempting to get the money, the $\frac{1}{2}$ 300,000 back, from the vendors, isn't that correct?

A. (Witness nods.)

Q. And of course, the advice was given that the costs of such proceedings could be substantial.

A. (Witness nods.)

Q. That was the process. Mr. Crowley obviously entertained some doubts about the document. Did you ever entertain such doubts about the document?

A. I think as I told you, I have no actual recollection of whatever date it was, on the 10th May 1984 I am glad to say. On the 14th May, I wrote to Mr. Lawrence Crowley and I think I set out the answers to the questions you are asking me.

Q. Very good. We'll deal with the letter so. Your response is to Mr. Crowley by letter dated 14th May 1984.

"Dear Mr. Crowley, I am writing to you as we agreed when we met on the 10th May to let you know formally the Revenue's view on the subject of the agreement by the Gallagher Group to acquire certain lands.

"The legal opinion which you have obtained and which is summarised from the letter of the 3rd May from Messrs. Arthur Cox & Co. Solicitors, would deter you as Receiver from taking any further action. The question then remains whether the Revenue Commissioners, as preferential creditors, might wish to pursue the matter by moving to appoint a provisional liquidator.

"I have considered this matter in an administrative context and without allowing the status of the proposed vendor to influence my decision" that may be a typographical error. It may be "proposed defendant," is it? Anyway

A. Proposed

Q. Proposed vendor, it doesn't we'll come back to it.

"The summary

A. It means vendor.

Q. Or perhaps of the vendor, perhaps, yes.

"The summary of Mr. O'Dwyer's conclusion at 2 refers to the real possibility that the stated reason for entering into the agreement might not be disproved."

A. Sorry, I think, not that I have a chance, is that there was a contract for sale an agreement for sale upon

which a deposit was paid. On the fulfilment of the contract there would be a sale. I am glad I remembered that.

Q. "The summary of Mr. O'Dwyer's conclusion at 2 refers to the real possibility that the stated reason for entering into the agreement might not be disproved.

Assuming that it might be possible in a winding-up to have the directors examined, it would seem to me to be difficult, to say the least of it, to undermine their version of the matter given the known style of business of a particular enterprise in which they were engaged.

It would also need to succeed in reversing the more usual understanding where the greatest reliance is placed on the documentary record. The provisional liquidator urged on by the Revenue Commissioners would be attempting to establish that the document with which we are all concerned meant something other than what was stated.

"On point 3 of Mr. O'Dwyer's summary, I must also take note that even if we were to take action along the lines suggested, the recovery of the funds would by no means be readily attainable" I beg your pardon "be a readily obtainable objective."

"In all the circumstances, do not think that the responsibilities placed on the Revenue Commissioners under the broad veil of care and management of the

duties and taxes would permit me to move for the appointment of a provisional liquidator.

"In the last analysis, the opportunity for a liquidator having the agreement of contract condemned, differs only from the Receiver doing so because the liquidator would be afforded an opportunity of having the directors examined by the Court. The chance of setting the agreement at naught by going into court fortified only by disbelief in the agreement would not seem to me to be great.

"Yours sincerely, S Pairceir, Chairman."

Now, if I could take the final sentence in your response to Mr. Crowley. "The chances of setting the agreement at naught by going into court fortified only by disbelief in the agreement would not seem to me to be great."

What did you mean by that, Mr. Pairceir?

A. Well, that you need something more than a disbelieving in a document, that you have to really that if the if the Gallaghers continued to maintain the view when being examined by the Court, as they had maintained when they were discussing the matter with Mr. Crowley, then all the Revenue could do not the Revenue, the liquidator appointed by the creditor would be to try to undermine the document itself.

Q. Now, of course there would be risks and substantial risks associated with most forms of litigation, I think you would agree, for anybody embarking upon it?

A. It's usually about 50/50.

Q. And a question of the credibility of witnesses before a court could be something which decided an issue one way or the other, would you agree?

A. Of course, yes.

Q. And of course one does have to take into account the risks and the costs associated with education before embarking upon it?

A. Particularly in the circumstances in which we found ourselves in 1984.

Q. And what were they?

A. The economy was in a bad state. The voted monies were very scarce, we were limited on our resources. I think that embarking on hazardous undertakings mightn't be well looked upon by the Public Accounts Committee and an excess vote would be very serious, so that all of the decisions that I was making around that time had to do with the economy of the situations and the scarce resources and that scarce resources was very well occupied in a whole lot of other developments. These were hard times.

Q. Oh absolutely, and perfectly legitimate matters to take into consideration before

A. Particularly important, if I may say so, in the

hindsight which is being afforded by looking back from the present state of budget re prosperity.

Q. Yes, of course. So would it be that in those times, one might have felt one needed a greater degree of certainty of success or more likely success before embarking upon litigation?

A. It's not so much embarking upon litigation, embarking upon liquidation, winding-up the petition

Q. Expending public money?

A. Expending public money, where we would have been at those times already seriously stretched in the amount of liquidations we were involved in.

Q. And was that your major consideration in dealing with this matter?

A. Well, I think what I seemed to be trying to say in the letter is that there were these two pillars, that's the care and management one and the duty of the accounting officer, and this was being put to me at least as a long shot and I didn't think there was any reason why I should undertake it. Particularly since, in the documents which I had seen around that time, and I think which are on file, is that any the assets were estimated at the time to be such that there would be a shortfall for the holder of the fixed charge and therefore, that the idea that you could isolate this asset and get it for the preferential creditor when the process of liquidation would consume it anyway was a

very long shot.

Q. And

A. That's what I mean by saying because I was dealing with this rather differently to the way we are dealing with it here today. Because I was trying to not allow the status of the proposed vendor to influence my decision or anybody else's decision, so because it really wasn't relevant. What was relevant to me is what I have just described.

Q. So your is that what you mean then, you were concerned with a long shot, the expenditure of public monies for which you as accounting officer were responsible when you use the phrase: "I have considered this matter in an administrative context and without allowing the status of the proposed vendor to influence my decision"?

A. If you look at Mr. O'Dwyer's letter, he says: "If the matter is to be pursued further it should be done by a liquidator who can apply, etc., etc., so nobody said in this, either Raymond O'Neill nor James O'Dwyer nor Lawrence Crowley said that this document was a sham or a fraud. They said that it was a document between the parties and to get whether or not its bona fides could be established. You had to recognise it as a document, go after the winding-up Order and when you got in, to get the Court examined, then the Court might make some decision about the location, the proper location of the

asset. So that that was the narrow focus that I had on it.

Q. Well, Mr. Pairceir, I wonder could you be correct in your recollection in relation to that? Mr. Crowley sought the advice of a solicitor and senior counsel in relation to this matter, isn't that correct?

A. Yes.

Q. And both he and his legal adviser came to see you about the matter, isn't that correct?

A. Yes.

Q. They would hardly, I suggest, have done that if they were operating on the basis that this document had the appearance had all the appearances of a bona fide document?

A. I don't see how that could affect it at all. The reason they were coming to me was because the directors and other persons could be examined if in a liquidation and that that couldn't be done by a Receiver.

Q. If there had been an ordinary contract in the usual terms for the sale of land which appeared to be reasonable in its value at the time, for the purchase of land, which appeared to be, on the face of it, normal, reasonable in terms of value, reasonable in terms and conditions of the contract, would you not agree it would be unlikely that Mr. Crowley would be taking the advice of the solicitor and counsel and that they would then be coming to you with a suggestion that

the Revenue should fund the appointment of a liquidator?

A. Of course.

Q. So the answer is, must be then that they came to you because there was at least a question as to the bona fides of this document, isn't that correct?

A. Yes.

Q. And did you share that doubt yourself?

A. Well, as I have said, the document was unorthodox and I didn't disagree with the view that they had put forward.

Q. So as far as you were concerned, on the face of it, the document did not appear to give rise to a bona fide contract for the purchase of land?

A. Yes, but what I shared with them was the question, not the answer.

Q. That was the view you took what I am trying to establish at the moment, Mr. Pairceir, are the facts.

Is that the view you took of the document as well?

A. It's clear that I saw that there was a question there.

Q. And a serious question?

A. I wasn't being asked to answer the question.

Q. Mr. Pairceir, I am asking you for what your view was.

I am not asking what you were asked by these people to do. I am asking you what was your view about this document?

A. That it was open to question, that its bona fides were

not established.

Q. Now, having made a decision which you were perfectly entitled to do, taking into account the considerations which you did, the expenditure of public monies on a potential long shot, you advised Mr. Crowley that the Revenue Commissioners were not prepared to fund the appointment of the liquidator, isn't that correct?

A. Yes.

Q. And of course, making such a decision, you exercised the judgement you are required to exercise in the safeguard of public monies, isn't that correct as well, as one of the considerations?

A. Yeah.

Q. And you were perfectly entitled to make such a decision while still entertaining a doubt in one's own mind about the bona fides of the document, isn't that correct?

A. Yes.

Q. And is that what happened in this case?

A. As I say, from the letter that I wrote, I would think that is true.

Q. Now, I accept that it is some sixteen-odd years ago, and you had to exercise your decision, putting the identity of the proposed vendor, as you describe them, out of the equation, you had to exercise your judgement in arriving at a decision, putting them out of the picture, but surely in terms of being able to remember

the matter, this related to one of the most significant or controversial political figures in the country at the time and perhaps over the last 25/30 years, isn't that correct?

A. Yes.

Q. So what I am really inquiring is, are you sure you don't have a memory of it?

A. Sorry. What I said was that I had no memory of the discussion.

Q. I see, I beg your pardon.

A. Of course, I have a very clear memory of the event.

Q. Very good. And after you had made your decision and informed Mr. O'Dwyer or Mr. Crowley of that decision, I think you then referred the matter to the superintending Inspector of Taxes, is that correct?

A. I probably phoned him up.

Q. You probably phoned him up?

A. Yeah.

Q. What would have happened? You'd have given him a phone call and explained the position to him, I suppose?

A. Well, I told you I spent 40 years in the Revenue, so that I had come into the possession of a piece of information in dealing with the Gallagher Group which affected, shall I say, another taxpayer. So I naturally passed on the information that $\frac{1}{2}$ 300,000 seemed to have passed to this particular taxpayer in

January 1980, as a piece of

Q. As a piece of information?

A. Yes, because the Revenue

Q. He must have made contact with you about the matter

again because according to Mr. Clayton, I think

Mr. Clayton said that he received a telephone call from

you, that was the first point of contact between you

and he?

A. I don't think you should import too much formality into

this.

Q. I am not

A. Mr. Fintan Connolly would be a person I would speak to

several times every day and he'd probably say to me,

would you ever talk to Mr. Clayton, you know, that's

the way we got on.

Q. What I am trying to do

A. It wasn't all this spit and polish or anything like

that.

Q. Absolutely not, absolutely not. So you rang

Mr. Clayton and you I think explained the situation or

the information that you had, anyway, to him?

A. Correct.

Q. And I think you must have continued to entertain, in

your personal capacity, a degree of disbelief in

relation to this document because you informed

Mr. Clayton of some of the unusual features of the

document, isn't that correct?

A. Yes.

Q. And I think your inquiry of Mr. Clayton was to as to whether it would give rise to any tax implication on his side of the house?

A. Yes.

Q. Now, I think Mr. Clayton did an analysis of the situation, his research into the matter and I think he was able to inform you of his view that it could give rise to a Capital Gains liability, isn't that correct?

A. Yes.

Q. And he so informed you? He informed you. He rang you up and told you?

A. Yeah, I think did he come to see me? I think he might have at any rate it doesn't matter.

Q. He might have sent you a little memo or a little handwritten note?

A. I think we tended to talk about these things. At any rate he got in touch with me and he told me what was in the contract.

Q. And I think he also must have come into some information that there was a potential capital gains liability in respect of the sale of Rath Stud because that then came into the equation from the point of view of his calculations at least anyway?

A. Yes.

Q. And he attempted to deal with Mr. Haughey's tax agents in respect of these matters?

A. Yes.

Q. I think you may have been here this morning, but yesterday and this morning, Mr. Clayton was going through correspondence and he was getting very he was getting no response, would be, I think, fair to say, from your knowledge of the documents now anyway.

A. Yes.

Q. He then developed a method of communication with you whereby he attributed a different name to Mr. Haughey and a different description of the area of the lands and matters of that nature. I am not saying

A. I think he did that only once.

Q. Maybe well, maybe twice, I think the name Murphy may have been used, but I am not suggesting that there is anything sinister in relation to that. The matter was being dealt with sensitively

A. Yeah.

Q. would be fair to say? And what Mr. Clayton was doing was putting another layer of confidentiality in place?

A. Oh yes.

Q. And he spoke to you or referred to you at least in how he might deal with Mr. Haughey's agents on at least one occasion, if not more than that, and he also, I think, sent you a copy of a draft that he intended, a draft letter he intended sending?

A. That is so.

Q. Now, can you remember any of the occasions on which Mr. Clayton would have contacted you about this Capital Gains matter?

A. Here again I recognise the documents and therefore, I have no difficulty in saying all these events occurred.

Q. And those indicate that Mr. Clayton was in reasonably frequent contact with you over the years about the matter, isn't that correct?

A. Three times in 1984, once in 1985 and four times in 1986.

Q. And would you think that they were the only occasions or would you have had other telephone conversations with him as well?

A. My concern about this was, to begin with, well, first of all, I passed on the information, but my concern about it was that having decided, as I did, about not going for the liquidation, well then, I then acted on the matter as though the document was a full effect and therefore, I was interested to know what the other party, how the other party would respond.

Q. You knew that the information had not been disclosed to the Revenue at some stage. You knew that this information had not been disclosed by the vendors, the proposed vendors?

A. Yes, I know that now, but I would assume that that is likely, because it's, as Mr. Clayton said this morning, it's not really we are talking about 1984. The

capital taxes had been introduced in 1974/'75 and, you know, not all of these events were being reported to the Revenue.

Q. I understand, I understand that. That that is so.

They were not being reported to the Revenue?

A. With accuracy.

Q. But the Revenue had a technique themselves, didn't they, to try and prompt people to make disclosure, they would hint to somebody's tax agent, particularly to tax agents by including in a letter something to the effect of an inquiry as to whether there had been the disposal of any assets or matters of that nature.

A. Mr. Clayton referred this morning to the rather paltry powers that the Revenue had.

Q. I'll come to those in a moment.

A. Just in answer to your question, so therefore, it was an a a custom had grown up of prompting voluntary disclosure because and most of the successful cases of back duty came out of voluntary disclosure because you had to have something to pull you in.

Q. But I think it was something that was understood by tax agents as well when they were in communication with the Revenue, they would understand the type of coded hint that was being given in a letter from the Revenue?

A. Most of the major tax departments in accountants' offices were headed up by ex-Revenue people. It wasn't a secret.

Q. Yes, so they knew how the game was played?

A. Yes.

Q. And Mr. Clayton was writing such letters to Mr. Haughey's agents, isn't that correct, from

A. He certainly wrote one where he dropped a big hint.

Q. Now, was it causing you any concern that there was no response in relation to the matter?

A. I don't think so, no I must admit that I wouldn't have thought about it very much.

Q. No, but you embarked upon this enterprise initially with a certain apprehension in relation to the document, isn't that correct?

A. I don't know what you mean about my embarking on an enterprise.

Q. Well, I'll put it to you this way: You first became involved and you informed the superintending inspector after you had made your decision, isn't that correct, and you had doubt about the documents?

A. Yes, but I would have thought that the superintending inspector would have dealt with it way up to the end.

Q. Yes, but you were dealing with Mr. Clayton on the matter, or he was dealing with you on the matter?

A. Yes, yes, the second he would come to me about it.

Q. From the documents now, correct me if I am wrong, it would appear that Mr. Clayton, on this particular matter, the Capital Gains, was effectively reporting to you?

A. I would prefer to say he was telling me about how he was getting on rather than saying he was reporting to me, which carries an overtone.

Q. Well, I don't know what the overtone is, but you were advising him on how matters might be dealt with?

A. No, I wasn't.

Q. Well, there is a note, and I'll go through it now, I think you were here when Mr. Clayton dealt with it this morning, where at a meeting with you, the expression "Rope and a pig" was used and a suggestion that a stronger hint be given to the tax agents.

A. That was a conversation I had with him.

Q. And it wasn't advice you were giving him?

A. Not in the sense that I was giving him a command. We were just talking about it.

Q. I am not suggesting that Mr. Clayton wasn't a responsible official, you wouldn't necessarily need to give him a command?

A. He would know more about it than I do.

Q. And what role did you have, so, at such a meeting or having such a conversation with Mr. Clayton? Were you just a sounding board?

A. No. I wrote in a letter, maybe I can't find it now, but yes, a letter which I wrote to Mr. Davis on the 7th December rather covers that. "While Mr. Clayton knew what had to be done in assessing the liability and pursuing the tax, I would have understood that it is

important for him and for the Revenue generally that he should be assured that whatever he did had the support of the Chairman." That was my role.

Q. Well, I'll come to that. So that's your view, that this was a difficult matter for Mr. Clayton to deal with?

A. Mr. Charles Haughey was a very prominent is a very prominent person. Mr. Clayton, dealing with this particular matter, with which I had been connected out of the Gallagher Group, was, I felt, was entitled to be sure that the steps that I was taking were ones that, in the event of there being any complaint or anything else, that I would be able to say I know that it's been happening, that I wouldn't be taken by surprise.

Q. Now, the Revenue were proceeding on the basis in pursuing Capital Gains Tax on this particular transaction in attributing the status of a bona fide contract, whatever about the doubts that may have been in anyone's mind, but they were proceeding on the basis that this was a bona fide contract for the purchase of land, isn't that correct?

A. Yes.

Q. And that the terms and conditions were bona fide and that the deposit of $\frac{1}{2}$ 300,000 was forfeited on such and such a date. Isn't that correct, if the conditions of the contract could not be complied with?

A. Yes.

Q. From a Revenue point of view, and from the assessing and collecting of a Capital Gains Tax, this was just an ordinary tax matter, isn't that correct?

A. That's true, except it had not been disclosed.

Q. What's the significance of that?

A. Well, it would be an ordinary tax matter if it had been disclosed and the process of assessment were going ahead, but this was a piece of information which had come to us through the Gallagher Group in the receivership, and Mr. Clayton was, as we discussed earlier on, nudging the tax agent in the direction of saying, you better find out from your client what is what this might be about. So that's that was the sensitivity in it.

Q. The fact that it hadn't been disclosed?

A. Yes.

Q. Now, if you ally that with the doubts which were entertained in relation to the document, did you, you as the Chairman, not consider that it warranted some form of further scrutiny?

A. What did?

Q. The whole transaction.

A. No.

Q. You didn't even consider that?

A. Mr. Raymond O'Neill and Mr. James O'Dwyer had come to me with their concern about the bona fides of the document. Their advice to Mr. Crowley was that maybe

you could establish this if you appointed a liquidator and the parties could be examined under Section 245. That's the territory about establishing a legitimacy of the document. Once that I had come to this decision which we have discussed at length, then I had to deal with the document as a document giving rise to transaction. Mr. Clayton advised me of the nature of the liability which arose. At that stage, all I was doing was pursuing the liability which arose as a result of a transaction which had occurred between the parties.

Q. Mr. Pairceir, I am not at all questioning your entitlement to have made a decision that you were not going to

A. Sorry, I will answer your question by saying that having made that decision, that was the end of the matter, as far as I was concerned.

Q. So, did you then decide that you were putting any doubts you entertained about the document out of your mind?

A. Yes.

Q. But can that be so? Because you informed Mr. Clayton of the unusual features of the document?

A. I could inform him about it, and still put concern out of my mind.

Q. Well, proceeding on that basis so, you proceeded on the basis that it was for the purpose of the Revenue's

business now, a bona fide document, and if you could collect the tax on it, it should be done, isn't that correct?

A. Mmm.

Q. And in fact, was forming part of the assets of Mr. Haughey, isn't that correct, this is 1/2 300,000?

A. And had since 1980.

Q. And had since 1980. And it was not being disclosed, isn't that correct, notwithstanding the prompting, it was not being disclosed?

A. Yes.

Q. And that nondisclosure was causing at least a degree of sensitivity within the Revenue or concern?

A. You see, we were moving forward from a knowledge of the document, we dealt with the Gallagher Group, then we were moving into the taxpayer, the Haughey family, and until such time as we got a response from the Haughey family, we didn't know what was going to transpire.

Q. I can understand that, but it wasn't being disclosed so that was causing some concern, wasn't it, in the Revenue?

A. You see, we didn't have a clear link between the Gallagher and the Haughey thing.

Q. Sorry, I don't understand that?

A. What I mean by that is if it had been disclosed on the Haughey CGT return, that that would have the case would be closed.

Q. Oh yes, I can understand. If it had come in in the normal course of returns or even if there had been delay, if it had been returned, it was a matter that could be dealt with and consideration could or could not be given even to consideration of interest, I understand that of course, but the Revenue were in possession of information that $\frac{1}{2}$ 300,000 had been given by the Gallagher Group to the Haughey family to Mr. and Mrs. Haughey. Now the evidence which was given before this Tribunal is and I just want to do this for the sake of completeness.

Mr. Haughey has given evidence that Mrs. Haughey had no real involvement in this particular transaction. He accepted responsibility for this particular transaction himself. It's just in case there is any doubt about Mrs. Haughey having some huge involvement in the matter. But she was on the document, there is no doubt about that. It wasn't being disclosed, you were concerned now. Is that correct?

A. The reason you asked me about the reason for the sensitivity. And the sensitivity was to move forward and to try to get some response from the Haugheys.

Q. As far as the Revenue was concerned, there appears to be an asset which was not disclosed, isn't that correct?

A. A transaction.

Q. No, an asset, serious consideration, calculations were

being done and the question of Capital Gains on this particular transaction, isn't that correct?

A. But that is that was because the asset had arisen from a transaction which was taxable.

Q. Did you ever give consideration to involving any other branch of the Revenue other than Mr. Clayton's section in Capital Gains in respect of this matter?

A. No.

Q. Why not?

A. Well, I don't know. I mean, are you going to tell me why I should have?

Q. I am asking you why not?

A. Well,

Q. Did the Revenue have an investigation branch?

A. Yes.

Q. What were the criteria for the involvement of the investigation branch in the affairs of the taxpayer?

A. Nondisclosure of income.

Q. Or nondisclosure of an asset?

A. Of an asset.

Q. And here was a situation where a huge degree of sensitivity existed within the Revenue, as you said yourself, because of nondisclosure and you did not even give consideration to involving the investigation branch. I am not talking about going to court or appointing liquidators, I am talking about you didn't even give consideration to the involvement of the

investigation branch. Is that correct?

A. That is correct.

Q. Why not?

A. The activities of the investigation branch were conducted by the superintending inspectors of taxes.

The superintending inspectors of taxes was a very large branch of the Revenue headed up by a person of deputy secretary rank, had two assistant secretaries, a large number of people who dealt with the business of the assessment, collection of the tax and the running of the investigation branch. I did not lead on and tell them whom they should investigate. Apart from the fact that I don't remember thinking about it anyway.

Q. Well, Mr. Pairceir, just bear with me for a moment.

This particular transaction was, and I use the term loosely now, was directed towards Mr. Clayton's section, isn't that correct?

A. Yes.

Q. And once it was directed to Mr. Clayton's section, Mr. Clayton, of course, being a responsible official of the Revenue, dealt with the matter in a responsible way, but only from a Capital Gains point of view, isn't that correct?

A. That's correct.

Q. And he kept you informed of this, isn't that correct, of his dealings?

A. Of the steps that he was taking.

Q. And would I be correct in thinking that once the affair was being dealt with by Mr. Clayton and was moving along or not moving along, but he continued to deal with it, it would stay in that section on the Revenue?

A. Oh yes.

Q. Unless and until somebody in the Revenue indicated that we are not getting anywhere with this and perhaps it's a matter that the investigation branch should take on, in other words, directed somewhere else?

A. I don't agree with that. It seems to me to be perfectly reasonable. We were aware of an asset which had passed to the Haugheys on the basis of the agreement. The tax liability on that is dealt with in the Capital Gains Tax legislation. Every time that an asset passes around, you don't launch an investigation branch inquiry.

Q. I understand that, but there was nondisclosure, and no cooperation over many years in relation to this, isn't that correct?

A. Well, I don't think you could say that there was nondisclosure over many years because the Revenue view, as was explained by Mr. Clayton, was that the liability did not kick in until 1985, the end of 1985 when the deposit was forfeited. So that and the tax was assessed sometime, I don't remember the dates, but it had all been collected at any rate by a year and a

half. It's not really a very long time.

Q. With respect, Mr. Pairceir, does that argument hold together at all? Of course it's a very fine technical argument made by the Revenue that the deposit was forfeited on the date in the contract which would allow the various options to be exercised or the deposit forfeited. The Revenue knew, from its involvement with the Gallagher Group, that the Gallagher Group were incapable of completing this particular contract, isn't that correct?

A. Yes.

Q. From an early stage, from as far back as 1982 or perhaps earlier. Well, sorry, you didn't know about the contract earlier, but from earlier. Mr. Clayton, prior to the date when he gave evidence that the liability arose in 1985/1986, prior to that, some significant time prior to that had been writing to Mr. Haughey's tax agents prompting them to disclose it, isn't that correct?

A. That's true.

Q. And I think Mr. Clayton, who was a responsible and senior official at the time and has gone on to higher positions in the Revenue, would hardly have been writing to tax agents who would understand the nature of the letter they were receiving unless he considered that it was the appropriate thing to do, that there was a necessity for disclosure?

A. Yes.

Q. And in real terms, there was no disclosure over many, many years in relation to this matter and I am only taking from the time it came to the attention of the Revenue. I am not even dealing with the time before that. Would you agree?

A. How do you mean would I agree?

Q. There was nondisclosure for a considerable period?

A. Yes.

Q. What I am trying to ascertain is what consideration in the first instance was given to the involvement of the investigation branch and if there was no consideration, why that was so?

A. I did not give any consideration to referring the Haughey family to the investigation branch. The reason I didn't, I never thought of doing such a thing and even now I don't see why I should have.

Q. What then was the sensitivity attaching to the matter?

A. The personality involved.

Q. And that was the sensitivity?

A. Well, the Revenue does not live in a vacuum and we are, we are part of the process, an agent of government. There are, among the very influential people in that are people, members of parliament, Teachtaí Dála and people who are and have been in government. That's the sensitivity and also there are others as well, but

Q. Yes, I appreciate that. And I can understand from the point of view of confidentiality or layers of confidentiality, why certain security procedures might be followed in the Revenue. But in this particular case, as far as the Revenue were concerned, this was a normal transaction, isn't that correct? That's how the Revenue was treating it from a tax point of view?

A. Yes.

Q. And is it because of the identity of this particular taxpayer that it warranted the attention of the Chairman of the Revenue Commissioners over a long period of time?

A. No.

Q. Well, why then

A. It was, as I have explained before, it's to give Mr. Clayton assurance that I was aware of whatever action he was taking.

Q. But why would Mr. Clayton need that assurance? As a Revenue official carrying out his ordinary duties, he wouldn't need assurance if he was dealing with a normal bona fide transaction, would he?

A. Not in all there are certain matters which come before the Revenue which it is advisable to have cover, not in the sense of instruction, but in the sense of awareness of what is going on. And that's all that was.

Q. But if I could just take that piecemeal. What did

Mr. Clayton do which would be worthy of complaint about his behaviour?

A. Nothing.

Q. It wasn't a situation where he was even developing a new area or line of tax collection.

A. Quite so.

Q. In fact, the computation in relation to the Gallagher/Haughey transaction was a fairly simple one, isn't that right, it was just the application of a rate?

A. Yes.

Q. And in relation to the dealing with the Rath Stud disposal, the most favourable option was given to the taxpayer, isn't that correct?

A. Yes.

Q. In the exercise of the Revenue's discretion. So in all of those circumstances, why would Mr. Clayton need cover?

A. Well, he doesn't need it. But I go back again to the fact that, this matter came to my attention first. I then referred it I then was curious to know what the reaction at the far end would be and I kept in touch with Mr. Clayton and Mr. Clayton kept in touch with me about the development or absence of development.

Q. That's what the Tribunal is trying to understand, Mr. Pairceir. Why?

A. Well, from my point of view, I was interested to know

what the reaction of the taxpayer would be of the vendor would be. But it wouldn't be unusual for me to get in touch, to have some contact with a case where then I would expect some response from somebody else and people would let me know about it.

Q. How often would that happen, that you could that would monitor

A. Well,

Q. as Chairman of course?

A. Yes, I would say that dozens of times in the Collector-General's office in relation to big cases in default, receiverships, liquidations, High Court actions, etc., not so many on certainly on the Capital Gains Tax side. Frequently for Capital Acquisitions tax in individual cases and as well as that, there would be streams of cases coming in from the Minister for Finance's office through the representational system, through the PQs put down to the Minister for Finance, so that among those, there would be a number always in high profile where I would be concerned about maybe an action which was being taken which was too severe in some cases or which was not severe enough in another case, so it was part of the job.

Q. All of those appeared to be prompted by some external source or commencement?

A. Well, all the taxpayers are external.

Q. Yes, of course, but this is something that you

had information you had, you passed it on in the normal course of your job and why didn't it just take the normal course then? Like, why would the Chairman of the Revenue Commissioners have been involved?

A. If we take can I answer this in phases?

On the 15th May I spoke to Mr. Clayton. On the 30th July I asked him had he got a reply? And on the 7th August he sent me copies of the reply. On the 21st June following, that's between August 1984 and June 1985, we discussed Mr. Clayton's memorandum of the 18th June. Six months later, Mr. Clayton prepared a note for his file and about how he was going to raise the assessment and then he told me that the notice of assessment had issued and that the assessment was agreed in May and then he says that, well, on the 30th October, I signed a note saying that it should be referred to the Revenue solicitors. I don't understand what we are talking about. This is not a huge overview or oversight or superintendence by me of this matter. There is eight conversations in two years and a half.

Q. Mr. Pairceir, Mr. Clayton didn't act in this file without referring to you he kept you informed of all his actions?

A. He kept me informed of the stages

Q. And his proposed actions and are you seriously

suggesting that there was no overall supervision by you of this particular file?

A. I am not suggesting that. I am stating that.

Q. Very good.

Q. Well, what I propose to do, so, in the morning, Mr. Pairceir, is to go through each and every one, is that all right? You can familiarise yourself with them.

A. Yes.

CHAIRMAN: Just in conclusion on this aspect, Mr. Pairceir, when you were making your earlier decision, having conferred with Mr. Crowley and Mr. O'Neill and Mr. O'Dwyer against going for the longer shot, would the identity of the purchaser or of the vendor have been a factor in this sense in your decision, that it would have been part of the necessary task to have had your counsel persuade the Court that the person who had been Taoiseach, or at least Leader of the Opposition throughout these years, had been privy to a document that was not stated?

A. I don't think that I don't recall having that consideration in mind.

CHAIRMAN: Very good, we will resume matters in the morning. We will revert to half past ten.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING MORNING, WEDNESDAY, 20TH DECEMBER 2000 AT 10.30AM.

